

FREE TRANSLATION

Republic and canton of Geneva
JUDICIAL AUTHORITY
Investigation

Geneva, 30 July 2003

Office of the Investigating Magistrate
Rue des Chaudronniers 9
Case postale 3344
CH – 1211 GENEVE 3

Investigating Magistrate: Mr. Daniel DEVAUD

Please address all correspondence
To the undersigned Judge personally

Clerk: Mrs. Patricia CHRISTEN

Ref: PP N° P/1105/1997
c/**BHUTTO** and others
to be mentioned in all
communications

SENTENCING ORDER

In light of the criminal procedure n° P/11105/1997;

It being understood that Mr. Jens **SCHLEGELMILCH**, born on 25.11.1942, is accused of, at Geneva, between spring 1994 and spring 1997, in concert with Mrs. Benazir **BHUTTO**, at the time being the Prime Minister of Pakistan, and Mr. Asif Ali **ZARDARI**, husband of Mrs. **BHUTTO**, participating in the commission of acts to obstruct the identification of the origin, the discovery and the confiscation of agreed commissions in consideration for the conclusion of a contract between **SGS** and **COTECNA**, on one hand, and **PAKISTAN**, on the other hand;;

That Mr. **SCHLEGELMILCH** contests having so acted;

That the prevention of infraction of article 305bis of the penal code is established by the file exhibits, by the investigation and by the declarations of the indicted party made to the investigation;

CONSIDERING IN FACT

That at the time of the facts, Mr. Jens **SCHLEGELMILCH** was a lawyer in Geneva;

That he had been advising the **BHUTTO** family for many years;

That he was introduced to the **BHUTTO** family in the early 1980 when the brothers of Benazir **BHUTTO** consulted him in order that he might begin the process of obtaining a residence permit for their mother Mrs. Nusrat **BHUTTO**;

That he was introduced to Mr. Asif Ali **ZARDARI** in December 1987 at the marriage of Mr. Asif **ZARDARI** and Benazir **BHUTTO**;

* * *

That at the beginning of 1990, **COTECNA INSPECTION SA** (hereafter **COTECNA**) had concluded a contract of customs surveillance and inspection with PAKISTAN;

That in the context of the execution of this contract **COTECNA** paid 6% of the amount paid by PAKISTAN to account n° 622.902 at Barclays Bank (Suisse) SA in Geneva of the company **MARISTON SECURITIES INC.** (hereafter **MARISTON**), a company incorporated in the British Virgin Islands whose beneficial owner was Mrs. Nusrat **BHUTTO**, mother of Benazir **BHUTTO**;

That Mr. Jens **SCHLEGELMILCH** held the shares of **MARISTON** in his name but on behalf of Nusrat **BHUTTO**;

That Mr. Jens **SCHLEGELMILCH** was bound to Nusrat **BHUTTO** by a mandate agreement;

That in the context of the execution of the contract of customs surveillance and inspection linking Pakistan with **COTECNA** more than USD 1,200,000.00 was paid to **MARISTON**;

That the contract between Pakistan and **COTECNA** was terminated by the Pakistani authorities at the end of 1991;

* * *

That **SOCIETE GENERALE DE SURVEILLANCE SA** (hereafter **SGS**) had as its primary activity the performance, on behalf of its clients, of mandates of verification, inspection or certification of services or merchandise;

That during 1992, the ISLAMIC REPUBLIC OF PAKISTAN initiated an international call for bids in order to confer to a private enterprise the duty of verifying imports destined for this country (preshipment inspection of goods) and assuring the correct withholding of customs duties;

That **SGS**, whose seat is in Geneva, was a candidate for receiving this mandate and thus had submitted an offer;

That the **SGS** offer had initially been accepted by the Pakistani authorities without having concluded a contract;

That a letter of intention had even been signed by the Central Board of Revenue (hereafter **CBR**) in charge of the file for the Pakistani authorities;

That Mr. Hans **FISCHER** has been, since 1967, employed by **SGS**;

That in 1993, Hans **FISCHER** became the head of the division of “governmental contracts” of SGS;

