Yorski, Veronica R.

From:	Stetson, Catherine E.
Sent:	Tuesday, January 02, 2018 2:01 PM
To:	'Edwin.S.Kneedler@usdoj.gov'; 'Zack.Tripp@usdoj.gov'
Cc:	Monts, William L., III; Oakley, Bruce D.; Reich, Mitchell P.; 'Pizzurro, Joseph D.'; Garcia, Robert; Meehan, Kevin A.
Subject:	Helmerich & Payne Int'l Drilling Co. v. Venezuela (D.C. Cir. Nos. 13-7169, 13-7170, 14-7008)
Attachments:	Venezuela Letter to Solicitor General 1.2.pdf

Ed and Zack,

Thanks for meeting with us before the holidays to discuss this case. We've considered a few of the questions you posed in further detail, and have written a letter, attached, elaborating our answers in writing.
Please let us know if we can provide any additional information. Thank you again for considering our positions.

I hope you had a wonderful holiday season, and best wishes for the new year.

Best,
Cate

This material is distributed by Hogan Lovells US LLP on behalf of the Government of the Bolivarian Republic of Venezuela. Additional information is available at the Department of Justice, Washington, D.C.

Received by NSD/FARA Registration Unit 01/03/2018 3:50:31 PM

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

January 2, 2018

VIA EMAIL

Mr. Edwin S. Kneedler
Deputy Solicitor General
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20630

Re: *Helmerich & Payne Int'l Drilling Co. and Helmerich & Payne de Venezuela, C.A.* v. *Bolivarian Republic of Venezuela, Petróleos de Venezuela, S.A., and PDVSA Petróleo, S.A.* (D.C. Cir. Nos. 13-7169, 13-7170, and 14-7008)

Dear Ed:

Thank you for meeting with us on December 12 to discuss this case. Since our discussion, we have considered in further detail several of the questions that you posed to us. We thought that it might be helpful to elaborate a few of our answers in writing:

1. You asked how our position that customary international law only permits shareholders to assert their "direct rights" in a corporation can be reconciled with the fact that bilateral investment treaties (BITs) sometimes permit shareholders to assert claims based on injuries to the corporation itself. Our view—which mirrors the longstanding position of the United States—is that BITs do not themselves alter the rights provided by customary international law; instead they provide additional rights that derogate from the customary international law baseline.

As the United States has repeatedly explained, customary international law permits a shareholder to assert claims for "*direct* loss or damage sustained by [the] shareholder," but not for "loss or damage suffered * * * by a corporation in which the shareholder holds shares." U.S. Submission 3, *GAMI Investments, Inc.* v. *United Mexican States* (UNCITRAL Arbitration June 30, 2003); *see* U.S. Submission 2, *Int'l Thunderbird Gaming Corp.* v. *United Mexican States* (UNCITRAL Arbitration May 21, 2004); U.S. Memorial on Jurisdiction and Admissibility 67-68, *Methanex Corp.* v. *United States* (UNCITRAL Arbitration Nov. 13, 2000). A shareholder's direct rights in a corporation are defined by municipal law, and typically include the right to receive dividends, the right to attend shareholder meetings, and the right to collect residual corporate assets on

Received by NSD/FARA Registration Unit 01/03/2018 3:50:31 PM

dissolution. *See* U.S. Submission 3, *GAMI, supra*; U.S. Cert. Br. 22-23, *Venezuela* v. *Helmerich & Payne Int'l Drilling Co.* (U.S. No. 15-423, May 2016); *see also* U.S. Submission 14, *Eli Lilly & Co.* v. *Canada* (UNCITRAL Arbitration Mar. 18, 2016) ("[I]t is appropriate to look to the law of the host State for a determination of the definition and scope of the 'property right' at issue."). Under nearly every legal system that recognizes separate corporate personhood—including Venezuela's—a shareholder does not have a direct right to corporate assets. *See Barcelona Traction, Light & Power Co., Ltd. (New Application: 1962) (Belg. v. Spain)*, 1970 I.C.J. 3 (Feb. 5) ¶¶ 40-46; Venezuela Br. 43-44 (describing Venezuela law). Accordingly, a shareholder cannot raise a claim under customary international law merely because corporate assets are taken, even if that taking "severely" depletes the value of the corporation's shares, U.S. Cert. Br. 22-23, *Venezuela, supra*, and even if a shareholder is the corporation's "sole" owner, U.S. Memorial 68, *Methanex, supra*; *see also* U.S. Submission 2-3, *Thunderbird, supra*; U.S. Submission 3-4, *GAMI, supra*.

