

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the annulment proceeding between

**ESPF BETEILIGUNGS GMBH, ESPF NR. 2 AUSTRIA BETEILIGUNGS GMBH,
AND INFRACLASS ENERGIE 5 GMBH & CO. KG**

Annulment Respondents

and

ITALIAN REPUBLIC

Applicant on Annulment

**ICSID CASE NO. ARB/16/5
Annulment Proceeding**

**DECISION ON THE CONTINUATION OF THE PROVISIONAL STAY OF
ENFORCEMENT OF THE AWARD**

Members of the Committee

Prof. Dr. Jacomijn J. van Haersolte-van Hof, President of the *ad hoc* Committee

Prof. D. Brian King, Member of the *ad hoc* Committee

Dr. Ucheora Onwuamaegbu, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Natalí Sequeira, ICSID Secretariat

9 July 2021

COUNSEL FOR THE PARTIES

***Representing ESPF Beteiligungs GmbH,
ESPF Nr. 2 Austria Beteiligungs GmbH
InfraClass Energie 5 GmbH & Co. KG:
Annulment Respondents***

Mr. Kenneth R. Fleuriet
King & Spalding
1700 Pennsylvania Ave., N.W.
Suite 200
Washington, D.C. 20006
U.S.A.

Ms. Amy Roebuck Frey
Ms. Héloïse Hervé
Ms. Isabel San Martín
King & Spalding
12, cours Albert 1er
75008 Paris, France

Mr. Reginald R. Smith
Mr. Kevin D. Mohr
King & Spalding
1100 Louisiana St.,
Suite 4100
Houston, Texas 77002
U.S.A.

Mr. Jan K. Schaefer
King & Spalding
TaunusTurm
Taunustor 1
Frankfurt am Main 60310
Germany

Mr. Christopher S. Smith
King & Spalding
1180 Peachtree St., NE
Suite 1600
Atlanta, GA 30309
U.S.A.

***Representing the Italian Republic:
Applicant on Annulment***

Avv. Pietro Garofoli
Avv. Laura Delbono
Avv. Giacomo Aiello
Avvocatura Generale dello Stato
Via dei Portoghesi 12
00186 Rome, Italy

Prof. Avv. Maria Chiara Malaguti
External consultant to the
Ministry for Foreign Affairs
Dr. Filippo Fontanelli
External consultant to the
Ministry for Foreign Affairs

Table of Contents

I.	PROCEDURAL HISTORY.....	1
II.	The Parties' positions.....	2
	A. The position of Italy.....	2
	B. The Annulment Respondents' position.....	5
III.	THE COMMITTEE'S ANALYSIS.....	9
	A. The applicable legal standard.....	9
	B. Whether the circumstances require the stay to be continued.....	12
	1. Italy's compliance with the Award if the application for annulment is rejected	13
	2. The balance of hardship and risk of non-recoupment.....	14
	C. Whether security should be ordered.....	18
IV.	DECISION AND ORDERS.....	19

I. PROCEDURAL HISTORY

1. This Decision relates to the Italian Republic's application for the continuation of the stay of enforcement of the ICSID Award rendered on 14 September 2020 in *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic* (ICSID Case No. ARB/16/5) (the "**Award**").
2. On 11 January 2021, the Italian Republic ("**Italy**" or the "**Applicant**") filed an application for annulment of the Award (the "**Application**").
3. The Application contained a request that enforcement of the Award be stayed, and further that the *ad hoc* Committee rule that the stay be maintained until the Application itself was decided (the "**Request for Continuation of the Stay**") pursuant to Article 52(5) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**") and Rule 54(1) and (4) of the ICSID Rules of Procedure for Arbitration Proceedings (the "**Arbitration Rules**").
4. The ICSID Secretary-General registered the Application on 20 January 2021 and, pursuant to the mandatory terms of Rule 54(2), informed the Parties of the provisional stay of enforcement of the Award.
5. The *ad hoc* Committee (the "**Committee**") was constituted on 3 May 2021 in accordance with Article 52(3) of the ICSID Convention and Arbitration Rules 6, 52(2), and 53. The Members of the Committee are Prof. Dr. Jacomijn van Haersolte-van Hof (Dutch), President, Prof. D. Brian King (U.S.), and Dr. Ucheora Onwuamaegbu (British, Nigerian). All members were appointed by the Chairman of ICSID's Administrative Council.
6. On 7 May 2021, the Committee invited the Parties to confer regarding the timetable for the exchange of written submissions on Italy's Request for Continuation of the Stay.
7. The Parties agreed a schedule for submissions in relation to Italy's Request for Continuation of the Stay, including an agreement that after the first-round submissions were filed, Italy could request second-round submissions if it so wished.
8. The Committee confirmed the schedule agreed by the Parties by means of an email dated 17 May 2021. As was previously communicated to the Parties on 7 May 2021, the Committee decided to maintain the provisional stay of enforcement until it had the opportunity to consider the Parties' submissions and rule on the issue.

9. In accordance with the agreed schedule, Italy filed its Brief on the Stay of Enforcement of Award on 26 May 2021 (“**Italy’s Brief on Stay**” or the “**Brief**”).
10. ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH and InfraClass Energie 5 GmbH & Co. KG (the “**Annulment Respondents**”) filed their Opposition to Italy’s Request for Continuation of the Stay of Enforcement of the Award on 9 June 2021 (the “**Opposition**”).
11. On 10 June 2021, Italy informed the Committee that although it opposed most statements made in the Opposition, Italy believed that the Parties had exhaustively pleaded their positions in their submissions and that the Committee has been fully briefed. In the interest of time, and to promote the expedited administration of the proceedings, Italy expressly confirmed that it did not consider a second round of briefing necessary.
12. On 17 June 2021, the Committee held its first session by videoconference. On 25 June, the Committee circulated a draft Procedural Order No. 1 and invited the Parties to submit their final comments.
13. Section II of this Decision summarizes the Parties’ positions on the stay of enforcement of the Award.¹ Section III sets out the Committee’s analysis. The Committee’s decision is stated in Section IV.

