ICSID Case No. ARB/07/5

ABACLAT AND OTHERS
(CLAIMANTS)

and

THE ARGENTINE REPUBLIC
(RESPONDENT)

PROCEDURAL ORDER NO. 28

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9 JUNE 2014

IN VIEW OF

- The Minutes of the First Session of 10 April 2008 and Procedural Order No. 27 of 30 May 2014;
- ICSID's letter of 6 May 2014 in relation to the upcoming hearing;
- The Parties' respective letters of 13 May 2014 in which they each provided the list of witnesses to be called for examination at the hearing;
- The Parties' respective letters of 20 May 2014 in which they each commented upon the other Parties' list of witnesses called for examination at the hearing;
- Respondent's letter of 21 May 2014, in which it objected to Claimants' modification of their list of witnesses;
- Claimants' letter of 22 May 2014 responding to Respondent's objections;
- The Parties' respective letters of 22 May 2014 attaching a joint draft agenda and setting out their points of disagreement as concerns the conduct of the upcoming hearing;
- Respondent's letter of 28 May 2014 and Claimants' letter of 29 May 2014 requesting a ruling on the pending issues;
- The Parties' respective letters of 2 June 2014 concerning the list of witnesses and experts to be examined at the hearing;
- The pre-hearing conference call held on 3 June 2014;
- Respondent's letter of 3 June 2014, in which Respondent requested the right to conduct a direct examination of Mr. Federico Molina, Ms. Noemi La Greca, Mr. Daniel Marx, and Messrs. Saul Keifman and Lucio Simpson;
- The Arbitral Tribunal's letter of 3 June 2014 providing clarification regarding the designation of witnesses and experts for direct examination;
- Respondent's letters of 4 June 2014 concerning the list of witnesses and experts subject to direct examination and the purported withdrawal of Messrs Cottani and Guidotti from Respondent's list of cross-examination;
- Claimants' letter of 5 June 2014 responding to Respondent's letters of 4 June 2014;

1. WITNESS AND EXPERT EXAMINATION

CONSIDERING

(i) Individual Claimants

- that, in Procedural Order No. 27, Respondent was given the opportunity to cross-examine the eight Claimants who have submitted a written witness statement;

- that, in its letter of 2 June 2014, Respondent objected to the Arbitral Tribunal's decision to allow only the cross-examination of these eight Claimants considering that it would infringe upon Respondent's right of defense;
- that, based thereon, Respondent decided not to call any of these eight individual Claimants for cross-examination;
- that, consequently, the Tribunal takes note of Respondent's decision not to call any of the Claimants who have submitted a written witness statement;

(ii) Experts called by the Arbitral Tribunal

- that, in Procedural Order No. 27, the Arbitral Tribunal announced that it intended to question Messrs. Norbert Wühler (Tribunal expert) and Ted Bloch (Respondent expert);
- that neither Party raised any objections to their examination, but both Parties requested to be informed of the scope of examination by the Arbitral Tribunal;
- that the examination of Messrs. Wühler and Bloch will be based on and limited to the scope of their respective reports as well as the Parties' comments thereon;

(iii) Direct Examination of Witnesses and Experts

- that, in Procedural Order No. 27, the Arbitral Tribunal decided as follows concerning the direct examination of witnesses and experts:

> "[…] *there shall in principle be no direct examination of witnesses and experts, unless otherwise justified by special circumstances;*
>
> *therefore, if Respondent considers that there are special circumstances justifying a departure from this principle, it shall file a written application by Tuesday 3 June 2014 listing witnesses and/or experts it wishes to examine directly and provide explanations as to the reasons why such direct examination is justified;*
>
> *that, in case the Arbitral Tribunal admits one or more of these requests, Claimants (who originally did not call such witnesses or experts for cross-examination) will be allowed to cross-examine them, if they so wish;*"

- that subsequently, in its letter of 3 June 2014, Respondent requested the right to conduct a direct examination of Mr. Molina, Ms. La Greca, and Messrs. Marx, Keifman and Simpson on the following basis:
  - as concerns Mr. Molina, Ms. La Greca and Mr. Marx, none of them had the opportunity to provide their views on the matters at issue in Phase 2 raised by Claimants and their experts;
  - as concerns Messrs. Keifmann and Simpson, the complexity of the issues addressed in their reports requires that they be afforded an opportunity to make a brief preliminary presentation before cross-examination;
- that, by letter of 3 June 2014, the Arbitral Tribunal indicated that Respondent's right to request a direct examination was not limited to experts or witnesses called by Claimants for cross-examination but could also include other witnesses and experts to the extent that their direct examination is justified by special

circumstances, and the Arbitral Tribunal therefore re-invited Respondent to complement its list if it so wished;

