

November 24, 1998

**Robert Azinian and others v. United Mexican States
(ICSID Case No. ARB(AF)/97/2)**

**Decision of the Tribunal concerning
the filing of a reply and a rejoinder**

1. The Tribunal has considered the parties' respective letters of 30 October and 10 November 1998 and hereby directs the parties to prepare a further round of written pleadings.
2. The fundamental basis for this decision is the Tribunal's determination that the oral phase of the proceedings is likely to be better focussed by allowing Reply and Rejoinder Memorials.
3. At the same time, the Tribunal acknowledges that many of the observations made in the Respondent's letter of 10 November are pertinent in principle, such as the restrictive criteria listed in paragraph 18. It would not, however, be efficient to initiate a separate preliminary debate over the permissible scope of a Reply which is yet to be submitted. It should be enough for the Tribunal to exhort the parties to ensure that their respective final Memorials are responsive to their opponent's previous submissions, and be organized in such a way that this responsive character is plain to see.
4. The same reasoning applies to evidence in support of the Reply or Rejoinder, including the Desona operating journals. The Tribunal notes that the Respondent at one point called for the production of such evidence, and still suggests that it was not previously produced because it "would severely undermine the validity of [the Claimants'] experts' so-called 'indications of value'." (Paragraph 34 of 10 November letter.) While the Respondent asserts that it would at this stage suffer prejudice if such materials are produced, because it may have to develop new counter-arguments and

indeed new analyses to serve as support for those counter-arguments, the Tribunal does not view this objection as decisive. In the first place, in as much as it could be raised against any evidence accompanying any Reply the objection goes too far to be acceptable in principle. Secondly, there is no basis to rule *a priori* that it would be particularly burdensome to deal with the materials the Claimants wish to produce. (With respect to operating logs, it is the experience of the Tribunal that notwithstanding their typical bulkiness they are not necessarily difficult to interpret with respect to basic information such as productivity and downtime.)

5. In view of the above, and having furthermore regard to the fact the Claimants have already had time to consider the Counter-Memorial, the Tribunal instructs the parties to proceed as follows:

- (1) The Claimants to file their Reply by 19 January 1999.
- (2) The Respondent to file its Rejoinder by 19 April 1999.

Original signed by
Mr. Jan Paulsson
President of the Tribunal