II. THE PARTIES’ POSITIONS

A. The position of Italy

14. Italy requests the Committee to maintain the stay of enforcement of the Award and submits that, despite the delay in payment to the Annulment Respondents that a stay of enforcement might cause, maintenance of the stay “strengthens the award’s finality, rather than weakens it.”²
15. Relying on previous decisions from Swedish and US courts in non-ICSID Convention setting aside proceedings, Italy contends that as a general practice, courts apply their broad discretion and commonly grant a stay of enforcement in challenges to investment arbitration awards.³
16. Referring to the Decision rendered by the annulment committee in *Quiborax*,⁴ Italy submits that any detriment that the Annulment Respondents might suffer due to waiting one year or so

¹ The summaries included in this Decision are not intended to be exhaustive descriptions of the Parties’ submissions. The objective is instead to provide the relevant context for the Committee’s analysis and findings. The Committee has nevertheless carefully considered all the submissions made by the Parties.

² Italy’s Brief on Stay, ¶ 8.

³ Italy’s Brief on Stay, ¶¶ 9-10, 14-15.

⁴ **ILA-054**, *Quiborax S.A. and Non-Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No.

for payment, should the Award be upheld, can readily be cured by post-award interest, whereas the Applicant deserves protection from the risk of non-recoupment if the Award is ultimately annulled.⁵

17. Italy submits that “there is an inherent asymmetry between private investors and States”⁶ when it comes to the solvency of each, in as much as States (unlike private parties) are presumptively solvent, and that therefore a stay of enforcement is “a temporary safeguard” to which States are entitled where they have submitted a *bona fide* application for annulment.⁷ Italy further refers to the decision of the *ad hoc* Committee in *InfraRed*⁸ in support of this position.⁹
18. In Italy’s view, provided that there is no evidence of bad faith or a mere dilatory purpose on the side of the applicant party, the conditions for continuing the stay are present, making it both unnecessary and inappropriate to conduct “an expedite[d] review of the merits of the application.”¹⁰ Italy points to the decisions of prior annulment committees in this regard.¹¹
19. Italy adds that in general, a stay on enforcement will not be granted if the State’s conduct suggests that instead of an interim suspension, its ultimate goal is to avoid payment of the amount owed under the Award.¹²
20. Italy reiterates that granting a stay would not cause any harm or prejudice to the Annulment Respondents given the fact that they were awarded post-award interest, and in light of a State’s presumed solvency.¹³ In Italy’s view, interest “cures the investor’s potential inconvenience of waiting for a due pay out,” whereas Italy risks non-recovery in the event the payment is found not to be due after all.¹⁴
21. Indeed, according to Italy, the risk of non-recoupment is one of the most important factors to be taken into account in an application for continuation of a stay of enforcement, and it must

ARB/06/2 , Decision on the Application to Terminate the Provisional Stay of Enforcement of the Award, 21 February 2017, ¶ 66.

⁵ Italy’s Brief on Stay, ¶¶ 11-12.

⁶ Italy’s Brief on Stay, ¶ 16.

⁷ Italy’s Brief on Stay, ¶¶ 16-17.

⁸ **ILA-040**, *InfraRed Environmental Infrastructure GP Limited and others v. Kingdom of Spain*, ICSID Case No. ARB/14/12 (“*InfraRed*”), Decision on Continuation of Stay of Enforcement of the Award, 27 October 2020, ¶ 167.

⁹ Italy’s Brief on Stay, ¶ 19.

¹⁰ Italy’s Brief on Stay, ¶¶ 22-26.

¹¹ Italy’s Brief on Stay ¶¶ 29-31, citing **ILA-045**, *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v. Kingdom of Spain*, ICSID Case No. ARB/14/11 (“*NextEra*”), Decision on Stay of Enforcement of the Award, 6 April 2020, ¶¶ 91-93 and **ILA-042**, *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. Kingdom of Spain*, ICSID Case No. ARB/15/36 (“*OperaFund*”), Decision on the Request for the Continuation of the Stay of Enforcement of the Award, 16 November 2020, ¶ 71.

¹² Italy’s Brief on Stay, ¶ 28.

¹³ Italy’s Brief on Stay, ¶ 33.

¹⁴ Italy’s Brief on Stay, ¶ 34.

be balanced against the award creditor's risk of the inability to recover.¹⁵ In support, Italy points to the decision of the *ad hoc* Committee in *CMS*,¹⁶ which is said to have affirmed that States should as a general matter be granted a stay when seeking annulment, while emphasizing that an applicant does not have to prove that the awarded sum would be irrecoverable in the event of annulment.¹⁷

22. According to the Applicant, there are several aspects which must be considered when assessing the possibility of non-recoupment. It notes that three predominant factors were identified by the *ad hoc* Committee in *SolEs*,¹⁸ namely: i) the natural and judicial character of the award creditor; ii) the location of its activities or assets; and iii) the financial stability of the creditor.¹⁹ Following this line of reasoning, Italy underlines the significance of the financial situation of the investors here as an issue that should be assessed by the *ad hoc* Committee.²⁰
23. Italy argues that it meets the requisite criteria to be granted a stay of enforcement. First, Italy refers to its track record as a dutiful observant of international decisions, notably the *Norstar* and *Enrica Lexie* awards.²¹ On the other hand, Italy questions the financial position of the Annulment Respondents, pointing to the balance sheets of ESPF and ESPF2 as well as public records of InfraClass Energie 5.²² Italy also raises the possibility of external funding for the arbitration claim, which in its view poses an additional risk of non-recoupment.²³
24. Italy next refers to the financial standing and corporate structures criteria assessed in the annulment proceedings in *CDC*²⁴ and *Karkey*,²⁵ noting the “difficulties that are inherent in the attempts to recover any amounts from investors operating in the framework of layered corporate structures, in particular one-project investment vehicles.”²⁶ In support of such statements, Italy

¹⁵ Italy's Brief on Stay, ¶ 35.

¹⁶ **ILA-041**, *CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8 (“*CMS*”), Decision on Argentine Republic's Request for a Continued Stay of Enforcement of the Award, 1 September 2006, ¶ 38.

¹⁷ Italy's Brief on Stay, ¶¶ 36-37.

