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FEATURED Q&A

How Substantial Are Venezuela's Legal Liabilities?



ICSID is hearing more than 40 cases largely due to former Venezuelan President Hugo Chávez's controversial expropriations of various companies during his presidency. // File Photo: Venezuelan Government.

Q The World Bank's International Centre for Settlement of Investment Disputes, or ICSID, in mid-March overturned a previous ruling that had ordered Venezuela to pay U.S.-based multinational oil company ExxonMobil \$1.4 billion in damages. The case is only one of more than 40 others being heard at ICSID that came largely as a result of late President Hugo Chávez's nationalizations of the oil sector, in addition to takeovers in the electricity, telecoms, metal and agricultural sectors during his presidency. How will the ruling and similar cases influence foreign investment in Venezuela's oil sector? Does the latest decision provide any meaningful relief for Venezuela's cash crunch? What is the state of arbitration claims against Venezuela in international courts, and how big of a liability are the cases for the cash-strapped nation?

A David Voght, managing director at IPD Latin America: "The ICSID tribunal's decision to annul the \$1.4 billion Venezuela Holdings BV (ExxonMobil) award will give Venezuela some financial respite as it faces a spike in foreign debt service and arbitration liabilities in the coming years. Following the March decision, we estimate that some \$3.3 billion in outstanding ICSID awards are still pending payment. Total liability for cases currently under review or awaiting decision may add an additional \$9.5 billion to Venezuela's overall arbitration liability through 2020 and beyond. While the numbers seem daunting, near-term payments will be relatively low, as Venezuela's agile lawyers contest awards and mastermind compensation deferments. Because perceived country risk is already high, the ruling probably will not

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TOP NEWS

POWER SECTOR

Gas Natural Sues Colombia Over Unit's Seizure

Spanish utility Gas Natural SDG has said it is suing the Colombian government after it seized one of its companies, electricity provider Electricadora del Caribe, known as Electricaribe.

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OIL & GAS

PDVSA Will Honor Bond Payments: Economy Minister

Analysts for the most part expect Venezuela to make good on its payments, though the recent drop in oil prices have caused some to raise concerns.

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OIL & GAS

Petrobras Cuts Debt by 20% During Q4

Brazilian state-run oil company Petrobras, led by CEO Pedro Parente, has cut its debt by 20 percent and had a positive free cash flow for the seventh straight quarter during the fourth quarter of last year.

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Parente // File Photo: Brazilian Government.

OIL & GAS SECTOR NEWS

Petrobras Cuts Debt by 20% During Q4

Brazilian state-run oil company Petrobras has cut its debt by 20 percent and had a positive free cash flow for the seventh straight quarter during the fourth quarter of last year, showing signs of recovery despite a net loss of 14.824 billion reais (\$4.7 billion) for 2016, Reuters reported Tuesday. Drastic cost-cutting measures and higher productivity led to a net income of 2.510 billion reais (\$812 million) in the last quarter of 2016, reversing a loss of 16.458 billion reais during the previous quarter, which was the main reason for a profit miss. A stronger currency and sliding borrowing costs also attributed to Petrobras' improved showing in the fourth quarter. The positive results have affirmed Petrobras CEO Pedro Parente's plan to cut back on unrealistically priced investments and improve the largest debt burden among the world's major oil companies. "We had some good results in the quarter, but the job is far from done, the company's debt is still too high," Parente said following the results. "Happily, there are very encouraging operational numbers here." Chief Financial Officer Ivan Monteiro said credit costs and access to financing have both improved since Parente took the position in May. He attributed both to helping expedite the company's debt reduction.

PDVSA Will Honor Bond Payments: Economy Minister

Venezuela's state-run oil company, PDVSA, will honor its approximately \$17 billion in bond payments due this year, thanks to stronger global oil prices, Venezuelan Economy Vice President Ramón Lobo said in a newspaper interview published Tuesday, Reuters reported. "If we managed to pay last year, which was a harder and trickier year, we'll certainly achieve it this year," Lobo told state-owned newspaper *Corre del Orinoco*. Oil accounts for more than 90

percent of Venezuela's hard-currency revenues. Despite the economy's dependence on oil prices, Venezuelan President Nicolás Maduro has in the past repeatedly ruled out the possibility that the country will default on its debt. Brent crude increased in price to more than \$58 per barrel in January as a result of oil output



Lobo // File Photo: Venezuelan Government.

cuts by OPEC member states, as well as a few cooperating non-member states. Last week, however, Brent crude dropped to a three-month low. Analysts for the most part expect Venezuela to make good on its payments, though the recent drop in oil prices have caused some to raise concerns. "The estimated \$5 decline in oil prices that translates into \$3.2 billion fewer petrodollars is not yet a trigger for default," Siobhan Morden, managing director and head of Latin America fixed income strategy at Nomura, said in a note to clients. "However, it clearly raises concern without yet knowing the bottom for oil prices."

