INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

WASHINGTON, D.C.

EDF (SERVICES) LIMITED

(Claimant)

v.

ROMANIA

(Respondent)

(ICSID CASE No. ARB/05/13)

PROCEDURAL ORDER NO. 2

Rendered by an Arbitral Tribunal composed of

Piero Bernardini, President
Arthur W. Rovine, Arbitrator
Yves Derains, Arbitrator

I. FACTUAL AND PROCEDURAL BACKGROUND

What follows is a summary of the facts of the case, as understood at this stage of the proceeding, for the limited purpose of introducing the issues dealt with in this Order. A more extensive review of the subject-matter of the dispute and the procedure in this arbitration will be made in the Award, taking into account, *inter alia*, the results of the Parties' factual and legal presentations at the hearing.

1. By a Request for Arbitration, dated June 13, 2005, Claimant, EDF (Services) Limited ("EDF"), a juridical person established under the laws of the Bailiwick of Jersey, a Crown Dependency of the United Kingdom, with registered office at Pirouet House, Union Street, St. Helier, JE1 3 WF, Channel Islands, initiated this arbitration with respect to a dispute with Respondent, the Government of Romania ("Romania"). The dispute arises out of a series of actions allegedly attributable to Romania that led to the destruction of investments in Romania owned and controlled by Claimant in an airport services business at Romania's international airports and on-board Romania's national airline.

2. According to Claimant, these actions violated the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Romania for the Promotion and Reciprocal Protection of Investments dated July 13, 1995, which entered into force on January 10, 1996 (the "BIT"). The BIT was extended to nationals of the Isle of Man and the Bailiwicks of Guernsey and Jersey by an exchange of Notes between the United Kingdom and Romania, dated February 25 and March 22, 1999, which entered into force on March 22, 1999.

3. The investment dispute brought by Claimant in this arbitration includes the following allegations:

a) the failure of Romania to provide fair and equitable treatment under international law to Claimant and its investments, as required by Article 2 of the BIT.

b) the failure of Romania to provide compensation to Claimant upon taking measures that expropriated the value of Claimant's investments in Romania, as required by Article 5 of the BIT;

c) the failure of Romania to provide treatment to Claimant and its investments as favourable as that accorded to Romania's own nationals or companies, as required by Article 3(1) of the BIT; and

d) the failure of Romania to observe contractual obligations entered into with Claimant and its investments, as required by Article 2 of the BIT.

4. On November 20, 1991, EDF entered into a Joint Venture Agreement ("JVA") with two Romanian state enterprises, AIBO and C.N. Casrom S.A., pursuant to which a Romanian Company, ASRO, was established. Under the JVA, ASRO was granted a concession over all commercial services at the Bucharest Otopeni Airport, including but not limited to duty-free shops. The initial duration of the JVA was 10 years, extendable for an additional 10-year term, with the agreement of ASRO's General Shareholders Meeting (allegedly deciding by simple majority vote). Since at all times, EDF was the controlling shareholder of ASRO, in Claimant's view it had the right to extend the duration of the ASRO Joint Venture to at least 2012 by voting at the ASRO General Assembly.

5. In reliance on an alleged right to extend the ASRO Joint Venture to 2012, EDF maintains that it invested millions of dollars in the development of ASRO's operations. This included financing the construction of retail spaces at the Otopeni Airport and expanding ASRO's operations both to the Constanta Airport and to the Timisoara International Airport. As a result, ASRO allegedly became the sole operator of the duty-free stores at all of Romanian's international airports, holding exclusive concessions to provide duty-free and duty-paid commercial services at Bucharest Otopeni and Constanta airports.

6. On December 19, 1994, EDF entered into a joint venture agreement with TAROM (the Romanian national airline) and Mr. Jon Staicu to form a Romanian Company, SKY. The initial duration of SKY was 15 years. SKY was to provide in-flight duty free services on TAROM's aircraft.

7. According to Claimant, in order to secure AIBO's cooperation for the extension of ASRO's duration, EDF agreed to grant its Romanian partners a greater share of ASRO, namely 49%, retaining 51% ownership. The extension of the ASRO Joint Venture was approved both by AIBO's Board of Directors and by representatives of the Ministry of Transport at a meeting of ASRO's shareholders on November 29, 2000.

8. According to Claimant, the political winds turned against EDF following the political elections of November 26, 2000, a new government being elected with Mr. Adrian Nastase named Prime Minister and Mr. Miron Mitrea Minister of Transport.

