

# SGS Société Générale de Surveillance S.A.

v.

Islamic Republic of Pakistan  
(ICSID Case No. ARB/01/13)

## Procedural Order No. 2

### Introduction

In this Procedural Order, the Tribunal addresses the request of SGS Société Générale de Surveillance S.A. (“SGS” or the “Claimant”), by a submission dated 7 May 2002, seeking the issuance of “Urgent Provisional Measures” (the “Request”).

The Claimant’s Request sought the granting of the following recommendations:

- (1) that the Respondent immediately withdraw from and cause to be discontinued all proceedings in the courts of Pakistan relating in any way to this arbitration, including Pakistan’s application for a stay of this arbitration and its application to have SGS held in contempt of court, and that the Respondent refrain from commencing or participating in any other such proceeding in the future;
- (2) that the Islamabad-based arbitration pending between SGS and Pakistan be stayed until such time, if any, as this Tribunal has issued an award declining jurisdiction over the present dispute,

and that award is no longer capable of being interpreted, revised or annulled pursuant to the ICSID Convention;

- (3) that the Respondent take no action of any kind that might aggravate or further extend the dispute submitted to the Tribunal.

On 16 September 2002, the Islamic Republic of Pakistan (“Pakistan” or the “Respondent”) filed written “Objections to the Claimant’s Request for Urgent Provisional Measures” (the “Objections”).

The hearing on the Request and the Objections was held at The Hague, the Netherlands, on 23 September 2002.

The request for provisional measures set out under paragraph (1) above was supplemented at the hearing in order to reflect developments in certain court proceedings in Pakistan relating to this arbitration proceeding that occurred after the filing of the Request. The Claimant requested the Tribunal to recommend that the Respondent “remove” or “undo” a judgment made on 3 July 2002 by the Supreme Court of Pakistan.<sup>1</sup>

Article 47 of the ICSID Convention provides that: “Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.”

### Summary of the Facts

The Tribunal’s understanding of the facts that immediately bear upon the Request and the Objections, as those facts can be derived from those submissions and the Transcript of the oral hearing, can be summarized as follows.

The Judgment of the Supreme Court of Pakistan dated 3 July 2002 granted a motion by the Respondent that the Claimant be permanently enjoined from taking any steps to participate in this international proceeding. We understand that Pakistan’s action was based upon the fact that the contract between the Claimant and the Respondent, the Agreement for Pre-shipment Inspections (the “PSI Agreement”), signed 29 September 1994, contained an arbitration clause providing for the resolution of “[a]ny dispute, controversy or claim arising out of, or relating to” the PSI Agreement by means of an arbi-

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<sup>1</sup> See page 5, paragraph 2 and page 9, paragraph 2 of the transcript from the oral hearing on provisional measures held in The Hague on September 23, 2002 (“the Transcript”).

tration, the place of which was designated to be Islamabad, Pakistan.<sup>2</sup> The PSI Agreement has given rise to mutual claims of breach thereof as well as to claims that the Respondent has breached the Agreement between the Swiss Confederation and the Islamic Republic of Pakistan on the Reciprocal Protection of Investments<sup>3</sup> (the “Bilateral Investment Treaty” or “BIT”).

After notice of termination of the PSI Agreement with effect from 11 March 1997 was given by the Respondent on 12 December 1996 and various consultations between the parties failed to resolve the dispute, on 12 January 1998, the Claimant initiated a claim against the Respondent in the Court of First Instance of Geneva, Switzerland, alleging wrongful termination of the PSI Agreement.<sup>4</sup> The Respondent opposed this claim on various grounds but principally on the basis that the parties had agreed to the private arbitration of any disputes arising out of the PSI Agreement rather than to submit to the courts of any country and on grounds of sovereign immunity from the legal process of the Swiss courts.

On 24 June 1999, the Geneva Court of First Instance rejected SGS’s claim, principally on the first ground asserted by the Respondent. SGS then appealed to the Geneva Court of Appeal and subsequently appealed further to the Swiss Federal Tribunal. Both courts upheld the judgment of the Court of First Instance, but on grounds of sovereign immunity. These legal proceedings (the “Swiss legal proceedings”) unfolded over a period of some twenty-two months.

