

Statement of Dissent by Dr. Santiago Torres Bernárdez

1. I dissent from the majority decisions embodied in Procedural Order N° 23 concerning the deadline for submission of the Rejoinder by the Respondent, the hearing dates and the possibility given to the Claimants to file a Rejoinder Memorial on Jurisdiction by motifs already developed in detail in my Statements attached to the President's letters to the Parties of 28 November 2013, 21 October 2013 and 26 September 2013, respectively.

2. With respect to the filing by the Respondent of the Rejoinder, Procedural Order N° 23 extends the former deadline (15 February 2014) until 31 March 2014, namely by 47 days corresponding to the number of days during which the proceedings has been suspended (19 December 2013 to 4 February 2014). It follows that now the number of days for the Respondent becoming acquainted with the contents of the Claimants' Reply is of 122 days (instead of 75 as before). But, it remains that the Claimants became acquainted with the contents of the Respondent's Counter Memorial about 314 days before filing the Reply Memorial. This difference between the said 314 days and 122 days continue to constitute, in my opinion, a gross and unjustified deviation from the commands of the Parties' equality procedural rule in detriment of the Respondent Party. Procedural Order N° 23 does not correct therefore such a deviation.

3. Furthermore, Procedural Order N° 23 does not make any consequential adjustment in the hearing dates which remain as before the suspension of the proceedings. This means, as explained in my statement attached to the President's letter of 21 October 2013, that because of the circumstances described in that statement such hearing dates remain unfriendly to the *égalité d'armes* principle which should preside the unfolding of the hearing, and in detriment also of the same Party. It is my considered opinion that in international arbitral proceedings neither party should obtain some initial advantage over the other where that is due to factual verifiable particular circumstances of the case.

7 February 2014

Signed: Santiago Torres Bernárdez