¹⁸ **ILA-046**, *SolEs Badajoz GmbH v. Kingdom of Spain*, ICSID Case No. ARB/15/38 (“*SolEs*”), Decision on the Continuation of the Stay of Enforcement of the Award, 26 August 2020, ¶ 83.

¹⁹ Italy's Brief on Stay, ¶ 39.

²⁰ Italy's Brief on Stay, ¶¶ 41-43.

²¹ Italy's Brief on Stay, ¶ 49, citing **ILA-049**, the International Tribunal for the Law of the Sea, Case No. 25, *The M/V 'Norstar' Case (Panama v. Italy)*, Judgment of 10 April 2019 and **ILA-050** PCA Case No. 2015-28, *The 'Enrica Lexie' Incident (Italy v. India)*, Award of 2 July 2020, ¶ 1094.

²² Italy's Brief on Stay, ¶ 52.

²³ Italy's Brief on Stay, ¶ 54.

²⁴ **ILA-060**, *CDC Group PLC v. Republic of Seychelles*, ICSID Case No. ARB/02/14, Decision on Whether or Not to Continue Stay and Order, 14 July 2004, ¶ 18.

²⁵ **ILA-063**, *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1 (“*Karkey*”), Decision on the Stay of Enforcement of the Award, 22 February 2018, ¶ 115.

²⁶ Italy's Brief on Stay, ¶¶ 55-57.

refers to the difficulties it is experiencing in recovery proceedings in *Blusun*,²⁷ further adding that such a risk would not apply in relation to a State which is subject to enforcement.²⁸

25. Considering the above, Italy requests the *ad hoc* Committee to order the continuation of the stay of enforcement of the Award until a decision on annulment is rendered in these proceedings.²⁹

B. The Annulment Respondents' position

26. The Annulment Respondents begin their Opposition by objecting to Italy's reading of Article 52(5) of the ICSID Convention.³⁰ Relying on *Burlington*³¹ and *SGS*,³² the Annulment Respondents submit that "stays of enforcement are the exception, while immediate enforcement of ICSID awards is the rule."³³
27. In that context, they proceed to argue that Italy's references to foreign court decisions in non-ICSID cases are immaterial to the present case;³⁴ while noting that in three out of the five ICSID annulment cases relied on by Italy, the stay of enforcement was in fact lifted.³⁵
28. Based on the outcomes of a number of previous cases (*Valores Mundiales*,³⁶ *Sempra*,³⁷ *Kardassopolous*,³⁸ *Elsamex*,³⁹ and *Eiser*⁴⁰), the Annulment Respondents contend that since about 2009, ICSID practice has shifted to generally rejecting the continuance of a stay of enforcement.⁴¹ In fact, the recent trend in ICSID decisions, which Italy has failed to address,

²⁷ *Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic*, ICSID Case No. ARB/14/3 ("*Blusun*").

²⁸ Italy's Brief on Stay, ¶ 57.

²⁹ Italy's Brief on Stay, ¶ 59.

³⁰ Opposition, ¶ 6.

³¹ *ELA-003, Burlington Res. Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5 ("*Burlington*"), Decision on Stay of Enforcement of the Award, 31 August 2017, ¶ 73.

³² *ELA-004, SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Stay, 22 March 2013, ¶ 85.

³³ Opposition, ¶ 10.

³⁴ Opposition, ¶ 8.

³⁵ Opposition, ¶¶ 9 and 16, referring to the *NextEra*, *InfraRed*, and *OperaFund* annulment proceedings.

³⁶ *ELA-006, Valores Mundiales, S.L. and Consorcio Andino S.L. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/13/11, Decision on the Request for a Continuation of the Stay of Enforcement of the Award, 6 September 2018, ¶ 83.

³⁷ *ELA-008, Sempra Energy Int'l v. Argentine Republic*, ICSID Case No. ARB/02/16 ("*Sempra*"), Decision on the Argentine Republic's Request for a Continued Stay of Enforcement of the Award, 5 March 2009, ¶ 27.

³⁸ *ELA-009, Ioannis Kardassopolous and Ron Fuchs v. Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15 ("*Kardassopolous*"), Decision of the *ad hoc* Committee on the Stay of Enforcement of the Award, 12 November 2010, ¶ 26.

³⁹ *ILA-059, Elsamex SA v. Republic of Honduras*, ICSID Case No. ARB/09/4, Decision of the *ad hoc* Committee on the Continuation of the Stay of Enforcement of the Award, 7 January 2014, ¶ 90.

⁴⁰ *ELA-010, Eiser Infra. Ltd. and Energía Solar Lux. S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/36 ("*Eiser*"), Decision on Stay of Enforcement of the Award, 23 March 2018, ¶ 48.

⁴¹ Opposition, ¶¶ 11-14.

contradicts Italy's arguments that requests for a stay of enforcement are regularly and commonly granted.⁴²

29. The Annulment Respondents counter Italy's reading of *MTD*⁴³ by stating that "it does not follow that a stay of enforcement should be imposed or continued simply because an application for annulment is not found to be dilatory or devoid of merit."⁴⁴ They argue that Italy's two objections in the Application, namely the Tribunal's rejection of the *intra*-EU jurisdictional defense and the Tribunal's failure to engage with two other issued awards involving Italy, are dilatory and lacking in merit, and in any event do not have a bearing on whether the Committee should continue the stay or not.⁴⁵
30. The Annulment Respondents agree with Italy on the factors that *ad hoc* committees typically consider when determining an application for a stay of enforcement, but contend that "each of these factors weighs against continuing the stay." In their view, Italy has failed to discharge its burden of proving the existence of the three factors that, if satisfied, could warrant a continuation of the stay, namely, i) the likelihood of Italy's compliance with its obligations under the Award should the annulment application be unsuccessful; ii) the comparative hardship borne by each party in case the challenged Award is immediately complied with (or not); and iii) the possibility of recouping payments from the Annulment Respondents should Italy prevail in the decision on annulment.⁴⁶
31. First, the Annulment Respondents argue that there is little proof that Italy would comply with the Award in the event that it is upheld. Contrary to Italy's assertions on continuously honoring its international obligations, the Annulment Respondents stress that the question is not a matter of financial resources available, but rather one of volition. They argue that Italy's record of non-compliance with prior Energy Charter Treaty ("ECT") awards undermines the Applicant's position, adding that the payment of this Award is made more unlikely by the fact that doing so would establish an unwelcome precedent for Italy with respect to the other renewable energy awards it is facing.⁴⁷ In any event, the Annulment Respondents contend, Italy's mere representation that it complies with awards is inadequate, such that if the Committee were

⁴² Opposition, ¶¶ 16-20, citing **ELA-018**, *Cube Infra. Fund SICAV et al. v. Kingdom of Spain*, ICSID Case No. ARB/15/20, Decision on the Continuation of the Provisional Stay of Enforcement of the Award, 17 April 2020, ¶¶ 121, 125, 141; **ILA-058**, *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Procedural Order No. 3, May 20, 2020, ¶¶ 74, 134, 138; and **ILA-045**, *NextEra*, ¶ 80.