On 11 September 2000, after the judgments of the first two Swiss courts were rendered, but before the judgment of the Swiss Federal Tribunal was issued on 23 November 2000, the Respondent invoked Article 11.1 of the PSI Agreement in order to commence arbitration proceedings in Pakistan pursuant to the applicable governing statute. (The Tribunal will refer to this proceeding as the “local arbitration” or the “PSI Agreement arbitration.”) On this date, Pakistan applied to the Court of the Senior Civil Judge, Islamabad, pursuant to s. 20 of the Pakistan Arbitration Act, 1940, for an order that the dispute between the parties be referred for decision by an arbitrator to be appointed by the Court.

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<sup>2</sup> Article 11.1 of the Agreement between the President of the Islamic Republic of Pakistan, acting by and through its Ministry of Finance, Revenue Division, and Société Générale de Surveillance S.A., dated 29 September 1994.

<sup>3</sup> Signed on 11 July 1995 and entered into effect on 6 May 1996.

<sup>4</sup> The following facts are taken from the Respondent’s Chronology of Material Events, Exhibit P1 to the Respondent’s Objections to the Claimant’s Request for Urgent Provisional Measures, dated 16 September 2002, and from the parties’ respective submissions. The Tribunal understands these facts to be common ground between the parties.

The Swiss legal proceedings having concluded with the denial of the Claimant's appeal on 23 November 2000, the Claimant then appeared before the Senior Civil Judge in Islamabad by filing, on 7 April 2001, a set of preliminary objections to the PSI Agreement arbitration and, without prejudice to those objections, a counter-claim against Pakistan for alleged breaches of the PSI Agreement.

On 10 October 2001, SGS sent a letter to the Government of Pakistan consenting to ICSID arbitration pursuant to Article 9(1) of the BIT.

On 4 January 2002, SGS filed an application with the Senior Civil Judge, Islamabad, for an injunction against the local arbitration on the ground principally that it was entitled to have the dispute settled through ICSID arbitration and that the local arbitration should be stayed until the ICSID Tribunal determined Pakistan's objection to its jurisdiction. On 7 January 2002, the application was rejected by the Senior Civil Judge who also directed both parties to submit the names of arbitrators, one of whom could be appointed to arbitrate the PSI Agreement dispute. SGS then appealed to the Lahore High Court and when that appeal was dismissed on 14 February 2002, appealed further to the Supreme Court of Pakistan on 5 March 2002. Pakistan, for its part, filed its own appeal to the same Court against one paragraph of the Lahore High Court's judgment as well as an application for an injunction to enjoin SGS from pursuing the ICSID arbitration.

Following the parties' respective petitions filed in the Supreme Court of Pakistan, the Court, on 15 March 2002, allowed both petitions and granted leave to appeal. At the same time, the Supreme Court enjoined both parties from pursuing their respective arbitration proceedings pending a decision on their appeals. While the two appeals were before the Supreme Court, on 17 April 2002, an application was made by the Government of Pakistan to the Court to hold SGS in contempt of court.

On 3 July 2002, the Supreme Court of Pakistan rendered its final decision on both appeals, dismissing the Claimant's appeal and granting the Respondent's request to proceed with the PSI Agreement arbitration and restraining the Claimant from pursuing or participating in the ICSID arbitration.<sup>5</sup> In its Reasons for Judgment, the Supreme Court considered *inter alia* whether the Claimant had the requisite standing to commence this ICSID claim and concluded that it did not. The Court's Reasons for Judgment were

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<sup>5</sup> See "Chronology of Material Events," Exhibit P1, page 3, to the Respondent's Objections.

followed on 7 July 2002 with the appointment of Mr. Justice (Retd) Nasir Aslam Zahid as the sole arbitrator to hear the PSI Agreement arbitration.

Although the Government of Pakistan had earlier applied for an order of contempt of court, the judgment of the Supreme Court did not issue a notice of contempt.<sup>6</sup> Counsel for the Claimant noted during the hearing, however, that the “petition [for contempt] still seems to us [to be extant] or at any rate has not been withdrawn” and that it “has not been explicitly disposed of.”<sup>7</sup> The Respondent pointed out that the Court did not respond to the Government’s earlier application and that the Government has not made any fresh application to the Supreme Court to have SGS held in contempt of court.<sup>8</sup> The Claimant agrees that no such steps have been taken but nevertheless expresses its concern that steps could be taken by an indefinite number of persons, including the Supreme Court *sua sponte*, and that, although SGS itself does not have assets or personnel in Pakistan that could be the subject of contempt proceedings, it has sister companies that do.<sup>9</sup> It therefore has expressed concern at the existence of the injunction and the possibility of steps being taken against it or any of its sister companies for contempt of court.