POWER SECTOR NEWS

Gas Natural Sues Colombia Over Company's Seizure

Spanish utility Gas Natural SDG has said it is suing the Colombian government after it seized one of its companies, electricity provider *Electricidad del Caribe*, known as *Electricaribe*, *The Wall Street Journal* reported Wednesday. Colombian authorities on March 14 said they were liquidating *Electricaribe*, despite objections from Gas Natural, saying the company's distribution network, which provides

NEWS BRIEFS

Italy's Eni Discovers Oil in Mexico's First Well Since Energy Sector Opening

Italian oil company Eni has discovered "meaningful" oil reserves off Mexico's coast in the first well drilled by an international oil company since Mexico opened up its previously nationalized oil sector to private investors as part of sweeping energy sector reforms in 2013, the *Financial Times* reported Thursday. The Amoca-2 well is located in the shallow waters of the Bay of Campeche in southeast Mexico. Eni is planning a second well in the Amoca area, as well as two more drills this year to assess existing discoveries and target undrilled pools.

China's Pacific Hydro Begins 82 MW Wind Farm Construction in Chile

Pacific Hydro, a renewable energy company owned by China's State Power Investment Corporation, has started construction on the 82 megawatt Punta Sierra wind farm in the O'Higgins region of Chile, *ReNews* reported Thursday. The project is expected to cost \$150 million and will supply the country's main power grid. The wind farm will be located in the commune of Ovalle. The Punta Sierra wind farm is Pacific Hydro's first in Chile. The company has been active in Chile since 2002, producing electricity via its hydro plants in the O'Higgins region.

Petroecuador Picks Oil Industry Vet to Run Company Amid Probe

Ecuadorian state run-oil company Petroecuador has tapped former Petroamazonas head José Luis Cortázar to run the company, *Petroleumworld.com* reported Tuesday. The naval engineer will succeed Pedro Merizalde, who stepped down for "personal reasons," Petroecuador said in a statement.

electricity to Colombia's Caribbean coast, was responsible for frequent blackouts. Colombian Superintendent of Services José Miguel Mendoza claims the company has proven to be unable to provide adequate services to its 2.5 million customers in the region. But Gas Natural has accused Colombia of "expropriation" and said it is filing the case with the United Nations Commission on International Trade Law, a legal body that arbitrates on disputes between states and foreign private investors. Gas Natural is demanding a full restitution of its electricity unit, as well as a "viable regulatory framework" from the government. Otherwise, it is seeking more than \$1 billion in compensation from Colombia's government, based on a preliminary valuation of the company's market value. Gas Natural has complained Colombia does little to control thousands of Colombians illegally tapping into power lines at a cost of \$100 million each year, MarketWatch reported. Colombian Minister of Commerce, Industry and Tourism Maria Claudia Lacouture declined to comment on the lawsuit specifically to the Journal, but said Colombia has followed precedents carefully, as well as local and international laws, throughout the entire process. "The first and most important thing is that the intervention is not a nationalization or an expropriation," she said Wednesday. "The Colombian government is guaranteeing the provision of an essential service for Colombians and because of this, it is acting within its rights."

POLITICAL NEWS

U.S. Border Wall Only Needed in Some Locations: Official

In a Senate budget hearing Wednesday, the head of the union representing U.S. Border Patrol agents said that a physical wall along the border with Mexico was only necessary in "strategic locations," ABC News reported. National Border Patrol Council president Brandon Judd said, "We don't need a great wall of the United States. We do not need 2,000 miles of

border wall. I will tell you, however, that a wall in strategic locations is absolutely necessary." Judd said the current fencing "can be defeated" by criminals and those seeking to cross the border. President Donald Trump has pledged to build a "great wall" along the border with Mexico with promises that Mexico will pay for it, a position that has led to the worst diplomatic relations between Mexico and the United States in a generation. Trump also made immigration enforcement a priority since taking office,

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impact new foreign investment in Venezuela's oil sector. Out of necessity, PDVSA has been implementing contract structures that ring-fence oil investments from political and commercial risk—to a degree. New arrangements for upstream production ventures and service contracts continue to offer arbitration; some offer foreign law. There is a trend to allow international partners and service companies increased operational autonomy. Cash flow has been pushed offshore and is managed by trusts to improve transparency. However, with production trending downward, there is still risk associated with PDVSA's allocation of crude and product exports, as payments are tied to offtake contracts that must first be supplied. It will be interesting to see how ExxonMobil responds to the ICSID decision. Venezuela may not be off the hook indefinitely, but the country has certainly proven itself a force to be reckoned with in the international arbitration arena."