That his role notably involves the negotiation and conclusion, on behalf of his employer, of service contracts for states outside of Switzerland;

That in autumn 1993, Mrs. Benazir **BHUTTO** became, for the second time, Prime Minister of **PAKISTAN**;

That from the time **SGS** attempted to enter in contract with Mrs. **BHUTTO** and her family in order to restart the discussion regarding the conclusion of the contract of inspection (preshipment inspection of goods);

That **SGS** had perfectly identified the influential persons surrounding Mr. **BHUTTO**;

That thus, in a memo of visit to PAKISTAN one of the **SGS** managers of the Asia zone, Mr. Bjorn Axel **SERGELBLOM**, indicated the following:

“In his view, Asif Zardary, BB’s husband, is deputy PM unofficially with a lot of pwer this was demonstrated last week with the ousting of BB’s mother from the chairmanship of PPP.

The influence of Asif Zardary is real and he has in the past always helped and favoured his friends and cronies, one of which is the **COTECNA** agent. With the same friends bank in power **COTECNA** needs to be watched with caution, in particular due to the lack of ethics of the parties concerned.”¹ (cf. p. 1455).

That when he was the assistant director of the governmental contracts division under Mr. **FISCHER** during the period in question, in a memo of 8 February 1994 Mr. F. **HERREN** indicated to Mr. **FISCHER**:

“This give me the impression that the civil servants have forgotten how BB tends to run her business (with the help of her husband), i.e. If she want it she will get it, with or without the support of the civil servants. She may realize that the trade supported is as well as the World bank and that the opposition can hardly oppose it now. There is a chance to get the project off the ground, with or without the consent of CBR. We should also admit that COTECNA is better

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placed now than before and has made some mileage. However they must have some concerns ref. delivering the baby alone.

CT has two options: either to split with us or to re-define the terms of reference (to please customs or to a level where they believe they can deliver). However because of their previous experience with Customs, they may rather go for the split under the present TOR (also more profitable for the sponsor). The trade will not return of COTECNA. We can wait for CT to do the political job and for them to approach us.

If we are interested in counter-balancing CT effort at the top, either by reaching for SHK or the husband, we should forget for time the civil servants (but keeping friendly contacts with them), they will not be the one making the decision. In such case quick access and cultivation of the top is required.”² (cf. pp. 1459-1460).

That at the beginning of March, Mr. **de BRAEKEREER**, manager of the Pakistani subsidiary of **SGS**, indicated in a memo that he would renew his efforts to see Mr. **ZARDARI** (cf. p. 1796);

That in a memo to Mr. **SEGERBLOM** of 10 and 12 December 1993, Mr. **de BRAEKEREER** explained that Asif Ali **ZARDARI** was the unofficial vice prime minister with much power as he showed by separating the mother of Benazir from the direction of PPP (Pakistani political party from which came Mrs. **BHUTTO**) (cf. pp. 1453 to 1455);

That in January 1994, Mr. Jens **SCHLEGELMILCH** met Mr. Asif Ali **ZARDARI** at a dinner in Geneva at the residence of Mr. Saddrudin **AGA KHAN**;

That he had not seen him for many years;

That according to Mr. **SCHLEGELMILCH** it was following this meeting that he recontacted **COTECNA**;

² *“This give me the impression that the civil servants have forgotten how BB tends to run her business (with the help of her husband), i.e. If she want it she will get it, with or without the support of the civil servants. She may realize that the trade supported is as well as the World bank and that the opposition can hardly oppose it now. There is a chance to get the project off the ground, with or without the consent of CBR. We should also admit that COTECNA is better placed now than before and has made some mileage. However they must have some concerns ref. delivering the baby alone.*

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That in the context of discussions with **COTECNA** which followed, Mr. **SCHLEGELMILCH** learned that it would be desirable for him to be in contact with **SGS** because **PAKISTAN** was a country too large for **COTECNA** to oversee on its own;