The Attorney General of Pakistan, the Hon. Makhdoom Ali Khan, appeared before the Tribunal and discussed the history of the Court proceedings and the operation of the Islamic Republic of Pakistan’s legal protections in the event that an application for a contempt order is made. The Tribunal has taken note of the Attorney General’s comments, particularly with respect to the scope of the Judgment of the Supreme Court of Pakistan, namely, that in his opinion it applies to SGS alone and not to its sister companies, adding that the Courts of Pakistan apply the principles of the corporate veil developed in English law.<sup>10</sup> In response to a question from the Tribunal, counsel for Pakistan stated that in view of the steps taken by the Claimant in relation to this international arbitration since 3 July 2002, the Claimant would be held to be in contempt of court.<sup>11</sup>

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<sup>6</sup> Respondent’s Objections at paragraph 46. We understand this notice amounts to a notice to show cause why the Claimant should not be held in contempt.

<sup>7</sup> See page 6, paragraph 5, lines 34-35 of the Transcript.

<sup>8</sup> Respondent’s Objections at paragraph 46. See also page 33, paragraph 2, lines 5-11 and paragraph 5, lines 34-39 of the Transcript.

<sup>9</sup> See pages 9-10 of the Transcript, especially page 10, lines 3-34.

<sup>10</sup> See pages 34-35 of the Transcript, particularly at page 35, lines 1-6.

<sup>11</sup> See page 33, paragraph 2, lines 5-6 of the Transcript.

Counsel for the Respondent emphasized that no party has applied for a finding of contempt since 17 April 2002 and observed that, always subject to its objections to this Tribunal's competence and jurisdiction to hear SGS's claim, Pakistan has duly participated in this arbitration. Such steps include replacing an arbitrator who found it necessary to resign, participating in the Tribunal's First Session held with the parties by teleconference on 21 August 2002, agreeing to pay its share of the fees of the proceeding, as well as filing its Objections and participating in the oral hearing of 23 September 2002.

## Discussion

We wish to record the fact that this Request has been considered completely on a without prejudice basis insofar as the Islamic Republic of Pakistan's objection to the Tribunal's competence and jurisdiction to hear the claim is concerned. Both parties made submissions that expressly stated or implicitly assumed that the Tribunal either has or does not have the requisite jurisdiction to hear the claim. Submissions were also made on the breadth of the Tribunal's jurisdiction, assuming that it had jurisdiction to hear the claims, to hear also a counter-claim, were the Government of Pakistan minded to advance one, if the Tribunal were to find that this claim could proceed to the merits. The Tribunal recognizes that, while it was not the purpose of the hearing to address the objections to competence and jurisdiction, nevertheless these express statements and implicit assumptions as to jurisdiction or the lack thereof are linked to the three requests as formulated by the Claimant.

We are thus compelled to make certain statements about jurisdiction in this Procedural Order. Such statements, it is repeated, are wholly without prejudice to the Tribunal's consideration of Pakistan's objections to competence and jurisdiction, a briefing schedule for which has already been set on an expedited basis by the Tribunal with the parties' agreement. The legal issues raised are substantive and complex and we look forward to receiving the parties' submissions thereon in due course.

We also note that Article 41(1) of the ICSID Convention establishes a legal rule of fundamental importance to the proper operation of the ICSID arbitral system: "The Tribunal shall be the judge of its own competence." It is undisputed that the Tribunal has this competence and that it has a duty to exercise it so as to determine whether or not the claim can be considered on the merits.

The Tribunal considers that certain other rights flow from this important rule.

### Request for Relief No. 1

It will be recalled that the Claimant requests firstly:

“that the Respondent immediately withdraw from and cause to be discontinued all proceedings in the courts of Pakistan relating in any way to this arbitration, including Pakistan’s application for a stay of this arbitration and its application to have SGS held in contempt of court, and that the Respondent refrain from commencing or participating in any other such proceeding in the future;”

It is convenient to break this request down into four sub-items as follows: (1) that the Respondent immediately withdraw from and cause to be discontinued all proceedings in the courts of Pakistan relating in any way to this arbitration, (2) including Pakistan’s application for a stay of this arbitration and (3) its application to have SGS held in contempt of court, and (4) that the Respondent refrain from commencing or participating in any other such proceeding in the future.

With respect to Sub-item (1) of Request No. 1, it has not been disputed that under the law of Pakistan, there is no further step to be taken in the Supreme Court proceeding. (To the extent that Sub-item (1) refers to any other proceedings in the courts of Pakistan relating in any way to this proceeding, the Tribunal’s comments in relation to Sub-item (4) below also apply here.)