⁴³ **ILA-044**, *MTD Equity Sdn Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7 ("*MTD*"), Decision on the Respondent's Request for a Continued Stay of Execution, 1 June 2005, ¶ 28.

⁴⁴ Opposition, ¶ 22.

⁴⁵ Opposition, ¶ 23.

⁴⁶ Opposition, ¶¶ 24-25.

⁴⁷ Opposition, ¶ 27.

mindful to continue the stay of enforcement, this should be conditioned on Italy either i) providing an irrevocable guarantee ; or ii) placing the awarded amount in an escrow account.⁴⁸

32. Second, the Annulment Respondents argue that Italy risks no harm from immediate enforcement of the Award, whereas “a multi-year delay to the Annulment Respondents’ ability to exercise their right to enforce their legal title causes them significant ‘harm’.”⁴⁹ In that regard, they point to the time that has already passed since the issuance of the Award and the prospective case calendar, stating that these annulment proceedings are expected to last more than a year.⁵⁰
33. According to the Annulment Respondents, the longer the stay is continued, the more difficult the enforcement of the Award becomes. They point to the fact that they are not Italy’s only award creditor as well as to Italy’s reluctance to pay the Award, presumably requiring enforcement efforts in other jurisdictions.⁵¹
34. Referring to the decisions of the *ad hoc* committees in *Antin*, *Eiser* and *InfraRed*, the Annulment Respondents counter Italy’s statements on the payment of interest being sufficient compensation for the harm caused by a continuation of the stay.⁵² They contend that interest alone “does not compensate for the additional loss the Annulment Respondent will have to incur to force Italy to comply with its obligation to pay,” the risk of non-recovery, and the fact that the delay would push them further down in the line of Italy’s award creditors.⁵³
35. Lastly on the second factor, the Annulment Respondents submit that even if continuance of the stay would not cause any harm to them, this would not be sufficient to justify continuing the stay where lifting it will also not cause any cognizable harm to Italy. Referring to the language of Article 52(5) of the ICSID Convention and ICSID practice, the Annulment Respondents contend that “the balance must weigh in favor of lifting the stay” to warrant continuing it.⁵⁴
36. Third, the Annulment Respondents argue that Italy has failed to demonstrate a real risk that the awarded amount could not be recouped by Italy in the event that the Award were annulled.⁵⁵

⁴⁸ Opposition, ¶ 56.

⁴⁹ Opposition, ¶¶ 31-32.

⁵⁰ Opposition, ¶ 33.

⁵¹ Opposition, ¶ 34.

⁵² Opposition, ¶¶ 36-38, citing **ILA-051**, *Infrastructure Services. Luxembourg S.à.r.l. and Energia Termosolar B.V. (formerly Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V.) v. Kingdom of Spain*, ICSID Case No. ARB/13/31 (“*Antin*”), Decision on the Continuation of the Provisional Stay of Enforcement of the Award, 21 October 2019, ¶¶ 82; **ILA-040**, *Eiser*, ¶ 60; and **ELA-023**, *InfraRed*, ¶ 163.

⁵³ Opposition, ¶ 35.

⁵⁴ Opposition, ¶ 39.

⁵⁵ Opposition, ¶ 40.

Referring to the decision in *Antin*,⁵⁶ they argue that Italy has not demonstrated that ESPF, ESPF2 and ICE5 are in financial distress. On the contrary, all three remain going concerns.⁵⁷ ESPF and ESPF2’s balance sheets and their audit records show the companies’ “willingness and ability to pay financial obligations out of their existing revenue stream.”⁵⁸ The Annulment Respondents also dispute Italy’s assertions regarding ICE5’s financial position, stating that ICE5’s audited accounts show that it has a solid financial position.⁵⁹

37. The Annulment Respondents further contend that, in contrast to the situations in *SolEs*⁶⁰ and *RREEF v Spain*,⁶¹ their own financial records prove their ability to repay the Award amount through either their own or borrowed funds.⁶² In addition, while disputing the relevance thereof, the Annulment Respondents state that there is no third-party funder involved in the present proceedings.⁶³ Finally on the third factor, the Annulment Respondents submit that Italy’s experience in other enforcement proceedings, such as the *Blusun* reference, is irrelevant for the present proceedings.⁶⁴
38. Alternatively, the Annulment Respondents request that in the event the stay of enforcement is granted, it should be conditioned on Italy providing financial security in the form of a bank guarantee, or by depositing the Award amount in escrow at a first-class international bank outside of the European Union.⁶⁵ Referring to previous ICSID decisions,⁶⁶ the Annulment Respondents assert that *ad hoc* committees commonly require security as a condition for a stay of enforcement “to counterbalance the prejudice to a successful claimant who would otherwise have been entitled to receive immediate payment under an ICSID award.”⁶⁷ In their view, such a request is reasonable given Italy’s demonstrated reluctance to pay other investment treaty

⁵⁶ Opposition, ¶ 42, citing **ILA-051**, *Antin*, ¶ 73.

⁵⁷ Opposition, ¶¶ 45-46.

⁵⁸ Opposition, ¶ 43.

⁵⁹ Opposition, ¶ 44.