Because this "customary international law principle of non-responsibility" often leaves shareholders without a "remedy [for] injuries to * * * locally-incorporated entities," many BITs and multilateral trade agreements furnish additional rights for foreign shareholders. U.S. Submission 2-3, *Thunderbird, supra*; *see* U.S. Submission 4, *GAMI, supra*. In particular, investment treaties often permit a shareholder to bring an expropriation claim not only "on its own behalf," but also "on behalf of an enterprise * * * that is a juridical person that the claimant owns or controls directly or indirectly." 2012 U.S. Model BIT, art. 24.1(a)-(b); *see also* NAFTA arts. 1116-1117. BITs also typically define "investments" broadly to include "every asset that an investor owns or controls, directly or indirectly"—capacious language that has itself been interpreted, in some circumstances, to include assets of a separate juridical entity in which the investor has an ownership interest. 2012 U.S. Model BIT, art. 1; *see, e.g.*, *CMS Gas Transmission Co.* v. *Argentina*, 42 ILM 788, 797-798 (2003).

The United States has repeatedly made clear, however, that these treaties do not alter the scope or content of customary international law. Rather, these provisions "derogate[ ] from customary international law," and create the right "to present a claim *not* found in customary international law." U.S. Submission 4, *GAMI, supra* (emphasis added); *see* U.S. Submission 3, *Thunderbird, supra* (explaining that such provisions "create[ ] a derivative right of action * * * that derogates from customary international law * * * without eliminating the distinction between direct and derivative injuries or altering the general principle that the corporation, as opposed to its individual shareholders, may alone take action on behalf of the corporation"); U.S. Memorial 68-69, *Methanex, supra* (similar). Shareholders therefore may assert the derivative rights established by these treaties only within the confines of the relevant treaty provisions. For example, the United States has repeatedly instructed NAFTA claimants that the only viable means for shareholders to raise claims based on an injury to a corporation itself is under article 1117 of NAFTA, which expressly authorizes such claims. *See* U.S. Submission 2, *S.D. Myers, Inc.* v. *Canada* (UNCITRAL Arbitration Sept. 18, 2001); U.S. Seventh Submission 2, *Pope & Talbot, Inc.* v. *Canada* (UNCITRAL Arbitration Nov. 6, 2001). Neither customary international law nor article 1116, which incorporates customary international law, provides a similar cause of action. *See* U.S. Submission 3, *Thunderbird, supra*; U.S. Memorial 62-70, *Methanex, supra*; U.S. Submission, 4-5, *GAMI, supra*.

Received by NSD/FARA Registration Unit 01/03/2018 3:50:31 PM

Hence, if the United States and Venezuela were parties to a BIT or comparable international legal instrument, H&P-IDC might be able to bring an expropriation claim pursuant to the procedures and limits set forth in that instrument. But there is no such agreement between the two countries, and H&P-IDC has not followed any treaty-specific procedures. *See* Venezuela Br. 6; *see also infra* pp. 5-6. The company has instead brought its claim in U.S. court under customary international law. It accordingly must abide by the limits that customary international law has long imposed, and customary international law recognizes no cause of action for a corporate parent to challenge the expropriation of its subsidiary's assets.

2. You also asked whether Decree No. 356, "On the Promotion and Protection of Investments" (Vz. 1999), grants H&P-IDC direct rights in the assets of its Venezuelan subsidiary for purposes of customary international law. It does not. When this law was in effect, it established a specialized international investment regime that—much like many BITs—arguably authorized investors to bring derivative claims on behalf of corporations in certain circumstances. Also like a BIT, however, Decree 356 did not alter an investor's property rights in a corporation, and its protections could be invoked only according to the procedures set forth in the decree itself. H&P-IDC has not invoked the procedures provided in Decree 356, nor has it alleged that Venezuela or its instrumentalities failed to accord H&P-IDC the rights that Decree 356 conferred. H&P-IDC accordingly cannot press any international law claim premised on that decree.