9. Various attempts followed, according to Claimant, to obtain confirmation from Prime Minister Nastase and Minister of Transport Mitrea that AIBO's cooperation would continue in the extended period of the Joint Venture, all without response. According to Claimant, at a meeting held at the parking space of the Hilton Hotel in Bucharest with a senior member of the staff of Prime Minister Nastase, Mr. Sorin Tesu, EDF's Chairman, Mr. Rick Weil, was informed that if EDF wanted to continue with its business operations it would have to pay US$2.5 million. According to Mr. Weil's testimony, this request was rejected as being in the nature of corrupt practices.

10. According to Claimant, on October 19, 2001, the Chief Operating Officer of ASRO, Mr. Marco Katz, met with another member of the staff of Prime Minister Adrian Nastase, Ms. Liana Iacob, at her home. Claimant alleges that during the meeting this official confirmed to Mr. Katz that if EDF wanted to continue business operations in Romania it had to make the US$2.5 million payment; and that Mr. Katz replied that EDF would not make such payment and that it expected to continue business in Romania in accordance with the long-term contracts.

11. In the course of ASRO's Extraordinary General Shareholders meeting of January 8, 2002, AIBO and TAROM representatives informed EDF that the Ministry of Transport would not authorize an extension beyond three months. However, the next day the position changed, with the Ministry of Transport requiring the immediate termination of ASRO.

12. According to Claimant, Romania initiated a series of arbitrary and discriminatory measures designed to expropriate the value of EDF's investment. Such actions culminated in the eviction of EDF from the

premises at Otopeni Airport and the termination of SKY's in-flight duty free activities by TAROM in violation of several BIT provisions. As alleged by Claimant, all these actions by Romania resulted from EDF's failure to agree to make the requested payment of US$2.5 million.

13. In the course of the proceedings, Claimant submitted written statements by both Mr. Weil and Mr. Katz supporting their contention of a request made by Romanian officials for payment of a bribe of US$2.5 million required to permit EDF to continue its business operations in Romania beyond the ten-year period. On its side, Respondent provided written statements of those officials that, according to the Claimant, requested the payment in question, namely Mr. Sorin Tesu and Ms. Liana Iacob. Both officials denied that any such request had ever been made.

14. Alerted by articles published in the international press concerning corruption in Romania and, more specifically, regarding allegations of a solicitation of a corrupt payment of US$2.5 million from EDF, the Romanian National Anti-Corruption Directorate ("DNA") and criminal courts of Romania investigated and reviewed Claimant's bribery claim and found them to be without merit. The Bucharest Court of Appeals issued a final and irrevocable judgment on September 27, 2007, not to prosecute Mr. Tesu and Ms. Iacob.

15. On April 23, 2008, Claimant filed an "Emergency Submission of New Evidence," consisting of an audio tape recording of a conversation allegedly held between Ms. Liana Iacob and Mr. Marco Katz and the transcript of the recording, both in the Romanian and English languages. According to Claimant, the audio tape and the transcript had been provided by a journalist preparing an article for the Financial Times,

who had asked Claimant to confirm several matters. Contending that it had obtained this evidence only on that same day and that "*this new evidence is essential for Claimant to present its case*," Claimant requested the Tribunal to admit the new evidence. Claimant's application was filed twelve days before the hearing to be convened in Washington, D.C., on May 5-10, 2008, for the hearing of legal arguments and the taking of oral evidence presented by the Parties.

16. As authorized by the Tribunal, on April 28, 2008, Respondent submitted its comments on Claimant's application, requesting the Tribunal either to reject the application or, should it decide to admit the same, to postpone the hearing of May 5-10, 2008, to allow Respondent to evaluate the audio recording and to submit such rebuttal evidence as may be warranted.

17. By decision of April 29, 2008, communicated to the Parties on the following day, the Tribunal postponed the hearing of May 5-10, 2008 to a later date, indicating that the Parties would be allowed to make further submissions regarding Claimant's new evidence. The Tribunal's decision of May 2, 2008, assigned time limits to the Parties for such further submissions and indicated that the hearing would be convened on September 22-27, 2008, for arguments and the taking of all oral evidence, including the new evidence should it in the meantime have been admitted.

