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TRIBUNAL DE GRANDE INSTANCE DE NANTERRE
(First Instance Court of Nanterre –France–)

6th Chamber

JUDGMENT OF May 30, 2011

Docket no.: 10/02629

CASE

THE *ASSOCIATION FRANCE-PALESTINE SOLIDARITE* "A.F.P.S.", PALESTINE LIBERATION ORGANIZATION "P.L.O.", Party applying to be joined to the proceedings

Against

The Company ALSTOM, The Company ALSTOM TRANSPORT, The Company VEOLIA TRANSPORT

PLAINTIFFS

THE *ASSOCIATION FRANCE-PALESTINE SOLIDARITE* "A.F.P.S."
whose registered head-office address is 21 ter rue Voltaire
75011 PARIS
represented by its Chairman, Mr. Jean-Claude LEFORT, residing in this capacity at the aforementioned registered head-office

represented by Maître Alain LEVY, lawyer registered with the PARIS Bar Association, registration no.: P0126 and by Maître Claude-Eric STUTZ, lawyer registered with the PARIS Bar Association

THE PALESTINE LIBERATION ORGANIZATION "P.L.O.", Party applying to be joined to the proceedings
represented by Mr. Mahmoud ABBAS, Chairman of the Executive Committee, himself represented by Mr. Hael AL FAHOUM, Head of the Palestinian Mission to France and the PLO
Electing domicile at the registered head-office of the General Delegation of Palestine in France, 14 rue du Commandant Léandri
75015 PARIS

represented by Maître Alain LEVY, lawyer registered with the PARIS Bar Association, registration no.: P0126, and by Maître Claude-Eric STUTZ, lawyer registered with the PARIS Bar Association

DEFENDANTS

The Company ALSTOM
Société Anonyme [French public limited company]
with capital of 2,056,893,972€
registered with the Nanterre Registry of Trade and Companies
under number 389 058 447
whose registered head-office address is 3 avenue André Malraux
92300 LEVALLOIS PERRET
represented by its legal representative, Mr. Patrick KRON, Chairman of the Board of Directors and Chief Executive Officer,
residing in this capacity at the aforementioned registered head-office

represented by Maître Pierre MAYER, lawyer registered with the PARIS Bar Association, and by Magali THORNE, lawyer registered with the PARIS Bar Association, registration no.: P0075

The Company ALSTOM TRANSPORT
Société Anonyme [French public limited company]
with capital of 265,540,000€
registered with the Nanterre Registry of Trade and Companies
under number 389 191 982
whose registered head-office address is 3 Avenue André Malraux
92300 LEVALLOIS PERRET
represented by its legal representative, Mr. Jérôme WALLUT, Chairman of the Board of Directors and Chief Executive Officer, residing in this capacity at the aforementioned registered head-office

represented by Maître Pierre MAYER, lawyer registered with the PARIS Bar Association, and by Magali THORNE, lawyer registered with the PARIS Bar Association, registration no.: P0075

The Company VEOLIA TRANSPORT
Société Anonyme [French public limited company]
with capital of 293,072,240€
registered with the Nanterre Registry of Trade and Companies
under number 383 607 090
whose registered head-office address is 163/169 avenue Georges Clemenceau
92000 NANTERRE
represented by its legal representative,
residing in this capacity at the aforementioned registered head-office

represented by Maître Gilles AUGUST, lawyer registered with the PARIS Bar Association, registration no.: P0438 by Maître Kami HAERI, lawyer registered with the PARIS Bar Association, and by Maître Carine DUPEYRON, lawyer registered with the PARIS Bar Association

The case was heard on March 02, 2011 at a public hearing before the court comprised of:

Véronique BESSEDE, Vice-President
Marie-Hélène MASSERON, Vice-President
Cyril CARDINI, Judge

who discussed the case.

Clerk of Court during the hearing: **Christine PREJEAN**

JUDGMENT

By public judgment, subject to appeal, in the presence of both parties and made available at the Court Registry in accordance with the opinion given at the end of the hearing.

THE HISTORICAL CONTEXT:

Between 1917 and 1948, after the dismantling of the Ottoman Empire, Palestine was under the military administration of Great Britain, which had to manage two contradictory promises:
- that made to the Zionist leaders to create a Jewish national home in Palestine,
- that made to the Arabs to lead Palestine towards independence.

Large-scale land purchases, the development of Jewish settlements closed to Palestinian Arabs and the immigration of several hundred thousand Jews fleeing European persecution triggered several cycles of violence which, in 1936, led to a Palestinian revolt, crushed by the British army in 1939.

On November 29, 1947, the United Nations General Assembly adopted, with a two-thirds majority, resolution 181, which divided Palestine into two independent States, one Jewish and the other Arab, and introduced an international zone comprising the Holy Places and a mixed City of Jerusalem.

The first Arab-Israeli war broke out the very next day, November 30, 1947. The Jewish forces progressively gained control of the principal zones allocated by the UN, provoking the exodus of several hundred thousand Palestinians.

The establishment of the State of Israel was proclaimed on May 15, 1948 by David Ben Gourion.

On December 11, 1948, the United Nations General Assembly adopted resolution 194, advocating the right for the return of Palestinian refugees to their homes or their compensation and reaffirmed the international status of Jerusalem, as well as its control by the United Nations. Israel refused the application of this resolution.

On December 22, fighting resumed between Egypt and Israel.

After the Israeli victory on January 13, 1949 and the signing of armistices with the Arab States (Rhodes' agreements), the Hashemite kingdom of Transjordan was re-baptised Jordan, annexing the West Bank and East Jerusalem, while the Gaza Strip was placed under Egyptian military administration. The border (known as the "*green line*"), which merely reproduced the front line of the armistice of April 3, 1949, physically divided the city of Jerusalem into a Jewish part in the West and an Arab part in the East (including the Old City) placed at the time under Jordanian control.

It was in May 1964 that the Palestine Liberation Organization (PLO) was created in East Jerusalem, refusing any legitimacy of the State of Israel and advocating an Arab Palestine open to Palestinian refugees and protecting the Jewish minorities present prior to the "*Zionist invasion*".

On June 5, 1967, Israel attacked Egypt again. Following what is known as the "*Six-Day War*", the Hebrew State occupied Egyptian Sinai, Syrian Golan, the West Bank, the Gaza Strip and East Jerusalem. On November 22, 1967, the United Nations' Security Council adopted resolution 242, which affirmed the inadmissibility of the acquisition of these territories through war, affirmed the right of the States in the region to live within secure, recognised borders and demanded the withdrawal of the Israeli armed forces from the territories occupied during the recent conflict (French version). The Arab States and the PLO refused any negotiation with Israel, while the Jewish State envisaged only the return of the occupied territories (English version).

In 1973, after the October War (Syria and Egypt attacked the Israeli forces in Sinai and Golan) and the Israeli victory, a UN Peace Conference on the Israeli-Palestinian conflict failed again.

In 1974, the UN recognised the PLO as the legitimate representative of the Palestinian people but Israel refused to do so.

In 1978, the PLO rejected the "*Camp David accords*" between Egypt and Israel, which withdrew from Sinai.

On December 15, 1988, the Palestinian National Council (the PLO's parliament) proclaimed the creation of the State of Palestine and recognised the existence of the State of Israel.

In 1993, the Oslo accords marked the mutual recognition of the State of Israel and the PLO, while establishing partial, transitional Palestinian autonomy in the occupied territories.

From 1999 to 2000, the Israeli-Palestinian talks failed again at Camp David: the parties disagreed on the borders, the status of Jerusalem, the fate of the Palestinian refugees and the future of the Jewish settlements in the occupied territories.

Likewise, the negotiations between Israel and the PLO in Taba in January 2001 failed.

On January 9, 2005, Mr. Mahmoud ABBAS was elected chairman of the Palestinian Authority following the death of Yasser ARAFAT.

Over all these years, the United Nations Security Council endlessly underlined the illegality of the occupation of East Jerusalem by Israel and the creation of the Jewish settlements in the *occupied territories* (e.g. resolutions 298 of September 25, 1971, 446 of March 23, 1979, 465 of March 1, 1980, 476 of June 30, 1980 and 478 of August 20, 1980 declaring null and void the provisions of the *fundamental law* adopted by Israel modifying the status of the Holy City).

THE LEGAL FACTS AND ACTS IN THIS PARTICULAR CASE:

On December 15, 1999, the State of Israel issued an international call for tenders for the construction and operation of a public transport service in the city of Jerusalem.

With a view to replying to this call for tenders, a company (the company CITYPASS Limited) was incorporated under Israeli law on June 15, 2000, by two French companies: ALSTOM TRANSPORT (20%) and CONNEX, now known as VEOLIA (5%) and two companies incorporated under Israeli law: POLAR and ASHTROM (jointly accounting for 75%). On October 19, 2004, POLAR and ASHTROM sold 20% of their shares to a third company incorporated under Israeli law, known as HAREL.

On November 27, 2002 and September 22, 2004, the Israeli Government entered into a 30-year franchising contract with the company CITYPASS Limited on behalf of the State of Israel in order to finance, design, construct, operate and maintain a "*light rail*" system in Jerusalem, supply the equipment for this system and collect the sales receipts from its operation.

On February 24, 2005, the companies ALSTOM TRANSPORT SA, POLAR INVESTMENTS LTD, CONNEX SA, ASHTROM GROUP LTD, HAREL INSURANCE COMPANY and CITYPASS LTD, partners of CITYPASS, entered into a shareholder agreement in order to specify their rights and obligations in the fulfilment of the franchising agreement.

On the same day, CITYPASS Limited entered into a contract for the operation and maintenance of the Jerusalem "*light rail*" system with the company CONNEX JERUSALEM LRT LTD, a company incorporated under Israeli law and an indirect subsidiary of VEOLIA TRANSPORT.

In the month of February 2005, the company CITYPASS Limited entered into a "*CONTRACT FOR THE ENGINEERING, PROCUREMENT AND CONSTRUCTION OF THE JERUSALEM LIGHT RAIL SYSTEM*" with the companies ALSTOM TRANSPORT SA, CITADIS ISRAEL LTD and ASHTROM GROUP LTD. Under the terms of this contract, the company CITYPASS Limited was referred to as the "*Franchisee*", while the three other companies (CITADIS, ALSTOM and ASHTROM) were jointly referred to as the "*Contractor*". In the preamble to the contract, it was explained that:

- the company CITYPASS Limited was selected in the capacity of Franchisee of the Jerusalem Light Rail Project,
- the "*Contractor*" submitted a proposal to the "*Franchisee*" for the engineering, procurement and construction of the Jerusalem Light Rail System on the basis of a turnkey contract, in return for the payment of a lump sum, the basis adopted by the "*Franchisee*" in order to prepare and present its bid to be submitted in reply to the call for tenders for the project.
- the "*Franchisee*" selected the "*Contractor*" to fulfil the EPC work (scheduling, design, engineering, construction, installation and completion) on the basis of a turnkey contract, in return for a lump sum in accordance with the requirements of the franchising contract.

The construction work began in December 2006.

Currently, the tramway is on the verge of being commissioned.

REMINDER OF THE PREVIOUS PROCEEDINGS AND THE RELATED ADMINISTRATIVE PROCEEDINGS:

By writ dated February 22, 2007, the *ASSOCIATION FRANCE PALESTINE SOLIDARITE* (henceforth referred to as the "*AFPS*") had the companies VEOLIA TRANSPORT and ALSTOM summonsed before the Regional Court in Nanterre, in order to have the franchising contract signed by these companies with the State of Israel for the construction of the tramway cancelled and its continued fulfilment prohibited on pain of penalty.

In the submissions filed with the Court Registry on October 15, 2007, the Palestine Liberation Organization (henceforth referred to as the "*PLO*") applied to be joined to the proceedings.

By interlocutory judgment dated January 11, 2008, this Court enjoined the defendants to produce evidence by way of any appropriate documents of the legal form of their participation in the disputed construction project and to produce a copy of the franchising contract.

In accordance with this judgment, VEOLIA and ALSTOM produced a number of documents in English before the court, including various free and partial translations.

Following a new submission-related incident, the Court sentenced the defendant companies to produce Tome 1 of the franchising contract of September 22, 2004 as well as its annexes with a sworn translation of these documents (judgment of June 6, 2008) within a three-month time-limit.