Background. Decree 356 was enacted in 1999 to establish a "legal framework" governing protections for foreign investors in Venezuela. Decree 356, art. 1. The decree is an example of a "national foreign investment law"—a type of law enacted by many countries over the past several decades that holds out certain protections for foreign investors. *See generally* David S. Caron, *The Interpretation of National Foreign Investment Laws as Unilateral Acts Under International Law*, *in* Making and Applying Investment and Trade Law 649 (2011). These laws typically afford protections similar to BITs, and are often entered into as substitutes for or supplements to such treaties. *See id.*

When Decree 356 was in effect, it provided that "international investors shall have the same rights and obligations to which * * * national investors are subject under similar circumstances," subject to "the limitations set forth in this Decree-Law." *Id.*, art. 7. Those rights included the right to receive "prompt, fair and adequate compensation" for any "[e]xpropriations of investments." *Id.*, art. 11; *cf.* Const. of the Bolivarian Republic of Venezuela, art. 115 (prohibiting takings except "for reasons of public benefit * * * with timely payment of fair compensation"). The decree provided that, "[f]or purposes of this Decree-Law," the term "investment" included "[e]very asset used for the generation of income," and that "[i]nternational [i]nvestment" meant an "investment that is owned, or is actually controlled by foreign individuals or legal entities." Decree 356, art. 3(1)-(2). The law's implementing regulations further provided that, "[f]or purposes of the Sole Paragraph of Article 3 of [Decree 356], it is understood that an investment is owned by international investors when their participation in the entity receiving the investment is one hundred percent (100%) of the capital, net worth or assets of the entity, according to the legal form adopted by the entity." Decree No. 1,867, art. 3 (Vz. July 11, 2002).

Received by NSD/FARA Registration Unit 01/03/2018 3:50:31 PM

If a foreign investor believed that Venezuela violated one of the rights granted by Decree 356, the decree set forth procedures by which the investor could bring a claim against Venezuela. It provided that investment disputes involving nationals of countries with an investment treaty or agreement with Venezuela "shall be submitted to international arbitration according to the terms of the respective treaty or agreement." Decree 356, art. 22. With respect to investment disputes involving nationals of countries with no such treaty or agreement, the law stated that "[a]ny dispute arising in connection with the application of this Decree-Law, once administrative remedies have been exhausted, may be submitted by the investor to the National Courts or Arbitral Tribunals of Venezuela, at the election of the investor." *Id.*, art. 23. In addition, the decree provided that "the investments and international investors whose respective countries of origin do not have a treaty or agreement in effect with Venezuela for the promotion and protection of investment, shall only enjoy the protection granted by this Decree-Law, until a treaty or agreement for the promotion and protection of investments with their country of origin * * * comes into force." *Id.*, art. 5, ¶ 1.

Decree 356 was rarely invoked during the years in which it was in force. In several instances, claimants sought to enforce this agreement in international arbitral proceedings, and in each instance the tribunals concluded that the agreement did not constitute consent to arbitrate investment disputes in international fora. *See, e.g.*, *OPIC Karimun Corp.* v. *Venezuela*, Award, ICSID Case No. ARB/10/14, at ¶ 179 (May 28, 2013); *Brandes Investment Partners, LP* v. *Venezuela*, Award, ICSID Case No. ARB/08/3, at ¶ 118 (Aug. 2, 2011). In 2014, Venezuela repealed the law and replaced it with a modified investment regime. *See* Dep't of State, Venezuela Investment Climate Statement 2015, at 4-5 (describing modified investment law).

Analysis. H&P-IDC has never argued that Decree 356 supports the claim that Venezuela took its "property * * * in violation of international law." 28 U.S.C. § 1605(a)(3). And rightly so. Decree 356 conferred on H&P-IDC a derivative cause of action in Venezuelan courts and arbitral tribunals; it did not grant H&P-IDC any *property rights* in its subsidiary that could be enforced pursuant to customary international law. Nor has H&P-IDC ever invoked the procedures set forth in that decree to enable foreign shareholders to challenge the expropriation of corporate property.

It is settled that a shareholder's "direct rights" for purposes of customary international law are determined by "reference to [the] municipal law of property." Zachary Douglas, The International Law of Investment Claims 52 (2009); *see* U.S. Submission 14 n.56, *Eli Lilly* ("[F]or a definition of 'property * * * [w]e necessarily draw on municipal law sources") (quoting Rosalyn Higgins, *The Taking of Property by the State: Recent Developments in International Law*, 176 Collected Courses of the Hague Academy of International Law 263, 270 (1982)). And there is no dispute that Venezuelan law deems a corporation a separate juridical person than its shareholders, and affords shareholders no direct rights to use, control, dispose of, or otherwise exercise ownership over the corporation's assets. *See* Venezuela Br. 43-44. Decree 356 does not change that. When that law was in effect, it afforded foreign shareholders no ownership rights in corporate property that domestic Venezuelan shareholders did not possess. On the contrary, the decree expressly stated that "international investors shall have the *same* rights and obligations to