II. RESPONDENT'S REQUEST FOR PROVISIONAL MEASURES

18. It is in the context of the factual and procedural background described in Section I above that Respondent filed, on May 2, 2008, a request for

provisional measures to be recommended by the Tribunal in accordance with ICSID Arbitration Rule 39 (the "Application"). In support of its Application, Respondent produced an article published in the Financial Times on May 2, 2008 under the tile: "Romania faces $100m corruption suit," a copy of FT.com World Financial Times on the same subject, other evidence already in the file and a copy of Procedural Order No. 3 in ICSID Case No. ARB/05/22, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania* (the "*Gauff* Order").

19. Specifically, the measures sought by Respondent to be recommended pursuant to the Application are that Claimant:

> *(A) refrain from disclosing to the public and particularly to the press (i) submissions of the parties in these proceedings, (ii) evidence submitted by the parties in this case, (iii) evidence submitted to the Romanian authorities, including to the National Anti-Corruption Directorate ("DNA"), either by the Claimant or by other parties (to which evidence Claimant has access) regarding the issues that are the subject of these arbitration or to Romanian authorities, (iv) evidence intended to be submitted either in this arbitration or to the Romanian authorities, (v) any decisions of this Tribunal, (vi) any transcript, records or minutes from these proceedings, and (vii) any correspondence between the parties and/or the Tribunal exchanged in respect of these arbitration proceedings;*
>
> *(B) refrain from disclosing information and providing commentary to the public or the press regarding its claims and allegations as to the subject of this dispute, particularly such information and commentary that reasonably may be expected to antagonize Respondent and its witnesses, exacerbate the differences between the parties, pressure Respondent and its witnesses, or render this dispute potentially more difficult; and*
>
> *(C) refrain from taking any steps that might undermine the procedural integrity or the orderly working of this arbitration proceeding and/or that more generally might aggravate or exacerbate the dispute.*

20. As authorized by the Tribunal:

a) Claimant filed comments regarding the Application on May 7, 2007, enclosing three exhibits (two judgments of the European Court of

Human Rights, relating to Article 10 of the European Convention on Human Rights, and a commentary of this article);

b) Respondent replied to Claimant's comments on May 8, 2008;

c) Claimant responded to Respondent's reply on May 13, 2008.

III. SUMMARY OF THE PARTIES' POSITION

a) Respondent's position

21. According to Respondent, Claimant disclosed to the media information that only a party to the case would know, such as the identity of many of Respondent's witnesses, and to the DNA confidential information in violation of the Tribunal's Confidentiality Order.

22. The article of May 2, 2008 in the Financial Times, written by Claimant's friend Mr. Barnett, discloses publicly arguments and evidence produced by EDF in the ICSID proceedings and before the DNA with the view "*to foment this dispute, to harass, to pressure and intimidate Romania, its witnesses and potential witnesses in these proceedings, and generally to try its case in the media*" (Application, page 3).

23. In view of the Tribunal's ruling not to admit now Claimant's new evidence but to allow Respondent the opportunity to submit rebuttal evidence and argument, including on the subjects of the authenticity and admissibility of the alleged recording, Claimant's commentary through the media threatens to obstruct Respondent's effort to obtain rebuttal evidence by intimidating private individuals having potentially relevant information.

24. Similar circumstances led the ICSID Tribunal in the *Biwater Gauff v. Tanzania* case to order provisional measures directing the parties not to use public discussions of the case as an instrument to antagonise the parties, exacerbate their dispute, unduly pressure one of them or render the resolution of the dispute potentially more difficult.

25. In response to Claimant's contention that its right to free expression regarding corruption in Romania is guaranteed in several international conventions to which both Romania and the UK are parties, Respondent notes that freedom of expression is obviously subject to reasonable limits, as made manifest by one of the conventions referred to by Claimant, the European Convention of Human Rights (in its article 10(2)).

b) Claimant's position

26. The Application has no basis in law or fact and should be rejected in its entirety. The allegation that Claimant provided information to the media is a baseless speculation. Equally baseless is the allegation that Mr. Barnett had a relationship with EDF's Mr. McNutt, the joint inclusion of persons on an internet network being irrelevant, meaning only a professional contact. The same contact existed between Respondent and Mr. Barnett due to Respondent's counsel's involvement in a previous case involving Romania, the Noble Ventures case.

27. Claimant only confirmed to the journalist that there will be an oral hearing before this Tribunal, that the audio recording will be submitted in these proceedings, that the visitor's voice on the recording was that of Marco Katz and that it fully supported Claimant's corruption case. This case has been dealt with by Romanian newspapers on numerous

occasions, the people involved being well-known: Lina Iacob, Milton Mitrea, Sorian Tesu, all publicly accused of corruption and involvement in Claimant's corruption case.

