In the matter of Reginald H. Howe v. Bank of International Settlements

ORDER

on the request of Reginald H. Howe for exceptional remedies

Whereas,

1.On July 25, 2001, in a communication by e-mail to the Tribunal concerning the Bank of International Settlements,[1] Mr. Reginald H. Howe stated that

a. He is "a former BIS shareholder," and has "an interest in any proceeding before the special Arbitral Tribunal recently appointed to hear disputes arising from the Bank's January freeze-out of its private shareholders."

b. Because "[i]n its 71st Annual Report dated June 11, 2001, the Bank states (at page 186): 'The Bank has declared that should the Arbitral Tribunal increase the compensation, such increased amount would apply in respect of all repurchased shares[,]' . . . the Bank has effectively made any arbitration before the Tribunal the practical equivalent of a class action, raising all the issues of procedural fairness that necessarily attach to such proceedings, including whether the claimant fairly represents the class."

c. Mr. Howe indicates his awareness of the claim submitted by Dr. Reiniccius and

[1] Hereafter the Bank of International Settlements will be referred to as the "Bank for International Settlements" or "the Bank" and the Tribunal Concerning the Bank of International Settlements will be referred to as the "Tribunal Concerning the Bank of International Settlements" or "the Tribunal".

the date of the preparatory conference that had been scheduled for that claim.

d. Mr. Howe requests the Tribunal "to advise me as follows": "(1) the number of shares held by Dr. Reineccius"; "(2) whether any other former shareholders have filed claims with the Tribunal, and if so, who they are, how many shares they held, and where [he] can obtain copies of their notices of arbitration and/or statements of claim; (3) what, if any, proceedings are currently scheduled; and whether other former private shareholders may attend and participate."

2. By letter of July 30, 2001, the Bank of International Settlements was invited to comment on Mr. Howe's letter.

3. By letter of August 2, 2001, Counsel for the Bank of International Settlements responded and stated that

a. Mr. Howe had filed a lawsuit against, *inter alia*, the Bank of International Settlements which the Bank has moved to dismiss on various grounds including "that Mr. Howe's challenge to the price and validity of the mandatory redemption is subject to compulsory arbitration before the Tribunal under Article 54 of the Bank's Statutes."

b. If Mr. Howe files a claim with the Tribunal, he should be invited to the preparatory conference on September 7, 2001.

c. Mr. Howe does not, he should not be permitted to attend "the preparatory conference [which] is and should remain a forum for the parties alone" nor should he be permitted

"to file papers, whether couched as requests for information or otherwise, commenting on arbitral proceedings in which he has declined to participate."

d. "Mr. Howe's assertion that 'the Bank has effectively made any arbitration before the Tribunal the practical equivalent of a class action' (a form of proceeding that does not even exist outside the United States) is incorrect."

e. Although "the Bank has also announced, in order to avoid repetitive arbitral proceedings, that it will voluntarily pay all former shareholders any additional compensation that the Tribunal may determine to be appropriate, without the necessity of their filing a claim," . . . "this does not mean that a former shareholder who files a claim "represents" anyone besides himself, and no former shareholder, whether he chooses to file a claim or not, is legally bound by the actions of any other former shareholders."

f. "[T]he Tribunal [should] advise Mr. Howe that he should file a claim, so that he can participate in the proceedings before it."

4. By letter of August 2, 2001, Mr. Howe was invited to comment on the letter of the Bank.

5. By letter of August 17, 2001 delivered by e-mail on August 18, 2001, Mr. Howe responded and stated:

a. "The purpose of this letter is to request advice, clarification or information from the Tribunal on specific matters that . . . [he] must consider prior to filing any notice of arbitration . . .."

b. He is "neither in a position nor required . . . [to] file a formal notice or claim" in order to participate in the September 7 conference but that "any notice of arbitration or statement of claim that might in future be submitted by [him] will include challenges to the jurisdiction of the Tribunal and to the arbitrability of the dispute" which include issues relating to the appointment and impartiality of the Tribunal. In this regard, he requests from members of the Tribunal copies of all communications with any official of any signatory government or of the Bank relating to his appointment to the Tribunal and requests the Tribunal to order the Bank to provide copies of its correspondence. He further requests notice of and opportunity to present these arguments to the Tribunal (presumably as a non-party to the proceeding) should they be raised in any arbitration proceeding relating to what he refers to as the "freeze-out."

