

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Annulment Proceedings
Regarding the Award Rendered on February 9, 2004
Between

MR. PATRICK MITCHELL

Claimant

v.

DEMOCRATIC REPUBLIC OF THE CONGO

Respondent

ICSID Case No. ARB/99/7

DECISION ON THE STAY OF ENFORCEMENT
OF THE AWARD

Composition of the ad hoc Committee:

President:	Mrs. Antonias Dimolitsa
Members of the <i>ad hoc</i> Committee:	Mr. Robert S. M. Dossou Prof. Andrea Giardina
Secretary of the <i>ad hoc</i> Committee:	Mrs. Martina Polasek

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I. PROCEDURE

1. On June 7, 2004 the Democratic Republic of the Congo (“DRC” or “Respondent” or “Applicant”) filed with the Secretary-General of the International Centre for Settlement of Investment Disputes (“ICSID” or “the Centre”) an application (“the Application”) requesting the annulment of an Award rendered on February 9, 2004 in ICSID Case No. ARB/99/7 (“the Award”) between the Democratic Republic of the Congo and Mr. Patrick Mitchell (“Claimant”). The Secretary-General of ICSID registered the Application on July 15, 2004 and transmitted a Notice of Registration to the Parties on that date.
2. The Application for the annulment of the Award comprised a request for the stay of its enforcement under Article 52(5) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”) and Rule 54(1) of the ICSID Rules of Procedure for Arbitration Proceedings (the “Arbitration Rules”). Article 52(5) of the ICSID Convention, second sentence, provides: *“If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.”* Accordingly, the Secretary-General, together with the Notice of Registration, informed the Parties that the enforcement of the Award was provisionally stayed.
3. The *ad hoc* Committee was constituted on August 24, 2004. Rule 54(2), second sentence, of the Arbitration Rules provides: *“As soon as the Tribunal or Committee is constituted it shall, if either party requests, rule within 30 days on whether such stay should be continued; unless it decides to continue the stay, it shall automatically be terminated.”* In the present case, the Democratic Republic of the Congo submitted such a request by letter of August 30, 2004. Therefore the Committee had until September 30, 2004 to rule on whether or not to continue the stay of enforcement.
4. In order to give the Parties the opportunity to fully present their observations on the issue of the continuation of the stay of enforcement, and for the Committee to rule on this issue in both languages (English and French), the Parties were asked by letter of September 9, 2004 to agree on the extension of the time limit set forth in Rule 54(2), second sentence, of the Arbitration Rules, until November 30, 2004. Both the Democratic Republic of the Congo by letter of September 17, 2004 and Mr. Patrick Mitchell by e-mail of September 19, 2004 agreed to this extension.
5. By letter of September 21, 2004, the Parties were invited to submit their observations on the issue of stay of enforcement: the DRC had to submit

its observations by October 5, 2004 and Mr. Patrick Mitchell to submit his response by October 20, 2004.

6. The Parties complied with the prescribed time limits and consequently the Centre received on October 5, 2004 the observations of the DRC on the issue of stay of enforcement and on October 20, 2004 Mr. Patrick Mitchell's response.

7. In compliance with Rule 13 of the Arbitration Rules the Committee held its first session on October 23, 2004 in Paris. The Parties participated in this session by telephone conference. On that occasion new time limits for the submission of additional observations were agreed: the DRC had to submit its reply by October 28, 2004 and Mr. Patrick Mitchell had to submit his rejoinder by November 3, 2004.

8. The Parties complied with the prescribed time limits and consequently the Centre received on October 28, 2004 the reply of the DRC and on November 3, 2004 Mr. Patrick Mitchell's rejoinder.

9. The Democratic Republic of the Congo and Mr. Patrick Mitchell indicated through their e-mails of November 5, 2004 and November 8, 2004, respectively, their agreement not to hold an oral hearing on the issue of stay of enforcement. The Committee was also of the opinion that there was no use of holding such a hearing.