Following the submission of the documents in accordance with this injunction, the AFPS and the PLO summonsed the company ALSTOM TRANSPORT SA to appear as a third party by writ dated November 18, 2008.

The two proceedings were joined by order of January 5, 2009.

Ruling on new procedural incidents, the Court with jurisdiction over this registered head-office by partial final judgment and interlocutory order dated April 15, 2009:
- rejected the pleas on grounds of lack of jurisdiction *ratione materiae* and *ratione loci* raised by the defence,
- declared the PLO's claim inadmissible,
- declared the AFPS's own claim admissible,
- rejected the claim for compulsory production of additional exhibits,
- referred the examination of the case to the President's conference,
- stayed judgment on the other claims, including the counterclaims against the PLO.

The companies ALSTOM and ASTOM TRANSPORT lodged both an objection on grounds of jurisdiction and an appeal against this judgment.

By order dated December 17, 2009, the Court of Appeal in Versailles declared the objections on grounds of jurisdiction admissible and confirmed the judgment of April 15, 2009, in which the Regional Court in Nanterre declared that it had jurisdiction to rule on the present litigation.

The companies ALSTOM and ALSTOM TRANSPORT lodged an appeal against this judgment to the Court of Cassation.

By order dated February 10, 2011, the 2nd civil chamber of the Court of Cassation declared the appeal inadmissible.

By order dated February 4, 2010, the pre-trial judge at the Court of Appeal in Versailles declared the immediate appeal lodged by ALSTOM against the judgment of April 15, 2009 to be inadmissible.

The proceedings therefore continued on the merits of the case before the Regional Court in Nanterre and the PLO once again applied to be joined to the proceedings in submissions dated March 1, 2010.

On March 10 next, the AFPS filed a claim before the Administrative Court in Paris, invoking the liability of the French State on grounds of its support for the participation of the two French companies in the construction and operation of the Jerusalem tramway.

These administrative proceedings are still ongoing.

THE PARTIES' CURRENT CLAIMS BEFORE THE REGIONAL COURT IN NANTERRE:

In view of the final submissions filed with the Court Registry on February 14, 2011 by the AFPS and the PLO, requesting that the Court:

- ***NOTE*** *that the PLO had once again applied to be joined to these proceedings;*
- ***DECLARE*** *the grounds for inadmissibility invoked by ALSTOM and ALSTOM TRANSPORT to be inadmissible;*
- ***DECLARE*** *the claims of the AFPS and the PLO to be admissible;*

In view of the provisions of articles 49 and 53 of the Fourth Geneva Convention of August 12, 1949;
In view of the provisions and notably articles 23 g and 46, paragraph 2, of the Hague Regulations of 1907;
In view of the provisions and notably articles 4.1 and 4.3 of the HAGUE convention of 1954 for the protection of cultural property in the event of armed conflict;
In view of the provisions of articles 6, 1131 and 1133 and 1382 of the French Civil Code;

- ***NOTE*** *the illegality of the cause and starting with the whole:*
  of the franchising contract dated September 22, 2004, whose fulfilment was guaranteed by the companies ALSTOM, ALSTOM TRANSPORT and VEOLIA TRANSPORT;
  of the shareholder agreement signed on February 24, 2005 by the company ALSTOM TRANSPORT and VEOLIA TRANSPORT;
  of the operation, engineering, procurement and construction contract entered into in the month of February 2005 by the Company CITYPASS and the Company ALSTOM TRANSPORT;
- ***PROHIBIT*** *the companies ALSTOM, ALSTOM TRANSPORT and VEOLIA TRANSPORT from continuing the fulfilment of the aforementioned contracts and any subsequent contracts, on pain of penalty of 100,000€ per recorded offence, which the Court shall reserve the right to enforce;*
- ***SENTENCE*** *solidarily the companies ALSTOM, ALSTOM TRANSPORT and VEOLIA TRANSPORT to pay the AFPS and the PLO the sum of € 1 each in damages;*
- ***DISMISS*** *all the requests, applications and claims of the companies ALSTOM, ALSTOM TRANSPORT and VEOLIA TRANSPORT;*
- ***SENTENCE*** *solidarily or at least in solidum the companies ALSTOM, ALSTOM TRANSPORT and VEOLIA TRANSPORT to pay the Association France Palestine Solidarité and the Palestine Liberation Organization the sum of 150,000 euros by virtue of the provisions of article 700 of the French Civil Procedure Code;*
- ***SENTENCE solidarily or at least in solidum*** *the companies ALSTOM, ALSTOM TRANSPORT and VEOLIA TRANSPORT to pay full costs, which shall be collected by the French law firm S.C.P. LEVY – GOSSELIN – MALLEVAYS – SALAUN, lawyers, in accordance with the provisions of article 699 of the French Civil Procedure Code;*
- ***ORDER*** *the provisional enforcement of the judgment to be delivered.*

In substance, the petitioners base their proceedings on the illegality of the construction of the Jerusalem tramway and on the liability of the defendant companies participating therein. They claim that the question of the legality of the settlements is inseparable from that of the construction of the tramway and intend to demonstrate that the future tramway is not intended for Palestinians but rather to support colonisation. They add that it constitutes a significant investment, the route of which has been traced based on a plan for the widespread usurping of East Jerusalem and the surrounding area, in favour of the settlers introduced with support from the Hebrew State. Citing all the international organisations that deem the settlements to be totally prohibited, they claim that the tramway, which is a tool for the consolidation and development of this settling, is likewise illegal by association. They analyse the urban development plans in order to demonstrate that the essential purpose of the tramway is to conveniently link illegal settlements in the North East of the City to the centre of the usurped Capital, the seven (out of twenty-three) stations announced as being intended to serve the Palestinian areas acting as a decoy. They explain, in fact, that all the Palestinians in Jerusalem do not have access to the western part of the city and that a residence permit is required for Arab residents to live in East Jerusalem, these permits being not only difficult to obtain but also easily revocable by the Israeli authorities. Thus, supposing that Palestinians are allowed onto the tramway at certain stations on the route located in the East, the possibility of continuing until the Western city for those who don't have the right to access this part shall be impossible. They deem it necessary in this respect to point out to the Court that the discriminatory policy implemented by the State of Israel has resulted in separate traffic lanes for each of the communities being forced to co-exist in this area and that a double road network has been built, one reserved for Israeli settlers (featuring fast, well-maintained motorways) and the other for Palestinians (featuring narrow, dangerous two-way roads). This situation regarding the roads and the separation sought by Israel therefore makes it very hard to believe the idea to which the defendant companies are trying in vain to give credence of a tramway built in joint favour of both populations. They also reveal that VEOLIA operates three bus lines (33, 109 and 110), which exclusively link illegal Israeli settlements, without serving Palestinian villages, and that the recruitment ads for the tramway require future controllers and operators to speak mother-tongue level Hebrew. They therefore conclude that the tramway project is part of the unconcealed Israeli desire to guarantee an urban continuum for the Jewish city whilst dismantling the structure of the Arab city, since, from the design stage, when it was studied between 1997 and 2000, the terminal points of the tramway were chosen as being settlements. They produce as evidence of this fact that the signs are in Hebrew, therefore meaning that this is not an ordinary public service, but a project closely linked to the ever-growing settlements, as demonstrated by the new housing construction programmes in Pisgat Ze'ev, the terminus of the future tramway. They claim that the construction of this tramway contributes to rendering impossible any new

definitive sharing of the City between both communities, and that the Palestinian inhabitants shall only gain a serious disadvantage from the tramway, i.e. the consolidation of the settlements that deprive them of their own territory and, in the long-term, shall cut the West Bank in two. In summary, they claim that international public policy demands that the Israeli inhabitants, who are illegal settlers, leave this territory and that the right of Palestinians to not have to co-exist with them, even in public transport, be protected. They claim therefore that, in order to prevent the occupation from rendering the tramway unlawful, it would have been necessary for two conditions to be met: that the tramway be designed in exclusive favour of the Palestinians (without imposing upon them the sharing of this means of transport with settlers whose presence is illegal) and that their legitimate authorities be consulted and involved from the start of the project.

In view of the final submissions filed with the Court Registry on February 21, 2011 by the companies ALSTOM and ALSTOM TRANSPORT SA, requesting that the Court:

In view of article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,
In view of articles 31 and 32 of the French Civil Procedure Code,
In view of articles 544 and 480 of the French Civil Procedure Code,
In view of articles 6, 1131, 1133 and 1382 of the French Civil Code,
In view of articles 1146 et seq. and notably article 1165 of the French Civil Code,
In view of the Fourth Geneva Convention of August 12, 1949 on the protection of civilian persons in time of war,
In view of the Hague Convention of 1907 respecting the laws and customs of war on land,
In view of the Hague Convention of 1954 for the protection of cultural property in the event of armed conflict,
In view of the United Nations Organisation San Francisco Charter of 1945.

Entertain the pleadings of the companies ALSTOM and ALSTOM Transport and declare them to be founded.

Principally

I.

State and rule *that according to the judgment dated April 15, 2009 and in accordance with article 544 of the French Civil Procedure Code, this Court declared that the Palestine Liberation Organization had no standing and terminated its proceedings;*

Note *that the Palestine Liberation Organization served notice of the aforementioned judgment by writ dated April 27, 2009, triggering the start of the time-limit for appealing; that the Palestine Liberation Organization did not appeal against this judgment;*

State and rule *that in accordance with article 480 of the French Civil Procedure, the judgment of April 15, 2009, in which it declared inadmissible the proceedings of the Palestine Liberation Organization, has become res judicata;*

State and rule *that the Palestine Liberation Organization's claim for the remedying of the issues surrounding its involvement in accordance with article 126 of the French Civil Procedure Code is consequently inadmissible, and to purely and simply dismiss this claim;*

State and rule *that the proceedings are definitively closed in regard to the Palestine Liberation Organization;*

II.

Note *that the allegedly-illegal agreement of September 22, 2004 is a foreign public franchising contract for public transport and that its signatories are the State of Israel and an Israeli company, CITYPASS Limited;*

Note *that the shareholder agreement of February 24, 2005, which was also criticised, is the shareholder agreement of an Israeli company, CITYPASS Limited, duly incorporated, registered and governed according to Israeli law, and whose shareholders are the French companies ALSTOM Transport (20%), VEOLIA TRANSPORT (5%) and the Israeli companies ASHTROM (27.5%), POLAR (27.5%) and HAREL (20%).*

Note *that the engineering, procurement and construction contract from February 2005, which was also criticised, was entered into by, firstly, the Israeli company CITYPASS Limited and, secondly, the French companies ALSTOM Transport and the Israeli companies ASHTROM and CITADIS Limited,*

State and rule *that these agreements and contracts, no more than their signatories, are neither fictional, nor constitute fronts and must be fully implemented;*

Note *that neither the State of Israel, nor the company CITYPASS Limited, the sole signatories of the Convention of September 22, 2004, which it has been alleged is unlawful, were involved in the proceedings;*

State and rule *that the companies ALSTOM Transport and VEOLIA Transport, simple minority shareholders of the company CITYPASS Limited, do not constitute genuine and reasonable defendants in the proceedings aiming to have an agreement of which they are not signatories declared unlawful;*

State and rule *that the proceedings intended to note the illegality of an agreement could neither be initiated nor pursued without being directed against the real and serious defendants, i.e. the State of Israel and the Israeli company, CITYPASS Limited;*

Declare inadmissible *all the requests, applications and submissions of the Association France Palestine Solidarité and, if necessary, the Palestine Liberation Organization;*