c. With respect to his contention that the Bank's commitment to "pay all former shareholders any additional compensation that the Tribunal may deem to be appropriate, without the necessity of their filing a claim. . ." (Letter of the Bank of August 2, 2001) transformed the proceeding into a class action, Mr. Howe states that "[w]hether or not one chooses to characterize the proceeding thus described as a class action . . . it presents many of the same problems. . . . " Among those problems are:

(i) multiple claimants may present varying evidence and contentions;

(ii) the Tribunal may be biased in later cases by presentations in prior ones;

(iii) in the event of multiple awards, it is not clear which will set the amount of the

Bank's payments to former shareholders who do not file claims;

(iv) holders of relatively few shares, bringing their claims on an individual basis, may not gain enough from a potentially favorable award to cover their legal expenses, unless the Tribunal allows former shareholders who have undertaken the expenses and risks of an arbitration to recover their legal expenses and costs as a charge against the enhanced payment to all. In this regard, Mr. Howe contends that "the Tribunal's own rules make no provision for the equitable allocation of costs in an arbitration involving the BIS on one side and its shareholders in more or less common cause on the other" but require each party to "pay its own expenses and an equal share of those of the Tribunal."

(v) the provisions in the Tribunal's rules with respect to assessment of costs by the Tribunal "give the Tribunal an unlimited call on the resources of the parties" and "appear designed for arbitration involving disputes between governments and the BIS" but "are wholly inappropriate and unfair when applied to an arbitration between the Bank and a private shareholder."

(vi) "no adequate provisions are in place for keeping former shareholders of the BIS properly informed about the status of the arbitration proceedings in which they have an interest."

d. Mr. Howe makes substantive allegations to the effect that "the BIS has been a key participant in a scheme to suppress gold prices orchestrated by top U.S. and British

officials, including those who are directors of the Bank." Because, Mr. Howe contends, "the Tribunal will be unable to determine a correct freeze-out price for the Bank's shares without also addressing and investigating its involvement and that of certain of its directors. . ." "the Tribunal might want to consider whether it is the most appropriate forum to which to address the price fixing issues, and if not, whether to stay any arbitration proceedings relating to the freeze-out until after the U.S. courts have finally determined" his claims.

e. Mr. Howe inquires about the impartiality and independence of the arbitrators.

6. Because Mr. Howe had raised some new issues in his letter of August 17, 2001, the Bank was invited, by letter of August 21, 2001 to express its views only on those new issues.

7. By letter of August 23, 2001, Counsel for the Bank repeated that it was inappropriate for Mr. Howe to continue filing letter briefs and arguments when he has not filed a notice of arbitration or statement of claim and that "the obvious and only purpose of his continued correspondence is to misrepresent the Tribunal and its activities to the United States court where he is presently resisting arbitration of his dispute with the Bank." With respect to the new matters, the Bank responded:

a. "[t]he proper way to resolve his 'challenges to jurisdiction and arbitrability' . . . is for Mr. Howe to file a claim that raises these issues . . . [as] the Tribunal has the power to determine its jurisdiction under Article 16 of its Rules."

b. "the Tribunal's Rules in Article 5 provide for procedures by which a claimant may challenge the impartiality of any arbitrator. If Mr. Howe is serious about pursuing these matters, he should file a claim and raise them."

c. "As regard issues of costs, it is the Bank's understanding of Article 33 of the Tribunal's Rules that the Tribunal has equitable discretion to apportion costs as it sees fit, including awarding them to a successful claimant. . . . any advance deposit of costs under Article 34 could be subject to similar equitable allocation, which could appropriately take account of the circumstances of any particular claimant. The Bank does not wish that costs alone should serve to prohibit individual former private shareholders from arbitrating a claim. It is certainly not the Bank's understanding that multiple claimants, collectively, must bear more than half the Tribunal's costs, as Mr. Howe erroneously suggests. In the event that any individual, such as Mr. Howe, files a claim and attends the preparatory conference, the Bank would expect that individual to bear the costs of his or her travel and accommodation, but not an allocation of the costs of the Tribunal without prior notification. It remains, however, for the Tribunal to determine how any advance deposits should be apportioned based on the total number of claims ultimately filed and all the other facts and circumstances regarding such claims."

d. The Bank objects to Mr. Howe's request that submissions be made public on the Web or otherwise.