⁶⁰ **ILA-046**, *SolEs*, ¶¶ 65-67,

⁶¹ **ILA-035**, *RREEF Infra. (G.P.) Ltd. and RREEF Pan-European Infra. Two Lux S.à.r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/30, Decision on Stay of Enforcement of the Award, 28 October 2020, ¶ 65.

⁶² Opposition, ¶¶ 47-48.

⁶³ Opposition, ¶ 49.

⁶⁴ Opposition, ¶ 50.

⁶⁵ Opposition, ¶¶ 53, 56.

⁶⁶ Opposition, ¶¶ 54-55, referring to **ELA-030**, Paul D. Friedland, *Provisional Measures and ICSID Arbitration*, ARBITRATION INTERNATIONAL, Vol. 2, No. 4, Oct. 1986, pp. 335-357, 349 (citing to the decision of the *Amco ad hoc* committee dated 17 May 1985); **ILA-028**, *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Decision on the Application for Annulment, 5 February 2002, ¶ 6; **ELA-008**, *Sempre*, ¶ 117; **ELA-009**, *Kardassopolous*; and **ELA-005**, *Flughafen Zurich AG v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/19, Decision on the Termination of the Stay of Enforcement of the Award, 11 March 2016, ¶ 69.

⁶⁷ Opposition, ¶ 55.

awards, as well as the harm that the Annulment Respondents would incur from a continuation of the stay.⁶⁸

39. For the above reasons, the Annulment Respondents request the *ad hoc* Committee to dismiss Italy's application for a continued stay of enforcement of the Award pending the Committee's decision on annulment. In the alternative, the Annulment Respondents request the *ad hoc* Committee to order Italy to provide financial security as described above. The Annulment Respondents also claim reimbursement of the costs and expenses related to Italy's application to continue the stay.⁶⁹

III. THE COMMITTEE'S ANALYSIS

A. The applicable legal standard

40. The starting point of the Committee's analysis is Article 52(5) of the ICSID Convention, which establishes the power of the Committee to grant or reject the request for the continued stay of enforcement of the Award:

The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.

41. Rule 54 of the Arbitration Rules then provides as follows:

(1) The party applying for the interpretation, revision or annulment of an award may in its application, and either party may at any time before the final disposition of the application, request a stay in the enforcement of part or all of the award to which the application relates. The Tribunal or Committee shall give priority to the consideration of such a request.

(2) If an application for the revision or annulment of an award contains a request for a stay of its enforcement, the Secretary-General shall, together with the notice of registration, inform both parties of the provisional stay of the award. As soon as the Tribunal or Committee is constituted it shall, if either party requests, rule within 30 days on whether such stay should be continued; unless it decides to continue the stay, it shall automatically be terminated.

(3) If a stay of enforcement has been granted pursuant to paragraph (1) or continued pursuant to paragraph (2), the Tribunal or Committee may at any time modify or terminate the stay at the request of either party. All stays shall automatically terminate on the date on which a final decision is rendered on the application, except that a Committee granting the partial annulment of an award may order the temporary stay of enforcement of

⁶⁸ Opposition, ¶ 57.

⁶⁹ Opposition, ¶ 59.

the unannulled portion in order to give either party an opportunity to request any new Tribunal constituted pursuant to Article 52(6) of the Convention to grant a stay pursuant to Rule 55(3).

(4) A request pursuant to paragraph (1), (2) (second sentence) or (3) shall specify the circumstances that require the stay or its modification or termination. A request shall only be granted after the Tribunal or Committee has given each party an opportunity of presenting its observations.

(5) The Secretary-General shall promptly notify both parties of the stay of enforcement of any award and of the modification or termination of such a stay, which shall become effective on the date on which he dispatches such notification.

42. While the wording in Rule 54(2) relating to the imposition of a provisional stay is mandatory (“the Secretary-General *shall*”) (emphasis added), Article 52(5) of the ICSID Convention is equally clear that the Committee’s decision on the continuation of a stay is discretionary (“the Committee *may*”) (emphasis added). In addition, according to the same provision, the Committee’s discretionary decision must be based on its appreciation of the specific circumstances of the case (“if it considers that *the circumstances so require*”) (emphasis added). There is no guidance in the Convention or the Rules regarding which circumstances shall be considered in deciding whether or not to continue the stay.
43. Nevertheless, a stay, if issued pursuant to Article 52(5) of the ICSID Convention, is an exception to the normal consequence of an award as provided for in Article 53(1) and Article 54(1) of the ICSID Convention, *i.e.*, that an award shall be binding on the parties as of its date of issuance, and recognized as binding and enforceable by each Contracting State. Consequently, the Committee is of the view that a stay is an exceptional remedy in the context of the ICSID system.⁷⁰ The Committee notes that national case law addressing the conditions for and function of a stay of enforcement, pursuant to standards of national legislation,⁷¹ are not relevant for the interpretation and application of the ICSID Convention and Rules.
44. Despite the absence of an explicit provision in the Convention or the Rules on the allocation of the burden of proof, the Committee considers that the wording and structure of the Convention and the Rules, which distinguish the provisional stay and the ruling by the Committee on the continuation thereof, and only provide mandatory wording in relation to the former, support the position that the normal approach to the burden of proof applies, such that the party making an application bears the burden of proof. This view is confirmed by the rulings of several committees, notably in *Karkey*:

⁷⁰ See, e.g., **ELA-003**, *Burlington*, ¶73.

⁷¹ Italy’s Brief on Stay, ¶¶ 9-10.