That during the same period, the beginning of 1994, Mr. Hans **FISCHER** approached Mr. Jens **SCHLEGELMILCH**, whom he knew to be linked to the **BHUTTO** family, in order that he might intervene in favor of the choice of **SGS**;

That Mr. **SCHLEGELMILCH**, having accepted to intervene, agreements have been concluded on 11 March 1994 under which, should the "Pakistani" contract be awarded to this company, **SGS**:

- ?? undertook to pay a commission of 1% of such sums to Mr. **SCHLEGELMILCH** personally;
- ?? entrusted to Mr. **SCHLEGELMILCH** the care of keeping in deposit the original of the preceding agreements, in order to ensure confidentiality;

That it was also envisaged that **SGS** would take charge of half of the travel costs incurred prior to the conclusion of the contract with Pakistan;

That Mr. Hans **FISCHER** signed these agreements;

That **BOMER FINANCE INC.** is an "offshore" company having its seat in the British Virgin Islands.

That Mr. Jens **SCHLEGELMILCH** is its representative.

That its beneficial owner is Asif Ali **ZARDARI**, husband of Mrs. Benazir **BHUTTO**;

That Mr. Jens **SCHLEGELMILCH** went to **PAKISTAN** from 18 to 27 March 1994 at the invitation of Prime Minister Mrs. Benazir **BHUTTO**;

That in reality, Mrs. Benazir **BHUTTO** shares with her husband the assets of **BOMER FINANCE INC.**, over which she has the power of disposition;

That in June 1994, **SGS** acquired the balance of **COTECNA** shares which it did not possess, it being understood that the majority of the **COTECNA** share capital had been acquired by **SGS** in 1991 and that in 1993 **SGS** possessed 90% of the capital of **COTECNA**;

That on 29 June 1994, **COTECNA** addressed, under the signature of Mr. Robert M. **MASSEY**, three letters sent to the office of Mr. Jens **SCHLEGELMILCH**, all of which commenced with the following phrase:

"Should we receive, within six months from today, a contract from the Government of the Pakistan for the inspection and price verification of goods imported in Pakistan, we, **COTECNA INSPECTION S.A.**, Geneva will pay ... on

the total amount invoiced and paid to us by the government of Pakistan for such a contract during the whole duration and its renewal.”³ (cf. pp. 1663, 1664, 1665 and 1666);

That one of these letters was addressed to the company **MARISTON SECURITIES INC.**, a company incorporated in the Virgin Islands (cf. p. 1663);

That **MARISTON SECURITIES INC.** should receive 6% of the amount billed and paid by the government of Pakistan under the inspection contract;

That the second of these letters was addressed to the company **NASSAM OVERSEAS INC.**, an incorporated company whose beneficial owner is Mr. Nasir **HUSSAIN**, at the time husband of the sister of Benazir **BHUTTO**;

That this letter provided for a commission of 3% of the amount billed and paid by the government of Pakistan under the inspection contract;

That the third letter was addressed to Mr. Jens **SCHLEGELMILCH**;

That this letter provided for a commission of 1.25% of the amount billed and paid by the government of Pakistan under the inspection contract;

That also on 29 June 1994, **COTECNA** sent a fourth letter addressed to **NASSAM OVERSEAS INC.**;

That in contrast to the three preceding letters of the same day sent to Mr. Jens **SCHLEGELMILCH** for himself and for **MARISTON** and **NASSAM**, this letter was modified as follows:

“In the event that, within six months from today, contracts for the inspection and the price verification of goods into Pakistan are signed between the Government of the Pakistan and COTECNA INSPECTION S.A., and SOCIETE GENERALE DE SURVEILLANCE S.A., we COTECNA INSPECTION S.A., Geneva, on behalf of SOCIETE GENERALE DE SURVEILLANCE S.A. will pay you 3% on the total amount invoiced and paid to SOCIETE GENERALE DE SURVEILLANCE S.A. by the governemt of Pakistan for such a contract during the whole duration and its renewals.”⁴ (cf. p. 1664)

³ “Should we receive, within six months from today, a contract from the Government of the Pakistan for the inspection and price verification of goods imported in Pakistan, we, COTECNA INSPECTION S.A., Geneva will pay ... on the total amount invoiced and paid to us by the government of Pakistan for such a contract during the whole duration and its renewal.”