- that, by letter of 4 June 2014, Respondent decided not to designate any other witnesses or experts for direct examination, contending that the exercise of this right had been made illusory by the Arbitral Tribunal since it was impossible to designate new witnesses and experts not yet called by Claimants only seven working days before the beginning of the hearing;
- that the Arbitral Tribunal appreciates Respondent's situation, which is largely due to the manner and timing of notifying and withdrawing witnesses and experts by both Parties;
- that, therefore, if Respondent is of the view that the examination of the other witnesses and experts during the hearing does not provide it sufficient opportunity to present its case, Respondent is at liberty to apply to the Arbitral Tribunal at the hearing for such measures as are appropriate under the circumstances, without prejudice to a similar right of Claimants;
- that, by letter of 5 June 2014, Claimants adopted the following position:
    - they objected to the conduct by Respondent of direct examinations of Mr. Molina, Ms. La Greca and Mr. Marx on the basis that Respondent had every opportunity to submit additional statements by these individuals with its Counter-Memorial or Rejoinder on Phase 2 and chose not to do so, so that there is no reason to provide Respondent with an opportunity to conduct a direct examination at this stage;
    - they had no objections to a short preliminary presentation by Messrs. Keifman and Simpson that addresses their existing conclusions in the damages reports already submitted with the Counter-Memorial or Rejoinder, provided that (i) they do not address new issues not previously addressed in their written reports, and (ii) Claimants' experts have the same opportunity to make presentations prior to their cross-examination, as agreed in the draft joint hearing agenda;
- that, as concerns Mr. Molina, Ms. La Greca and Mr. Marx, the Arbitral Tribunal considers:
    - that a direct examination is appropriate and useful to the extent that Claimants have requested their cross-examination notwithstanding the fact that they have not submitted any witness statement or expert report in Phase 2;
    - that the scope of their examination shall be limited to the scope of their original witness statements and/or expert reports;
- that, as concerns Messrs. Keifman and Simpson, the Arbitral Tribunal considers it appropriate to allow a limited direct examination in the form of a presentation by these experts of their reports;

- that Claimants shall be afforded the same opportunity with regard to Mr. Kaczmarek;

(iv) Dropping of Messrs. Cottani and Guidotti from Respondent's list of cross-examination

- that, in its letter of 2 June 2014, Respondent withdrew its cross-examination designations of Messrs. Cottani and Guidotti to the extent that they respond in their reports to issues raised by experts Messrs. Eichengreen and Roubini, who were withdrawn by Claimants;
- that Claimants object to this withdrawal on the basis that (i) Messrs. Cottani and Guidotti do not respond to Messrs. Eichengreen and Roubini, but address issues addressed by Molina, La Greca and Marx, and that (ii) if Messrs. Cottani and Guidotti were dropped by Respondent, Claimants would require a right to conduct a direct examination, otherwise this would lead to a prejudicial imbalance and would prevent a comparative assessment of the credibility of the key witnesses;
- that the purpose of the hearing is to provide the Arbitral Tribunal will the necessary information and clarifications in order to be able to make a decision on the key issues of the case;
- that, in view of the Parties' respective withdrawals of witnesses and experts, this very purpose is compromised;
- that, in order to ensure that the Arbitral Tribunal will receive a balanced picture on key issues and to guarantee equal treatment of the Parties, the Arbitral Tribunal decides as follows:
    - Respondent's request to withdraw Messrs. Cottani and Guidotti is rejected. They shall be subject to cross-examination by Respondent and Claimants are granted the right to conduct a limited direct examination;
    - The Arbitral Tribunal hereby exercises its right under Rule 34(2)(a) of the ICSID Arbitration Rules to call Messrs. Eichengreen and Roubini for questioning at the hearing. Each Party will be given the opportunity to examine these experts and the specific timing and modalities of this examination shall be decided at the hearing;
    - In case any of these individuals are not available to come to the hearing in Washington, they shall be examined by video-conferencing;

(v) Sequestration of Witnesses and Experts

- that the Parties are in agreement that there shall be no sequestration of witnesses or experts during the examination of other witnesses and experts;
- that the Parties however disagree on whether experts and witnesses shall be sequestrated during the Opening Statements and/or Closing Statements;