“[a] stay of enforcement during the annulment proceeding is by no way automatic, quite the contrary, a stay is contingent upon the existence of relevant circumstances which must be proven by the Applicant.”⁷²

45. Consequently, the Committee is of the view that as the moving party seeking to continue the provisional stay, Italy bears the burden of establishing the circumstances that – as specified in Article 52(5) – “require” the continued stay of enforcement, albeit that insofar as the Annulment Respondents raise any positive allegations to rebut Italy’s position, they need to substantiate and where necessary prove these allegations.
46. Italy emphasizes the “broad discretion” of the Committee to assess the specific circumstances of each case, while invoking the large number of prior cases in which requests for a stay or the continuation of a stay were granted, as further support for the proposition that, more often than not, the circumstances do not justify a lifting of the provisional stay.⁷³ The Annulment Respondents, on the other hand, point to the development of a more recent trend of cases where committees have found that stays of enforcement are not automatic and that there is no presumption in favor of retaining a stay.⁷⁴
47. The Committee is of the view that in assessing the circumstances asserted by each of the Parties, and in determining the appropriate standard of proof, there is no effective presumption either in favor of or against continuation of a stay. Rather, and consistent with the view expressed by other, and in particular more recent, annulment committees, this Committee must consider the specific facts and evidence relied on by Italy, and insofar as relevant by the Annulment Respondents, whereby “the circumstances must be specific, and allegations of harm must be substantiated by ‘specific evidence and data’ that give rise to a ‘particularized fear of harm.’”⁷⁵
48. The Parties have each referred to various grounds that they argue should be taken into account by this Committee. In so doing, both Parties have referenced grounds and circumstances considered by other annulment committees. At the same time, Italy in particular has argued that previous decisions rendered in other disputes do not bind the present Committee, and that those decisions relate to circumstances that may differ from the ones in this case.⁷⁶ There is some tension between the proposition that other decisions may provide guidance while at the same time not constituting binding precedents. The Committee agrees that other decisions are

⁷² ILA-063, *Karkey*, ¶ 99 (quoting *Kardassopoulos*, ¶ 26).

⁷³ Italy’s Brief on Stay, ¶¶ 11, 14.

⁷⁴ Italy’s Brief on Stay, ¶¶ 13, 14.

⁷⁵ ILA-063, *Karkey*, ¶ 108.

⁷⁶ Italy’s Brief on Stay, ¶ 18.

not formally binding, but at the same time considers that certain patterns and similarities in facts and circumstances may be useful comparators.⁷⁷

49. In Italy's Brief on Stay and the Annulment Respondents' Opposition, the Parties have referred to grounds that make up the applicable test to requests for a stay of enforcement, before addressing whether the circumstances in this case justify that the stay be continued. In doing so, they have referred to other annulment committees' decisions, which provide a somewhat fragmented framework but with a number of discernible themes. An element in this discussion is to what extent a particular ground requires a positive showing by one party, or whether in fact the ground may be a defensive factor to be invoked and supported by the other side. Moreover, as will be further discussed below, the ultimate test involves a balancing of the Parties' respective interests and risks of harm.

B. Whether the circumstances require the stay to be continued

50. Taking the above into consideration, the Committee will now proceed to evaluate the circumstances invoked by the Parties in order to assess whether a continuation of the stay is justified here. Essentially, both Parties identify the same grounds as potentially relevant, albeit that they use somewhat different terminology, bundle the arguments differently, and highlight slightly different aspects of the considerations and related decisions of other committees on stay applications.
51. Italy argues that whether the Application for annulment is well-founded is not a relevant factor, as long as the Application has been made in good faith and is not merely dilatory or frivolous. In support of its position, Italy underscores that it always honors obligations under international judgments or arbitration awards. The Annulment Respondents, on the other hand, argue that Italy is unlikely to comply with the Award if its request for annulment is rejected. Italy submits that it is not scheming to avoid its obligations and that any delay in payment is cured by the interest to be accrued. The Annulment Respondents, meanwhile, argue that the balance of hardship weighs in their favor. Most centrally, Italy argues that there is a risk of non-recoupment in the event that the stay is lifted but the Award is ultimately annulled, which the Annulment Respondents deny. Each of these issues is addressed in the sections that follow.

⁷⁷ See also Italy's Brief on Stay, ¶ 18 (acknowledging that due consideration should be given to earlier cases where they are indicative of a certain line of jurisprudential consistency, and referring to **ILA-057**, *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1, Decision on Stay of Enforcement of the Award, 17 September 2020, ¶ 128).

1. Italy's compliance with the Award if the application for annulment is rejected

52. Italy submits that save for extreme situations, States are always solvent⁷⁸ and thus there should be no question about Italy's ability to pay the amounts ordered in the Award.⁷⁹ It has no history of avoiding payment obligations under international judgments and awards, and it is not abusing these annulment proceedings to avoid the consequences of the Award. By contrast, the Annulment Respondents argue that solvency is not the issue, but rather Italy's willingness to pay voluntarily, which the circumstances suggest is lacking. Italy is facing other arbitral awards in relation to the same renewable energy matters, and paying this Award would create a precedent forcing Italy to pay all the others as well. Indeed, the Annulment Respondents say, Italy has failed to pay any of the ECT awards rendered against it, which raises serious doubts about its willingness to do so in the future and undermines the assertion that it always honors its obligations under international awards. The Annulment Respondents note that Italy has not presented any example of it ever having voluntarily paid an arbitral award in favor of an investor.
53. The Committee considers that the basis for finding that a request for annulment is frivolous or dilatory is a high threshold. It also notes, however, that rather than forming a requirement that must be demonstrated positively, circumstances suggesting the absence of good faith or the dilatory nature of an application serve to undermine a request for a stay. As the Committee in *Total* held, "[a] serious application is the least that can be expected from an applicant, and nowhere in the ICSID Convention – or in the practice of ad-hoc committees – [does] compliance with such minimum duty result in the extension of the stay."⁸⁰ In other words, the fact that an application for annulment does not appear dilatory or advanced in bad faith does not in itself constitute a factor supporting continuation of a stay.
54. As to Italy's solvency, this is not disputed by the Annulment Respondents; rather, they question Italy's willingness to pay the Award voluntarily, and they raise a number of considerations suggesting that it is at least arguable that Italy might be reluctant to set a precedent for payment of an award involving renewable energy matters.
55. The Committee considers that solvency as such is insufficient to justify a finding that a State is entitled to the continuation of a stay. Where an annulment respondent questions the applicant State's solvency, and provides support for this allegation, that might persuade a committee to

⁷⁸ Italy's Brief on Stay, ¶ 16.

⁷⁹ Italy's Brief on Stay, ¶¶ 46-49.

⁸⁰ **ELA-013**, *Total v. Argentina*, ICSID Case No. ARB/04/01, Decision on Stay of Enforcement of the Award, 4 December 2014, ¶ 84.

lift a stay. The converse, however, is not true: mere solvency does not provide support for a State's positive case that the stay should be maintained.