The Tribunal, having reviewed the submissions of Mr. Howe and the Bank of International Settlements and having deliberated, decides as follows:

A. With respect to the nature of Mr. Howe's requests: are the requests solely for information or also for

permission to participate, in some form other than that explicitly prescribed by the legal regime of the Tribunal, in the arbitration initiated by Dr. Reineccius against the Bank and any other arbitration before the Tribunal?

A.1. The Tribunal is an institution created by the 1930 Agreement to make decisions with respect to matters that come within its jurisdiction *ratione materiae* and with respect to persons and entities within its jurisdiction *ratione personae*.

A.2. The Tribunal is designed and empowered to deal with cases and controversies and, while it may provide information relevant to the filing of claims to potential claimants, it is not competent to give advisory opinions, in the nature of the advisory jurisdiction of the International Court of Justice.

A.3. Mr. Howe's self-identification in his letter of July 25, 2001 and more explicitly in his letter of August 17, 2001, indicates that he is entitled to be a claimant before the Tribunal. The Bank's responses of August 2, 2001 and of August 21, 2001 indicate that it, too, is of the view that Mr. Howe is entitled to be a claimant. Given Mr. Howe's status, a number of his requests, though often couched as a series of general questions, are, in fact, applications to the Tribunal, claimed as of legal right, on the basis of his legal status as a person entitled to be a claimant, for certain exceptional forms of participation and explicit requests for certain exceptional relief in a case pending before the Tribunal. While Mr. Howe requested a remedy from the Tribunal in his letter of July 25, 2001, his letter of August 17, 2001 makes clear that he wishes to secure that remedy without subjecting himself to the jurisdiction of the Tribunal.

A.4. In its letter of July 30, 2001, the Bank informed the Tribunal that Mr. Howe has sued the

Bank and other entities in the courts of the state of Massachusetts in the United States on a matter *prima facie* within the jurisdiction of the Tribunal and that Mr. Howe has challenged there the jurisdiction of the Tribunal. This was a fact which Mr. Howe had not revealed in his letter of July 25, 2001, in which he sought the aforementioned remedies, but which he confirmed in his letter of August 17, 2001.

A.5. Given Mr. Howe's status as a potential claimant under Article 54 of the Statutes of the Bank and his request to the Tribunal, Mr. Howe's letter of July 25 acknowledged and invoked the jurisdiction of the Tribunal.

A.6. It is on the basis of that acknowledgment and invocation of its jurisdiction that this order is able to deal with the specific demands by Mr. Howe to participate, on the basis of a claimed legal right, in a form other than that of claimant, in a case pending before the Tribunal and such other matters as are related to that request.

B. With respect to the request of a person who is entitled but has elected not to be a claimant before the Tribunal: may that person be certified by the Tribunal as a member of a class and participate as part of a "class action" in an arbitration which another claimant has initiated against the Bank?

B.1. The Bank has stated in its response of August 2, 2001:

> The Bank has also announced, in order to avoid repetitive arbitral proceedings, that it will voluntarily pay all former shareholders any additional compensation that the Tribunal may determine to be appropriate, without the necessity of their filing a claim.

B.2. Mr. Howe, referring to the earlier statement of the Bank of June 11, 2001, (which appears,

from the quoted section, to be consistent with the above quoted statement from the Bank's letter of August 2, 2001 but has not been submitted to the Tribunal), has stated that "the Bank has effectively made any arbitration before the Tribunal the practical equivalent of a class action." Mr. Howe reaffirmed this position in his letter of August 17, 2001. Hence Mr. Howe appears to claim the right to participate in the case initiated by Dr. Reiniccius, which is currently pending before the Tribunal, as a member of a class.

B.3. A "class action" is a procedure in United States law which involves a self-selected representative plaintiff who tries to secure a judgment that will bind members of a class, including even those who have not joined the suit as voluntary participants. Class actions have been, until the present, an essentially American phenomenon, based on Rule 23 of the United States Federal Rules of Civil Procedure and the case law of the highest courts in the United States. The class action procedure depends in critical ways on the competence of a court to "certify" a class. A "class action" is different from a "group action," a term used in a number of European countries, referring to a procedure in which a number of plaintiffs voluntarily consolidate their claims in a single action whose judgments bind them and the defendant in their action but do not bind other individuals, who could have but elected not to join the group.