Note *that the Association France Palestine Solidarité brought proceedings against the French State before the Administrative Court in Paris, notably complaining that it had not taken all the necessary measures in terms of its state and international obligations;*
State and rule all the more *that the proceedings against ALSTOM and ALSTOM Transport cannot be entertained in their current state;*
In the alternative
I.
State and rule *that the conclusion and fulfilment of a public service franchising contract by the State of Israel are not contrary to the duties of the occupying State according to international law;*
State and rule *that the construction and operation of a tramway cannot be deemed a violation of the Fourth Geneva Convention of 1949 and the Hague Convention of 1954;*
State and rule *that neither the bodies of the United Nations, nor the International Community have established as a "legal fact" the alleged international unlawfulness of the construction of the Jerusalem Tramway;*
State and rule *on this first count that violation of international legal policy cannot be adopted as grounds in order to invoke the tort or quasi-tort liability of ALSTOM and ALSTOM Transport;*
II.
State and rule *that private persons are not entitled to equally invoke all international norms before the civil courts;*
State and rule *that conventional texts are for strictly inter-state application;*
State and rule *that the reference to "jug cogens" is irrelevant;*
State and rule in consequence *that private persons, i.e. the Association France Palestine Solidarité and the Palestine Liberation Organization, are not entitled to use the international conventions mentioned, as they do not confer subjective rights;*
III.
State and rule *that the conventional texts mentioned do not provide in any way for obligations incumbent upon private companies;*
State and rule *that no alleged horizontal assessment of the Geneva Convention makes it possible to make any obligations incumbent upon ALSTOM and ALSTOM Transport;*
State and rule *that these private companies are not subjects of international law;*
State and rule in consequence *that none of the conventional texts mentioned creates any obligations incumbent upon private companies, i.e. ALSTOM and ALSTOM Transport;*

IV.
State and rule *that in order for norms of public international law to be incorporated into international public policy, they still have to be subject to this international public policy;*
State and rule *that admitting that humanitarian considerations are subject to French international public policy, this public policy is not affected in this particular case;*
State and rule in consequence and all the more *that no tort or quasi-tort liability can be invoked against ALSTOM and ALSTOM Transport;*
Further in the alternative:
State and rule *that the Association France Palestine Solidarité and the Palestine Liberation Organization have not produced evidence of personal, direct and certain damage having for causa causans a tortious or quasi-tortious fault by ALSTOM and ALSTOM Transport;*
State and rule *once more that measures prohibiting ALSTOM and ALSTOM Transport from construction/operation, in addition to being unjustified and inappropriate, are contrary to both international law and the French constitutional principle of separation of powers;*
State and rule *that in fact the bringing of liability proceedings against ALSTOM and ALSTOM Transport before the French civil courts is only a pretext to stigmatise and have condemned by French legal policy, not without media hype, the Israeli policy in regard to Palestine and Palestinians;*
Consequently purely and simply dismiss *all of the claims, applications and submissions of the Association France Palestine Solidarité and the Palestine Liberation Organization and entertain the respective claims by the companies ALSTOM and ALSTOM Transport for the sentencing in solidum of the Association France Palestine Solidarité and the Palestine Liberation Organization to pay € 50,000 in damages, € 150,000 under article 700 of the French Civil Procedure Code and full costs of the proceedings.*

The ALSTOM companies claim that the disputed tramway merely constitutes public transport in favour of all the inhabitants, without discrimination, located in proximity to and around its route; that it offers all the advantages of a cutting-edge means of transport and is comfortable, non-polluting, high-capacity, fast and reliable; that the line features twenty-three stations, including seven in the section crossing the Palestinian areas; that the signs are in three languages: English, Arab and Hebrew; that it is therefore definitely accessible for all: Arabs or Jews, Palestinians or Israelis; that it's route has as much as possible taken the existing routes (notably route 60), without destroying real property and with a limited number of land expropriations; that the Court cannot take a decision with such significant consequences (work stoppage) without having firstly, either

ordered an appraisal in order to establish the damaging or beneficial nature of the tramway for the inhabitants of Jerusalem, or travelled to the site and heard the interested parties; that during a survey conducted before the construction work began, Palestinians precisely demonstrated that a vast majority of them were in favour of the tramway; that in fact, Jerusalem has been under-equipped for many years in terms of public transport and that the objective aimed for by launching this tramway project was to meet the mobility and transport needs of the whole population of the City of Jerusalem, to facilitate its economic and tourist development and to conserve, at the same time, the environment of a City with an exceptional historical heritage; that the tramway shall have an unrivalled transport capacity (one carriage can carry 250 passengers, which equates to three buses or 170 individual cars, i.e. 130,000 passengers per day); that on top of this there is a "*guaranteed*" journey time of forty minutes to cross Jerusalem, regardless of the time of day, and that this safe and comfortable means of transport shall be easily accessible for people with reduced mobility or older people, also offering air-conditioning in both the driving cabs and the carriages; that as this transport uses electrical energy, it shall not produce any gas or smoke emissions and will produce four times less noise that a car and that 3,500 trees are intended to be planted along the lines; that its essential function is to link the centre of Jerusalem to the other areas, in both the West and the East, by making use of the existing road or bus routes, without ever blocking or replacing them; that the creation of settlements in East Jerusalem occurred prior to and independent of the construction of the tramway, whose sole objective is to make the life of the population of Jerusalem, both Israeli and Palestinian, sedentary or not, easier by enabling them to travel and reach their places of residence, work, commerce, worship and leisure. ALSTOM and ALSTOM TRANSPORT finally point out that although the project has been public since 1999, the PLO never criticised it prior to its involvement in these proceedings (2007) and above all has not referred the matter to the International Court of Justice (ICJ), notably when this body was required to examine the legality of the separation wall in Palestine.

In view of the final submissions filed with the Court Registry on February 21, 2011 by the company VEOLIA TRANSPORT, requesting that the Court:

In view of the Fourth Geneva Convention of August 12, 1949,
In view of the Hague Convention of May 14, 1954,
In view of article 55 of the French constitution,
In view of article 1382 et seq. of the French Civil Code,
In view of articles 6, 1131 and 1133 of the French Civil Code,
In view of article 126 of the French Civil Procedure Code,
In view of articles 31, 32 and 32-1, 480 and 544 of the French Civil Procedure Code,
<u>On the procedural pleas:</u>
***STATE AND RULE** that the Palestine Liberation Organization, which was declared to have no standing by the Regional Court in Nanterre in its judgment of April 15, 2009 and having abstained from appealing against this judgment notwithstanding the delivery of a new mandate, has no standing to present submissions on the merits of the case;*
***CONSEQUENTLY, STATE AND RULE** that the present proceedings are closed in regard to the Palestine Liberation Organization;*
<u>On the dismissal from the proceedings of Veolia Transport:</u>
***NOTE** that the State of Israel is the natural defendant in these proceedings and has not been summonsed to appear;*
***NOTE** that the alleged illegality of the cause of the franchising contract of September 24, 2004 entered into by the State of Israel and the Israeli company Citypass and the shareholder agreement of February 24, 2005 cannot be pronounced in the absence of the State of Israel;*
***STATE AND RULE** that the AFPS and the PLO have no standing in the absence of the bringing of proceedings against the State of Israel;*
<u>Principally:</u>
***STATE AND RULE** that the international norms invoked by the Association France Palestine Solidarité and the Palestine Liberation Organization cannot be invoked by them against Veolia Transport, Alstom and Alstom Transport, which are private-law corporate entities;*
***STATE AND RULE** that the Association France Palestine Solidarité and the Palestine Liberation Organization have not produced evidence of the illegality of the tramway project, starting with the franchising contract and "any subsequent deeds" in regard to the norms of international public policy invoked;*
***STATE AND RULE** that the indirect and limited participation in the Franchising Contract, in its capacity as minority shareholder of the company incorporated under Israeli law, CityPass, and guarantor on a limited basis, is not a fault in regard to article 1382 of the French Civil Code;*
***CONSEQUENTLY, STATE AND RULE** that Veolia Transport has not committed any faults capable of invoking its liability according to article 1382 of the French Civil Code;*
<u>In the alternative:</u>

STATE AND RULE *that the Association France Palestine Solidarité has not produced evidence of the personal nature of the alleged damage;*
STATE AND RULE *that the Association France Palestine Solidarité and, if necessary, the Palestine Liberation Organization, has not produced evidence of the existence of a certain damage resulting from the existence and fulfilment of the disputed contracts;*
CONSEQUENTLY, STATE AND RULE *that there is no damage caused by Veolia Transport's participation in the Jerusalem tramway project;*
Further in the alternative:
STATE AND RULE *that there is no causal link between the minor participation of Veolia Transport in the tramway project and the damage alleged by the Association France Palestine Solidarité and the Palestine Liberation Organisation;*
STATE AND RULE *that the sole adequate and direct cause of the damage alleged by the Association France Palestine Solidarité and the Palestine Liberation Organization is the decision for the construction of the tramway taken by the State of Israel;*
CONSEQUENTLY, STATE AND RULE *that there is no causal link between the alleged fault by Veolia Transport and the damage alleged by the Association France Palestine Solidarité and the Palestine Liberation Organization;*
Further in the alternative:
STATE AND RULE *that the requested prohibitive measures are clearly unfounded in the absence of obligations incumbent upon Veolia Transport, Alstom and Alstom Transport liable to be prohibited;*
STATE AND RULE *that the requested prohibitive measures would be clearly ineffective to compensate for the damage allegedly suffered by the Association France Palestine Solidarité and the Palestine Liberation Organization;*
STATE AND RULE *that the penalty has not been sufficiently determined to result in its enforcement;*
CONSEQUENTLY, REJECT *the application for prohibition on pain of penalty lodged by the Association France Palestine Solidarité and the Palestine Liberation Organization;*
In any case:
DISMISS *all the requests, applications and claims of the Association France Palestine Solidarité and the Palestine Liberation Organization;*
NOTE *that the proceedings brought by the Association France Palestine Solidarité and the Palestine Liberation Organization are an abuse of process, in that they constitute manipulation of the French justice system for political and media-related purposes;*
SENTENCE *the Association France Palestine Solidarité and, if necessary, the Palestine Liberation Organization, to pay Veolia Transport the sum of one euro in damages for abuse of process;*
SENTENCE *furthermore the Association France Palestine Solidarité and, if necessary, the Palestine Liberation Organisation, to reimburse the sworn translation and reprography costs incurred by Veolia Transport, amounting to the sum of 39,530.30 euros, excluding tax;*
ORDER *the publication of the judgment to be delivered in five French newspapers or magazines at the exclusive expense of the Association France Palestine Solidarité and, if necessary, the Palestine Liberation Organization, up to the sum of 5,000 euros per publication: N.B. Veolia Transport may advance the costs of publication and obtain their reimbursement upon request from the Association France Palestine Solidarité;*
SENTENCE *the Association France Palestine Solidarité and, if necessary, the Palestine Liberation Organization, to pay the company Veolia Transport the sum of 150,000 euros based on article 700 of the French Civil Procedure Code;*
SENTENCE *the Association France Palestine Solidarité and, if necessary, the Palestine Liberation Organization to pay full costs.*

The company VEOLIA TRANSPORT underlines that the idea of building a tramway in Jerusalem was envisaged in 1994 as an extension of the Oslo accords of 1993 in order to reduce and regulate the fast-growing traffic in Jerusalem; that the project was therefore examined by the municipal authorities for this purpose based notably on the mobility needs of all the city's inhabitants. It claims that the construction work is currently on course to be completed and should be accepted before the end of 2011. It specifies that the route of the tramway stretches from the heart of West Jerusalem (Mount Herzi station), a territory falling under the sovereignty of the State of Israel since 1949, to the north of East Jerusalem, a territory that has been administered by the State of Israel since 1967, crossing the green line after Shivtei Israel station. It claims that this route would not have been chosen if, as the plaintiffs claim, the tramway had been designed in exclusive favour of the Jewish inhabitants of Jerusalem. In this hypothesis, in fact, it would have gone round the Arab areas in the North of Jerusalem (notably Shu'afat, which shall have three stops and Beit Hanina), taken the ring roads and motorways built over the last few years to serve the settlement of Pisgat Zeev to the north of the city. On the contrary, as a result of the chosen route, more than 50,000 Palestinians shall be affected and benefit from this means of transport. It affirms that the construction of the tramway has caused neither the destruction of homes or roads, nor illegal expropriation nor the discovery of cultural property, but has enabled the renovation of the existing roads with central reserves for the tram traffic, preserving the two-way car traffic. It states that it had an independent opinion survey conducted in 2009, three years after the start of the construction work. However, this survey revealed that the Arab inhabitants of Jerusalem (the inhabitants of Shu'afat and Beit

Hanina) are in the vast majority in favour of the tramway and the economic development associated with it, unlike the Israelis who expressed their preference for the ring roads whose very existence already confirms that the colonies are not isolated. It claims that in the course of summer 2010, it received an offer to purchase its shareholding in the company Citypass, from a company incorporated under Israeli law (Egged Holding Limited), the leader in bus transport in Israeli, but that the possible completion of this transaction, which is subject to numerous conditions precedent, is not scheduled for several months. It underlines that in any case, its participation in the tramway project is only in terms of capital and is entirely indirect:
in its capacity as a minority shareholder (5% share) of the franchisee company City Pass,
via its subsidiary Connex Jerusalem Ltd, which is a signatory of the operation and maintenance contract entered into with CityPass,
and that the operation of a means of public transport in Jerusalem is an act of neither colonisation nor population transfer, the Geneva Convention on the law of occupation permitting the occupying authority to take all the measures necessary for the day-to-day administration of the occupied territory.

