

Individual Statement of Dr. Santiago Torres Bernárdez

I agree with the sending of the letter above to the Parties without prejudice of the following reservations and understanding:

1/ Regarding the timetable included in the Letter, I consider that to grant Claimants, in certain hypothetical situations, the last opportunity to respond through the filling of a Rejoinder Memorial on Jurisdiction is contrary to Rule 31 of the ICSID Arbitration Rules, the principle of equality of the Parties in the proceedings, and the logic of the method of the alternative submission of pleadings applicable in the present case (see my Dissenting Statement joint to PO.Nº13, point B(1), and Dissenting Opinion to PO. Nº15, paras. 55, 56 and 57(5)).

2/ So far as the Expert's Final Verification Report referred to in the Letter, my position remains as per my Dissenting Opinion to P.O. Nº15, paras. 44-45 and 57(1) to (4), namely, *inter alia*, that without the agreement of both Parties, the Arbitral Tribunal lacked, pursuant to Article 43 of the ICSID Convention and Rule 34 of the ICSID Arbitration Rules, of the necessary competence to appoint Dr.Wühler, as it did, as sole Expert of the Tribunal for the task assigned to him by the majority in PO. Nº15.

3/ Lastly, with respect to the specific questions addressed in the present Letter to the Parties concerning the updating of the Database and the findings of the Expert's Final Verification Report, I understand: (i) that they are formulated without prejudging future decisions of the Tribunal and, (ii) that the questions listed do not curtail in any way the Parties' rights to address other or further questions or aspects concerning the said Verification Report.

Signed: Santiago Torres Bernárdez.