Received by NSD/FARA Registration Unit 01/03/2018 3:50:31 PM

which the investments and national investors are subject under similar circumstances." Decree 356, art. 7 (emphasis added).*

Decree 356 and its implementing regulations did define a shareholder's "investment," "[f]or the purposes of this Decree-Law" to include an investment "receiv[ed]" by a wholly owned subsidiary. *Id.* art. 3; Decree 1,867, art. 3. But like many BITs—which include similarly broad definitions of an "investment"—this definition at most served to enable foreign investors to bring derivative claims on behalf of their corporations for violations of certain key legal rights. The United States has long taken the view that similar provisions in BITs do not accord investors rights enforceable under customary international law, but rather "*derogate[ ]* from customary international law" and grant the right "to present a claim *not* found in customary international law." U.S. Submission 4, *GAMI, supra* (emphases added). To enforce such a right, moreover, an investor must follow the procedures specified in the provisions at issue—in the case of Decree 356, by exhausting administrative remedies and suing in Venezuelan courts or arbitral tribunals. Decree 356, art. 23. H&P-IDC undisputedly has not followed those procedures.

The only arguable difference between Decree 356 and a standard BIT is that Decree 356 was enacted unilaterally as a provision of Venezuelan domestic law, rather than negotiated with other countries. But that difference is immaterial. Unilateral declarations of international commitments stand on the same legal footing as bilateral and multilateral agreements. *See* International Law Commission, *Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations*, art. 1 (2006) ("Declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations."); U.S. Statement to the UN 6th Committee (ILC report) Re Unilateral Acts of States (Oct. 30, 2006), https://www.state.gov/s/l/2006/98333.htm (endorsing this principle); *see also Nuclear Tests Case* (*Aust.* v. *Fr.*), 1974 I.C.J. 253, at ¶43. Many nations have relied on that settled rule to grant rights to foreign investors through national investment laws rather than bilateral agreements. Countries rightly believed that this approach—which has widely benefited foreign investors, including American ones—would not result in dramatically broader rights than investment agreements entered one-by-one. Decree 356 should not be interpreted in a manner that would upset that settled understanding and disable countries from extending tailored protections to foreign investors without opening themselves up to claims under customary international law in foreign courts.

What is more, Decree 356 itself makes clear several times over that the rights it grants are enforceable only under the terms of the decree itself. It gives a broad definition of "investment" only "[f]or the purposes of this Decree-Law." Decree 356, art. 3; *see* Decree 1,867, art. 3 (similarly defining "investment" "for purposes of the Sole Paragraph of Article 3"). It provides

* Article 12 of Decree 356 stated that "[i]nternational investments and, where applicable, international investors, shall have the right, after complying with local regulations and paying applicable taxes, to transfer all payments related to investments." This provision did not accord foreign shareholders a right to pierce the corporate veil and "transfer" corporate assets—nor could it, given that Venezuelan investors lack any such right, and the decree makes clear that it affords no greater rights than domestic law. *See* Decree 356, art. 7. Rather, the provision ensured that "where applicable"—that is, where a shareholder had property rights in the pertinent investment—international investors could transfer "*payments* related to investments." This right would therefore have been infringed if, for instance, Venezuela prohibited H&P-IDC from transferring dividends it received from H&P-V. There is no allegation that any such infringement occurred.

Received by NSD/FARA Registration Unit 01/03/2018 3:50:31 PM

that investors from countries lacking an investment agreement with Venezuela "shall only enjoy the protection granted by this Decree-Law, until a treaty or agreement for the promotion and protection of investments with their country of origin * * * comes into force." Decree 356, art. 5, ¶ 1. And it specifies the precise dispute resolution mechanisms through which an investor may vindicate its rights: through "international arbitration," in the case of a national of a country with an investment treaty that so provides, *id.*, art. 22, or, for other investors, through "the National Courts or Arbitral Tribunals of Venezuela," and then only "once administrative remedies have been exhausted," *id.*, art. 23. Permitting investors to apply the law's definitions more broadly, invoke its protections through customary international law, and bring suit in U.S. courts would obviate each of these limits. Enabling such claims would be particularly inappropriate given that tribunals have concluded, correctly, that Decree 356 does not manifest consent to submit disputes to international arbitration—even where the relevant countries have a BIT—unless the treaty or agreement specifically so provides. *See, e.g.*, *OPIC Karimun Corp.*, *supra*, at ¶ 179; *Brandes Investment Partners*, *supra*, at ¶ 118.