28. Measures such as the one requested by Respondent may not be issued based merely on allegations. Not only has Respondent provided not one simple shred of evidence to support its position, but it may well be that the information contained in the newspaper articles came from persons within the organization of the Romanian State having access to this kind of information.

29. Claimant was obliged to submit to the DNA, upon the latter's request, witness statements given in this arbitration. Contrary to Respondent's contention, this action was not in breach of the Tribunal's Confidentiality Order.

30. The articles in the Financial Times and in the Romanian Cotidianul are by no means harassing or intimidating. There is no indication that the present dispute could be aggravated by these articles or that the latter could improperly pressure Romania and its existing or potential witnesses.

31. Claimant is entitled to free expression regarding corruption in Romania under several international conventions to which both Romania and the UK are parties. Such conventions have to be applied by the Tribunal under Article 42 of the ICSID Convention as part of the law of Romania, the contracting State Party to the dispute. Under the European Convention on Human Rights, freedom of expression may only be limited if so prescribed by law, as necessary in a democratic society

(Article 10.2). Article 47 of the ICSID Convention, providing for the Tribunal's power to recommend measures of protection, contains a general procedural power of the Tribunal which may not substitute for a law, the latter being the only permissible restriction to Claimant's freedom of expression.

32. Other international conventions and international instruments, such as the *UN Anti-Corruption Toolkit* of the United Nations Office on Drugs and Crime and numerous UN General Assembly Resolutions dealing with the fight against corruption, are referred to by Claimant to refute Respondent's attempt to silence debate about corruption of highest officials.

33. Under Article 47 of the ICSID Convention provisional measures may be recommended only to preserve the respective rights of either party. In the present case Respondent failed to demonstrate that Claimant's conduct would have violated any of its rights and that there would be the required necessity and urgency to protect the purported right of Respondent to confidentiality. As shown by the cases referred to by Respondent (*Metalclad Corporation v. United Mexican States* (ICSID Case No. ARB(AF)/97/1); *The Loewen Group, Inc. and Raymond L. Loewen v. United States of America* (ICSID Case No. ARB(AF)/98/3); or *Amco Asia Corporation and others v. Republic of Indonesia* (ICSID Case No. ARB/81/1)), the parties are free to publish documents or to speak publicly of the arbitration, unless they have explicitly agreed upon confidentiality. Respondent's reliance on the *Gauff* Order is misplaced since in the present case no evidence has been adduced by Respondent that any of Claimant's conduct is susceptible to aggravating or exacerbating the dispute.

IV. THE TRIBUNAL'S FINDINGS

34. Under Article 47 of the ICSID Convention, "*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*." Rule 39 (1) of the ICSID Arbitration Rules, in turn, provides that provisional measures are meant to preserve a party's right and that the request "*shall specify the rights to be preserved*."

35. The Application does not "specify" the rights that, according to Respondent, should be preserved by the requested provisional measures. However, judging from the content of its Application (paras. 21-24, *supra*) it appears that Respondent has essentially in mind:

a) the right to the respect of the Tribunal's Confidentiality Order;
b) the right not to have witnesses and potential witnesses intimidated;
c) the right of access to new evidence without obstructions caused by intimidation of private individuals; and
d) the right not to use public discussion as an instrument to exacerbate the dispute or render its resolution potentially more difficult.

36. In order to address properly the questions raised by Respondent in the Application, a distinction is to be made between a party's obligation of confidentiality and the more general duty not to adopt measures that infringe upon the other party's procedural rights or the integrity of the arbitral process. A confidentiality obligation may be imposed by the ICSID Convention, the ICSID Arbitration Rules and Regulations and by the Tribunal's Confidentiality Order of 27 July 2006.

37. No similar distinction is reflected in the Application. Respondent merely asserts, on the one side, that Claimant "*improperly submitted to the DNA confidential witness statements given in this arbitration in violation of this Tribunal's Confidentiality Order*" and asserts, on the other, that certain information concerning this arbitration contained in Mr. Barnett's article of May 2, 2008 was disclosed by Claimant (Application, page 3). However, no allegation is made in the Application that Claimant breached a confidentiality obligation with regard to information allegedly disclosed by it to the press.