II. PARTIES' POSITION

A. **The position of the Democratic Republic of the Congo, as presented through its written submissions of October 5 and October 28, 2004, is in summary the following:**

10. First, the DRC contends that it would be very difficult for it, if not impossible, to recoup the amount of the Award in case the latter is annulled. It explains that Mr. Patrick Mitchell, as an attorney, has professional activities that are founded on intangible goods as his know-how and clientele, in respect of which no forcible execution is possible. The DRC adds that Mr. Patrick Mitchell's income is dispersed among several countries, and indicates on this point that the amount awarded to him by the Award may be claimed by his partners or by his law firms, which would make it more difficult for the DRC to recoup the amount. Respondent also contends that Mr. Patrick Mitchell has at his disposal the necessary means to possibly proceed to financial operations determining the localization of his income, and that moreover he has no known

residence. The DRC concludes that a forcible execution against Mr. Patrick Mitchell would be almost impossible.

11. Second, the DRC contends that Mr. Patrick Mitchell has lucrative professional activities, so that there would be no urgency for him to recoup the amount of the Award, all the more so as this amount bears interest until the date of actual payment. Further on this point, Respondent argues that Mr. Patrick Mitchell's acceptance of the extension of the time limit in order to let the Committee rule on the stay proves that there is no urgency for him.

12. Third, the DRC contends that the grounds for annulment invoked by it are *prima facie* relevant, pointing out in this regard that these grounds concur with the criticism expressed by the dissenting arbitrator Mr. Yawovi Agboyibo, who was appointed by the Centre. In other words, the DRC contends that the annulment proceedings are not dilatory, as the grounds for annulment it invokes are serious.

13. The DRC concludes that the requested stay of enforcement should be granted without any guarantee in favour of Mr. Patrick Mitchell. It explains that, generally speaking, the posting of a guarantee, which is an important burden for a developing country as the DRC, would have a "deterrent effect" on the submission of applications for annulment that are made in good faith and are well-founded. The DRC adds that if, as Claimant contends, its financial situation is difficult, it is not obvious at all that it would be able to negotiate a guarantee under reasonable conditions; furthermore, the posting of such a guarantee would constitute a precedent for its other creditors.

14. In respect of the placement in an escrow account of the amount of the Award, as proposed by Mr. Patrick Mitchell, the DRC explains that it has other budgetary priorities. Referring to the Resolution 1565 of October 1, 2004 of the UN Security Council, the DRC specifies that its funds should be used, as a matter of priority, for maintaining international peace and security. In this context, the DRC contends that the amount due to Mr. Patrick Mitchell acquires considerable importance since, leaving aside the interest accruing, it would allow to pay the salary of 2,071 Congolese soldiers during six months or of 12,426 soldiers during one month; together with interest, this amount would allow to pay the salary of 2,878 soldiers during six months or of 17,270 soldiers during one month.

15. The DRC finally indicates that the international organizations were called upon by the Security Council, in the above-mentioned Resolution, to provide their support to the DRC in its endeavours to restoring its territorial integrity

and developing its economy. Therefore, the DRC considers that the Committee should grant the stay of enforcement without any condition.

B. Mr. Patrick Mitchell's position, as presented through his written submissions of October 20 and November 3, 2004, is in summary the following:

16. Mr. Patrick Mitchell asserts that the DRC had, as of February 9, 2004, an obligation to pay him the amount of the Award in accordance with the provisions of the Bilateral Treaty between the United States of America and the Democratic Republic of the Congo and of the ICSID Convention. In this regard, Claimant contends that the application for annulment and the request for stay of enforcement filed by the DRC are specious and only aim at further delaying its payment.

17. Claimant responds to the first argument of the DRC, regarding the difficulty in recouping the amount, by indicating his addresses in South Africa and the United States. Claimant also proposes to provide Respondent with a list of assets that could be attached should the DRC be successful in the annulment proceedings, on condition that Respondent proceeds alike.

18. Mr. Patrick Mitchell further contends that he accepted the stay of enforcement of the Award until the end of November 2004 only because of his concern for fairness, so that each party could present its observations.

19. Claimant adds that he cannot find, neither in the Award nor in the dissenting opinion of Mr. Yawovi Agboyibo, any *prima facie* evidence that would justify the annulment of the Award; on the contrary, he is convinced that all of Respondent's actions have a dilatory motive.

20. In regard to the issue of posting a guarantee in case the stay of enforcement is granted, Mr. Patrick Mitchell indicates in his first written submission that he would be happy, in order to avoid the DRC bearing the related bank fees, to place into escrow an amount equal to the said bank fees which would be payable to Respondent in the event the latter is successful in having the Award annulled. Mr. Patrick Mitchell indicates further that, in case the DRC is ordered to provide a guarantee for the amount of the Award, plus costs and interest to date, he would be willing to waive any further interest that may accrue during the period of annulment procedure ¹.