A **Diego Arria, member of the daily Advisor board and director at the Columbus Group:** "Firstly, it is very important to make clear that the ICSID did not overturn the ruling condemning Venezuela to pay compensation for the expropriations of the ExxonMobil assets. It only declared the partial annulment of the ruling, regarding the procedures that were followed to reach the amount of compensation. In sum, the amount must be discussed again between the parties. It is clear then that the ruling regarding ExxonMobil would not provide any relief to Venezuela.

directing CBP to hire 5,000 additional agents and ICE to hire 10,000 additional agents. Amid concerns that people are increasingly making illegal crossings into Canada, Judd said he doesn't want to see a situation where the only focus is on the southern border. "What I am scared of is we are going to throw all of our resources to the southern border and leave the northern border wide open," said Judd. The number of apprehensions at the U.S.-Mexico border—a proxy for how many Mexicans,

On the contrary, it will add to its cash crunch. The abusive practices of the regime mean that Venezuela could end up paying between \$40 billion and \$50 billion in compensation to companies that have had its assets expropriated. The irresponsible expropriation and confiscation practices of the Chávez-Maduro

“Obviously the Chinese are not afraid of their Venezuelan comrades.”

— Diego Arria

regime have also significantly damaged oil, gold, cement, electricity and agricultural production in Venezuela, with severe consequences for its people. It should be remembered that in January 2012, Venezuela withdrew from the ICSID, denouncing it as 'acting under the pressure of transnational economic sectors involved in the dismantling of Venezuela's national sovereignty.' Foreign investors have clearly heard such a message, and naturally there have not been new investments in the country, and even worse, some of the local foreign companies operating in Venezuela have departed. The most significant exception is China, which has lent Venezuela \$40 billion to be paid in oil, and that continues to operate in the country. Obviously the Chinese are not afraid of their Venezuelan comrades."

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central Americans and others are attempting to cross into the United States—has dropped to levels last seen in the 1970s, according to the Financial Times. While Border Patrol officials



Judd // Image: C-Span video grab.

complained Wednesday of a lack of staffing, the agency has been forced to pay out millions of dollars to settle abuse claims and other crimes committed by employees. The family of a 16-year-old boy who died from acute meth intoxication after Customs and Border Patrol officers forced him to “prove” that a liquid he tried to cross the border with was juice will receive \$1 million from the U.S. government, the Washington Post reported this week. None of the employees involved in the incident have been fired, according to the report. On Tuesday, two sisters from Guatemala, age 19 and 17, filed a \$750,000 law suit against CBP, claiming that they were taken by a Border Patrol officer to a closet where he forced them to strip and sexually assaulted them in July last year, the Los Angeles Times reported.

Polls Give Moreno Slight Advantage in Ecuador Runoff

The final voter polls allowed under Ecuador’s election laws suggest governing-party candidate Lenín Moreno will win narrowly in the runoff election scheduled April 2, Telesur reported Wednesday. Moreno leads former banker Guillermo Lasso in five of the surveys released before the mandated 10-day quiet period ahead of an election. Polling firm Market predicts Moreno would win 52.1 percent of valid votes if the election were held today, while Lasso would capture 47.9 percent. The sample of 2,240

ADVISOR Q&A

Why Is Coca Cultivation on the Rise in Colombia?

Q The U.S. State Department’s annual **International Narcotics Control Strategy Report** released in March said Colombia is the world’s top producer of cocaine and that the cultivation of coca has increased by record amounts for the past two years. What is the reason for the increase in coca cultivation and cocaine production in the country? How will cocaine eradication strategies change as the government and the FARC rebel group implement their peace agreement? What will cooperation with the United States against drugs look like during the Trump administration? How are policies toward coca cultivation and drug trafficking in neighboring Bolivia and Peru likely to affect Colombia’s role in illicit drug production and trafficking?