The Court referred to the reading of these pleadings for the details of the grounds and arguments developed by the parties.

In view of the order for the closure of the proceedings dated February 21, 2011.

GROUNDS FOR THE COURT'S JUDGMENT:

ON THE ADMISSIBILITY OF THE PLO'S SECOND APPLICATION TO BE JOINED TO THE PROCEEDINGS:

The presentation, above, reveals that these proceedings were initiated by the AFPS on February 22, 2007 and that the PLO applied to be joined to these proceedings for the first time on October 15, 2007.

This application to be joined to the proceedings was declared inadmissible by this Court on April 15, 2009 on the grounds that the power given by Mr. Mahmoud ABBAS to Mr. AL HUSSEINI to represent the corporate entity before this court was not legitimate (sub-delegation to Mrs. KHOURI and power to initiate contractual proceedings though this litigation is of a tortious nature).

The Court of Appeal in Versailles considered that this judgment, which ruled solely on the objections and pleas for non-admissibility, was not subject to immediate appeal by the ALSTOM companies, in accordance with article 544 of the French Civil Procedure Code (order of February 4, 2010).

As the proceedings continued on the merits of the case before the Regional Court, the PLO applied to be joined to the proceedings for a second time in the submissions filed with the Court Registry on March 1, 2010 by producing new powers signed on November 5, 2009 (in the name of Mrs. KHOURI) and on June 1, 2010 (in the name of her successor, Mr. AL FAHOUM).

The PLO invoked the provisions of article 126 of the French Civil Procedure Code, which states that:
In the case where the situation giving rise to the plea of non-admissibility may be remedied, the inadmissibility will be set aside if its cause has disappeared by the time the judge rules upon the case. The same will apply where, before any foreclosure, the person who has the right to act becomes party in the on-going proceeding.

The PLO cited several legal judgments (exhibits 279 to 283) under the terms of which the Court of Cassation authorised a party to initiate new proceedings, after remedying the situation, when it was declared inadmissible at first instance (e.g. after a decision at a general meeting authorising a property management firm to initiate legal proceedings, order of the 2nd civil chamber of the Court of Cassation delivered on May 6, 2010).

However, in this particular case, the proceedings were initiated on February 22, 2007 by the AFPS and are still continuing before the same court for a ruling on the merits of the case. By re-applying to be joined to these proceedings on March 1, 2010, the PLO did not initiate new proceedings: it was joined to the previous proceedings for which it had already been declared to have no standing. Nor did it "*become party in the on-going proceeding*" according to the aforementioned article 126, as it was already party thereto since its first

application to be joined to the proceedings on October 15, 2007, though represented by an individual without legitimate power.

However, article 480 of the French Civil Procedure Code states that *the judgement which decides in its operative part the whole or part of the main issue, or one which rules upon the procedural plea,* ***a plea seeking a plea of non-admissibility*** *or any other interlocutory application, will,* ***from the time of its pronouncement****, become res judicata with regard to the dispute which it determines.*

Article 481 adds that *the judgment, since its pronouncement,* ***puts an end to the judge's jurisdiction over the dispute that he has determined****.*

The PLO, which did not initiate new proceedings, therefore cannot have the admissibility of its application to be joined to the proceedings judged again at a court subject to appeal, even if, in the meantime, it signed a new power in the name of the person representing it in the proceedings. By doing so, indeed, it did not change capacity in any way, as its capacity to act is assessed based on its company object, which remained the same before and after the second application to be joined to the proceedings. It only remedied the issue affecting the validity of its previous application to be joined to the proceedings in accordance with article 117 of the French Civil Procedure Code, which punishes the lack of power of a person featuring in the proceedings as representing a corporate entity. It was judged that this irregularity rendered its application to be joined to the proceedings inadmissible.

In any case, the defendants rightly underline that the PLO served notice of the judgment on April 15, 2009 and did not lodge an appeal against it. This judgment therefore became final in regard to it.

Indeed, if the pre-trial judge declared ALSTOM's immediate appeal inadmissible, this is because the judgment of April 15, 2009 did not terminate the proceedings in regard to it.

However, this judgment ended the procedural relationship formed between the PLO, on the one hand, and the companies ALSTOM and VEOLIA, on the other.

However, article 544 of the French Civil Procedure Code states in substance that judgments that rule on a plea of non-admissibility by terminating the proceedings may immediately be appealed against in the same way as judgements that rule upon the whole of the main issue.

In this case, the judgment of April 15, 2009 declaring the PLO's claims inadmissible terminated the procedural relationship between this plaintiff and the defendants.

As such, this judgment was therefore subject to immediate appeal by the PLO, in accordance with the aforementioned legal provisions.

However, by serving notice of this judgment, the PLO triggered the start of the time-limit for appealing, which has now expired.

This judgment therefore became final in regard to the PLO and has become *res judicata* in accordance with the provisions of article 500 of the French Civil Procedure Code, which states that:

The judgement, which is not subject to any review action staying its execution, ***will become res judicata****.* ***The judgment, which is subject to such a review action, will have the same authority on the expiration of the time-limit for such a review action if the review action has not been made within the time-limit.***

In conclusion, as the PLO's request has been definitively declared inadmissible, it can no longer be examined on the merits of the case.

The PLO's new application to be joined to the proceedings on March 1, 2010 shall therefore be declared inadmissible in accordance with the combined provisions of articles 1351 of the French Civil Code and 122 of the French Civil Procedure Code, which state:

- in the case of the former, *that the force of res judicata takes place only with respect to what was the subject matter of a judgment. It is necessary that the thing claimed be the same; that the claim be based on the same grounds; that the claim be between the same parties and brought by them and against them in the same capacity,*
- in the case of the latter, *that a plea of non-admissibility is any ground whose purpose is to get the adversary's claim declared inadmissible,* ***without entering into the merits of the case****, for lack of a right of action, such as a not being the proper party, lack of interest, statute of limitations, fixed time-limit or* ***res judicata****.*

ON THE ADMISSIBILITY OF THE CLAIMS MADE AGAINST ALSTOM AND VEOLIA:

On the grounds that in its judgment of April 15, 2009, this Court invited the parties to another hearing before the trial and appeal court on the petitioner's standing, the companies ALSTOM and ALSTOM TRANSPORT once again challenge the admissibility of the claim against them on grounds of absence from the hearings of genuine and reasonable defendants, i.e. the parties to the allegedly-illegal agreement.

The company VEOLIA TRANSPORT in turn claims that the Court cannot rule on the question of the illegality of the tramway project in regard to international law in the absence of the State of Israel, the recipient of the norms invoked and the designer of the tramway project. It therefore concludes that the Court must lodge a plea of non-admissibility against the plaintiffs (page 24 of VEOLIA's final submissions). In the operative part (page 102), it therefore requests that it be dismissed from the proceedings.

However, the Court already ruled on these defence arguments in its judgment of April 15, 2009.

On page 18, indeed, examining ALSTOM's claims, it wrote:
"It adds that the Court can but note that the franchising contract of September 22, 2004 was signed by the Israeli government and the company CityPass Ltd, a company incorporated under Israeli law; that as the latter are not involved in the proceedings, the judgment to be delivered by the Court would have no authority over them; that the disputed proceedings are therefore of no use to the claimant, which has produced no evidence of any legally-protected standing.
It specifies that the AFPS deliberately and voluntarily pretended to be unaware of the signatories of the disputed contract in order to try to justify the jurisdiction of a French civil court, that it therefore summonsed two companies that it was aware were not signatories of the aforementioned contract, though the Israeli government and the company CityPass Limited alone can effectively defend themselves in litigation relating to the validity of a contract of which they are the sole signatories."

To conclude, page 19:
"The more or less indirect participation in the disputed contracts of the defendants, private operators, under conditions that remain to be determined and specified on the merits of the case, characterise prima facie, at this stage of progress of the proceedings, the plaintiff's standing.
Consequently, the association's proceedings shall be declared admissible under the terms of the operative part, below, without it being necessary to examine the other additional grounds for inadmissibility."

In the operative part, the Court indeed declared the AFPS's "*own claim*" admissible.

The order delivered on December 17, 2009 by the Court of Appeal in Versailles only examined the plea of lack of jurisdiction.

In their order of February 4, 2010, the pre-trial judge considered that, since the Court had only ruled on the procedural pleas and pleas for non-admissibility, which did not terminate the proceedings as they were rejected, the judgment of April 15, 2009 was not subject to immediate appeal by ALSTOM.

Consequently, the question of the admissibility of the AFPS's claims against the companies ALSTOM and VEOLIA may be referred to the Court of Appeal with judgment on the merits of the case.

However, for the same reasons as above, this Court cannot be its own court of appeal and rule again on the plea for non-admissibility based on the absence from the hearings of genuine and reasonable defendants.

For all that, by using the disputed wording (*under conditions that remain to be determined and specified on the merits of the case*), the Tribunal did not in any way intend to reserve the outcome of the plea for non-admissibility that it ruled upon subject to appeal in the operative part of the ruling, but simply wanted to serve notice to the parties that the merits of the bringing of proceedings against the companies ALSTOM to the proceedings was now subject to defence on the merits of the case in accordance with article 71 of the French Civil Procedure Code, which states:
A defence on the merits of the case means any ground destined, after examination of the merits, to have the adversary's claim declared unfounded.

The companies ALSTOM and ALSTOM TRANSPORT shall therefore have their plea for non-admissibility on grounds of absence from the hearing of genuine and reasonable defendants judged inadmissible.

The application for dismissal from the proceedings shall consequently be rejected.

ON THE APPLICATION FOR STAY OF JUDGEMENT:

Still on grounds of the absence from the hearing of genuine and reasonable defendants, the companies ALSTOM and ALSTOM TRANSPORT request once more than the Court stay its judgment on the claims awaiting the judgment of the Administrative Court in Paris, to which a claim against the French State was submitted by the AFPS on March 10, 2010.

They claim, in fact, that, based on the claims (illegality of the franchising contract and subsequent contracts), only the parties to these contracts would constitute genuine and reasonable defendants.

However, the parties to these contracts (CITYPASS, ALSTOM TRANSPORT, CONNEX, VEOLIA, POLAR, HAREL, ASHTROM, etc.) were not introduced to the proceedings pending before the Administrative Court in Paris either, meaning that the plea for stay of judgment is totally unfounded, the French State not being party to the disputed franchising agreement either.

For all that, nothing prevented the companies ALSTOM and ALSTOM TRANSPORT, it they deemed it useful or essential, to introduce to the proceedings any persons liable to bear, with or instead of them, the tort liability invoked in this particular case and to join them to the proceedings.

The application for stay of judgment shall consequently be rejected.

ON THE LEGAL BASIS:

The AFPS bases its claims on both domestic legal rules and international legal rules.

It has in fact initiated tort liability proceedings against the defendant companies based on the provisions of article 1382 of the French Civil Code which states that *any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.*

The invoking of tort liability supposes the demonstration of three elements: fault, damage and a causal link between the fault and the damage.

In terms of the fault, the AFPS accuses the defendant companies of having participated in the conclusion of the contracts whose cause is illegal in accordance with articles 6, 1131 and 1133 of the French Civil Code, which state:

- in the case of the first, *statutes relating to public policy and morals may not be derogated from by private agreements,*
- in the cast of the second, *an obligation without cause or with a false cause, or with an unlawful cause, may not have any effect,*
- in the case of the third, *a cause is unlawful where it is prohibited by legislation, where it is contrary to public morals or to public policy.*

The AFPS therefore intends to demonstrate that the disputed contracts (franchising contract, shareholder agreement and engineering, procurement and construction contract for the Jerusalem light rail system) are contrary to international public policy as they simultaneously breach all of the following:

1) article 49 (last paragraph) of the Fourth Geneva Convention of August 12, 1949, which states that the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies,
2) article 53 of the Fourth Geneva Convention of August 12, 1949, which prohibits any destruction by the Occupying Power of real or personal property,
3) articles 23 and 46 of the Hague Regulations of October 18, 1907, which prohibit any form of expropriation of enemy property,
4) articles 27 of the Hague Regulations of October 18, 1907, 5 of Hague Convention IX of 1907, 53 of Protocol Additional NO.I to the Geneva Conventions of August 12, 1949, 4-1 and 4-3 of the Hague Convention of 1954, which prohibit the confiscation, destruction or damage, as well as theft, pillage, misappropriation or requisitioning of cultural property and sites of worship located on the territory of the contracting States.