¹ The Committee, perceiving this position of Mr. Patrick Mitchell as an implicit offer of amicable settlement with the DRC on the stay, drew the attention of the DRC on this point during the session of October 23, 2004, asking it to take position. The DRC continued pleading against the guarantee.

21. As Respondent continued pleading against the guarantee in its reply of October 28, 2004, Mr. Patrick Mitchell concluded in his response of November 3, 2004 that deciding the stay of enforcement of the Award on condition that a guarantee be provided would be in conformity with the practice of ICSID annulment proceedings. In support of this position, he refers to different precedents and to an ICSID document (“Discussion Paper”) of October 22, 2004. Further, Mr. Patrick Mitchell underlines that nothing in the ICSID Convention says that a party to an ICSID arbitration is entitled to protection against enforcement efforts while pursuing an annulment of the award. Mr. Patrick Mitchell draws thus the conclusion that Respondent should bear a real cost as a counterbalance to a Committee’s decision to grant the stay of enforcement.

22. Mr. Patrick Mitchell’s concluding statements of his written submission of October 20, 2004 remain unchanged: Mr. Patrick Mitchell agrees to a stay of enforcement until the annulment proceedings are terminated, on the condition that Respondent provide a guarantee or place the amount of the Award to date into escrow; otherwise, Mr. Patrick Mitchell requests the termination of the current stay of enforcement of the Award.

III. DISCUSSION

A. The issue of stay of enforcement

23. According to Article 52(5) of the Convention: “*The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.*” No indication is given as to what kind of circumstances require a stay; therefore the Committee is free to evaluate the arguments of the Parties in view of the particularities of each case. In this respect, the ICSID precedents do not bind the Committee. However, these precedents constitute examples of the practice, which must thus be taken into consideration, especially when the Parties refer to them, as in the present case; and these precedents may influence the Committee if they are convincing and if they concern similar circumstances.

24. The first argument of the DRC relates to the difficulties in recouping the amount of the Award, in case the latter is annulled. In this respect, the Committee retains that Mr. Patrick Mitchell is a natural person, whose activities and assets are difficult to localize. Thus, theoretically, possible difficulties in recoupment cannot be excluded. In reply to this argument, Mr. Patrick Mitchell declared that he was ready to provide a list of assets that could be attached. This proposal

shows good will; yet, it does not suffice for excluding a possible danger of non-recoupment. Lastly, the circumstances of the present case resemble those of the *MINE*² case, the reasoning of which was adopted also in the *Wena*³ case. The concern of the Democratic Republic of the Congo about not being able to recoup the paid amounts is thus justifiable.

25. As to the second argument of the DRC, regarding the absence of urgency for Mr. Patrick Mitchell to have the amount of the Award at his disposal, this is not capable of influencing the Committee's reasoning. Mr. Patrick Mitchell is the beneficiary of the Award of February 9, 2004, and therefore he has the right to seek enforcement of this Award. Whether or not he actually needs to have the amount of the Award at his disposal immediately, is a contingent question, personal to Mr. Patrick Mitchell and outside the context of the present proceedings.

26. The Committee refuses to enter into the question of the *prima facie* relevance of the grounds for annulment, which is another argument of the DRC. As a matter of fact, any discussion on the merits and on the chances of annulment of the Award would be misplaced. Having said that, the *prima facie* dilatory character of the application for annulment is a distinct question that does not refer to the chances of success of the application but to the manner in which the latter is presented, *i.e.* to the apparent seriousness of the invoked grounds; a *prima facie* dilatory application would be the one with a manifestly abusive character and would for that reason only exclude the stay of enforcement. The application filed by the DRC has not such a character; and this is so, irrespective of the close similarities between some of its arguments and the position of the dissenting arbitrator Mr. Yawovi Agboyibo. Besides, the fact that the application for annulment was filed by the DRC at the end of the time limit prescribed in Article 52(2) of the Convention, which was underlined by Mr. Patrick Mitchell, does not change at all the above consideration: the time limits for the exercise of a right allow the interested party to take advantage of them until the last moment, all the more so if said party is a State that needs to set in motion several wheels of its administration.