- that Claimants consider such sequestration unnecessary, whereas Respondent considers that it is necessary to prevent witnesses and experts from being unduly influenced by the pleading of the Parties' Counsel;
- that the Arbitral Tribunal decides as follows:
    - witnesses and experts shall be sequestrated during the Opening Statements;
    - witnesses and experts may freely attend the remainder of the hearing, including the Closing Statements;
- that the Arbitral Tribunal invites Respondent to reconsider its position that witnesses and experts shall be sequestrated during the Opening Statements as it is unlikely that witnesses and experts will be influenced by the pleading of the Parties' Counsel in this case;

2. MR. NICOLA STOCK

CONSIDERING

- that, in Procedural Order No. 27, the Arbitral Tribunal announced that it intended to question Mr. Nicola Stock;
- that, in its letters of 2 and 4 June 2014, Respondent requested the Arbitral Tribunal to reverse its decision to examine Mr. Nicola Stock on the basis that he had not submitted any prior statement and that Respondent would not be able to anticipate what questions the Arbitral Tribunal intended to ask nor to prepare for such questions;
- that, in their letter of 2 June 2014, Claimants raised certain concerns regarding the questioning of Mr. Nicola Stock and requested clarification as to the scope of his questioning in view of the fact that he had not submitted any prior statement and that his ability to prepare and to respond to the Arbitral Tribunal's questions would be significantly impaired without knowing the scope of his examination;
- that Arbitral Tribunal recalls that it called Mr. Nicola Stock "in his capacity as representative of TFA within the meaning of ICSID Arbitration Rules 18 and 32(3)," which provides that "[t]he members of the Tribunal may, during the hearings, put questions to the parties, their agents . . ., and ask them for explanations," and not in the capacity of a fact witness or expert, for whom a witness statement or expert report is required;
- that, however, the Arbitral Tribunal has reviewed the questions and no longer sees a need to put them to Mr. Nicola Stock and, therefore, withdraws its request;

3. ORDER OF PROCEEDINGS AND ALLOCATION OF TIME BETWEEN THE PARTIES

CONSIDERING

(i) Dates and time of the hearing

- that the Parties are in agreement with regard to the daily hearing time and suggest to hold hearing from 9:30am to 5:30pm with 1.5 hours lunch break and two 15 minutes break;
- that, on this basis, the total time of the hearing would be 60 hours, of which 26 hours would be allocated to each Party and 8 hours to the Arbitral Tribunal;
- that, in view of the limited number of witnesses and experts who will be examined at the hearing, a fewer number of hearing days than the presently scheduled 10 days may be needed, but that the Arbitral Tribunal does not wish to reduce the number of days in advance of the hearing, being mindful of the opportunity that each Party must have to present its case, and that the Arbitral Tribunal may adjust the schedule during the hearing in consultation with the Parties if and when circumstances so allow or require;
- that the Parties are reminded that the availability of their witnesses and experts shall be scheduled in such a manner that there shall be no down time during the hearing;

(ii) Equal division of time

- that, in principle, time shall be allocated equally between the Parties;
- that exceptions to this principle may be justified where the number of witnesses and experts called by one Party substantially exceeds the number of witnesses and experts called by the other Party;
- that, ultimately, Claimants have called five of Respondent's witnesses and experts, whereas Respondent has called two of Claimants' witnesses and experts;
- that each Party was free to call any witness or expert it wished to call among the other Party's witnesses and experts who had submitted a witness statement and/or expert report;
- that under these circumstances a strict application of the principle of equal division of time may impair Claimants' opportunity to cross-examine the witnesses and experts it designated;
- that, consequently, it appears appropriate to apply the principle of equal division of time with a certain flexibility;

(iii) Opening and Closing Statements

- that Claimants contend that the Parties should be at liberty to use their total allocated time (26 hours each) as they deem fit, and they therefore request the

right to use six hours for their Opening Statement and six hours for their Closing Statement;

- that Respondent requests that Opening and Closing Statements should have fixed durations and should be limited to three hours;
- that the Arbitral Tribunal considers that a time limit for the Opening and Closing Statements should be set to ensure a smooth and efficient conduct of the hearing;
- that the Arbitral Tribunal considers that three hours should be sufficient for each Party for their Opening Statements;
- that, as concerns the Closing Statements, in view of the limited number of experts and witnesses, the Arbitral Tribunal considers that 1.5 hours per Party should be sufficient, whereby this may be reconsidered after the examination of all witnesses and experts and taking into account also the next steps;
- that, consequently, Opening Statements will be limited to three hours per Party and Closing Statements, to the extent necessary, will be limited to 1.5 hours;