It in fact claims that these rules of international law have a direct effect on individuals in domestic policy in that they not only have a conventional value but also in that they are part of international public policy, that they have a customary value long-recognised by the community of States and that they constitute norms of superior value that belong to the category or general peremptory law or "*jus cogens*".

It also claims that the disputed contracts are unlawful as they violate the ethical rules with which the companies ALSTOM and VEOLIA undertook to comply.

In terms of the damage and the causal link, the AFPS claims that, even if it is a third party to the disputed contracts, the very existence and the fulfilment of these unlawful agreements causes it personal damage as an indirect victim.

The company VEOLIA TRANSPORT replies that the question of the lawfulness of an international contract can only be examined in regard to the law applicable to this contract, i.e. in this case Israeli law rather than articles 1131, 1133 and 1382 of the French Civil Code.

ON THE FAULT:

1) The violation of article 49 (last paragraph) of the Fourth Geneva Convention of August 12, 1949:

Paragraph six of article 49 of the Fourth Geneva Convention of August 12, 1949 states that:
The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

The AFPS claims that the tramway is not a mere means of transport but in fact is intended to render the illegal creation of the Jewish settlements in East Jerusalem, the occupied territory, long-lasting.

As evidence of its analysis, the AFPS cites:

- the report of the heads of mission of the European Union in East Jerusalem of December 15, 2008, which states that: *"Israel is continuing increased settlement activity in and around East Jerusalem, linked by new roads and **a tramway**"* or that *"the construction **of a tramway** linking East Jerusalem's Arab neighbourhoods as well as Israeli settlements to the centre of West Jerusalem has continued unabated throughout 2008. The current route of the tram passes through the Arab neighbourhood of Shu'fat (ca. 20,000 inh.), and connects the Israeli settlements of Pisgat Ze'ev and Neve Ya'akov (ca. 40,000 and 20,000 inh. resp.), north-east of Jerusalem. The **tram** will substantially raise the costs of separating these areas from West Jerusalem as well as from each other."*
- the resolution adopted on April 14, 2010 by the United Nations Human Rights Council, which condemned the *"decision to establish and operate a tramway between West Jerusalem and the Israeli settlement of PISGAT ZEEV, in clear violation of international law and relevant United Nations resolutions".*

The other documents cited by the plaintiff (issued by the United Nations Security Council, United Nations international law commission, Court of Justice of the European Communities, members of the European

Economic Community or the European Union Council of Ministers for Foreign Affairs) are however irrelevant as they make no specific reference to the disputed tramway but rather to different situations (such as the annexation of Jerusalem, the construction of settlements or that of the separation wall) and it precisely falls to the Court, at this stage of its judgment, to state whether the aforementioned tramway, in addition to its apparent function for communication and transport, does not in fact constitute one of the means of rendering the illegal transfer of the Jewish population to East Jerusalem long-lasting.

In their defence, the companies ALSTOM and VEOLIA claim that the disputed tramway is only a simple means of transport for undifferentiated use by all the inhabitants of Jerusalem and that it does not in any way constitute a tool for "*population transfer*" according to the Geneva Convention. In regard to the documents cited by the AFPS, they reply that they do not have any legal or restrictive effect, that the report by the EU heads of mission is an internal and confidential document, which was not followed up in any way by the European Union Council and that the Human Rights Council's resolution, taken in violation of the rules governing its powers, was not ratified by the United Nations general assembly.

Regardless of the legal effect of these documents, they unquestionably constitute a concrete analysis of the situation by the supra-national authorities and, as such, factual data that the Tribunal can take into account in order to adopt its own position.

However, before examining whether the construction of the Jerusalem tramway constitutes a violation of this international rule, it is necessary to analyse the conditions for the application of this rule to the present litigation and to determine whether French nationals can directly invoke it before the national courts in order to settle litigation between private persons.

As international conventions are in essence intended to govern dealings between the States party to the conventions, it would be logical to presume the absence of direct effect of international conventions on the nationals of the signatory States (the opposite presumption applying in terms of EC law).

However, the Government Commissioner (*Commissaire du gouvernement*), Mr. ABRAHAM, concluded the opposite in the GISTI case: *"it seems to us that we can affirm that under French law, since the adherence of our legal system to the monistic principle by virtue of article 26 of the Constitution of October 27, 1946, confirmed by article 55 of the Constitution of 1958, international treaties, incorporated into national legal policy as a result of their ratification and publication in the French Official Journal, are generally presumed to produce direct effects in domestic law, i.e. to create subjective rights that individuals can invoke before the national courts."*

According to Mr. ABRAHAM, this presumption would not apply in two sets of hypotheses:
- there is no direct effect when the actual object of the conventional norm is to exclusively settle dealings between States party to the convention and not guarantee rights in favour of individuals,
- there is no direct effect when the provisions in favour of individuals are expressed in terms too general to be sufficient on their own.

However, he excludes the editorial criterion adopted by certain people on the grounds that the authors of a treaty are generally unconcerned with its status in domestic policy and leave this question to national law, major multilateral conventions being signed by both "*monistic*" States and "*dualistic*" States (monism and dualism being two contradictory views of the relationships between domestic and international legal policies).

Applying these criteria, the Council of State followed the Government Commissioner and considered in this GISTI case that the provisions of the New York Convention on the rights of the child dated January 26, 1990 did not produce direct effects in regard to private persons (order of April 23, 1997).

Bérangère TAXIL, Lecturer at the University of La Rochelle, who affirms the existence of a presumption of direct effect in France of international conventions in a work entitled *LES CRITERES DE L'APPLICABILITE DIRECTE DES TRAITES INTERNATIONAUX AUX ETATS UNIS ET EN FRANCE* [i.e. the criteria for the direct applicability of international treaties in the United States and France], notes that the Council of State and the Court of Cassation now perform a joint article-by-article analysis of international treaties in order to determine their direct applicability.

In any case, the AFPS itself acknowledged in its final submissions (page 107) that international conventions are not monolithic and that their effect (whether direct or not) must be assessed on a provision-by-provision basis. This is also the conclusion reached by Mr. ABRAHAM in the aforementioned case ("*It is not excluded a priori that all the provisions of a treaty are of such a character, or otherwise that none of them are: it can very often occur that certain articles, or even certain clauses of certain articles, can have a direct effect and others do not*.")

In this particular case, it is therefore necessary to analyse the alleged rule (article 49, paragraph 6) and, in view of the whole of the Fourth Geneva Convention, determine whether this specific provision has a direct effect on French nationals, by creating **rights** in favour of the AFPS and **obligations** incumbent upon the companies ALSTOM and VEOLIA, meaning that this international rule would be intended to govern not only dealings between signatory States but also the dealings between the parties to this litigation.

Though France has not ratified the Vienna Convention of May 23, 1969, this Convention nonetheless has customary value (as recognised by the Court of Cassation in the order of July 11, 2006) and can act as a general tool for the interpretation of international treaties. Its article 31 states that *a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

In this case, it is true, as pointed out by the AFPS, that the 4th Geneva Convention of August 12, 1949 is entitled "*GENEVA CONVENTION RELATIVE TO THE **PROTECTION OF CIVILIAN PERSONS** IN TIME OF WAR*", which leads to the presumption that it is intended to **create rights** in favour of "*civilian persons*", therefore nationals of the States in conflict.

The reading of article 4 confirms this analysis as it states that:
***Persons protected by the Convention are those who**, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.*

However, article 1 of the Convention in turn states:
The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

This wording demonstrates that though rights are conferred upon private persons, the **obligation** is incumbent upon the States party to the convention and not directly upon their nationals, the signatories undertaking "*to respect and to ensure respect for*" the rule, certainly by the other signatory States, but perhaps also by their own nationals. The terms "*in all circumstances*" indeed argue in favour of a broad interpretation.

However, in this case, the provision in question (*The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies*) only applies a prohibition to the occupying State, without creating subjective rights in favour of the nationals of the occupied territory, who are not even mentioned in this paragraph.

It therefore does not create any **direct rights** in favour of Palestinians. At most, this prohibition has **indirect** repercussions on the fate of the inhabitants of the occupied territories.

Furthermore, it does not create any obligations incumbent upon the nationals of the signatory States, meaning that this provision cannot have a direct effect in regard to the companies ALSTOM and VEOLIA nor govern their dealings with the AFPS.

Indeed, contrary to what the latter claims, this provision does not create any **direct obligations** incumbent upon French companies as, firstly, literally only the *Occupying Power* has a negative obligation (*to not transfer its population*). Secondly, article 1 of the convention states that the contracting parties undertake to respect and *ensure respect for* the convention, meaning that the obligation incumbent upon their nationals is only indirect, the direct effect applying to the States party to the convention, which are the subjects of the international humanitarian obligation.

The AFPS nonetheless claims that the 4th Geneva Convention creates obligations incumbent upon private persons, making the company a subject of international law as article 146 of the Convention imposes upon States the obligation to search for persons alleged to have committed, or to have ordered to be committed, grave breaches "*of this Convention*". It also cites the order of the International Court of Justice dated December 19, 2005 in regard to the occupation of Congo by Uganda.

However, firstly, the aforementioned article 146 states in its first paragraph that *The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.* Though article 147 does indeed count among these grave breaches the illegal deportation or transfer of populations, it must be noted that the direct international obligation is incumbent upon the States party to the convention, the criminal liability of their nationals depending upon domestic legislation, which in French law inevitably results from the principle of legality of crimes and penalties (*Nullum crimen nulla poena sine lege*). Put differently, though the 4th Geneva Convention has direct effects on States, it only has indirect effects on their nationals, in terms of obligations.

Secondly, the order of the International Court of Justice cited by the plaintiff invokes the sole liability of Uganda "*both for any acts of its military that violated its international obligations and for any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account*." This means that the liability of the "*other actors present in the territory*" depends on that of the occupying State, which is clearly contrary to the concept of direct effect.

The AFPS also wrote on page 115 of its final submissions: "*The expression "ensure respect for" supposes a third party, another subject of law upon which all of the mentioned obligations are **indirectly** but clearly incumbent*."

In regard to the three case law judgments cited (exhibits 261, 262 and 263), the first two relate to the European Convention on the protection of human rights (which has a highly specific place in domestic legal policy) and the third to the International Covenant on Economic, Social and Cultural Rights of December 16, 1966 rather than the Geneva Convention of 1949. This final judgment only highlighted the principle of primacy of the norm most favourable to the employee, excluding the more restrictive domestic law. The idea is therefore more to settle a conflict of norms and recognise the employee's rights than to create obligations incumbent upon the company.

In other terms, and to return to article 49 of the 4th Geneva Convention, not only does it not create any *direct vertical effect* in favour of the nationals of occupied territories (direct vertical effect being the right to invoke a provision against state authorities), but also cannot have any *direct horizontal effect* in dealings between nationals of a non-occupied territory (direct horizontal effect being the right to invoke a provision between private persons).

The AFPS nonetheless claims that the court judge must take into account international public policy punishing the violation of fundamental rights and explains that this taking into account is a legal means that is added to the direct applicability of the 4th Geneva Convention and, notably, its articles 49 and 53. It states that it is now commonly accepted that in addition to French domestic public policy, which allows the judge to dismiss the application of the foreign law, there is an international public policy in the strict sense of the term, translating "*less the claims of national companies than the needs of international morality*". It adds that the French Courts no longer hesitate to apply international law as imposed by the Constitution of 1958 (pages 122 to 129).

