

### **Statement of Professor Marcelo G. Kohen**

Without prejudice to my dissenting opinions on the Partial Award and the Final Award, I agree with the dismissal of the request for rectification of the Final Award submitted by Respondent. As a matter of fact, I consider that its arguments do not concern mere errors in computation in the terms of Article 36(1) of the UNCITRAL Rules. They may be errors in the choice of methods and the way of assessing the amount of the compensation due. In other words, they would be errors of substance, not merely in computation.

It is true that the majority of the Tribunal did not follow any of the methods proposed by the Parties' experts. On the contrary, it used a method of its own, the Parties having no opportunity to give their opinion on the method finally chosen. To my mind, that does not preclude due process. The Tribunal examined the Parties' positions, and the majority made its decision. The assessment of the compensation amount being an essentially legal operation including financial calculations, and the majority having upheld jurisdiction, the Tribunal has authority to decide on the basis of its own legal reasoning and in view of the financial issues raised by the Parties. The majority decision adopts that conduct and, as such, is irreproachable, regardless of whether its analysis is consistent with law or not. The same applies to the failure to assess Lajun's debt for the purpose of determining its share value. Article 36(1) may not be used as an appeal.

Lastly, I would like to comment on the *obiter dictum* of paragraph 72 of this decision. It states that an arbitration proceeding is a manifestation of "international justice". I believe that arbitration is a private dispute resolution method-different from that of courts of justice- which is agreed by the parties in order to settle a particular dispute. What is more, the notion of "international justice" may be used to refer to permanent international adjudicatory bodies. It is well-known that there is no system of international justice, as there is on a national level.

[signed]

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Professor Marcelo G. Kohen

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