

**IN THE MATTER OF AN ARBITRATION UNDER THE TREATY BETWEEN THE UNITED
STATES OF AMERICA AND THE REPUBLIC OF ECUADOR CONCERNING THE
ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT SIGNED ON
27 AUGUST 1993**

- and -

THE UNCITRAL ARBITRATION RULES, 1976

(the “UNCITRAL Rules”)

- between -

MURPHY EXPLORATION & PRODUCTION COMPANY - INTERNATIONAL

(“Claimant”)

and

THE REPUBLIC OF ECUADOR

(“Respondent,” and together with Claimant, the “Parties”)

PROCEDURAL ORDER NO. 4

Tribunal:

Me Yves Derains

Professor Kaj Hobér

Professor Bernard Hanotiau, Presiding Arbitrator

Registry:

Permanent Court of Arbitration

I. PROCEDURAL BACKGROUND

1. On 6 May 2016, the Tribunal issued its Partial Final Award.
2. By letter dated 6 June 2016, Claimant requested that the Tribunal “make an additional award deciding Claimant’s claim for post-award interest on the costs of arbitration,” pursuant to Article 37 of the UNCITRAL Rules; or, in the alternative, and “in case the Tribunal decided this issue but failed to expressly reflect it in the Partial Final Award due to a clerical or typographical error or an error of a similar nature,” correct the Partial Final Award, pursuant to Article 36 of the UNCITRAL Rules (the “Request”).
3. By letter dated 8 June 2016, the Tribunal acknowledged receipt of the Request and invited Respondent to submit its comments by 17 June 2016.
4. By letter dated 17 June 2016, Respondent objected to the Request on the basis that “there is no ground for relief under either Article 36 or 37 of the UNCITRAL Arbitration Rules.”

II. RELEVANT PROVISIONS

5. The relevant provisions of the UNCITRAL Rules are as follows:

Article 36 – Correction of the Award

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply.

Article 37 – Additional Award

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.
3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply.

III. PARTIES' ARGUMENTS

Additional award pursuant to Article 37 of the UNCITRAL Rules

2. Claimant requests that the Tribunal “make an additional award deciding Claimant’s claim for post-award interest on the costs of arbitration,”¹ pursuant to Article 37 of the UNCITRAL Rules and, more specifically, that the Tribunal order Respondent to pay post-award interest on the amount awarded to Claimant for the costs of arbitration in paragraph 548(x) of the Partial Final Award.² In support of its request, Claimant submits that, in its pleadings and submissions, it had requested that the Tribunal order Respondent to pay post-award interest on “all amounts awarded to Claimant until Ecuador’s final satisfaction of the Tribunal’ Award.”³ Claimant contends that while the Tribunal ordered “Ecuador to bear 75% of the costs of arbitration including Claimant’s costs for legal representation and assistance in the amount of EUR 3,756,550.68,”⁴ the Partial Final Award “omits a decision” on post-award interest on said amount.⁵
3. Respondent objects to Claimant’s request for an additional award, arguing that such request is not *justified* as required under Article 37(2) of the UNCITRAL Rules.⁶ First, Respondent argues that there was no extant claim for post-award interest at the time of the issuance of the Partial Final Award.⁷ More specifically, Respondent submits that Claimant’s claim for post-award interest on costs was not “expressly sought,”⁸ “adequately made prior to the award”⁹ or included in Claimant’s “most relevant pleadings on the issue.”¹⁰ Second, Respondent contends that “even if such a claim could be considered to have been made and outstanding,”¹¹ it was a “subject of

¹ Claimant’s letter dated 6 June 2016, p. 2.

² Claimant’s letter dated 6 June 2016, p. 2.

³ Claimant’s letter dated 6 June 2016, pp. 1-2, referring to Claimant’s Statement of Claim, para. 461(iv), Claimant’s Reply on the Merits, para. 782, Claimant’s Post-Hearing Brief, para. 149, and Claimant’s Second Post-Hearing Brief, para. 61.