In any event, even if Decree 356 were understood to afford some "direct rights" to foreign shareholders, H&P-IDC has made no allegation that the rights granted by the decree have been infringed. As the United States has explained, an investor's direct rights for purposes of international law are subject to any procedural or substantive restrictions that municipal law places on those rights. *See* U.S. Submission 135, *Glamis Gold, Ltd.* v. *United* States (UNCITRAL Arbitration Sept. 19, 2006). Consequently, where the rights accorded by municipal law are subject to a domestic exhaustion requirement, a violation of those rights typically does not occur until the claimant has sought and been denied domestic remedies. *See Simon* v. *Republic of Hungary*, 812 F.3d 127, 148 (D.C. Cir. 2016); *see also Republic of Austria* v. *Altmann*, 541 U.S. 677, 714 (2004) (Breyer, J., concurring). Decree 356 expressly requires exhaustion of domestic remedies: It provides that investors must seek redress in Venezuelan domestic courts or arbitral tribunals "once administrative remedies have been exhausted." Decree 356, art. 23. H&P-IDC has made no allegation that it exhausted administrative remedies or sought redress in domestic (or international arbitral) tribunals, notwithstanding that Venezuela and its instrumentalities initiated proceedings in Venezuela to compensate H&P-V for the seizure of its assets prior to initiation of this lawsuit. For that reason, as well, H&P-IDC has no international-law claim based on Decree 356.

3. Finally, you asked whether H&P-IDC might have a claim that it suffered a regulatory taking of its shares in H&P-V. The scope of any right to compensation for regulatory takings (or "indirect expropriations") under customary international law is unsettled. *See* Matthew C. Porterfield, *State Practice and the (Purported) Obligation under Customary International Law to Provide Compensation for Regulatory Expropriations*, 37 N.C.J. INT'L L. & COM. REG. 159, 188 (2011) ("there is not a general and consistent practice of providing investors a right to compensation for regulatory expropriations"); Rachelle Alterman, *The U.S. Regulatory Takings Debate through an International Lens*, 42 URB. LAW. 331, 355 (2010) ("no two countries have the same law on regulatory takings—not even countries with ostensibly similar legal and administrative traditions"). At a minimum, however, it is "a fundamental principle of international law that, for an expropriation claim to succeed the claimant must demonstrate that the government measure at issue destroyed all, or virtually all, of the economic value of its investment, or interfered with it to such a similar extent and so restrictively as to support a

Received by NSD/FARA Registration Unit 01/03/2018 3:50:31 PM

conclusion that the property has been taken from the owner." U.S. Submission 12, *Space Int'l Investments, LLC* v. *Republic of Costa Rica*, ICSID Case No. UNCT/13/2 (Apr. 17, 2015) (internal quotation marks omitted). Furthermore, even where a government measure deprives an investment of economic value, courts must examine the "character of the government action" to determine whether it is expropriatory or regulatory in nature; as the United States has observed, "[i]n considering whether nondiscriminatory regulatory actions by host States constitute an expropriation, tribunals 'remain reluctant to second-guess the host State's decision to enact economic legislation or pass regulations to address a matter of legitimate public welfare.'" U.S. Submission 3 & n.7, *Windstream Energy, LLC* v. *Canada* (UNCITRAL Arbitration Jan. 12, 2016).

The challenged actions in this case—the seizure of some of H&P-V's assets—do not satisfy these requirements. As an initial matter, claims of direct and indirect expropriation cannot be based on the same governmental act. *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award ¶ 250 (May 22, 2007) (explaining that "if a given measure qualifies as a form of direct expropriation it cannot at the same time qualify as an indirect expropriation"). Plaintiffs have identified only one government act that allegedly interfered with their property rights: the *direct* expropriation of certain assets owned by H&P-V. H&P-IDC cannot rely on that same act to support a separate claim of indirect expropriation of its own property.