56. Given the rejection of the relevance of solvency as a basis for ordering the continuation of the stay, it is not necessary to address the Annulment Respondents' rebuttal argument that there is reason to doubt Italy's willingness to pay. The situation might be different had Italy provided concrete assurances of payment and/or offered security for the amounts awarded. In the present case, however, Italy declined to provide such assurances and in fact merely argued that it should not face a contrary presumption in relation to its willingness to pay,⁸¹ even though it acknowledges that a State's willingness to pay matters more than the abstract ability of the State to pay.⁸²
57. There is no support for the – unqualified – allegation that “the suspension of the award's enforcement ... is a temporary safeguard to which States seeking annulment of an award are ‘entitled’.”⁸³ Rather, as the committee in *CMS* itself qualified the quoted statement, a respondent State seeking annulment should be entitled to a stay “provided it gives reasonable assurances,”⁸⁴ specifically in that case by means of an undertaking by the *Procurador del Tesoro de la Nación Argentina*.⁸⁵ Further, the fact that by applying for annulment Italy is exercising a legal right does not suffice to satisfy the burden on Italy of making a showing of the existence of relevant circumstances requiring the continuation of the stay.

2. The balance of hardship and risk of non-recoupment

58. While Italy is somewhat less equivocal than the Annulment Respondents⁸⁶ in highlighting the balancing exercise required of this Committee, in presenting the various considerations to be taken into account in assessing the confirmation or lifting of a stay, Italy also refers to the need to balance various factors. In particular, Italy alleges that while the stay of enforcement does not cause particular harm or prejudice to the investors, since interest cures the potential inconvenience of waiting for payment, “nothing can compensate the state of the inevitable inconvenience of trying to recover a payment that was not due.”⁸⁷ Or, in other words, “the relative inconvenience for the award creditor must be balanced against the risk of any impossible recovery.”⁸⁸

⁸¹ Italy's Brief on Stay, ¶ 48.

⁸² Italy's Brief on Stay, ¶ 28.

⁸³ Italy's Brief on Stay, ¶ 17.

⁸⁴ *ILA-041, CMS*, ¶ 38.

⁸⁵ *ILA-041, CMS*, ¶ 28.

⁸⁶ Opposition, ¶ 30.

⁸⁷ Italy's Brief on Stay, ¶ 34.

⁸⁸ Italy's Brief on Stay, ¶ 36.

59. The Annulment Respondents on the other hand argue that payment would not cause Italy to suffer any material economic hardship or an unusual degree of prejudice,⁸⁹ while conversely, continuing the stay would cause significant harm to them. That harm would not be mitigated fully by interest, because the Annulment Respondents are likely to need to enforce the Award in one or more jurisdictions. The mere passage of time will prejudice them, they say, because the number of Italy's award creditors (and the progress of existing creditors through the enforcement process) is likely to have increased, reducing the Annulment Respondents' chances of collecting on their Award. As a result of these positions, both Parties have addressed whether or not there is a material risk of non-recoupment if the stay were to be lifted but the Award eventually annulled.
60. The Committee recalls that the governing standard is whether circumstances have been demonstrated that "require" a stay or its continuation. These circumstances might pertain to either Italy, or the Annulment Respondents, or both. In this light, the Committee recalls that but for the showing of circumstances dictating otherwise, the structure of the Convention provides that awards are immediately binding and enforceable. General considerations that States are typically solvent (see above) are not sufficient and should be distinguished from the scenario in which the lifting of a stay would result in an appreciable risk that a payment would be irrevocable, for example in the case of a payment to an insolvent company,⁹⁰ as will be further discussed below.
61. Regarding the harm that continuing the stay would cause to the Annulment Respondents, Italy argues that "if the scenario of intentional failure to pay [by Italy] is realistically ruled out," post-award interest effectively compensates for any harm or prejudice to the investors.⁹¹ In the view of the Committee, however, ruling out intentional failure to pay is not the appropriate test. Arguably, positive assurances can be a factor in weighing the impact of lifting a stay or not, but that cannot be equated with the absence of a negative indicator (which might, but has not been alleged by the Annulment Respondents, and if it had would have been for them to specify and support). As considered above, the alleged presumption of a State's solvency is immaterial and cannot as such negate any harm or prejudice.
62. As to the payment of interest, the argument that interest "cures" the investor's potential inconvenience of waiting is overly broad. While generally the payment of interest is adequate to mitigate a delay in payment, where the prospects of enforcement are negatively impacted by

⁸⁹ Opposition, ¶ 31, referring to **ILA-051**, *Antin*, ¶ 81.

⁹⁰ **ILA-044**, *MTD*, ¶ 29.

⁹¹ Italy's Brief on Stay, ¶ 33.

a delay in enforcement, interest may not provide sufficient compensation.⁹² The Annulment Respondents have suggested that Italy is unlikely voluntarily to pay the Award, and they refer to existing and likely future creditors seeking enforcement, with the consequence that delay will push them further back in the creditors' line. Be that as it may, as the Annulment Respondents correctly argue, it is for Italy to make a positive showing that circumstances exist that require a stay.⁹³

63. The most tangible argument Italy has made in support of its claim that the stay should not be lifted is the risk of non-recoupment, which the Parties agree is a circumstance that *ad hoc* committees may take into account when deciding whether a stay of enforcement should be continued.⁹⁴ Nevertheless, Italy suggests that the risk that the award amount would be irrecoverable is inherent in the payment of an award while the annulment action is pending,⁹⁵ whereas the Annulment Respondents argue that the award-debtor (Italy) must demonstrate the existence of a real risk that sums collected by the award-creditor (the Annulment Respondents) will not be repaid if the State prevails in its annulment challenge.⁹⁶ Indeed, the Committee considers that as the moving party, Italy has the burden to allege and substantiate a material risk of non-recoupment, such as, for example, by showing that the Annulment Respondents are in financial distress or on the brink of insolvency.⁹⁷ It is not sufficient to state, as Italy has done, that “[t]he record provides no reassurance regarding the Claimants’ [*i.e.*, the Respondents on Annulment] financial position.”⁹⁸ Instead, Italy would need to identify and substantiate concrete facts and circumstances that show the Annulment Respondents’ financial distress or comparable circumstances. It would then be for them to rebut these allegations and substantiate their rebuttal arguments.
64. Presumably reflecting an acceptance of the need to support its allegation, Italy identifies a number of circumstances that, it suggests, foreshadow “an unusually high financial burden or risk in connection with the recovery of the award monies,”⁹⁹ and in this regard refers to certain financial data regarding the Annulment Respondent companies. Italy invokes in particular the fact that at the end of 2019, ESPF and ESPF 2 had a significant debt to their shareholders and other liabilities, some of which are said to have been urgently due, and to the fact that InfraClass Energie 5 had a yearly budget of £34,000 in 2019 (presumably suggesting that it is a small

⁹² ILA-051, *Antin*, ¶ 82.