There appears no basis for the Respondent or any other party to apply to the Court to re-visit the judgment. The Tribunal accepts that this proceeding in the Supreme Court of Pakistan is one from which Pakistan cannot withdraw or discontinue. Nor can Pakistan “remove” or set it aside. It is a final and completed judgment of that Court.

However, although the Supreme Court Judgment of July 3, 2002 is final as a matter of the law of Pakistan, as a matter of international law, it does not in any way bind this Tribunal. We have already adverted to the requirement of Article 41 of the ICSID Convention that this Tribunal determine whether it has the jurisdiction to consider the claims that have been advanced and that we cannot decline to do so.

It is clear that SGS has a *prima facie* right to seek access to international adjudication under the ICSID Convention. It has consented to submit its claim to arbitration under Article 9(2) of the Bilateral Investment Treaty. It has alleged both breach of contract and breach of substantive obligations con-

tained in the BIT. The Islamic Republic of Pakistan is a signatory to the ICSID Convention and has duly ratified it.

It is essential for the proper operation of both the BIT and the ICSID Convention that the right of access to international adjudication be maintained. In the Tribunal's view, it has a duty to protect this right of access and should exercise such powers as are vested in it under Article 47 of the ICSID Convention in furtherance of that duty.

Sub-item (2) of Request No. 1 is that Pakistan's application for a stay of this ICSID proceeding be withdrawn or discontinued. It appears to us that Sub-item (2) is subsumed in Sub-item (1) and the comments just made apply equally to it.

Sub-item (3) of Request No. 1 concerns Pakistan's application to have SGS held in contempt of court.

The Tribunal understands that while the application to have SGS declared in contempt of court was made in April 2002, the Court did not act on the application and no subsequent petition to hold SGS in contempt has been filed. It is advised further however that it is possible that there could be a complaint by the Government, the Court *sua sponte*, or even by a private party who formed the view that SGS had failed to comply with the Court's order. The Attorney General has advised that there is a detailed process for the conduct of contempt proceedings under the law of Pakistan in which the person who is the subject of the complaint is given a full opportunity to respond to the allegations of contempt.

We note these statements and take from them that there are protections put in place by the law of Pakistan to ensure that contempt proceedings are handled with great care. However, it is important that the possibility of contempt proceedings in relation to the Supreme Court's 3 July 2002 Judgment not in any way impair the rights discussed above. The right to seek access to international adjudication must be respected and cannot be constrained by an order of a national court. Nor can a State plead its internal law in defence of an act that is inconsistent with its international obligations.<sup>12</sup> Otherwise, a Contracting State could impede access to ICSID arbitration by operation of its own law.

Therefore, while the Tribunal accepts that the Judgment of the Supreme Court is final, it requests the Respondent not to act on its earlier

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<sup>12</sup> See Article 3 of the International Law Commission's Articles on State Responsibility and the commentary thereon as well as Article 27 of the Vienna Convention on the Law of Treaties.



complaint of an alleged breach of the Court's stay or to file a new complaint. We recommend further that, in the event that any other party, including the Supreme Court of Pakistan *sua sponte*, were to initiate a complaint, Pakistan take all necessary steps to inform the relevant court of the current standing of this proceeding and of the fact that this Tribunal must discharge its duty to determine whether it has the jurisdiction to consider the international claim on the merits. A corollary of this duty is that both parties to the arbitration must be free to take all necessary steps in furtherance of their participation in it. It follows that the Government of Pakistan should ensure that no action be taken in respect of its 17 April 2002 application for contempt and that, if any other contempt proceedings are initiated by any party, such proceedings not be acted upon.

Sub-item (4) of Request No.1 seeks a recommendation that the Respondent refrain from commencing or participating in "all proceedings in the courts of Pakistan *relating in any way* to this arbitration" *in the future*. This is too broad a request. The Tribunal is aware of Pakistan's concerns about the circumstances in which the PSI Agreement was allegedly procured. We have taken careful note of the fact that there have been legal proceedings in Pakistan relating to the PSI Agreement.<sup>13</sup> The Supreme Court's Reasons for Judgment record the fact of the investigation into the origins of the PSI Agreement and its granting by a former government of Pakistan.<sup>14</sup> There may be further proceedings in that connection in the future. We cannot enjoin a State from conducting the normal processes of criminal, administrative and civil justice within its own territory. We cannot, therefore, purport to restrain the ordinary exercise of these processes.