B.4. The Tribunal Concerning the Bank of International Settlements, as an Arbitration Tribunal, has only those powers that have been assigned to it by its constitutive instruments. Those instruments do not include or contemplate a class action comparable to the institution available in United States courts nor do they empower the Tribunal to certify a class. That is not to say that the Tribunal is

unable to deal effectively with some of the problems for the solution of which the class action procedure was developed in the United States. The Tribunal may, for example, be prepared to conduct two or more arbitrations pending before it in a consolidated manner, whether by means of consolidation proper of the arbitrations, parallel conduct or otherwise, in the interest of arbitral economy, as long as such consolidation is compatible with the Tribunal's powers and does not prejudice the rights of individual claimants. Nor are individual claimants precluded from consolidating their own individual actions that were *in pari materiae* and then pursuing them as a single entity.

B.5. Hence Mr. Howe cannot be allowed to participate in the stages of the proceeding initiated by Dr. Reiniccius as a participant in a "class action" before the Tribunal.

C. With respect to the request of a person who is entitled but has elected not to be a claimant before the Tribunal: does that person have a right to participate in a preparatory conference with respect to an arbitration between the Bank and a person who is a claimant?

C.1. Article 9(1) of the BIS Arbitration Rules provides

> Subject to these Rules, the 1930 Hague Agreement, the 1907 Convention and the Terms of Submission, the Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the

> proceedings each party is given a full opportunity of presenting its case. (Underlining added)

Article 12(1) of the Rules requires "a preparatory conference with the parties to conclude the Terms of Submission in accord with Article XV(6) of the 1930 Hague Agreement." Because Article 9(1) requires that each party be given a full opportunity of presenting its case at any stage of the proceedings and the preparatory conference is a mandatory stage of the proceedings, each party to a case is entitled to "a full opportunity" to participate in the preparatory conference. Hence, if Mr. Howe is one of the "parties" to the case whose Terms of Submission will be concluded at the preparatory conference, he is entitled to participate in that conference.

C.2. In the constitutive instruments of the Tribunal, "party" refers to a claimant or a defendant. In the case currently pending before the Tribunal in which Mr. Howe seeks some role other than as claimant, Dr. Reiniccius, the claimant, and the Bank, the defendant, are the parties.

C.3. While the Secretary of the Tribunal, in her letter of August 2, 2001, drew Mr. Howe's attention to the documents relevant to arbitration and Mr. Howe's letters indicate familiarity with and understanding of the procedures of the Tribunal, Mr. Howe has, at least until now, elected not to invoke the jurisdiction of the Tribunal by submitting to it a claim against the Bank.

C.4. As Mr. Howe is neither a claimant nor a defendant in this case, he is not a party and has no right to participate in the preparatory conference nor in any other stage of the proceedings, within

the meaning of Article 9(1).

D. With respect to the request of a person who is entitled to but has elected not be a claimant before the Tribunal: does that person have a right merely to attend but not otherwise to participate in a preparatory conference with respect to an arbitration between the Bank and a person who is a claimant?

D.1. As Mr. Howe is not a party to the proceedings, a request to be present at the preparatory conference may be granted only if the Rules of the Tribunal, which take due account of its constitutive instruments, require that the preparatory conference be public.

D.2. Article 20(2) of the Rules requires that "Hearings shall be held in public." Article 28(6) of the Rules requires that "[t]he award shall be read out in public sitting . . . ." The Rules do not require any other stage of the proceedings to be public.

D.3. As the Rules indicate which stages of the proceeding must be held in public, but do not require the preparatory conference to be held in public, it is clear that the drafters intended to confine the preparatory conference to participation by the parties.

D.4. Hence a non-party to the arbitration, such as Mr. Howe, may not be present at the preparatory conference.

E. With respect to the request of a person who is entitled but has elected not to be a claimant before

the Tribunal: may that person raise challenges to jurisdiction and arbitrability?

E.1. A challenge to jurisdiction and to arbitrability may be brought by a party to an arbitration. Article 16(2) of the Rules of the Tribunal contemplates the possibility of challenges to the jurisdiction of the Tribunal and assigns a time limit for such challenges.