However, the judgments are essentially intended to settle conflicts of jurisdiction or conflicts of law rather than create a horizontal effect of the international norm between French nationals. This is the case in:

- the order of the Court of Cassation dated May 25, 1948, which decided that the burden of proof of the content of the foreign law applicable to the litigation was incumbent upon the plaintiff,
- the order of the Court of Appeal in Paris dated February 24, 1977, Lady O against the Department of the Public Prosecutor, which granted jurisdiction to the French Courts to declare the birth of persons born abroad since it is in the interest of public policy for any person normally living in France, even if they were born abroad and are a foreign national, to have a civil status,

- the order of the Court of Appeal in Paris dated September 10, 1993 partially cancelling the provisions of an arbitration award on grounds of the execution in France of this award being contrary to international public policy, one of the parties having committed fraud during the arbitration proceedings,
- the order of the Court of Appeal in Paris dated July 12, 1984, which cancelled the sentence having awarded jurisdiction to the Court of Arbitration, dismissing the arguments based on compatibility with the UNESCO conventions on the protection of global and cultural heritage of contracts providing for the construction of a tourist programme on the Giza pyramid plateau,
- the order of the Court of Cassation of May 10, 2006 relating to a case of domestic slavery, which decided that international public policy objected to an employer being able to invoke rules of conflicts of jurisdiction and law in order to waive the jurisdiction of the national courts and French law in proceedings with a link to France,
- the order of the Court of Appeal in Paris dated October 3, 1984, which refused to consider as contrary to international public policy bank practices ensuring applicants the minimum of guarantees from which shareholders of banks based in England benefit,
- the orders of the 1st civil chamber of the Court of Cassation dated October 25, 2005 and January 3, 2006 refusing to recognise the value in France of a unilateral repudiation judgment pronounced in Morocco,
- the order of the 1st civil chamber of the Court of Cassation dated February 1, 2005, which awarded jurisdiction to the French courts in order to punish the impossibility for a party to have access to the courts, which constitutes a denial of justice in regard to international public policy and the European convention on human rights,
- the order of the social chamber of the Court of Cassation dated January 25, 2005, which awarded jurisdiction to the French courts in the absence of a labour court set up within an international organisation.

Therefore, the plaintiff has not cited any examples where the concept of international public policy makes it possible to conclude that international norms have direct horizontal effect between private persons and even less case law judgments concluding that the specific provisions of article 49 of the Geneva Convention of August 12, 1949, analysed above, have such an effect.

On the contrary, the criminal chamber of the Court of Cassation rejected the appeal lodged against an order delivered on November 24, 1994 by the Court of Appeal in Paris, which had considered "that in the absence of direct effect of the provisions of the four Geneva Conventions, relating to the search for and bringing of proceedings against perpetrators of grave breaches, article 689 of the French Criminal Procedure Code cannot be applied" (Crim. January 6, 1998, no.95-81.527, Javor et al.).

The AFPS has also invoked "*jus cogens*" to compensate for the absence of direct effect of the Geneva Convention of August 12, 1949.

This concept was introduced into international law by the Vienna Convention of May 23, 1969 on the law of treaties, which stated in article 53 that:
A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

However, France refused to ratify the Vienna Convention precisely as a result of the introduction of this entirely imprecise concept, judging that it could compromise the stability of conventional law. The company VEOLIA TRANSPORT cites in this respect the explanations of the representative of the French state during the parliamentary debates, which are quite enlightening (VEOLIA's exhibits 48 and 49).

In any case, supposing it is applicable in France, the concept of "*jus cogens*" could only act, as the aforementioned provisions demonstrate, to settle conflicts of international norms (depriving of effect treaties contrary to the norm of "*jus cogens*"), but not to govern dealings between nationals of States recognising the value and authority of "*jus cogens*".

This was the conclusion of Professor Dominique Carreau (cited by the AFPS as a theoretician of "*jus cogens*", page 132 of its final submissions), who defined the punishment under "*jus cogens*" as the nullity of norms to the contrary (DALLOZ repertoire of international law), and who recognised the prudence of State Courts, notably the Court of Cassation, which gave precedence to the customary immunity rule in the GADDAFI case, as it was not possible to establish the existence of a peremptory norm to the contrary.

In regard to Robert KOLB, though he wrote in a doctrine article cited by the plaintiff (exhibit no.240) that "*crammed with provisions to protect persons in a situation of pronounced vulnerability*, *it [the Geneva Convention IV] establishes a minimum standard of public policy (jus cogens)*" and though he cites articles 49 and 53 as being part of this inviolable standard, he in no way draws the conclusion that these rules would have direct effects between nationals of another State. He only concludes that the PLO/Israel accords are invalid in that they have the effect of diminishing the obligations of the occupying Power provided for by Convention IV, proof that the **subjects of the obligation** of "*jus cogens*" are the States rather than individuals, certain between them (the nationals of the occupied territories) being however **the beneficiaries of the rights of protection** granted.

Continuing his analysis, he wrote: *"International life over the last thirty years has however demonstrated that modern occupation tends to extend over time, sometimes lasting several decades… Things change the longer the occupation lasts.* ***Good management of the territory may in such a case require measures of social reform and transformation capable of keeping pace with changes to the world. These reforms are necessary for the good of the local inhabitants… The only power capable of taking or enabling such developments is the occupying Power.*** *Furthermore, in order to get out of the occupation situation, it may be necessary to enter into transitional accords making some compromises…. Yet these transitional concessions may have to stray somewhat from the rigid letter of the law of occupation, including that of Convention IV.* ***The prime example that can be given is the Israeli-Palestinian process".***

This clearly recognises the limits of the *juris cogentis* value that he attaches to articles 49 and 53 of the Geneva Convention of 1949 or 23 and 46 of the Hague Regulations of 1907 in his work "*Le droit de l'occupation militaire*" (i.e. the law of military occupation), co-written with Sylvain VITE (page 253).

Finally, though this concept has sometimes been applied by international courts (International Court of Justice, International Criminal Tribunal, Court of First Instance of the European Communities), it is not intended to be applied by domestic French courts since the French State also refuses to submit to this concept. Therefore, the International Court of Justice has not given its opinion on the *juris cogentis* character of humanitarian law, even if its President, Mr. BENDJAOUI, has been able to note that the Geneva Conventions of 1949 benefited from widespread State adherence.

The judgments cited in this respect by the AFPS are not significant. Indeed:

- the order of the Council of State of October 23, 1987 (Nachfolder Navigation) makes no reference to the concept of "*jus cogens*" but rather to that of "*principle of international law*", and, furthermore, only does so in order to examine the potential liability of the State rather than that of private companies,
- the order of the Administrative Court of Appeal in Nancy of December 31, 1992 (*Association de sauvegarde des Vallées et de prevention des pollutions*, i.e. association for the protection of the Valleys and the prevention of pollution) does not make any reference to "*jus cogens*" either but only to a "*general principle of law*", and, furthermore, only does so in order to state its preference for the application of the Bonn Convention, considered as appropriate implementation of the disputed principle, rather than the aforementioned "*general principle of law*".

It shall therefore be judged that article 49 (6) of the Geneva Convention of August 12, 1949 cannot have any direct effect in dealings between private persons on the grounds that it would be the expression of a rule of "*jus cogens*".

Finally, the AFPS invokes international custom by claiming that the prohibition of the transfer of inhabitants is a rule of humanitarian law, which has a customary value.

In substance, the AFPS explains that, as the International Court of Justice judged in its advisory opinion of July 8, 1998 on the use of nuclear weapons, a large number of rules of humanitarian law are so fundamental for the

respect of human beings that they are imposed upon all States, whether they have ratified the conventional instruments that express them or not, as they constitute **inviolable principles of international customary law** (in bold in the plaintiffs' summary submissions, page 136). It therefore deduces that the conventional rules that it invokes have customary value (in that they are part of humanitarian law) and, noting that the French courts accept to use international customs upon which to base their judgments (it cites in this respect the submissions of the Government Commissioner, Mr. Jean Massot, in a case relating to the definition of High Seas, as well as numerous case law judgments and a doctrine author, Jean-François Lachaume), it asks the Court to consider that if the judge applies these norms, which are the subject of no transposition, it is that they have direct effect by nature and that they are opposable to all the subjects of law according to the expression of the Tribunal of First Instance of the European Communities.

The AFPS therefore considers that, though ratified by France, the conventional rules that it invokes have maintained their customary value.

However, though today the four Geneva Conventions of 1949, as well as numerous provisions of the protocols additional of 1997, have indeed acquired customary value, this only means that these conventions and protocols apply even to States that have not signed them.

Indeed, as both additions to and substitutes for conventional law, customary sources oblige States that are not party to the conventional instruments to respect a minimum of principles of the law of nations, as they result from established practices, principles of humanity and the demands of the public conscience.

This is, for example, the position that was adopted in the case of Nachfolger Navigation Company Ltd, for which the plaintiff cited the submissions of the Government Commissioner, Jean Massot, France having refused to sign or ratify the Geneva Convention of 1958 on the High Seas.

For all that, whenever custom is embodied in a convention, it cannot have any more effect on nationals of the signatory States than that which results from its written provisions as analysed above.

Indeed, though Eric DAVID (professor at the *Université Libre de Bruxelles*, i.e. French-speaking Free University of Brussels) was able to write in an article
"Opposability of international customary humanitarian law to non-state actors":
…it remains the case that this law can bind individuals when it is directly applicable, i.e. when the rule is aimed at private persons and that it is precise and unconditional, autonomous and complete… It is deemed to be directly aimed at individuals when it confers rights and obligations upon them, which can be invoked before a domestic judge (self-executing norm). As the Court of Justice of the European Communities has frequently repeated, a provision is directly applicable if it establishes "a precise and unconditional principle sufficiently operational to be applied by a domestic judge and which, therefore, is liable to govern the legal situation of private persons",
such is not the case in this particular case as the aforementioned conventional rule does not confer rights and obligations upon private persons as analysed above.

Supposing furthermore that the AFPS invokes a custom with content different from that of the Geneva Convention of August 12, 1949 (which is not demonstrated in the exegesis of its submissions), it would be required to define very precisely the exact content of this custom in order to enable the Court to analyse not only its direct applicability to the present litigation but above all its customary value since the aforementioned opinion of the International Court of Justice (that the plaintiff cites as the basis for the recognition of the Custom in international law) mentions "*a large number of rules of humanitarian law*", which means, conversely, that **all the rules of humanitarian law** do not have this customary value.

Therefore, since article 49(6) of the Geneva Convention of August 12, 1949 does not have direct effect between parties, there is no need to examine whether its provisions were violated by the companies ALSTOM and VEOLIA.

2) <u>The violation of article 53 of the fourth Geneva Convention of August 12, 1949:</u>

Article 53 of the fourth Geneva Convention of August 12, 1949 states that:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Unlike article 49, article 53 makes specific reference to "*private persons*", meaning that it is undeniable that this conventional provision (read in the light of the aforementioned article 4), despite being part of international law, confers direct rights upon Palestinian nationals whose territory is subject to an occupation.

The AFPS, whose standing has been recognised and whose purpose is to initiate any proceedings with the effect of ensuring the defence of the rights of the people of Palestine, can therefore invoke the rights thus granted to Palestinians.

For all that, the reading of this article also reveals that the subject of the prohibition (therefore the debtor of the obligation) is the "*Occupying Power*", i.e. in this case, the State of Israel.

The latter, which ratified the Geneva Conventions on July 6, 1951, therefore undertook, in accordance with the aforementioned article 1, "*to respect and ensure respect for*" this prohibition.

If, as the AFPS claims, the franchising contract entered into by the State of Israel and the company Citypass violates the provisions of article 53 of the fourth Geneva Convention of August 12, 1949, in that it organises the destruction of property belonging to Palestinians, it is therefore the State of Israel that failed in its obligation.

However, by bringing proceedings based on article 1382 of the French Civil Code (and not based on article 1384), the AFPS must produce evidence of the defendants' **personal fault**. Indeed, French law only recognises vicarious liability in the cases exhaustively listed (liability of parents for damage caused by their under-age children, principals for damage caused by their agents, teachers for damage caused by their students).

Put differently, though the Court considers that article 53 of the 4th Geneva Convention does indeed create rights in favour of nationals of the occupied territories, directly invocable before the Courts of the States party to the convention, it does not, however, create any obligations incumbent upon the private companies of a State that is a third party to the occupation, but only upon the "*Occupying Power*".