² Maritime International Nominees Establishment [MINE] v. Republic of Guinea, Decision partially annulling the award, Dec. 22, 1989, 5 ICSID Rev.—FILJ. 95 (1990): "*MINE is a corporation controlled by a single individual who would be able to thwart any recoupment by Guinea of assets seized by MINE by transferring those assets out of MINE.*"

³ Wena Hotels Limited v. Arab Republic of Egypt, Decision on application for annulment, Feb. 5, 2002, 41 I.L.M. 933, paras. 5-6 (2002); Wena Hotels Limited v. Arab Republic of Egypt, Procedural Order No. 1 of the *ad hoc* Committee concerning the continuation of the stay of enforcement of the award, Apr. 5, 2001, 18(10) Mealey's Int'l Arb. Rep. 33 (2003): "... *Wena Hotels Limited is currently reduced to a 'shell' company, almost entirely without assets, and that is controlled by a single individual.*"

27. The current situation of the DRC constitutes an argument that has been invoked by Respondent in connection with the question of the escrow account. Still, the Committee is of the opinion that it has to firstly examine this argument in connection with its decision on the stay. Given the sensitive political situation of the DRC, described in the UN Resolution 1565 of October 1, 2004 to which Respondent refers, significant efforts have to be made in order to ensure peace and security in the region, which entails an important financial burden for the State. The Committee is of the opinion that, in this context, the payment, leaving aside the interest accruing, of the amount of 750,000 plus 95,000 USD ordered by the Award — even if this amount seems minimal — could constitute today a significant additional burden for the DRC. Even if there is no question — as was the case in MINE — of “catastrophic, immediate and irreversible consequences for its ability to conduct its affairs”⁴, still the immediate payment by the DRC of this amount may obstruct its plans for the restoration of its authority and for the economic and social development of the country.

28. In conclusion, the Committee considers that if the amount of the Award is paid, on the one hand, real difficulties in recouping the amount should the Award be annulled cannot be excluded and, on the other hand, there is an obvious risk that such payment would have unfortunate repercussions on the DRC’s efforts to achieve its restructuring. None of the above considerations may in itself justify the stay of enforcement; yet, due to their coexistence the Committee is inclined to accept the stay of enforcement, all the more so as this seems to be in conformity with the general practice. Indeed, in a different field but with the same ‘raison d’être’, stay of enforcement pending an appeal from a judicial decision is, according to several national laws, almost automatic⁵. Same stands in the context of applications for setting aside arbitral awards under Article VI of the New York Convention. Finally and most importantly, though the annulment of an ICSID award constitutes an exceptional remedy, the stay of enforcement of the award, pending an annulment procedure, was granted in all cases where such stay was requested⁶.

⁴ Op. c. note 2: “The criterion is, rather, whether termination of the stay would have what Guinea calls ‘catastrophic’ immediate and irreversible consequences for its ability to conduct its affairs.”

⁵ See in the same effect Paul D. Friedland “Stay of Enforcement of the Arbitral Award Pending ICSID Annulment Proceedings,” in *Annulment of ICSID Awards*, IAI Series on International Arbitration No. 1.

⁶ *Amco Asia Corporation and Others v. Republic of Indonesia*, Decision annulling the Award, May 16, 1986, 25 I.L.M. 1439 (1986) [Amco I]; *Amco Asia Corporation and Others v. Republic of Indonesia*, Decision rejecting the parties’ applications for annulment of the Award and annulling the decision on supplement decisions and rectifications, Dec. 17, 1992 [Amco II] (quoted in the article of Paul D. Friedland, op. c. note 5); *Wena*, op. c. note 3; *MINE*, op. c. note 2; *CDC Group PLC v. Republic of Seychelles*, Decision on Whether or Not to Continue Stay and Order of July 14, 2004, published on the site www.transnational-disputes-management.com.

29. Thus, the Committee decides unanimously that the stay of enforcement of the Award of February 9, 2004 shall continue until its decision on the application for annulment filed by the DRC is issued.