(iv) Time count

- that the Parties agree that the method of accounting for time shall be the Chess Clock system under the supervision of the Arbitral Tribunal Secretary;
- that the Parties however disagree whether the Chess Clock system further applies to the Opening and/or Closing Statements;
- that this issue is moot given that the Arbitral Tribunal has set a time limit for the Opening and Closing Statements;
- that, consequently, Opening and Closing Statements shall be subject to the time limit mentioned above and shall in principle not be subject to the Chess Clock system;
- that, in conclusion, the Chess Clock system shall apply to the examination of witnesses and experts, but not to the Opening and Closing Statements;

(v) Hearing Schedule

- that the Parties agree on the general lines of the schedule suggested by Claimants in their letter of 2 June 2014;
- that Respondent however disagrees with Claimants' qualification of Messrs. Cottani and Guidotti as witnesses and their examination at the very beginning;
- that, in view of the Parties' disagreement, the Arbitral Tribunal shall decide on the order of examination in accordance with Article 44 of the ICSID Convention and Rule 19 of the ICSID Arbitration Rules;

4. OTHER ISSUES

CONSIDERING

(i) Documents for Use During the Hearing

- that it was agreed during the pre-hearing conference that the Secretary of the Arbitral Tribunal would liaise with the Parties directly and arrange for the preparation of the following documents:
    - Binders with *hard copies of the key record documents* that the Parties plan to use during their oral pleadings and examinations of witnesses/experts.
    - *Flash drive or external drive with all the submissions*, correspondence and exhibits of Phase 1 & 2. With a hyperlinked index so that Tribunal can search for documents quickly if need be.
- that the Parties further agreed during the pre-hearing conference that no document not already in the record shall be used without leave of the Arbitral Tribunal and exceptional circumstances;
- that, consequently, the Parties shall prepare the above mentioned documents and refrain from submitting any document not already in the record without obtaining prior leave from the Arbitral Tribunal;

(ii) Confidentiality

- that, in its letter of 2 June 2014, Respondent requested the Arbitral Tribunal to order the Parties and all people attending the hearing to maintain confidentiality on the issues raised therein;
- that Claimants contend that the standard of confidentiality should be the one contemplated in Procedural Order No. 3, paras. 86 and 100, according to which only minutes and records of hearings of the present proceedings shall be restricted unless the Parties otherwise agree, or the Tribunal otherwise directs, and Parties are entitled to engage in general discussions about the case in public;
- that the Arbitral Tribunal considers that Procedural Order No. 3 deals extensively with issues of confidentiality;
- that with regard to the hearing, the applicable standard of confidentiality is the standard set out in paras. 86 and 100 of Procedural Order No. 3, according to which:

> "[…] *subject to further specific restrictions on disclosure of specific documents and information as set out herein, the Parties may engage in general discussion about the case in public, provided that any such public discussion is restricted to what is necessary, and is not used as an instrument to antagonise the Parties, exacerbate their differences, unduly pressure one of them, or render the resolution of the dispute potentially more difficult, or circumvent the terms of this Procedural Order No. 3.*
>
> […]

> […] *minutes and records of hearings of the present proceedings shall be restricted unless the Parties otherwise agree, or the Tribunal otherwise directs"*

- that the Arbitral Tribunal does not consider it necessary or appropriate to modify this standard of confidentiality with regard to the Parties, their representatives and/or agents;
- that the Arbitral Tribunal further considers that ICSID staff is subject to sufficient standards of confidentiality under the relevant ICSID framework;
- that neither the Procedural Order No. 3 nor the relevant ICSID framework imposes confidentiality obligations on third parties, including witnesses and experts;
- that, with regard to such witnesses and experts, the Arbitral Tribunal considers that requiring them to sign a confidentiality undertaking will sufficiently guarantee the confidentiality of the hearing;
- that, consequently, each witness and expert shall be required to sign a confidentiality undertaking, which is addressed to both Parties and in which the witness or expert acknowledges that he or she is aware of the Confidentiality Order No. 3, a copy of which is to be attached to the undertaking, and agrees to be bound by it;
- that Respondent's request is otherwise rejected;

CONSEQUENTLY THE ARBITRAL TRIBUNAL DECIDES AS FOLLOWS:

A. WITNESS AND EXPERT EXAMINATION

1. Individual Claimants

- **The Arbitral Tribunal takes note of Respondent's decision not to call individual Claimants who have submitted a witness statement for examination at the hearing;**