By writing in its previous judgment on the incidents "*The **more or less direct** participation in the disputed contracts of the defendants, private operators, **under conditions which remain to be determined and specified on the merits of the case**, characterise prima facie, at this stage of progress of the trial, the plaintiff's standing*", the Court did not say anything more and reserved the right to examine the conditions of the invoking of the liability of the defendants on the merits of the case, by separating this question on the merits from the earlier questions of admissibility.

Consequently, it is not because the AFPS has standing (even in the absence of the State of Israel from the trial) that its proceedings against the companies ALSTOM and VEOLIA are legally founded.

Indeed, supposing that the latter did, by entering into the disputed contracts, participate in the destruction of real or personal property of the Palestinian territory, they did not directly violate article 53 of the Geneva Convention as only the State of Israel was bound to "*respect and ensure respect for*" this international rule.

They cannot be judged vicariously liable.

No more than article 49, article 53 does not therefore create any direct horizontal effect between the parties to the present trial.

For the same reasons as above (which it is unnecessary to repeat here), the AFPS cannot effectively invoke international public policy, "*jus cogens*" or international custom to get around the absence of direct horizontal effect of the provisions of article 53 of the 4th Geneva Convention.

In any case (still supposing that the State of Israel entering into the disputed franchising contract constitutes a violation of its international undertakings in regard to the provisions of article 53 of the fourth Geneva

Convention), it has not been established by the AFPS – upon whom the burden of proof falls in its liability proceedings - that this violation renders the aforementioned contract null on grounds of illegal cause in regard to Israeli law.

Indeed, the company VEOLIA TRANSPORT lawfully claims that articles 6, 1131 and 1133 of the French Civil Code are not applicable to a government contract entered into by the State of Israel and a company incorporated under Israeli law for a construction project in the City of Jerusalem.

Indeed, the franchising contract specifies in article 25.1 that: *"The present Franchising Contract, its interpretation and the rights and obligations of the parties under the terms of the present and any questions relating to the above shall be governed* ***by the Laws of the State of Israel****".*

The three other contracts, which are closely linked to the fulfilment of the disputed franchising contract, are not subject to French law either:

- The shareholder agreement entered into by six predominantly Israeli companies specifies in article 5.3 that *"The shareholders shall ensure that the Company remains an active company existing validly in the State of Israel* ***in accordance with the Laws of the State of Israel*** *throughout the entire term of the Franchising Agreement*" and in article 11.2 that "*Any litigation resulting from the present Agreement or relating to it that is not settled by virtue of article 11.1, shall be subject to arbitration… The arbitrator shall conduct the arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce…, provided that this arbitration is subject* ***to the positive law of the State of Israel***".
- The operation and maintenance contract entered into by two companies incorporated under Israeli law (CITYPASS and CONNEX) specifies in article 21 "*The present contract is governed by* ***the laws of the State of Israel***",
- The engineering, procurement and construction contract entered into by CITYPASS, ALSTOM TRANSPORT, CITADIS and ASHTROM is also "*subject to the* ***law of the State of Israel***" (article 23).

In other terms, though article 1382 of the French Civil Code is naturally intended to govern dealings between the AFPS (a French association) and the companies ALSTOM and VEOLIA (French companies), the disputed contracts are not subject to French law and therefore to articles 6, 1131 and 1133 of the French Civil Code.

Since the AFPS has not invoked Israeli law to support its claims, it has therefore not been established that these contracts are null on grounds of illegal cause in regard to the law that is applicable to them.

And even if it is incumbent upon the French courts, when they recognise a foreign law to be applicable, to search for its content, it must be noted in this particular case that the plaintiffs never claimed the application of Israeli law, even though VEOLIA specifically noted that the contracts in question are not subject to the French Civil Code.

The fault alleged by the AFPS (entering into contracts null on grounds of illegal cause) has therefore not been demonstrated.

3) <u>The violation of articles 23 and 46 of the Hague Regulations of October 18, 1907:</u>

Article 23 of the regulations forming an annex to the fourth Hague Convention of October 18, 1907 states that:
In addition to the prohibitions provided by special conventions, it is especially forbidden:
…
g. to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.

Article 46 states that:
Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.
Private property cannot be confiscated.

The preamble to the Convention demonstrates that it creates direct rights in favour of inhabitants as it is affirmed by the signatories that: *According to the views of the High Contracting Parties, these provisions, the*

wording of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents ***in their mutual relations and in their relations with the inhabitants.***

However, the first two articles of the Convention also specify that:
Article 1:
The Contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the laws and customs of war on land, annexed to the present Convention.
Article 2:
The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, ***do not apply except between Contracting powers, and then only if all the belligerents are parties to the Convention****.*

Meaning that it is established that the subjects of the obligation thus created are the States party to the convention rather than their nationals.

The study of case law confirms this analysis:
- the Council of State in an order of March 30, 1966 thus refused to sentence the French State (based on article 53 of the annex to the Hague Convention of October 18, 1907) to compensate for the damage claimed by the *Compagnie Générale d'Energie Radio-électrique* for depriving them of the use of the premises requisitioned by the occupying army and the loss of industry relating to this requisitioning,
- the criminal chamber of the Court of Cassation, in an order of May 30, 1969, refused to allow a German national to benefit from the waiver of liability that article 31 of the annex of the Hague Convention of October 18, 1907 provides for in regard to acts of spying.

In any case, supposing that the State of Israel entering into the disputed franchising contract constitutes a violation of its international undertakings in regard to the provisions of articles 23 and 46 of the rules forming an annex to the fourth Hague Convention of October 18, 1907, the AFPS has not demonstrated that this violation would deprive of cause the disputed contracts, which are subject to Israeli law rather than the French Civil Code and more particularly articles 6, 1131 and 1133 thereof.

No more than articles 49 and 53 of the Geneva Convention, articles 23 and 46 of the Hague Regulations therefore do not create any direct horizontal effect between the parties to the present trial.

For the same reasons as above, the AFPS cannot effectively invoke international public policy, "*jus cogens*" or international custom to get around the absence of direct horizontal effect of these international provisions.

4) <u>The violation of article 27 of the Hague Regulations of 1907, article 5 of the Hague Convention IX of 1907, articles 4-1 and 4-3 of the Hague Convention of May 14, 1954 and article 53 of Protocol Additional no.1 to the Geneva Conventions of August 12, 1949:</u>

Article 27 of the Hague Regulations of October 18, 1907 states that:
In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

The City of Jerusalem being neither besieged nor bombarded, these provisions cannot be applied in the present case.

In regard to article 5 of the Hague Convention IX of 1907, it relates to bombardment by naval forces in time of war!

However, article 4 of the Hague Convention of May 14, 1954 states that:

1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it

to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.
3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall, refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.

The AFPS underlines that the franchising contract states that all artefacts discovered on or under the construction site shall be the property of the Government and claims that archaeological discoveries have stopped the construction work, meaning that the contractual clauses would constitute a gross violation of the rights of Palestinians by Israel.

The companies ALSTOM and ALSTOM TRANSPORT reply that, in fact, the discoveries in question are not related to Palestinian history but revealed traces of the presence of Jewish settlements at the time of the Roman occupation, which were discovered under the site of route 60.

Regardless, article 4 of the Hague Convention does not contain any more rights or obligations for civilian persons of the States party to the convention than article 49 (6) of the 4th Geneva Convention.

The preamble to the convention also demonstrates that only the States party to the convention accept any obligations:

The High Contracting Parties,
***Recognizing** that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction;*
***Being convinced** that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;*
***Considering** that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection;*
***Guided** by the principles concerning the protection of cultural property during armed conflict, as established in the Conventions of The Hague of 1899 and of 1907 and in the Washington Pact of 15 April 1935;*
***Being of the opinion** that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace;*
***Being determined** to take all possible steps to protect cultural property;*
***Have agreed** upon the following provisions:*

For all that, the Court of Appeal in the Hague judged on July 3, 2002 on the subject of the claiming of icons by the orthodox Church in Cyprus considering that:

"…the Convention and the Protocol impose obligations only on the Contracting Parties and do not contain any measures which are directly binding on the citizens of these States." (ALSTOM exhibit no.51).

Therefore, it shall be judged that article 4 of the Hague Convention of 1954 has no direct horizontal effect between the parties in the present trial.

In regard to article 53 of Protocol Additional no. 1 to the Geneva Conventions of August 12, 1949, which relates to the protection of cultural property and places of worship in international armed conflicts, article 1 also states that *the High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances*. Though this wording demonstrates the peremptory character of the norm, it is directly aimed at the States, which must not only apply it but also ensure that their counterparts apply them in case of armed conflict. Therefore, it did not create any direct obligations incumbent upon private companies.

As for the previous provisions, neither international public policy, nor "*jus cogens*" nor custom can compensate for this absence of direct conventional effect.

Though the International Court of Justice and the General Assembly of the United Nations have been able to sentence Israel for pillaging of the archaeological and cultural heritage of the occupied territories, as the AFPS underlined on page 139 of its final submissions, this is precisely because only States are the subject of the obligations thus introduced by the international community.

Furthermore and for the same reasons as above, it has not been established that the possible breach by the State of Israel of its international obligations in regard to these Regulations, Conventions and Protocols leads to the nullity of the franchising contract on grounds of illegal cause in accordance with the Israeli law to which it is subject.

In regard to the possible fault of the French State (for not having ensured respect by French companies for its international undertakings relating to the protection of cultural property), it cannot be directly held against the companies ALSTOM and VEOLIA based on article 1382 of the French Civil Code, which requires proof of personal fault.

The AFPS's tort proceedings shall therefore be dismissed as a result of the participation of the defendant companies in the fulfilment of a contract null on grounds of illegal cause.

5) <u>The violation of ethical rules:</u>

In terms of the additional claims, the AFPS claims that the companies ALSTOM and VEOLIA committed a fault by violating the ethical rules that they undertook to respect. It explains that the violation of a legal or regulatory provision is sufficient condition for the fault as written by Professor Flour and Professor Aubert in their work on contract law; that fault can exist, even in the absence of any violation of the law and result from the violation of an obligation of due or reasonable care; that the non-fulfilment of a contract can be the source of tort liability to third parties, who can invoke its incorrect fulfilment when it has caused them damage and that the violation of an internal company rule or code of professional ethics is a source of liability. It adds that if adherence to the Global Compact is a voluntary initiative, whenever someone adheres to it, they must respect it and incorporate it into their mode of operation, failing which their liability may be invoked (pages 121 and 158 of the summary conclusions).

a) <u>The fault of the company VEOLIA TRANSPORT:</u>

The AFPS states that the company VEOLIA ENVIRONNEMENT, the parent company, put in place from the start of 2004 a code of ethics applicable to all the companies belonging to the group and notably the company VEOLIA TRANSPORT; that this code of ethics incorporated into the internal rules, refers amongst others to the ten principles of the United Nations Global Compact, appended to this document. Underlining that principle no. 2 of this Compact obliges companies to "*make sure that they are not complicit in human rights abuses*.", it claims that VEOLIA failed in its obligations thus accepted by participating in the construction of the tramway on the occupied territory.

It underlines that the City of Swansea (Wales), with which VEOLIA had previously entered into contracts for the local bus network, put an end to its commercial dealings with this company after the meeting of the City Council on July 17, 2010 on the grounds that:

> *"The UN not only does not recognise Israel's annexation and occupation of East Jerusalem, but has repeatedly stated its view that the Israeli settlements in East Jerusalem and the West Bank contravene international law, and it has demanded that Israeli settlement activities and occupation should not be supported.*
>
> *The international trading company, Veolia, is a leading partner in a consortium seeking to build a light railway system linking Israel to illegal settlements in occupied East Jerusalem, a project that clearly not only contravenes UN demands but is in contravention of international law.*
>
> *This Council therefore calls on the Leader & Chief Executive not to sign or allow to be signed any new contracts or renewal of any existing contracts with Veolia or any other company in breach of international law, so long as to do so would not be in breach of any relevant legislation.*

The company VEOLIA TRANSPORT replies that the code of ethics is not a contract.

Article 1101 of the French Civil Code defines a contract as *an agreement by which one or several persons bind themselves, towards one or several others, to transfer, to do or not to do something*.

A contract therefore supposes an exchange of consent between several parties.

The question is discussed in doctrine and case law.