B. The issue of the guarantee

30. The stay of enforcement of the Award may be combined or not with a guarantee in favour of Mr. Patrick Mitchell, the beneficiary of the Award. In examining this issue, the Committee starts with some general considerations:

31. The posting of a guarantee aims at preventing the risk of non-enforcement in the future. It is no exaggeration to say that the guarantee is a form of “conditional payment in advance”⁷. Nowhere in the Convention or in the ICSID Rules is it said that the stay of enforcement should or might (as is the case of Article VI of the New York Convention) be combined with the posting of a guarantee. It is obvious, however, that this question is left to the discretion of the Committee. On this point, it is noted that all the ICSID *ad hoc* Committees which had to decide on the stay of enforcement of an award⁸ had also dealt with the issue of guarantee. Four of them conditioned their decision to grant the stay upon the posting of a guarantee⁹. Only one of them granted the stay without any guarantee¹⁰. The ICSID Discussion Paper of October 22, 2004 just acknowledges this practice.

32. The strongest argument against the granting of a guarantee, to which the DRC expressly refers, is that its beneficiary would be in a much more favourable position regarding the enforcement of the award than he was before the provisional stay. This was also the main consideration which led the Committee in the *MINE* case to grant the stay of enforcement without the condition of a guarantee¹¹. The above argument is strengthened by the fact that such an improvement in the position of the beneficiary of the award is juxtaposed with Article 55 of the Convention, which preserves the immunity of the signatory States from execution.

⁷ See Paul D. Friedland, *op. c.* note 5.

⁸ Amco I, *op. c.* note 6; Amco II, *op. c.* note 6; Wena, *op. c.* note 3; MINE, *op. c.* note 2; CDC Group PLC, *op. c.* note 6.

⁹ Amco I, *op. c.* note 6; Amco II, *op. c.* note 6; Wena, *op. c.* note 3; CDC Group PLC, *op. c.* note 6.

¹⁰ MINE, *op. c.* note 2.

¹¹ *Op. c.* note 2 : “To require such a guarantee would, in addition to involving what might turn out to be very heavy expenditure for the fees of the guaranteeing bank and possibly making it necessary to freeze the amount of the Award and the interest accruing thereon, place MINE in a much more favourable position than it enjoys at the present time and also in a more favourable position than it enjoyed prior to the provisional stay.”

33. However, by virtue of the Convention a State has the obligation to comply with the award, while annulment of an ICSID award is “unusual”¹². It thus seems reasonable to order the posting of a guarantee when a State requests the stay of enforcement of the award, except if this entails significant costs for said State, or the freezing of the amount due with serious consequences on this State’s budget. Moreover, if the posting of a guarantee does actually improve the position of the beneficiary of the award with respect to enforcement, it also constitutes the counterbalance to the negative effect of the stay on the beneficiary, *i.e.* the counterbalance to the delay in his satisfaction through payment of the amount of the award, which in principle should be immediate.

34. Yet, on the other hand, it should be kept in mind that the guarantee aims at ensuring the payment—in case the award is upheld—and that consequently there must exist a serious risk of non-enforcement of the award in the future.

35. In the present case:

36. First, the possibility of an escrow account is to be excluded (alternative request of Mr. Patrick Mitchell for a security conditioning the decision on the stay). Indeed, as it has already been decided by the *ad hoc* Committee in the context of the issue of the stay of enforcement *per se*, the fact that the DRC cannot use the amount of the Award because of an immediate payment might have significant repercussions on its present situation. It is obvious that the placement of this amount in an escrow account, *i.e.* its freezing until the decision on the annulment of the Award is issued, would have the same result for the DRC.

37. All the arguments of the DRC regarding its difficult position relate to the freezing of the amount as a consequence of an escrow account, and not to the posting of a bank guarantee. In regard to the latter, the DRC’s arguments aim only at refuting Claimant’s arguments; they are limited to the difficulty in negotiating a guarantee under “*reasonable conditions*” and to the risk that a guarantee “*would induce other creditors to request similar treatment.*” In the Committee’s opinion, the first argument is not relevant as presented—*i.e.* in a hypothetical and imprecise way—and does not allow any further discussion,

¹² “*an unusual remedy for unusual situations*”: See C. Schreuer, “Three Generations of ICSID Annulment Proceedings,” in *Annulment of ICSID Awards*, IAI Series on International Arbitration No. 1, especially p. 42.

all the more so because it is difficult to believe that a State would not be in a position to furnish a bank guarantee for about one million dollars under, more or less, acceptable conditions. As to the second argument, it can in no way influence the Committee in its decision; it might only lead the Committee to think that there are indeed several creditors of the DRC who remain unpaid.