⁴ “In the event that, within six months from today, contracts for the inspection and the price verification of goods into Pakistan are signed between the Government of the Pakistan and **COTECNA INSPECTION S.A.**, and **SOCIETE GENERALE DE SURVEILLANCE S.A.**, we **COTECNA INSPECTION S.A.**, Geneva, on behalf of **SOCIETE GENERALE DE SURVEILLANCE S.A.** will pay you 3% on the total amount invoiced and paid to **SOCIETE GENERALE DE SURVEILLANCE S.A.** by the governemt of Pakistan for such a contract during the whole duration and its renewals.”

That at the beginning of June 1994, many meetings were held under the direction of Mr. **ZARDARI** in Islamabad in the presence of representatives of the Pakistani authorities as well as representatives of **COTECNA** and **SGS**;

That, when asked why it was Mr. **ZARDARI** who had organized these meetings, Mr. **de BRAEKEREER** indicated the following: "I assume that it's because of the need for political support. I mean by my response, as it is a political decision, it is necessary that the meeting be organized by a politician."

That the negotiations on the contractual modalities were undertaken between **SGS** and **COTECNA**, which had just been purchased by **SGS**, on one hand, and the Pakistani authorities, on the other hand, during the summer of 1994;

That upon the decision of Benazir BHUTTO, who was not only Prime Minister, but also finister of finances of the ISLAMIC REPUBLIC OF PAKISTAN, the inspection contract was awarded to SGS and COTECNA, despite the opposition of the customs services of the country, on 29 September 1994;

That the internal allocation between **SGS** and **COTECNA**, **COTECNA** having been purchased by **SGS** in June 1994, was made on a 50-50 basis, **SGS** and **COTECNA** sharing the verification of imports to PAKISTAN depending on the country of origin of the imports;

That the entry in force of this contract was set at 1 January 1995;

That Mr. Jens **SCHLEGELMILCH** had personally overseen the payment by **SGS** and **COTECNA** of commissions due to **BOMER**, **NASSAM** and to himself;

Thus that, for **SGS**, Mr. Jens **SCHLEGELMILCH**:

- ?? addressed on 28 April 1995 a letter accompanied by two bills for an amount of USD 113,688.90 for **BOMER** and USD 18,948.15 for himself (cf. pp. 1756 to 1758) for the first quarter 1995;
- ?? requested by telephone from **SGS**, on 3 August 1995 (cf. 1763-1764), a statement of commissions due and their payment which corresponded to USD 340,412.42 for **BOMER** and USD 56,735.40 for himself for the second quarter 1995;
- ?? requested by telephone from **SGS** (cf. 1773-1774), a statement of commissions due and their payment which corresponded to USD 745,203.08 for **BOMER** and USD 124,200.51 for himself for the third quarter 1995;
- ?? requested by telephone from **SGS**, on 30 January 1996 (cf. 1775-1776), a statement of commissions due and their payment which corresponded to USD 364,001.36 for **BOMER** and USD 60,666.89 for himself for the fourth quarter 1995;
- ?? requested by telephone from **SGS** (cf. 1781-1782), a statement of commissions due and their payment which corresponded to USD 441,284.01 for **BOMER** and USD 73,574.35 for himself for the first quarter 1996;

- ?? requested by telephone from **SGS** (cf. 1787-1788), a statement of commissions due and their payment which corresponded to USD 338,997.13 for **BOMER** and USD 56,492.53 for himself for the second quarter 1996;
- ?? requested by telephone from **SGS**, on 1 September 1996 (cf. 1793-1794), a statement of commissions due and their payment which corresponded to USD 244,147.72 for **BOMER** and USD 40,691.29 for himself for the third quarter 1996;
- ?? requested by telephone from **SGS** (cf. 1803-1804), a statement of commissions due and their payment which corresponded to USD 870,045.77 for **BOMER** and USD 145,007.63 for himself for the fourth quarter 1996;
- ?? requested by telephone from **SGS** (cf. 1805-1806), a statement of commissions due and their payment which corresponded to USD 278,125.60 for **BOMER** and USD 46,354.27 for himself for the first quarter 1997;
- ?? requested by telephone from **SGS** (cf. 1811-1812), a statement of commissions due and their payment which corresponded to USD 638,763.67 for **BOMER** and USD 106,460.61 for himself for the second quarter 1996;