The Tribunal has also taken note of the fact that in the course of upholding the enforceability of the PSI Agreement's arbitration process, the Supreme Court of Pakistan recorded the Attorney General's statement that the Government of Pakistan would not file a claim based upon the allegations of kickbacks and bribery in its arbitration claim under the PSI Agreement.<sup>15</sup> We consider, however, that logically, and in principle, they could be relevant to any proceeding regarding the PSI Agreement with SGS.

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<sup>13</sup> These proceedings are referred to in the attachments to the Government of Pakistan's application for the appointment of an arbitrator filed with the Senior Civil Judge, Islamabad, which were provided to the Tribunal at its request at the end of the hearing.

<sup>14</sup> Reasons for Judgment of the Supreme Court of Pakistan in C.A. No. 459 of 2002 and C.A. No. 460 of 2002 at paragraph 15.

<sup>15</sup> *Id.*, at paragraph 16.

## Request for Relief No. 2

It will be recalled that Request No. 2 seeks a recommendation:

“that the Islamabad-based arbitration pending between SGS and Pakistan be stayed until such time, if any, as this Tribunal has issued an award declining jurisdiction over the present dispute, and that award is no longer capable of being interpreted, revised or annulled pursuant to the ICSID Convention;”

In the Tribunal’s view, this request raises a number of substantive issues that go to the question of whether the Tribunal has jurisdiction. We have mentioned the express statements and implicit assumptions that pervaded the submissions made at the oral hearing. By way of clarifying the bases of its decision in respect of Request No. 2, the Tribunal considers it appropriate to identify some of these issues without, however, deciding any of them.

First, it was submitted by counsel for the Claimant that, should the Tribunal ultimately rule that it has the requisite jurisdiction to hear the claim on its merits, the Respondent is fully entitled to file a counterclaim. To this submission of the Claimant, counsel for the Respondent responded by expressing the view that “there are no rights” for Pakistan under the BIT and that “[Pakistan’s] rights solely exist under the contract with SGS.”<sup>16</sup>

The source of jurisdiction to consider such a counter-claim and the governing law applicable to such a claim is of capital importance. It would be inequitable if, by reason of the invocation of ICSID jurisdiction, the Claimant could on the one hand elevate its side of the dispute to international adjudication and, on the other, preclude the Respondent from pursuing its own claim for damages by obtaining a stay of those proceedings for the pendency of the international proceedings, if such international proceedings could not encompass the Respondent’s claim.

The assumption underlying the Claimant’s request to stay the Islamabad arbitration is that this Tribunal can hear both parties’ claims.<sup>17</sup>

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<sup>16</sup> See page 40, last paragraph, lines 34-36 of the Transcript.

<sup>17</sup> See page 46, paragraph 3, lines 17-23 of the Transcript.

Notwithstanding the alacrity with which the Claimant's submission was made, we are not able at this time to consider the validity and implications of that submission.<sup>18</sup> Thus we cannot base our decision on the request for the stay of the PSI Agreement arbitration on that submission which is yet to be adequately litigated.

Other questions that occur to the Tribunal concern the subject matter of the Islamabad-based arbitration. It was for this reason that the Tribunal inquired as to whether a Statement of Claim had already been filed either as part of the application to the Civil Court to appoint the arbitrator or before the Supreme Court or since the time that the Supreme Court appointed the arbitrator. The Attorney General advised that it was not necessary fully to formulate the claim to be arbitrated in order to seek a court-appointed arbitrator and that the Respondent's claim had yet to be fully articulated.<sup>19</sup> However, as noted above, the Attorney General informed the Supreme Court that the Government's claims would be based on the terms and conditions embodied in the PSI Agreement.<sup>20</sup> The Tribunal infers from statements of counsel that the PSI Agreement arbitration would involve commercial claims related to the contract. It appears to us on the basis of the evidence available at this time that Pakistan's claims relating to the PSI Agreement may be substantially linked to the claims of breach of contract that SGS alleges.

A third question that has arisen concerns the effect of SGS's consent to ICSID arbitration. In filing such a consent, has it waived its right to pursue its counter-claim in the Islamabad arbitration, at least until such time as this Tribunal determines whether it has the jurisdiction to consider its claims? This might follow from Article 26 of the ICSID Convention, which states that consent to arbitration under the Convention shall be deemed to be consent "to the exclusion of any other remedy." If so, the PSI Agreement arbitrator might be deprived of a full joining of the legal issues relating to the performance of the contract under applicable municipal law.