38. As to Mr. Patrick Mitchell's arguments in favour of a guarantee, these refer to the existence of a very important debt of the DRC towards local creditors, which does not imply however that the DRC would not respect its international obligations.

39. Given the Parties' arguments, the Committee feels obliged to take some distance and revert to some more general and objective considerations in order to make its decision:

40. Reference is made to the most important argument against the posting of a guarantee mentioned herein above under para. 32, namely the improvement of the position of the beneficiary of the guarantee with respect to enforcement. There is no doubt about this improvement, but there is more: indeed, from another perspective, as regards the debtor and his right to request the annulment of the award according to Article 52 of the Convention and Rule 50 of the Arbitration Rules, it can be said that the posting of a guarantee, which is always a burden, penalizes in fact the party that applies for annulment. However, a party must remain free to file such an application for annulment. Moreover, there is no doubt that in the absence of the annulment procedure, the States would not have ratified the ICSID Convention¹³. And, on this point, the Committee is of the opinion that the DRC's argument about the "deterrent effect" of the posting of a guarantee on the submission by developing countries of applications for annulment made in good faith, has a certain value.

41. Further, the posting of a guarantee is not absolutely necessary to ensure the future enforcement of the award in case the latter is upheld. The immunity of a State from execution (Article 55 of the Convention) does not exempt it from enforcing the award, given its formal commitment in this respect following signature of the Convention. If it does not enforce the award, its behaviour is subject to various indirect sanctions. Precisely, reference is made to Articles 27 and 64 of the Convention. The investor's State has the right, according to Article 27, to exercise diplomatic protection against the State which does

¹³ See Pierre Lalive, "Concluding Remarks," in *Annulment of ICSID Awards*, IAI Series on International Arbitration No. 1, especially p. 300.

not respect its obligation to enforce an arbitral award of the Centre; but also, according to Article 64, to have recourse to the International Court of Justice¹⁴. Moreover, a State's refusal to enforce an ICSID award may have a negative effect on this State's position in the international community with respect to the continuation of international financing or the inflow of other investments.

42. In view of the foregoing, the *ad hoc* Committee by majority, notwithstanding the fact that the DRC did not prove that the posting of a guarantee would entail significant costs having serious consequences on its present situation, is however of the opinion that an order for the stay of enforcement is not necessarily conditioned upon the posting of a guarantee except if the Committee is convinced that circumstances, which would make more difficult the enforcement of the award should the latter be upheld, do actually exist. In the present case the Committee is not convinced that the DRC, albeit its present political difficulties, will not comply in the future with its international obligations deriving from the ICSID Convention. In addition, the amount of the Award being minimal indeed, it is difficult to believe that the DRC would expose itself to the risk of the abovementioned sanctions (para. 41) by denying enforcement of the Award in the event the latter is upheld.

43. One of the three members of the Committee, while completely agreeing with the reasoning of the present chapter on the guarantee, however concludes differently, giving more weight to the considerations under the above paragraphs 33, 37 and 38 and considering especially the following elements: (i) the DRC does not prove—not even argues—that the posting of a guarantee would be a really important burden for it (because the bank fees would be very significant or the amount of the Award should be frozen); (ii) objectively, the bank fees concerning the posting of a guarantee with respect to this minimal amount cannot be very high; (iii) in the specific context of an annulment procedure of the ICSID, it is not reasonable to decide on the guarantee by reason solely of the principle *per se* that a State is obligated to comply with its international obligations (a Committee could never thus have conviction that a State would not comply with such an obligation in the future and consequently the posting of a guarantee should never be ordered against a State). According to the minority opinion, the posting of a bank guarantee by the DRC for the entire amount of the Award would be justified in view of the circumstances of the present case.

¹⁴ See Christoph H. Schreuer, "The ICSID Convention: A Commentary," Article 64, pages 1259 et seq., especially p. 1263.

IV. DECISION

Therefore, the *ad hoc* Committee decides that:

Enforcement of the Award rendered on February 9, 2004 shall continue to be stayed according to Rule 54(2) of the Arbitration Rules, until the *ad hoc* Committee issues its decision on the application for annulment filed by the Democratic Republic of the Congo.

The present Decision is signed on behalf of the Committee by its President.

ANTONIAS DIMOLITSA
President of the ad hoc Committee

Athens, November 30, 2004