A Barry McCaffrey, president of BR McCaffrey Associates, retired U.S. Army four-star general and former director of the White House Office of National Drug Control Policy: “Colombia is such a magnificent country of incredible physical riches. The courage and patriotic pride of its people during the years of brutal civil war are inspirational. The Colombian armed forces and national police are the most respected institutions by the Colombian people. The security forces faced down the lawless elements of the FARC and ELN and the BACRIM with incredible bravery. Both President Uribe and President Santos are national heroes.

people was taken between March 19 and 20. Meanwhile, Cedatos, a firm that released a poll last month that put Lasso ahead of Moreno, found in its latest poll the Moreno would instead win by 4 percentage points. A CMS poll, the closest among five released, suggests that

Now Colombia has a treaty and the shooting has largely stopped. However, in my judgment, the U.S. State Department report on the massive increase in the cultivation of coca over the past two years portends the

“Colombia will become a narco-state.”

– Barry McCaffrey

coming failure of the rule of law in Colombia. Colombia will become a narco-state. The end of aerial coca crop spraying under the false guise of environmental sensitivity was a signal to the narcos that Colombia wanted peace even at the cost of violating international and Colombian law. The simply astronomical profits to be made from cocaine will fuel the gradual destruction of the rule of law. The FARC and ELN will not in the end disarm. They cannot achieve domination of the Colombian people through the ballot box. They will attempt to achieve their goals through corruption and the demobilization of the army and police. Sadly, I think this treaty will end badly.”

EDITOR’S NOTE: More [commentary](#) on this topic appeared in Monday’s issue of the daily Latin America Advisor.

the race is a dead heat, with Moreno winning 35.17 percent compared to Lasso’s 35.01 percent. Both candidates have been campaigning heavily in recent days to attract young voters, with Lasso pledging to focus on drug use and creating more entrepreneurship among youth,

NEWS BRIEFS

Piñera Enters Chile Presidential Race

Former Chilean President Sebastián Piñera on Tuesday entered the country's presidential race, seeking the nomination of the "Chile Vamos" coalition, formed by his political party and the more conservative UDI party, Reuters reported. Primaries are scheduled for July, and the election is to be held in November. Current President Michelle Bachelet is constitutionally barred from seeking a consecutive term. She previously served as president before Piñera's 2010-2014 term.

Venezuelan Per Capita Income Falls 28 Percent

Per capita income in Venezuela has slid 28 percent in the past four years, El Universal reported Wednesday, citing research released by New York-based Torino Capital. A combination of "misguided" economic policies adopted since 1999 under a socialist government and a "massive external shock" stemming from low oil prices have cut deeply into the income levels of citizens, the report states. The average price of Venezuelan crude sold by state oil firm PDVSA last week was about \$42, down from a historical peak of \$126 in 2008.

Saudi Arabia Orders New Inspections on Brazilian Meat Imports

Saudi Arabia, the world's second-largest importer of Brazil's chicken, ordered new inspections on meat imported from the country after Brazilian authorities alleged that meatpackers had bribed inspectors to allow spoiled meat to stay on the market, Bloomberg News reported Wednesday. In addition, Egypt temporarily suspended permits on new meat imports from Brazil in the wake of the news. The Saudi Food & Drugs Authority now requires port inspectors to "intensify checks" on Brazilian meat imports, the news service reported.

and Moreno offering to make more scholarships and fellowships available to students, El Comercio reported.

ECONOMIC NEWS

Argentina Shows Signs of Recovery: Statistics Agency

Argentina's economy showed some signs of recovery as it grew 0.5 percent in last year's fourth quarter as compared to the third, the country's national statistics agency said Tuesday, The Wall Street Journal reported. The farming, energy and construction sectors are seeing increased output, and analysts are expecting the economy to grow 3 percent this year. "The economy bottomed out in the third quarter of last year and began recovering afterwards," Matías Carugati, chief economist at Argentine consulting firm Management & Fit told The Wall Street Journal. He said he expects the economy to grow about 1 percent

The economy bottomed out in the third quarter of last year and began recovering afterwards."

— Matías Carugati

per quarter this year. In the fourth quarter, the economy contracted 2.1 percent as compared to the same period a year earlier, and for the entire year of 2016, it contracted 2.3 percent. High inflation and a currency devaluation led to lower spending by individuals and lower levels of investment by companies. President Mauricio Macri's tax cuts, deregulation and other economic measures have led to growth in agriculture and have led to record harvests. However, it is unclear whether Argentines' financial picture will improve before midterm elections in October. Economic growth has so far been felt mainly in rural areas, but not in urban areas such as the province of Buenos

Aires, where 40 percent of the country's population lives and which is critical to outcomes in elections, the newspaper reported.

