

FAX IN

Marvin Roy Feldman Karp
v.
United Mexican States
(ICSID Case No. ARB(AF)/99/1)

Procedural Order No. 6
concerning the marshalling of evidence
at the hearing on the merits

1. The Tribunal recalls the proposals on the marshalling of evidence made by the President of the Tribunal and conveyed to the parties by the Secretariat's letter of June 8, 2001; the Claimant's letter of June 13, 2001 in response thereto; the Respondent's letter of June 14, 2001, and its attachment, in response to the foregoing correspondence; and the Claimant's letter of June 14, 2001. The Tribunal, having considered the parties' above-mentioned communications, issues the following Order concerning the marshalling of evidence at the hearing on the merits scheduled to be held in Washington, D.C. from July 9 through July 13, 2001.

2. ~~Time of the Tribunal's sittings.~~ The Tribunal shall sit for 35 hours throughout the hearing, for 7 hours each day of hearings, between 9:00 a.m. and 6:30 p.m., with a break each morning and afternoon and a 90-minute break for lunch. The Tribunal envisages consulting the parties on the first day of hearings (Monday, July 9, 2001) whether any additional sitting time will be required during the hearing. The Tribunal does not contemplate sitting for more than an additional hour each day of hearings.

3. Allocation of Time

a. Of the 35 hours for which it shall sit, the Tribunal reserves 5 hours for itself, for putting questions to the parties, to witnesses or to experts, or for deliberation. The remaining 30 hours are to be distributed equally between the parties, with 15 hours for each party. Each party may use its time as it wishes. Time will be kept by the Secretary and is to be counted against the party presenting its arguments, putting a question to a witness or expert, or raising an objection to such a question. The Tribunal may make any appropriate adjustments in the allocation of time between the parties.

b. A party shall not be deemed to have accepted the statements of a witness or expert on which such witness or expert is not questioned or challenged.

4. Order of Proceeding. Each party has made proposals on the order of proceeding which deviate from the proposal on this point made by the President of the Tribunal. None of the parties' proposals on this point, however, has been accepted by the other party. In these circumstances, the Tribunal seeing no compelling reason to depart from the President's original proposal, the hearing shall proceed as follows:

a. The Claimant shall make an opening statement, with an overview of the evidence it relies upon.

b. The parties having agreed in this case that there shall be no direct oral examination of witnesses or experts, the Claimant shall thereafter proceed to cross-examine witnesses and experts proposed by the Respondent.

- c. The Respondent shall be entitled to re-direct examination of each witness or expert cross-examined by the Claimant, on matters arising out of such cross-examination.
 - d. Once the Claimant has concluded its cross-examination of the Respondent's witnesses, the Respondent shall make an opening statement, with an overview of the evidence it relies upon.
 - e. The Respondent shall thereafter proceed to cross-examine witnesses and experts proposed by the Claimant.
 - f. The Claimant shall be entitled to re-direct examination of each witness or expert cross-examined by the Respondent, on matters arising out of such cross-examination.
 - g. Once the Respondent has concluded its cross-examination of the Claimant's witnesses, the Claimant and the Respondent are invited to make their respective closing statements to the Tribunal.
5. Scope of cross-examination. In its letter of June 13, 2001, the Claimant sought guidance from the Tribunal to the effect that cross-examination be limited to the matters and to the documents referred to in each witness's written statement. In its letter of June 14, 2001, the Respondent submitted instead that either party should be entitled to cross-examine a witness on any matter relevant to the dispute that is within the witness's personal knowledge and any matter that goes to witness credibility. The Tribunal agrees with the foregoing proposal of the Respondent. Witnesses may therefore be cross-examined on any matter relevant to the dispute that is within the witness's personal knowledge, subject to

the control of the Tribunal on an *ad hoc* basis if, for instance, the Tribunal deems the question put to the witness is irrelevant or has otherwise already been answered.

6. Witnesses and Experts to be Examined by the Parties. The President of the Tribunal has instructed its Secretary to contact counsel for each party with a view that the list of witnesses to be examined at the hearing (as well as arrangements concerning interpretation and their presence in the hearing room) may at this time be established. The Claimant may supplement the list of witnesses it seeks to cross-examine at the hearing upon its receipt of the Respondent's rejoinder on the merits.

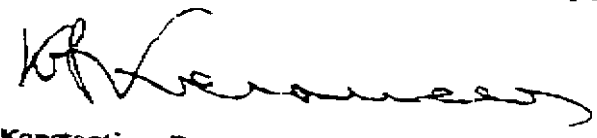
7. Interpretation

- a. As a general rule, simultaneous interpretation between English and Spanish shall be used at the hearing. This is subject to the following exceptions.
- b. At the first session of the Tribunal, the parties agreed that consecutive interpretation is to be used for the examination of witnesses in a language other than their native language.
- c. The Tribunal will endeavor to accommodate the proposals on interpretations made in the Claimant's letter of June 13, 2001, subject to the availability of time at the hearing. The President of the Tribunal has instructed its Secretary to consult with counsel for each party on this point.

8. Presence of Witnesses and Experts during the Hearing. Mr. Marvin Roy Feldman Karpa may remain in the hearing room throughout the hearing. While the Respondent has, in its letter of June 14, 2001, expressed a preference for a certain rule on the presence of witnesses and experts during the hearing, both the Claimant and the Respondent have reserved further submissions on this point until the list of witnesses is finalized. The President of the Tribunal has instructed its Secretary to consult with counsel for each party on this point.

9. Presence of Canada and the United States of America. The President of the Tribunal has instructed its Secretary to consult with the relevant officials of Canada and the United States of America to determine who will be attending the hearing on their behalf.

This order is signed on behalf of the Tribunal by its President.



Konstantinos D. Kerameus
President of the Tribunal

June 19, 2001