Moreover, the partial seizure of H&P-V's assets did not "destroy[ ] all, or virtually all, of the economic value" of H&P-IDC's shares in the company, or deprive H&P-IDC of any of the rights of ownership. U.S. Submission 12, *Space Int'l Investments*, *supra*. H&P-V continued to hold millions of dollars in assets subsequent to the challenged actions, and H&P-IDC retained the right to attend shareholder meetings, collect dividends, and the like. Venezuela Br. 44-45; *see also id.* at 11 (noting that proceedings were initiated to provide compensation for the seized property). In addition, the ICJ has made clear that actions that indirectly diminish the value of a company's shares, even dramatically, do not effect a taking where the company has not "ceased to exist." *Barcelona Traction*, 1970 I.C.J. 3, at ¶ 66; *see Ahmadou Sadio Diallo (Guinea* v. *Dem. Rep. Congo)*, 2010 I.C.J. 639, at ¶ 158 (Nov. 30). In *Diallo*, for instance, the ICJ rejected a taking claim based on "acts of interference" with Mr. Diallo's shares, which indirectly caused the company to enter a state of "undeclared bankruptcy," because even "a precarious financial situation cannot be equated with the demise of the corporate entity." *Id.* at ¶¶ 150, 158. Similarly, the United States has explained that a government "indirectly" expropriates a shareholder's investment only where it "expropriat[es] the corporation as a whole." U.S. Submission 3, *GAMI*, *supra*; *see also* U.S. Cert. Br. 22-23, *Venezuela*, *supra* (explaining that measures that "deplet[e] a corporation's assets, even severely," do not effect a taking of its shares). Yet there is no contention that H&P-V—which continues to press its own claims in this litigation—has ceased to exist or been taken in its entirety.

Last, the "character of the government action" in this case was designed to "protect legitimate public welfare objectives." U.S. Submission 3 n.7, *Windstream Energy LLC*, *supra* (citation omitted). Plaintiffs acknowledge that the "specialized" drilling equipment that Venezuela seized was necessary to access the country's oil reserves—the lifeblood of its economy—and that the equipment had sat idle for almost a year before its seizure. J.A. 19, 22. The relevant legislation

Received by NSD/FARA Registration Unit 01/03/2018 3:50:31 PM

and executive decree cited the "indispensable" and "scarc[e]" nature of this equipment in authorizing the expropriation. J.A. 88-89, 105. These aims were plainly regulatory in nature under both U.S. and international law. Plaintiffs have attempted to impugn the government's official statements of purpose by citing press releases that referred to H&P-IDC's nationality. But the United States has properly insisted on the clearest possible evidence before looking behind a foreign sovereign's official acts to question its "real" motives. *See* U.S. Br. 31, *W.S. Kirkpatrick & Co., Inc.* v. *Envt'l Tectonics Corp., Int'l*, No. 87-2066 (U.S. Oct. 5, 1989) (explaining that "an inquiry into the 'motivation' for th[e] act" of a foreign sovereign may "raise significant act of state concerns, since the effect of such an inquiry is to impugn the integrity or ingenuousness of the act, even if its validity is not questioned"); U.S. Counter-Memorial 121-124, *The Loewen Grp., Inc.* v. *United States*, ICSID Case No. ARB(AF)/98/3 (Mar. 30, 2001) (rejecting claims of nationality discrimination based on scattered statements by government officials); *see also Societe Nationale Industrielle Aerospatiale* v. *U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522, 538 (1987) (explaining that "[b]oth comity and concern for the separation of powers counsel the utmost restraint in attributing motives to sovereign states"). The allegations in the complaint cannot overcome that presumption. *See Helmerich & Payne Int'l Drilling Co.* v. *Bolivarian Republic of Venezuela*, 784 F.3d 804, 814 (D.C. Cir. 2015), vacated, 137 S. Ct. 1312 (2017) (explaining that in light of Venezuela's official statements, "it may well be * * * that the taking was 'rationally related to [Venezuela's] security or economic policies' ").

* * * * *

Thank you again for considering our clients' positions. We are happy to provide any further information that you might need.

Sincerely,

/s/ Joseph D. Pizzurro
Joseph D. Pizzurro
Robert B. García
Kevin A. Meehan
Curtis, Mallet-Prevost,
Colt & Mosle LLP
101 Park Avenue
New York, New York 10178
(212) 696-6000
jpizzurro@curtis.com

Counsel for Appellants Petróleos de Venezuela, S.A. and PDVSA Petróleo, S.A.

/s/ William L. Monts, III
William L. Monts, III
Catherine E. Stetson
Mitchell P. Reich
Hogan Lovells US LLP
555 Thirteenth Street NW
Washington, DC 20004
Telephone: (202) 637-5600
william.monts@hoganlovells.com

Bruce D. Oakley
Hogan Lovells US LLP
700 Louisiana Street, Suite 4300
Houston, TX 77002
(713) 632-1400

Counsel for Appellant Bolivarian Republic of Venezuela

Received by NSD/FARA Registration Unit 01/03/2018 3:50:31 PM