2. Experts called by the Arbitral Tribunal

- **the examination of Messrs. Wühler and Bloch will be based on and limited to the scope of their respective reports as well as the Parties' comments thereon;**

3. Mr. Nicola Stock

- **The Arbitral Tribunal withdraws its request to put questions to Mr. Nicola Stock under ICSID Arbitration Rule 32(3);**

4. Direct Examination of Witnesses and Experts

- **Respondent's request to conduct a direct examination of Mr. Molina, Ms. La Greca and Mr. Marx is granted, whereby the scope of their examination shall**

be limited to the scope of their original witness statements and/or expert reports;

- **Respondent's request to conduct a direct examination of Messrs. Keifman and Simpson is granted to the extent that such direct examination takes the form of a limited presentation by one or both of these experts of their report;**
- **Claimants are granted the same right with regard to Mr. Kaczmarek;**

5. Dropping of Messrs. Cottani and Guidotti from Respondent's list of cross-examination

- **Respondent's request to withdraw Messrs. Cottani and Guidotti is rejected. They shall be subject to cross-examination by Respondent and Claimants are granted the right to conduct a limited direct examination;**
- **The Arbitral Tribunal hereby exercises its right under Rule 34(2)(a) of the ICSID Arbitration Rules to call Messrs. Eichengreen and Roubini for questioning at the hearing. Each Party will be given the opportunity to examine these experts and the specific timing and modalities of this examination shall be decided at the hearing;**
- **In case any of these individuals are not available to come to the hearing in Washington, they shall be examined by video-conferencing;**

6. Sequestration of Witnesses and Experts

- **Witnesses and experts shall be sequestrated during the Opening Statements;**
- **Witnesses and experts may freely attend the remainder of the hearing, including the Closing Statements;**

B. ORDER OF PROCEEDINGS AND ALLOCATION OF TIME BETWEEN THE PARTIES

1. Dates and time of the hearing

- **The Arbitral Tribunal confirms the Parties' agreement with regard to the daily hearing time and to hold hearing from 9:30am to 5:30pm with 1.5 hours lunch break and two 15 minutes break;**
- **The Arbitral Tribunal does not wish to reduce the number of days in advance of the hearing, but it may adjust the schedule during the hearing in consultation with the Parties if and when circumstances so allow or require;**

2. Equal division of time

- **The principle of equal division of time shall be applied with a certain flexibility to take into account the unequal number of witnesses and experts called by each side and to ensure that each Party will have the appropriate time to examine each witness and expert;**

3. Opening and Closing Statements

- **Opening Statements will be limited to three hours per Party and Closing Statements, to the extent necessary, will be limited to 1.5 hours;**

4. **Time count**

- **The Chess Clock system shall apply to the examination of witnesses and experts, but not to the Opening and Closing Statements;**

5. **Hearing Schedule**

- **The Hearing will be conducted according to the Schedule that will be issued shortly;**

C. OTHER ISSUES

1. **Documents for Use During the Hearing**

- **The Parties shall prepare the above mentioned documents and refrain from submitting any document not already in the record without obtaining prior leave from the Arbitral Tribunal;**

2. **Confidentiality**

- **Each witness and expert shall be required to sign a confidentiality undertaking, which is addressed to both Parties and in which the witness or expert acknowledges that he or she is aware of the Confidentiality Order No. 3, a copy of which is to be attached to the undertaking, and agrees to be bound by it;**
- **Respondent's request is otherwise rejected.**

The decisions made in this Procedural Order have been made jointly by the majority of the members of the Arbitral Tribunal.

Dr. Torres Bernárdez has issued a separate 'Statement of Dissent', which is attached hereto.

[signed]

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Pierre Tercier,
President
On behalf of the majority of the Arbitral Tribunal

Statement of Dissent of Dr. Santiago Torres Bernárdez to Procedural Order Nº 28 of 9 June 2014

1. I dissent from the present Procedural Order Nº 28 because its underlying principles on the main procedural legal questions at issue, namely the rights concerning (i) the examination at the forthcoming hearing of individual Claimants and (ii) the examination by the Respondent at that hearing of its own witnesses and experts, are similar to those set forth in Procedural Order Nº 27 of 30 May 2014, an Order to which for reasons of principle I joined a detailed Statement of Dissent.