38. Regarding the Confidentiality Order, Claimant acknowledged that it disclosed to the DNA, upon the latter's request, witness statements given in this arbitration (Reply of May 8, 2008, page 3). It contends, however, that there was no violation of the Tribunal's Confidentiality Order since, on the one side, it was obliged to do so and, on the other, the Order defines Romania as Party in the case of Respondent, and Romania comprises every emanation of the State, including the DNA.

39. Claimant's defense with respect to the Confidentiality Order and disclosures to the DNA is not acceptable to the Tribunal. When the Confidentiality Order defines Romania as a Party, it refers to the Romanian State as Respondent in this arbitration, as made manifest by point 1 of the Order ("*for the purposes of this Order, 'Party' means . . . in the case of Respondent, Romania*") and by point 5 c) (defining which persons within each Party's organization are entitled to access to or disclosure of Confidential Information, as defined by the Order). To include among such persons all emanations of the Romanian State, as contended for by Claimant, would defeat the Order's objective of a restricted and controlled use of Confidential Information.

40. Claimant should have requested the Tribunal's authorization prior to disclosing Respondent's witness statements to the DNA, such statements falling within the purview of the Confidentiality Order having been marked by Respondent as "Confidential." However, it is consistent with the Confidentiality Order that the further submission to the DNA of witness statements was specifically authorized by the Tribunal on May 15, 2008. Respondent's complaint that the Confidentiality Order was violated is therefore well-grounded.

41. Regarding disclosure of information to the press, according to Respondent the information used by Mr. Barnett for his article in the Financial Times was disclosed by Claimant following the Tribunal's ruling that it would allow Respondent to produce evidence regarding, among other things, the authenticity of the audio recording. In Respondent's view, this behaviour threatens to obstruct its effort to gather rebuttal evidence by scaring and intimidating private individuals having potentially relevant information.

42. Respondent has failed to demonstrate to the Tribunal's satisfaction that Claimant has provided the aforementioned information to the press. On its side, Claimant has denied having provided the information contained in the Cotidianul and in the Financial Times (Response of May 8. 2008, page 2). It is accordingly unnecessary to investigate whether disclosure of any pieces of information reported by the press is in breach of a specific confidentiality obligation, be it based on ICSID Convention, the Arbitration Rules and Regulations, the Tribunal's Confidentiality Order or otherwise.

43. Subject to para. 53 below, there is no provision in the ICSID Convention or in the ICSID Arbitration Rules or Regulations which expressly provides for the confidentiality of the kind of evidence and information as to which recommendations to refrain from disclosure should be made (Application, requests (A) and (B) on page 2, para. 19, *supra*), except to the extent such evidence or information would fall within the scope of the Confidentiality Order. However, since the Confidentiality Order is in full force and effect, there would be little purpose in recommending that a Party refrain from disclosing evidence or information covered thereby.

44. It remains to be seen whether the other request for provisional measures (Application, request (C) on page 2) should be granted. The request is that the Tribunal recommend to Claimant that it "*refrain from taking any steps that might undermine the procedural integrity or the orderly working of this arbitration proceeding and/or that more generally might aggravate or exacerbate the dispute*."

45. As mentioned in para. 42 above, there is no evidence that Claimant has provided information to the press. However, in view of the relevance of the issues raised by Respondent in the present status of the proceedings, the Tribunal will take into consideration, also on its own initiative as allowed by ICSID Arbitration Rule 39(3),[1] Respondent's request under (C) to determine whether, under the present circumstances, recommending these types of provisional measures is warranted.

46. It is part of the inherent procedural powers of an arbitral tribunal, be it acting within the framework of an international commercial arbitration

[1] Rule 39(3) provides that "*the Tribunal may also recommend provisional measures on its own initiative . . . .*"

or of an investment treaty arbitration under the ICSID Convention, to ensure that the proper functioning of the dispute settlement process is safeguarded. Procedural integrity and non-aggravation of the dispute are objectives meant to preserve the parties' rights to be heard on an equal footing and to be able to collect and provide the necessary evidence in support of their claims and defenses.

47. The rights to be preserved by provisional measures are not limited to the rights in dispute. Nothing in Article 47 of the ICSID Convention, when interpreted "*in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose*"[2] justifies a restrictive view. As stated by Professor Christoph Schreuer, "*such an interpretation would be contrary to the Convention's drafting history*" (The ICSID Convention – A Commentary, 2001, pp. 778–79).

