

June 21, 2012

Ms. Meg Kinnear
Secretary-General
International Centre for Settlement of
Investment Disputes
Washington, D.C.

Re: Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador (ICSID Case No. ARB/09/17) – Annulment Proceeding

Dear Ms. Kinnear,

I am writing on behalf of the Republic of El Salvador to oppose Claimants' request for additional time to have their application for annulment evaluated by another third-party financier.

El Salvador would like to bring to the Secretary-General's attention that the Centre first requested payment from Claimants on August 17, 2011. Thus, *payment has been pending for ten months*, not only for the six months that have elapsed since the annulment proceeding was suspended. Furthermore, Claimants have had *eleven months* since they filed their application for annulment to find a way to fund this proceeding. In fact, earlier than that, when Claimants decided to apply for annulment, they should have known that they would be required to make advance payments for the costs of the proceeding.

The Centre has been extremely patient with Claimants and they now seek to stretch that patience beyond reasonable limits. In a final exercise of discretion *nine months* after having first requested payment from Claimants, in a notice to the parties dated May 22, 2012, the Centre gave a last warning to Claimants that if payment was not received by June 19, 2012, "the Secretary-General will move that the *ad hoc* Committee discontinue this annulment proceeding." (Emphasis added.) If payment was not made by June 19, 2012, nothing in Claimants' letter of June 18, 2012, justifies departing from the Centre's notice to the parties.

El Salvador would ask that the Secretary-General bear in mind that Claimants have already unjustly forced El Salvador to bear considerable costs to defend a proceeding that never should have been initiated. Claimants ignored El Salvador's opposition to registration of this case based on a clear jurisdictional defect, and they also ignored El Salvador's

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advance consent for them to discontinue this arbitration before the Tribunal was constituted. Instead, Claimants forced El Salvador to spend more than \$800,000 to have the arbitration dismissed for the very reasons El Salvador had notified to Claimants in two separate letters opposing registration and offering advance consent to terminate the arbitration before the constitution of the Tribunal. In these circumstances, El Salvador hopes that the Secretary-General will proceed in accordance with the Centre's notice of May 22, 2012, and promptly initiate the process to discontinue the annulment proceeding.

If after the Secretary-General moves that the *ad hoc* Committee discontinue the annulment proceeding, the Committee is inclined to consider Claimants' request for additional time, El Salvador requests the opportunity to be heard by the Committee.

Sincerely,



Luis Parada