

International Centre for Settlement of Investment Disputes
Washington, D.C.

In the proceedings between

International Company for Railway Systems (ICRS)
(Claimant)

and

Hashemite Kingdom of Jordan
(Respondent)

(ICSID Case No. ARB/09/13)

Procedural Order No. 3
To Withhold Decisions on Pending Applications and to Defer December
2010 hearing on Jurisdictional Objections

Members of the Tribunal

Judge Patrick L. Robinson (President)
Mr Stanimir A. Alexandrov (Co-Arbitrator)
Professor Bernard Audit (Co-Arbitrator)

Date of dispatch to the Parties

November 26, 2010

1. The Tribunal recalls from the record that there are pending proceedings between the Hashemite Kingdom of Jordan and the Public Transportation Regulatory Commission (a Jordanian entity) on the one hand and International Company for Railway Systems on the other hand at the Court of Arbitration of the International Chamber of Commerce, which concern the same facts and circumstances in the dispute here (the “ICC Proceedings”).
2. On October 6, 2010 the Respondent, *inter alia*, notified the Tribunal of the Claimant’s communications to the ICC Secretariat of its intention to withdraw jurisdictional objections and to submit a counter-claim in the ICC proceedings. Therefore, the Respondent requested that the Tribunal set “a prompt deadline to confirm that, in light of its recent communications to the ICC, Claimant will agree to seek the immediate discontinuance of the present ICSID proceedings with prejudice.”
3. In response to a letter from the Tribunal on October 14, 2010, on October 21, 2010 the Claimant submitted its comments on the Respondent’s October 6, 2010 letter. The Claimant said, *inter alia*, that its communications to the ICC “are not to the effect that the Claimant has accepted the jurisdiction of ICC under the IA.” The Claimant further stated, “Claimant, without conceding that ICSID is the tribunal of first resort, has in the interest of an expeditious resolution of the dispute and not having to be put through the financial strain of pursuing two arbitrations in the very same matter, for the time being abstained from pursuing its remedy before ICSID, as set out in the IA. The same cannot be seen to be an agreement by the Claimant that ICSID does not have jurisdiction under the IA but merely suspension of the proceedings of ICSID in favour of the ICC arbitration.”
4. In response to letter from the Tribunal on October 26, 2010, on October 29, 2010 the Respondent submitted its comments on the Claimant’s October 21, 2010 letter. The Respondent said, *inter alia*, “for the time being it simply does not oppose Claimant’s request to suspend the ICSID proceedings so that the dispute may be heard before the ICC tribunal.” The Respondent further, stated its expectation that

the “Tribunal issue an order immediately suspending these ICSID proceedings in favour of the ICC arbitration, including a cancellation of the jurisdictional hearing scheduled for December 2010.”

5. However, on November 4, 2010 the Respondent, by letter to the Centre, asked that the Tribunal be notified that it “now requests that ICSID take all appropriate steps under Financial Regulation 14 to discontinue these proceedings due to the fact that the Claimant has remained in default.” The Respondent further stated that under the present circumstances it “can no longer acquiesce to a suspension of the proceedings” and it opposes the suspension unless and until Claimant funds its share of the advance on cost. Respondent then requests that the “Tribunal not rule on the Claimant’s pending Provisional Measures Request nor undertake any further activity in connection with the pending jurisdictional objections.”
6. On November 9, 2010 the Centre informed the Parties, in accordance with Administrative and Financial Regulations 14(3)(d), of the default of the Claimant and invited either Party to pay the outstanding amount of [...] within 15 days of the date of that letter.
7. Having notice of the Centre’s November 9, 2010 letter to the Parties, the Tribunal on November 15, 2010 communicated to the Parties its intention to “withhold its decisions on all pending applications for the present time and defer the jurisdictional hearing set for December 2010 to a later date.” The Tribunal then invited the Parties to “provide their comments in that regard, if any, by Friday, November 19, 2010.” On November 19, 2010, by letter, the Respondent informed the Tribunal that it “is in agreement with the intention expressed by the Tribunal in this regard.” The Tribunal received no comments from the Claimant.
8. Taking note of these developments and the Parties’ comments, the Tribunal makes the following orders:
 - a. The Tribunal withholds its decisions on all pending applications, and

- b. The jurisdictional hearing set for December 2010 is deferred to a date to be determined later.

[Signed]

Judge Patrick L. Robinson
President of the Tribunal
Date: [November 26, 2010]