2. Basically, the present Order is a continuation of the Majority's views which inspire the previous one. Thus, the considerations developed in my Statement of Dissent to Procedural Order Nº 27 apply *mutatis mutandis* to the present one. I will therefore limit my considerations below to explain briefly my position with respect to some of the main specific decisions listed in the decisional part of Procedural Order Nº 28:

A) Individual Claimants (paragraph A (1) of the decisional part)

3. As explained in my Statement of Dissent to P.O Nº 27, the Majority distorted the Respondent's request asking, in the first place, for examination of all the purported Claimants remaining in the case and, in the alternative, that the Tribunal indicates the number of Claimants which would be examined at the hearing and, on the base of such a number, the Argentine Republic will select the individual Claimants concerned. I explained as well the schemes and technicalities used by the Majority to denaturalize the Respondent Party's request beyond recognition and rejected it.

4. At its place, the Majority in P.O. Nº 27 granted to the Respondent the right to cross-examine among the thousands of individual purported Claimants only eight "Claimants witnesses" who are persons chosen by the legal representation of the Claimants themselves. I qualify such amazing outcome as a "procedural joke". It was therefore to be expected that the Respondent declined to call the eight purported individual Claimants concerned. Point 1 of the decisional part of P.O. Nº 28 limits itself to record that Respondent's decision. Thus, the outcome of the handle by the Majority of the Respondent's request for examination at the hearing of individual purported Claimants described above is that, apparently, no individual Claimants shall be heard during the hearing.

5. I regret very much that outcome which I consider harmful for the present arbitration because: (i) the particular characteristics and circumstances of the case; (ii) the lack yet of any kind of direct examination by the Tribunal of the relevant documentation submitted by the Claimants Party concerning each individual Claimant; (iii) the

assurances given in the Decision on Jurisdiction and Admissibility of 4 August 2011 concerning the determination of the *ratione personae* jurisdiction of the Tribunal with respect to each of the individual Claimants; and (iv) the opportunity of the forthcoming hearing for beginning to look for a remedy to the said lack.

6. For me is inconceivable that an international arbitral tribunal, an ICSID Arbitration Tribunal in the present case, could proceed to adopt *ratione personae* individual jurisdictional decisions without having a **direct** knowledge of the relevant evidence on each of the purported Claimants concerned as duly submitted by the Claimants Party for the purpose of establishing, precisely, the Tribunal *ratione personae* jurisdiction with respect to every one of the said individual purported Claimants. In any case, in the light of the present situation I continue to reserve my right of questioning, for such a purpose, any individual purported Claimant pursuant to ICSID Arbitration Rule 32 (3) at any appropriate moment of time.

B) Experts called by the Arbitral Tribunal (paragraphs A (2) and (3) of the decisional part)

7. I concur in the decisions in theses paragraphs, namely to call Messrs. Wühler and Bloch at the hearing and to waive the Arbitral Tribunal's right to put questions to Mr. Nicola Stock at such a hearing.

C) Direct examination of witnesses and experts (paragraph A (4) of the decisional part)

8. I concur with the Majority in granting the Respondent's requests to conduct a direct examination of Mr. Molina, Ms. La Greca and Mr. Marx as well as of Messrs. Keifman and Simpson which I consider, contrary to the Majority's view, to be a matter of right. I reject however, as too narrow, the terms in which the direct examination of Messrs. Keifman and Simpson is given. Likewise, I concur, as a matter of right as well, with the granting to the Claimants the right to conduct a direct examination of Mr. Kaczmarek in the same terms than such a right is given to Messrs. Keifman and Simpson.

D) Dropping of Messrs. Cottani and Guidotti from Respondent's list of cross-examination
(paragraph A (5) of the decisional part)

9. The decision to reject Respondent's request to withdraw Cottani and Guidotti is in principle contrary to the fundamental principle of the equality of the Parties in the proceeding because the dropping from the Claimants' list of cross-examination of

Messrs. Eichengreen, Mastroiani and Roubini have been treated by the Majority in P.O. Nº 27 the other way around.

10. However, the additional decision of the Tribunal to call Messrs. Eichengreen and Roubini for questioning at the hearing and, if not available to come to the hearing in Washington, to be examined by video-conference, introduces a balance in paragraph 5 of the decisional part of P.O. Nº 28 allowing me to give a qualified support to that paragraph of the present Order as a whole.

E) Confidentiality (paragraph C (2) of the decisional part)

11. I support the above paragraph in the hope that it would be sufficient to avoid breaches of the confidentiality at the hearing, without prejudice of the consideration of any further request on the matter by any one of the Parties or by both of them.

Signed: Santiago Torres Bernárdez