Brazilian Authorities Raid Several Offices in Odebrecht Probe

Brazilian federal police on Tuesday raided the offices of several individuals with close ties to some senators in the latest development in



Oliveira // File Photo: Brazilian Government.

the far-reaching Odebrecht corruption probe, Reuters reported. The Supreme Court issued 14 search-and-seizure warrants for people closely associated with Senate President Eunício Oliveira and Senators Renan Calheiros, Valdir Raupp and Humberto Costa. The raids took place in the cities of Brasília, Maceió, Recife, Rio de Janeiro and Salvador. The warrants were based on plea-bargain testimony given by executives of Brazilian construction conglomerate Odebrecht, which is at the center of the corruption scandal. Oliveira, a central ally of President Michel Temer, has denied receiving illegal campaign donations for his 2014 campaign as governor of Ceará. "The senator is convinced the truth will prevail," a statement issued by his lawyer said, following the raids. Costa said he believed the raids will corroborate his defense. The other senators did not immediately respond to requests for comment. In the coming weeks, Brazil's Supreme Court is expected to disclose the details of 950 depositions given by 77 Odebrecht executives. One federal prosecutor who has helped lead the probe, Carlos Lima, has said he believes that as many as 350 new investigations could result from the Odebrecht testimonies.

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A **Francisco J. Monaldi, fellow in Latin American energy policy and lecturer in energy economics at the Baker Institute for Public Policy at Rice University:** “The recent annulment of ICSID’s compensation award decision is the last of some remarkably favorable decisions for Venezuela on this dispute. First, an ICC arbitration panel awarded Exxon \$908 million in 2011, using the arbitration provision of their contract with PDVSA. That amount was significantly smaller than Exxon’s claim, because it calculated the net present value of the project using a contractually set limit on the price of oil. Then, in 2014, the ICSID tribunal’s decision to award Exxon \$1.4 billion for the same expropriation was another success for the Venezuelan government. Not only did the tribunal decide that the expropriation was lawful, but the amount awarded was significantly smaller than expected, largely because they applied a high discount rate to calculate the net present value. In addition, the tribunal ruled that the changes in royalties and taxes were legal, and thus no compensation was warranted for that. Still, somehow surprisingly, the Venezuelan government asked for an annulment of that decision, allowing for postponement of the payment. The recent decision delays it even further. Thus, ten years after the expropriation, Exxon has received very little compensation. This ruling could have an impact well beyond Venezuela’s borders, showing that the ICSID structure can provide limited deterrence against regulatory expropriation and arbitrary nationalization. Having said that, Venezuela has many other claims at the ICSID, most significantly Conoco’s, for a significantly larger amount, which has already been declared an ‘unlawful’ expropriation. Venezuela’s cash crunch is so severe that this decision offers little respite, but it is no doubt a very welcome development for the government. However, the reputational costs of Chávez’s massive wave of opportunistic expropriations have been enormous for the country.”

A **Jaime Martínez Estévez, partner at Rodner, Martínez & Asociados in Caracas:** “Venezuela is in need of foreign investment, particularly to reverse the decline of its oil production. The annulment ruling will add further difficulties to new foreign investment negotiations. Global competition for foreign investment is becoming harder every day, and capping possible damages with an already serious political risk will be an extra burden. A ceiling on a possible indemnification may require that the required investment premium be higher, in order for a Venezuela project to compete. Venezuela needs radical changes in its economic policies and to rebuild its institutions to attract investment. New generations of bilateral investment treaties (BITs) may help. The ruling provides some relief for Venezuela’s foreign currency demands, for it reduced and delayed the amounts to be paid. As a precedent, it may have similar effects on the Conoco claim on Petrozuata (ICSID Case ARB/07/30). However, the immediate relevance of the relief may be small, considering the dire economic conditions in Venezuela: continued negative GDP (29.2 percent loss in last 3 years), declining international reserves (down 22.09 percent from last year) and reduced imports (expected to shrink an additional 17 percent). Venezuela still has another 34 cases pending at the ICSID, with many exceeding the average time of arbitration reported by the ICSID, at 39 months. Recent rulings against Venezuela have been the subject of negotiations, which have not given fruition to the claimants. It is foreseeable that some may resort to enforcement actions against assets of Venezuela abroad, which may be the reason why Venezuela disposed of or encumbered assets abroad (e.g. CITGO). An enforcement action may trigger a domino effect.”

The Advisor welcomes comments on its Q&A section. Readers can contact editor Gene Kuleta at gkuleta@thedialogue.org.

LATIN AMERICA ENERGY ADVISOR is published weekly by the Inter-American Dialogue
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Latin America Energy Advisor is published weekly, with the exception of some major U.S. holidays, by the Inter-American Dialogue 1155 15th Street NW, Suite 800 Washington, DC 20005 **Phone:** 202-822-9002
www.thedialogue.org
ISSN 2163-7962

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