

MOBIL INVESTMENTS CANADA INC. & MURPHY OIL CORPORATION

v.

GOVERNMENT OF CANADA

ICSID Case No. ARB(AF)/07/4

**DECLARATION BY
PROFESSOR PHILIPPE SANDS Q.C.**

1. In my Partial Dissenting Opinion (of 17 May 2012), I set out the reasons for my conclusion that the 2004 Guidelines, as applied to the Projects, constitute a “subordinate measure” that was adopted “consistent with” the “non-conforming measure” maintained by Canada, as set out in its Schedule to Annex I of the NAFTA. It followed from this “the question of damages does not arise” (paragraph 42), and I am unable to join my colleagues in adding my support to this Award.
2. My colleagues have afforded me the fullest possible opportunity to participate in all aspects of the elaboration of the Award on quantum, and this I have done notwithstanding the views set out on the Partial Dissenting Opinion. The legal and factual issues raised in this unique case are not without their complexities, or novelties, underscoring the sentiment that the elaboration of quantum is rarely, if ever, a matter of science or art.
3. In such circumstances, I wish to pay tribute to both my colleagues for their unstinting effort to consider the arguments of the parties in a manner that is fair, serious, transparent and balanced. I am also grateful to them for according me every possible opportunity to offer suggestions and perspectives, and for taking those too fully into account. It has been a privilege to work in so collegial an atmosphere, whatever differences might have, on occasion, divided us.

[Signed]

Professor Philippe Sands QC

London, 3 February 2014