A fourth issue concerns the interpretation of the opening clause of Article 26 of the ICSID Convention, an issue raised by the Respondent. The Respondent has asserted that the parties "otherwise stated" that they would submit any disputes arising under the PSI Agreement to local arbitration and

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<sup>18</sup> See Article 46 of the ICSID Convention.

<sup>19</sup> See page 26, paragraph 3, lines 18-26 of the Transcript.

<sup>20</sup> Reasons for Judgment of the Supreme Court of Pakistan, *supra* note 14, at paragraph 16.

that this contractual commitment was freely given by SGS because it was of fundamental importance to the Government of Pakistan. The Respondent submits further that a specific agreement must prevail over the otherwise exclusive remedy created by a claimant's invocation of ICSID arbitration. We do not decide this issue in this application, choosing instead to leave it to be considered in light of all of the parties' submissions on competence and jurisdiction, after the hearing set for February 2003.

Were the Tribunal to base its decision on the balance of equities, it would not be inclined to grant Request No. 2. It was noted earlier that SGS resorted to the Swiss courts, indeed to the highest Swiss court, in order to pursue its claim of breach of contract against the Respondent. Having litigated this in the Claimant's own national *fora* and then seeking to stay the arbitration sought by Pakistan under the PSI Agreement, the Claimant's actions do not create equities that favour it. The Claimant has also appeared in the PSI Agreement arbitration to the extent of making jurisdictional objections and filing a counter-claim.

The Tribunal, however, also believes that normally it would be wasteful of resources for two proceedings relating to the same or substantially the same matter to unfold separately while the jurisdiction of one tribunal awaits determination. No doubt the parties have been put to considerable expense already. At the same time, the Tribunal is concerned that Pakistan not be effectively deprived of a forum for the hearing of its own claims relating to the PSI Agreement.

Accordingly, the Tribunal has concluded that it would be appropriate in all the circumstances of this case to recommend a stay of the PSI Agreement arbitration until such time as the Tribunal decides the objections to competence and jurisdiction. The Tribunal notes that the Respondent's best estimate for the conduct of the arbitration is not the statutory directive of four months, but more likely a "year to 18 months at the very least".<sup>21</sup> There is little likelihood therefore that the PSI Agreement arbitration would conclude before this Tribunal hears the Respondent's objections and issues its decision. With the cooperation of the parties, the expeditious resolution of the jurisdictional issue should be possible.

Accordingly, the Tribunal recommends the stay requested. It is scarcely necessary to add that this like any procedural order on provisional measures may be re-visited on the application of either party and after hearing the other

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<sup>21</sup> See page 41, paragraph 4, line 34, and page 42, first paragraph, line 3 of the Transcript.

party, should circumstances change materially during the pendency of the jurisdictional phase of this proceeding.

### **Request for Relief No. 3**

The third request made by the Claimant is:

“that the Respondent take no action of any kind that might aggravate or further extend the dispute submitted to the Tribunal.”

We have already addressed the issues relating to legal proceedings in the courts of Pakistan, and in particular the issue of the contempt proceedings. Apart from the considerations that flow from the state of those proceedings, we note that neither party has taken any measure to aggravate the dispute. We observe the current cooperation between the parties and see no evidence that would justify the making of an order.

### **Order:**

For the foregoing reasons, the Tribunal issues the following recommendations:

First, the Tribunal recommends that the Government of Pakistan not take any step to initiate a complaint for contempt. It recommends further that, in the event that any other party, including the Supreme Court of Pakistan *sua sponte*, were to initiate a complaint, the Government of Pakistan take all necessary steps to inform the Court of the current standing of this proceeding and of the fact that this Tribunal must discharge its duty to determine whether it has the jurisdiction to consider the international claim on the merits. The Government of Pakistan should ensure that if contempt proceedings are initiated by any party, such proceedings not be acted upon.

Second, the Tribunal recommends that the Islamabad-based arbitration pending between the Government of Pakistan and SGS be stayed until such time, if any, as this Tribunal has issued an award declining jurisdiction over the present dispute, and that award is no longer capable of being interpreted, revised or annulled pursuant to the ICSID Convention. The Tribunal requests that a copy of this procedural order be transmitted to the designated arbitrator so that he is made fully aware of the status of this international proceeding.

Both parties requested an order for costs of this application. The Tribunal declines to make such an order at this time.

Florentino P. Feliciano  
*President of the Tribunal*

J. Christopher Thomas  
*Arbitrator*

André Faurès  
*Arbitrator*

October 16, 2002