E.2. Article 16(1) states that "[t]he Tribunal shall have the power to decide the question as to its own jurisdiction."

E.3. There is no authorization in the Tribunal's Rules for the Tribunal to entertain a challenge to jurisdiction by a non-party.

E.4. Accordingly, a person who is entitled but has elected not to be a claimant before the Tribunal may not resort to an extra-arbitral procedure for challenging jurisdiction and arbitrability. This is without prejudice to the right of a person in Mr. Howe's position, if and when he elects to become formal claimant, to raise such challenges to jurisdiction and arbitrability as he may wish, as contemplated by the legal instruments that have constituted and govern the Tribunal.

F. With respect to the request of a person who is entitled to but has elected not be a claimant before the Tribunal: may that person challenge an arbitrator?

F.1. Articles 5 to 8 of the Tribunal's Rules provide a procedure for challenge to arbitrators. In particular, Article 5(1) provides that "[w]hen the Tribunal is seised of a case, each member of the Tribunal shall execute a Declaration of Impartiality and Independence and deposit it with the Secretary of the Tribunal." Article 5(3) requires the Secretary of the Tribunal to convey to the parties in the arbitration information in the Declaration about "a fact or relationship which may give rise to questions about [a member's] impartiality or independence but which the member does not believe actually impairs his or her independence and impartiality nor warrants recusal." Article 7 establishes the procedure by which and the time limits within which a party to an arbitration may challenge an arbitrator, whether on the basis of the information afforded in his or her Declaration or such other information as the party may have or acquire. Article 7(5) provides the procedure by which the Tribunal decides a challenge.

F.2. Accordingly, a party to an arbitration before the Tribunal may challenge an arbitrator on the grounds specified in the Rules.

F.3. The Rules do not provide for a procedure by which a person who is entitled to but has elected not to be a claimant before the Tribunal may challenge an arbitrator.

F.4. Accordingly, a person who is entitled to but has elected not be a claimant before the Tribunal may not challenge arbitrators in some sort of extra-arbitral procedure which is not contemplated by the Rules.

G. With respect to the request of a person who is entitled to but has elected not be a claimant before the Tribunal: is that person entitled to information with respect to arbitrations by other claimants concerning issues *in pari materiae?*

G.1. As stated above, the only phases of the arbitral process of the Tribunal that are required to be conducted in public are the hearings and the reading of the award.

G.2. The Tribunal is of the view that the reservation of the confidentiality of the other stages of the proceeding reflected a decision by the drafters which was designed to achieve a balance between the interest in providing public information and the interest of parties to an arbitration in the confidentiality of the proceedings.

G.3. The Tribunal is of the view that the same considerations apply to the current issue of valuation of shares.

G.4. The Tribunal is of the view, however, that the publication of information which does not infringe the privacy of the parties to an arbitration on this matter, insofar as it will, in any case, become public during the two public phases of each arbitration, but that is relevant to other persons, who, though not claimants, are eligible to become claimants, should be made available to such persons upon their application. The following information will be published on the website of the Tribunal at the Permanent Court of Arbitration [www.pca-cpa.org] and made available to potential claimants on request:

(a) The names of current or former shareholders who have filed claims with the Tribunal.

(b) The number of shares held by each current or former shareholder who has filed claims with the Tribunal.

(c) A copy of the relief sought by each current or former shareholder who has filed claims with the Tribunal as stated in the Notice of Arbitration and any amendment thereof, as well as any relief sought by the Bank

(d) The schedule and status of proceedings currently pending before the Tribunal.

H. With respect to the allocation of deposits and costs: does the Tribunal have the legal competence or "equitable discretion" to allocate deposits and costs to take account of the circumstances of any particular claimant?

H.1. The 1930 Agreement and the 1907 Convention contemplated an equal division of the costs of an arbitration between the parties. As the context of those instruments was inter-state arbitration and not arbitration between a state or an international organization, on the one hand, and individual claimants on the other, that system of equal allocation was consistent with the notion of the sovereign equality of states and may have provided a formula that was likely to achieve equity in specific cases.