⁹³ Opposition, ¶ 39.

⁹⁴ Italy’s Brief on Stay, ¶¶ 35-44, 50-58; Opposition, ¶ 40.

⁹⁵ Italy’s Brief on Stay, ¶ 37.

⁹⁶ Opposition, ¶ 40.

⁹⁷ ILA-051, *Antin*, ¶ 73.

⁹⁸ Italy’s Brief on Stay, ¶ 50.

⁹⁹ ILA-051, *Antin*, ¶ 82.

company).¹⁰⁰ Italy also alleges that these companies are no longer going concerns but rather were investment vehicles created to execute a single project,¹⁰¹ and may have obtained external funding for this arbitration.¹⁰²

65. The Annulment Respondents have provided a detailed rebuttal of these allegations, disputing the existence of financial difficulties. The existence of shareholder loans or other obligations to shareholders does not demonstrate financial difficulty, the Annulment Respondents say, and ESPF and ESPF 2 are not behind on payments or otherwise suffering financial difficulties. In support thereof, the Annulment Respondents submitted the companies' audited accounts for the three most recent years, evidencing the companies' willingness and ability to pay financial obligations out of their existing assets or revenue streams.¹⁰³ In relation to InfraClass Energie 5, the Annulment Respondents explain that the company's most recent audited accounts demonstrate that its 2019 capital reserve amounted to €33 million, and that the information invoked by Italy inappropriately relates to the company's general partner (InfraClass Energie 5 Verwaltungsgesellschaft GmbH).¹⁰⁴ The Annulment Respondents have further provided specific and substantiated rebuttal of the allegation that the companies are no longer going concerns, as evidenced by the ESPF balance sheet submitted by Italy itself, which demonstrates that ESPF holds a 100% interest in nine companies in Spain that own renewable energy plants. Similarly, ESPF 2 and InfraClass Energie 5 have significant interests in other companies. In addition, the same ESPF balance sheet demonstrates that ESPF has cash on hand with capital reserves stated to be over €34 million; and likewise the ESPF 2 balance sheet shows that the company has nearly €48 million in capital reserves.¹⁰⁵ Finally, while the Annulment Respondents dispute the relevance of an external litigation funder being entitled to the proceeds of an award, they deny that there is any funder here.¹⁰⁶
66. As the above overview demonstrates, while Italy has endeavored to make a showing that the Annulment Respondent companies are in financial difficulty, the detailed and explicit rebuttal, substantiated with information provided by Italy itself as well as other (publicly available) resources, shows that a more holistic consideration of the data and evidence presented by Italy paints a different picture. This rebuttal relates to all elements of the concrete allegations invoked by Italy: the shareholders loans and liabilities, the capital reserves of the companies, the status of the companies as going concerns, and the (non-)existence of any external funder.

¹⁰⁰ Italy's Brief on Stay, ¶ 52.

¹⁰¹ Italy's Brief on Stay, ¶¶ 53, 56.

¹⁰² Italy's Brief on Stay, ¶ 54.

¹⁰³ Opposition, ¶ 43.

¹⁰⁴ Opposition, ¶ 44.

¹⁰⁵ Opposition, ¶¶ 45-46.

¹⁰⁶ Opposition, ¶ 49.

In this context, the Committee further notes that the agreed submission schedule in relation to the stay of enforcement provided the possibility for Italy to request a second round of rebuttal submissions.¹⁰⁷ Nevertheless, in its email of 10 June 2021, Italy explicitly declined the opportunity to submit any rebuttal statement, on the ground that the Parties had already exhaustively pleaded their positions. Had Italy been of the view that it should and could challenge the Annulment Respondents' rebuttal arguments and evidence, availing itself of this opportunity would have been an obvious course of action.

67. Finally, insofar as Italy has invoked difficulties experienced in recovering moneys owed to an investor in another case (*Blusun*), or has generally invoked difficulties in recovering in different jurisdictions,¹⁰⁸ these circumstances do not constitute a valid argument in relation to potential recoupment difficulties involving unrelated investors such as the Annulment Respondents.

68. Consequently, the Committee finds that Italy has failed to make the necessary showing that, in the present case, there is a concrete risk of non-recoupment if the stay of enforcement is lifted.

C. Whether security should be ordered

69. In light of the Committee's view that there are no circumstances requiring enforcement of the Award to continue to be stayed, there is no need for the Committee to consider the Annulment Respondents' alternative plea that, should the Committee continue the stay, it should require "adequate security that would safeguard the Annulment Respondents' rights in the event Italy's annulment application is rejected."¹⁰⁹

¹⁰⁷ Email from Chris Smith (King & Spalding) to Committee, dated 16 May 2021.

¹⁰⁸ Italy's Brief on Stay, ¶¶ 57-58.

¹⁰⁹ Opposition, ¶ 53.

IV. DECISION AND ORDERS

70. For the reasons stated above, the Committee:

- a. rejects the Italian Republic's request for the continuation of the stay of enforcement of the Award; and
- b. reserves the issue of costs on this request to a further order or decision.



Prof. D. Brian King
Member of the *ad hoc* Committee



Dr. Ucheora Onwuamaegbu
Member of the *ad hoc* Committee



Prof. Dr. Jacomijn J. van Haersolte-van Hof
President of the *ad hoc* Committee