

## Partial Dissenting Opinion

I have signed the Final Award in this case with my two colleagues. As noted in the section of the Award on interest, the decision to award interest only up to the date of the Final Award was adopted by a majority only.

I respectfully disagree with my distinguished colleagues on this issue, as I believe that interest should run until full payment of the compensation awarded.

It is true that in its Consolidated Memorial, the Claimant states (at paragraph 526) that “*Pre-award interest in this case should be compounded quarterly through the date of the award*”. Similar statements are found at paragraph 723 of the Reply (“*All damages amount will need to brought forward to US dollars as of the date of the award*”) and paragraph 103 of the Post-Hearing Brief as well as in the Closing Statement of the Claimant. The Claimant suggests, in that case, that a compounded interest rate of 8% would be appropriate (Post-Hearing Brief, paragraph 103).

It is essential to note that this request is made in the context of a request in the body of the various submissions for an actualization of the damages to the date of the award. The Tribunal has refused to proceed to such an actualization and has preferred to establish the total damages as at December 31, 2001.

It is equally essential to note that nowhere in the *petitum* of any of the Claimant’s submissions do we find any limitation of time as to the running of interest or any suggested rate. Thus, the *petitum* at paragraph 537.7 of the Memorial reads: “*An order that the Argentine Republic compensate Camuzzi and Sempra for all damages they have suffered, plus interest compounded quarterly*” and, at paragraph 732.2 of the Reply, one reads: “*An order that the Argentine Republic compensate Claimants for all damages they have suffered, plus interest compounded quarterly.*” Again, the *petitum* itself makes no reference to a time limit or to a particular rate; these matters are clearly left to the discretion of the Tribunal.

I cannot agree that one can take an argument made in the body of briefs for a particular purpose (the actualization of damages) and transpose that argument into the *petitum* which makes a very different request (with no time limitation, nor any specific rate of interest).

Acting on the *petitum*, I would have granted the Claimant interest at the rate mentioned in the Decision and Award, beginning January 1, 2002 and running until full payment of the compensation awarded,

interest being compounded semi-annually. Acting otherwise, in my humble view, is ignoring the basic characteristic of interest which is the recognition of the time value of money and of the lost opportunity to earn a reasonable rate of return. In addition, it is giving a strong incentive to the party at fault to delay indefinitely and with impunity the payment of the sums due. The arbitral system should not encourage that kind of behavior.

[signature]  
The Hon. Marc Lalonde,  
Arbitrator  
September 18, 2007