H.2. Article 54 of the Statutes of the Bank extended the jurisdiction of the Tribunal to disputes between the Bank and individual shareholders. In this form of privity, the equal division of costs that was, not unreasonably, prescribed for inter-state arbitration could create inequities and even restrain or "chill" the access of individuals to arbitration. In this regard, the Tribunal takes note of the statement of the Bank in its letter of August 23, 2001, that "[t]he Bank does not wish that costs alone should serve to prohibit individual former private shareholders from arbitrating a claim." Wholly aside from the Bank's expression of its wish, an interpretation of a provision in one of the instruments of the Tribunal's regime that had the effect of prohibiting individuals entitled to arbitrate from doing so could hardly be lawful. As will be recalled, Article 9(1) of the Tribunal's Rules provides that

> Subject to these Rules and the Agreement and Convention under which it operates, the Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting its case.

. An allocation of deposits and costs that had the effect of not providing a party with a "full opportunity of presenting its case" would not meet the test of Article 9(1).

H.3. The "Rules for Arbitration Between the Bank for International Settlements and Private Parties," which were adapted on the basis of the authority in the 1930 Agreement to regulate arbitrations between the Bank and private shareholders, empower the Tribunal in Article 33 to "fix" the costs, a term which, in the context of this form of arbitration, includes the competence to allocate the costs in ways that further the shared objectives of the parties to the arbitration in order to achieve a fair process and a just outcome, consistent with law.

H.4. Hence, the Tribunal has the competence with respect to arbitrations under Article 54 of the Statutes of the Bank to allocate costs in ways that conduce to the optimum use of the arbitration as contemplated by the Article 54 and justice and fairness in the process of each arbitration.

H.5. The Tribunal takes note of the statement of the Bank in its letter of August 23, 2001 which says in relevant part that

> "it is the Bank's understanding of Article 33 of the Tribunal's Rules that the Tribunal has equitable discretion to apportion costs as it sees fit, including awarding them to a successful claimant. We also understand that any advance deposit of costs under Article 34 could be subject to similar equitable allocation, which could appropriately take account of the circumstances of any particular claimant. . . . It remains, however, for the Tribunal to determine how any advance deposits should be apportioned based on the total number of claims ultimately filed and all the other facts and circumstances regarding such claims."

H.6. Given the case-by-case and contextual imperative of any equitable allocation, the Tribunal cannot decide, in advance, the allocation of costs, all the more insofar as such an allocation is to "appropriately take account of the circumstances of any particular claimant." But even without knowing those circumstances in cases that have yet to advance or even to be filed, the Tribunal takes note of the Bank's statement that "[i]t is certainly not the Bank's understanding that multiple claimants, collectively, must bear more than half the Tribunal's costs . . . ."

H.7. The foregoing observations also apply *mutatis mutandis* to the deposits for the arbitration as provided for by Articles 33 and 34 of the Rules of the Tribunal.

H.8. Accordingly, the Tribunal has the legal competence and equitable discretion to allocate costs in ways that contribute to access to the arbitral procedure provided for in Article 54 of the Statutes, that ensure the fairness of the procedure and that secure a meaningful award.

For the above reasons, the Tribunal orders that

1. Mr. Howe's requests to participate or attend the preparatory meeting between Dr. Reiniccius and the Bank are denied. The Tribunal notes, however, that Mr. Howe, as a present or former shareholder of the Bank, has the power to become a claimant against the Bank before this Tribunal if he so wishes, whereupon he will benefit from all the rights assured to him under its Rules, including the right to participate in a preparatory conference with respect to his case.

2. Mr. Howe's request for information about other arbitrations is granted. The Tribunal directs the Secretary of the Tribunal to make available through the Tribunal's website and to persons who request such information and identify themselves as eligible claimants:

(a) The names of current or former shareholders who have filed claims with the Tribunal.

(b) The number of shares held by each current or former shareholder who has filed claims with the Tribunal.

(c) A copy of the relief sought by each current or former shareholder who has filed claims with the Tribunal as stated in the Notice of Arbitration and any amendment thereof, as well as any relief sought by the Bank

(d) The schedule and status of proceedings currently pending before the Tribunal.

3. The Tribunal has the competence to allocate deposits and costs of particular arbitrations to take account of the circumstances and needs of any particular party.

4. The Tribunal reserves the right to vary this order if the circumstances so require.

W. Michael Reisman,

President of the Tribunal, on behalf of the Tribunal

August 31, 2001