Indeed, certain people consider these codes and charters of conduct as contractual undertakings. This is unquestionably the case whenever the contra-party has been the recipient of the code of ethics or that the undertakings were made with such a level of publicity that it can reasonably be thought that they were aware of it, these undertakings being then incorporated into the contractual whole.

Others consider them on the contrary as unilateral undertakings, customs or natural obligations, or even company rules or practice, others still as soft law and finally others as quasi-contracts in accordance with article 1371 of the French Civil Code, i.e. *purely voluntary acts of man, from which there results some undertaking towards a third party, and sometimes a reciprocal undertaking of both parties.*

The exhaustive reading of VEOLIA's "***ethics, commitment and responsibility*** *programme*" (AFPS exhibit 152) reveals that it contains a list of the ethical rules to respect, both internally and externally:
- employees' obligations towards the employer (e.g. avoiding conflicts of interest),
- company obligations towards staff (e.g. implementing an active professional skill development, mobility and social promotion policy),
- company obligations towards shareholders (e.g. ensuring transparency of information),
- company obligations towards third parties: suppliers, service providers, clients and even more broadly "*the public*" (e.g. refusing to personally offer or receive any compensation, any services or financial benefits, whether direct or indirect).

For all that, though the company VEOLIA TRANSPORT expressed, by drawing up this code of ethics, its desire to comply with the obligations thus set out, evidence has not been produced by the plaintiffs that the other subjects of the obligations set out (whether employees, shareholders, clients or suppliers, etc.) also gave their consent to respect these obligations. In particular, it has not been demonstrated in the present case that the code of ethics of the company VEOLIA was appended to the disputed contracts, nor that its content was sufficiently well-known at the time (2005) in order to confer contractual value upon it. Given the denials of the defendant company, the plaintiff was required to demonstrate the elements liable to prove the contractual value of the code of ethics in this particular case.

Therefore, as things stand, the code of ethics of the company VEOLIA TRANSPORT must be considered as a quasi-contract rather than a genuine contract.

In any case, VEOLIA lawfully replies that the reference to the Global Compact, which features on page 10 of the ethics programme, only applies to the social field, in dealings between the company and its employees, as it is included under the title:
"3.1 Vis-à-vis employees this responsibility is characterised by:…"
and is thus labelled:
"…abiding by all basic international labour standards, such as those of the International Labour Organisation and those included in the Principles of the United Nations Global Compact (Appendix 5), in particular in regard to union rights, the prohibition of child and forced labour, and the prevention of discrimination on the basis of age, gender, ethnic origin, religion or disability."

In this sentence, the word "*those*" (*those included in the principles of the United Nations Global Compact*) grammatically refers to the nominal group "*basic international labour standards*".

The reference to the Global Compact is therefore exclusively limited to the social field and the rights of employees guaranteed by the aforementioned Global Compact.

This limitation is confirmed by the "*Summary*" featured on the second-to-last page of the "***ethics, commitment and liability*** *programme*", which classifies respect of international norms in the "*Social responsibility*" section.

As the AFPS has not invoked any violation of *basic international labour standards*, it has not therefore demonstrated the fault that the company VEOLIA TRANSPORT is alleged to have committed by participating in the construction of the disputed tramway.

b) The fault of the companies ALSTOM and ALSTOM TRANSPORT:

The AFPS states that the companies ALSTOM and ALSTOM TRANSPORT undertook to respect a code of ethics and, accordingly, to comply:
"*with the guiding principles of the OECD, the United Nations Universal Declaration of Human Rights and the principles of the Global Compact*" (page 5 of the code of ethics, exhibit 77); that ALSTOM SA is also a signatory of the United Nations Global Compact (exhibit no.76); that all the annual reports since 2002-2003 have repeatedly made reference to this code of ethics and the means of its application (exhibits no. 132 to 138).

It therefore concluded that "*the collaboration of ALSTOM TRANSPORT in the Jerusalem tramway construction contract, both in the course of its participation in the franchising contract of September 22, 2004 and the signing of the contract signed with the Company CITY PASS in the month of February 2005, constitutes a clear violation of the ethical rules with which the ALSTOM group claims to comply… By authorising the company ALSTOM TRANSPORT to participate in an unlawful contract, contrary to the principles of humanitarian law that the Group undertook to respect, the company ALSTOM clearly violated its duty of due and reasonable care in accordance with the rights and responsibilities conferred upon it*" (page 161 of AFPS's summary submissions).

As proof, it cites the statement made by Mr. KRON, Chairman and Chief Executive Officer, to the CGT union in a letter dated January 9, 2006:

> *"ALSTOM, as part of a consortium, is in charge of manufacturing 46 Citadis 302 carriages, supplying signs, the necessary infrastructure and maintenance. 500,000 working hours are generated by this contract at our sites in La Rochelle, Omans, Le Creusot, Villeurbanne and Tarbes.*
> *In regard to the route of this line, the decision was taken by the Jerusalem City Council and the Israeli Government. This route serves without discrimination the different areas of Jerusalem crossed by the line, which should improve the mobility and quality of life of its inhabitants regardless of their places of residence. If a legal judgment should lead the client to modify the route, the consortium would of course adapt to this new situation.*
> *For these reasons and contrary to your request,* ***our company cannot give up this contract*** *and risk the heavy financial penalties and the possible social consequences of such a decision".*

The companies ALSTOM and ALSTOM TRANSPORT reply that the rules of procedure of the Board of Directors is an internal document whose purpose and scope are limited to only the members of the aforementioned Board; that the code of ethics is only intended to guide the conduct of employees or representatives of the company, possibly being able to justify the moral condemnation of a form of behaviour, but without leading to the nullity or illegality of a contract; that the Global Compact is a simple invitation for its participants to respect, notably, the United Nations Universal Declaration of Human Rights and that it itself does not constitute an international norm whose non-respect would automatically lead to the nullity of the tramway construction contract. They remark that in any case, the AFPS has not demonstrated how this construction would violate the Universal Declaration of Human Rights (page 77 of ALSTOM's final submissions).

It follows therefrom that the ALSTOM companies are not specifically challenging the contractual value of the code of ethics but rather consider that the obligations it sets out would be simple duties of due care rather than duties to achieve a given result.

However, the AFPS, to which the burden of proof of fault falls in its tort proceedings could not merely claim that "*the signing of the contract signed with the Company CITY PASS in the month of February 2005, constitutes* ***a clear violation*** *of the… principles of humanitarian law*".

It is required to demonstrate what specific ethical rule that the ALSTOM companies voluntarily undertook to respect was violated in this particular case.

However, the Universal Declaration of Human Rights (to which the code of ethics of the ALSTOM companies makes reference) contains 30 articles, as well as a long preamble.

In the absence of specific detail from the plaintiff on this subject, only two articles appear to the Court to be connected with the present litigation. These are articles 13 and 17.

The first relates to freedom of movement which, until proved otherwise, is not violated in the present case by the disputed construction.

The second relates to private property and states that *No one shall be arbitrarily deprived of his property*. Though it is not challenged in this particular case by the defendants that the construction of the tramway led to certain expropriations of non-developable land, it is not necessarily contrary to the Universal Declaration of Human Rights as, by using the term "*arbitrarily*", its authors clearly intended to reserve the case of expropriations for reasons of public utility in accordance with the law. However, the AFPS has not demonstrated that the expropriations in question were not conducted according to the laws in force in East Jerusalem. To the contrary, its exhibit 184 reveals that these expropriations were scheduled as part of a development plan for Jerusalem jointly drawn up by the Ministry for Transport and the City Hall (*project 8000*) and that the City Engineer duly dealt with the appeals lodged by certain parties whose land was expropriated. The comparative examination of this project and the certificates produced for the hearing by the AFPS (exhibits 59-1 to 59-9) specifically allows us to note that the witnesses cited lodged appeals against the disputed *project 8000*. It therefore cannot be considered (failing ampler demonstration) that in this particular case there were arbitrary expropriations according to the Universal Declaration of Human Rights.

In regard to the Global Compact (to which the code of ethics of the ALSTOM companies also makes reference), it contains ten principles including the first two relating to "*human rights*" but without a specific definition and on a simple recommendatory basis ("*companies should… make sure*").

Finally, the guiding principles of the OECD are only non-restrictive recommendations sent to multinational companies by the governments who have adhered to them.

Therefore, and in the absence of the pinpointing of the specific ethical rule that was violated in the present case by ALSTOM, it has not been established that the construction of the tramway in question, serving numerous areas of Jerusalem and for use by all its inhabitants, including tourists (as shown by the English translations), would constitute a violation of Human Rights or Humanitarian Law in the broad sense.

The Occupying Power in fact has the duty to ensure the administration of the occupied territory, as recognised by Robert KOLB in the passage cited above, especially when the occupation is extended as in this particular case. Even if the *de facto* situations are not entirely comparable (occupation recognised by the International Community on the one hand and illegal occupation on the other), ALSTOM most opportunely produces the judgment of the Italian Court of Cassation dated October 3, 1951, which recognised the legitimacy of the Allies' decision to organise and manage metropolitan transport in Rome (ALSTOM exhibit no.29).

However, it has not been nor can it be challenged that movement in the City of Jerusalem has become problematic over the last few years.

And the survey conducted by VEOLIA showed that, paradoxically, it was not the Palestinian inhabitants but rather the Israeli inhabitants that expressed hostility to the tramway project. The plaintiffs have not demonstrated how this survey could not be reliable, though they recognise that it was conducted by an organisation specialised in marketing surveys.

The AFPS's tort proceedings shall therefore be dismissed as a result of the violation of their code of ethics by the defendant companies.

Failing established fault, the examination of the existence of the damage and the causal link becomes unnecessary.

ON THE COUNTERCLAIMS:

The companies ALSTOM and ALSTOM TRANSPORT both claim the sum of 50,000 euros in damages to punish their wrongful involvement in the proceedings as well as the attempted manipulation of the French courts.

The company VEOLIA TRANSPORT in turn claims the sums of € 1 in damages based on article 32-1 of the French Civil Procedure Code and € 39,530.30 to refund the reprography and sworn translation costs unduly incurred as a result of the plaintiffs' unfounded accusations. It also requests permission to have the present judgment published, at its advance expense, in return for reimbursement by the AFPS and the PLO upon request. It claims that the latter's' desire was in fact to find a sounding board in order to fuel their fight and denigrate French companies, whilst manipulating the legal system.

However, the lodging of a legal appeal constitutes in principle a right that only degenerates into abuse capable of leading to a debt of damages in case of malice, bad faith, gross error equipollent to deceit, or, at the very least, culpable carelessness; such is not the case in this particular case, the inaccurate assessment that the AFPS and the PLO made of their rights not in itself constituting a fault, while the illegality of the occupation of East Jerusalem is unanimously recognised by the International Community.

The claims for damages shall therefore be rejected.

In regard to the reprography and translation costs, they fall into the expenses governed by article 700 of the French Civil Procedure Code, whose application shall be examined below.

Finally, VEOLIA has not produced evidence of sufficient damage to its image for it to appear appropriate for the Court to order the publication of the present judgment.

ON ARTICLE 700 OF THE FRENCH CIVIL PROCEDURE CODE AND EXPENSES:

The plaintiffs should be sentenced to pay administrative and clerical costs in accordance with the provisions of article 696 of the French Civil Procedure Code.

For reasons of equity, there is no need, however, for sentencing under article 700 of the same code.

Provisional enforcement is unnecessary.

ON THESE GROUNDS,

Declares the PLO's new application to be joined to the proceedings to be inadmissible,

Declares the plea for non-admissibility on grounds of absence from the proceedings of genuine and reasonable defendants by the companies ALSTOM, ALSTOM TRANSPORT and VEOLIA inadmissible,

Rejects the application for the dismissal from the proceedings of the company VEOLIA TRANSPORT,

Rejects the application for stay of judgment awaiting the judgment by the Administrative Court in Paris,

Rejects the principal claims and counterclaims;

States that there is no need for the provisional enforcement of this judgment nor the application of the provisions of article 700 of the French Civil Procedure Code,

Sentences the AFPS and the PLO *in solidum* to pay administrative and clerical costs.

Signed in Nanterre on **May 30, 2011**

Signed by Véronique BESSEDE, Vice-President, and by Christine PREJEAN, Clerk of Court to whom the minutes of the judgment were submitted by the signatory magistrate.

THE CLERK OF COURT
[signature]

THE PRESIDENT
[signature]