48. Minimizing the scope for any external pressure on any party, witness, expert or any other person involved in the arbitral process is certainly within the Tribunal's mission. No current or imminent harm is necessary for this mission to be carried forward.

49. In the Tribunal's view, the circumstances of the case are such that no harm presently exists for the integrity of the arbitral process. However, it is evident that for the press, a case which has been characterized by the article in the Financial Times as a **"$100m corruption suit**" is of such a great appeal that it would not be surprising were the pressure on everyone involved in this arbitration to increase in the near future.

[2] Vienna Convention on the Law of Treaties, art. 31(1).

50. The Tribunal will not tolerate a situation in which the course of the arbitral process is in any way put at risk of derailment by some sort of parallel process conducted by and through the press. As stated by the Tribunal in the *Biwater Gauff v. Tanzania* case, although in somewhat different circumstances,[3] "*It is self-evident that the prosecution of a dispute in the media or in other public fora, or the uneven reporting and disclosure of documents or other parts of the record in parallel with a pending arbitration, may aggravate or exacerbate the dispute and may impact upon the integrity of the procedure. This is all the more so in very public cases, such as this one, where issues of wider interest are raised, and where there is already substantial media coverage, some of which already being the subject of complaint by the parties*" (*Gauff* Order, para. 136).

51. The Tribunal shares this position, which finds support in a number of previous decisions. Thus, in *The Loewen Group, Inc. and Raymond L. Loewen v. United States of America* (ICSID Case No. ARB (AF)/98/3), Decision on hearing of Respondent's objection to competence and jurisdiction, January 5, 2001), the Tribunal, after recognising that there is no general obligation on the parties under the ICSID Convention and the Rules the effect of which would be to preclude discussing the case in public, held that "*it would be of advantage to the orderly unfolding of the arbitral process if during the proceedings the parties were to limit public discussion to what is considered necessary*" (para. 26). Likewise, in *Metalclad Corporation v. United Mexican States* (ICSID Case No. ARB (AF)/97/1), Decision on a Request by the Respondent for an Order prohibiting the Claimant from revealing information regarding the Case,

[3] It is worth recalling in this connection that the *Gauff* Order relied upon by Respondent was based, among other considerations, on the acknowledgment by a party that it was at the origin of the disclosure complained of (*Gauff* Order, para. 13) and on the circumstance that both parties had made frequent use of publicity and disclosure (*Id.*, para. 163).

27 October 1997), the Tribunal held that information to the public should be avoided, "*subject only to any externally imposed obligation of disclosure by which either of them may be legally bound*" (para. 10).

52. Limitations of this nature do not infringe on a party's right to free expression once a party has chosen ICSID arbitration as the appropriate forum to enforce its claims. It is certainly in the public interest to make available information on sensitive issues, such as the allegations of corruption by public officers, as in the present case. However, this interest is to be balanced with the essential objective, in both Parties' interest, that the course of the arbitral process they have freely chosen to enforce their rights not be endangered in any manner by external pressures.

53. The Tribunal has also considered that under Regulation 22(2) of ICSID Administrative and Financial Regulations, publication of minutes or records of hearings is restricted and that documents produced by a Party are meant to be used only for the purpose of the arbitration proceedings.

V. THE ORDER

54. Based on the foregoing considerations and pursuant to the power conferred by Article 47 of the ICSID Convention, Rule 39 of the Arbitration Rules, and the inherent power of the Tribunal to take steps to prevent the exacerbation of the dispute and to maintain the integrity of the arbitral process, the following measures are recommended for the duration of this case:

1. Both Parties shall refrain from taking any steps which might undermine the integrity of the arbitral process or its orderly working and/or that more generally might aggravate or exacerbate the dispute.

2. Unless otherwise agreed by the Parties, or specifically authorized by the Tribunal, disclosure of documents produced by the opposing Party or originated during these proceedings, such as minutes or records of hearings and decisions, orders or directions of the Tribunal (other than awards and this Order), falls within the recommended measure. General discussion of the case in public is not restricted if not used to antagonise the Parties, to exacerbate the dispute or render its resolution potentially more difficult.

3. The Parties are at liberty to apply to the Tribunal regarding steps they intend or are requested to take which might conflict with this Order.

The Arbitral Tribunal

Arthur W. Rovine

Arthur Rovine

Yves Derains

Piero Bernardini
(Chairman)

Date: 30 MAY 2008