⁴ Claimant’s letter dated 6 June 2016, p. 2, citing Partial Final Award, para. 548(x).

⁵ Claimant’s letter dated 6 June 2016, p. 2.

⁶ Respondent’s letter dated 17 June 2016, paras. 3-10.

⁷ Respondent’s letter dated 17 June 2016, para. 9.

⁸ Respondent’s letter dated 17 June 2016, para. 6.

⁹ Respondent’s letter dated 17 June 2016, para. 5.

¹⁰ Respondent’s letter dated 17 June 2016, paras. 7-8, referring to *Gemplus S.A. and Others v. United Mexican States and Talsud S.A. v. United Mexican States*, ICSID Case Nos. ARB(AF)/04/3 and ARB(AF)/04/4, Award, 16 June 2010, paras. 1-52, 17-3–17-10, and 17-27 (RLA-425); and *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 21 November 2000, footnote 11 (CLA-187).

¹¹ Respondent’s letter dated 17 June 2016, para. 10.

the Tribunal’s dismissal of ‘all other claims’¹² in paragraph 548(xi) of the Partial Final Award, and thus cannot be said to have been omitted.¹³

Correction to the Award pursuant to Article 36 of the UNCITRAL Rules

4. Claimant requests in the alternative, “and in case the Tribunal decided this issue but failed to expressly reflect it in the Partial Final Award due to a clerical or typographical error or an error of a similar nature,”¹⁴ that the Tribunal issue a correction of the Award pursuant to Article 36 of the UNCITRAL Rules “to reflect the Tribunal’s order that Ecuador pay Claimant post-award interest on the costs of arbitration as awarded in numeral (x) of paragraph 548 of the Partial Final Award.”¹⁵
5. Respondent submits that Claimant’s request for a correction falls outside the scope of Article 36 of the UNCITRAL Rules because it does not involve a miscalculation, mistake or typographical error on the part of the Tribunal.¹⁶ It argues that any such correction is “limited to the ‘restoration of the award’s proper contents as adopted by the [arbitral tribunal]’”¹⁷ and adds that the fact that the Tribunal did not include a specific sentence on the subject “does not entail an unintended mistake.”¹⁸

IV. ANALYSIS AND DECISION OF THE TRIBUNAL

6. The Tribunal notes in the first place that Claimant’s Request does not involve a miscalculation, mistake or typographical error on the part of the Tribunal. It does not therefore meet the conditions of Article 36 of the UNCITRAL Rules.
7. With respect to Article 37 of the UNCITRAL Rules, the Tribunal notes that this provision permits the arbitral tribunal to make an additional award “as to claims presented in the arbitral proceedings but omitted from the award.” In the case at hand, Claimant has not made any specific claim for post-award interest on costs, either in its submissions on the merits or in its submissions

¹² Respondent’s letter dated 17 June 2016, para. 4.

¹³ Respondent’s letter dated 17 June 2016, para. 10.

¹⁴ Claimant’s letter dated 6 June 2016, p. 2.

¹⁵ Claimant’s letter dated 6 June 2016, p. 2.

¹⁶ Respondent’s letter dated 17 June 2016, para. 11.

¹⁷ Respondent’s letter dated 17 June 2016, para. 11, citing D. Caron et al., *THE UNCITRAL ARBITRATION RULES*, p. 895 (RLA-457) (internal citation omitted).

¹⁸ Respondent’s letter dated 17 June 2016, para. 12.

on costs. The reason why the Tribunal has not granted post-award interest on costs is that no specific claim in this respect was before the Tribunal at the time of rendering its award.

8. Claimant's Request, on the basis of both Articles 36 and 37 of the UNCITRAL Rules, is, therefore, denied.

Done at The Hague on 1 July 2016,



Professor Bernard Hanotiau
Presiding Arbitrator
(On behalf of the Tribunal)