corresponding respectively to commissions of 6% due to Asif Ali **ZARDARI** and Benazir **BHUTTO** on one hand and 1% agreed for himself, on the other hand;

That Mr. Jens **SCHLEGELMILCH** also sent the following bills to **COTECNA** on behalf of **BOMER** corresponding to the 6% commission due to Asif Ali **ZARDARI** and Benazir **BHUTTO**:

- ?? 22 May 1995, USD 107,733.70 for the first quarter 1995 (p. 1751);
- ?? 2 August 1995, USSD 446,906.00 for the second quarter 1995 (p. 1749);
- ?? 6 November 1995, USD 570,538.30 for the third quarter 1995 (p. 1747);
- ?? 29 January 1996, USD 478,108.20 for the last quarter 1995 (p. 1754);
- ?? 12 April 1996, USD 500,261.34 for the first quarter 1996 (p. 1745);
- ?? 6 August 1996, USD 572,467.26 for the second quarter 1996 (p. 1743);
- ?? 26 November 1996, USD 611,090.94 for the third quarter 1996 (p. 1741);
- ?? 15 April 1997, USD 231,353.11 for the last quarter 1996 (p. 1739);
- ?? 19 August 1997, USD 316,772.15 for the first quarters of 1997 (p. 1737);

That Mr. Jens **SCHLEGELMILCH** also gave the following bills to **COTECNA**, corresponding to the 3% due by that company to **NASSAM** under the contract of 29 September 1994:

- ?? 15 August 1995 USD 223,453.00 for the period from 1 April to 30 June 1995 (cf. pp. 1727-1728);
- ?? 22 November 1995 USD 372,601.53 for the period of the third quarter 1995 for payments received by **SGS** (cf. pp. 1722-1723);
- ?? 29 January 1996 USD 239,054.10 for the period of the fourth quarter 1995 (cf. p. 1729);

- ?? 1 February 1996 USD 182,000.70 for the period of the fourth quarter 1995 for payments received by **SGS** (cf. pp. 1717-1718);
- ?? 12 April 1996 USD 250,130.67 for the period of the first quarter 1996 (cf. p. 1715);
- ?? 28 May 1996 USD 220,642.00 for the period of the first quarter 1996 for payments received by **SGS** (cf. pp. 1712-1713);
- ?? 6 August 1996 USD 286,233.63 for the period of the second quarter 1996 (cf. p. 1710);
- ?? 2 September 1996 USD 291,572.40 for the period of the second quarter 1996 for payments received by **SGS** (cf. pp. 1707-1708);
- ?? 26 November 1996 USD 305,545.47 for the period of the third quarter 1996 (cf. p. 1705);
- ?? 10 December 1996 USD 435,022.92 for the period of the third quarter 1996 for payments received by **SGS** (cf. pp. 1702-1703);
- ?? 15 April 1997 USD 115,676.55 for the period of the fourth quarter 1996 (cf. p. 1701);
- ?? 14 April 1997 USD 139,062.80 for the period of the fourth quarter 1996 for payments received by **SGS** (cf. pp. 1699-1700);
- ?? 19 August 1997 USD 190,063.30 for the period of the first quarter 1997 (cf. p. 1697);
- ?? 25 August 1997 US\$ 319,381.83 for the period of the first quarter 1997 for payments received by **SGS** (cf. pp. 1695-1696);

That finally Mr. **SCHLEGELMILCH** again billed to **COTECNA** his own remuneration of 1.25% provided by the contract of 29 June 1994, viz the following payments which he received on his SBS account:

- ?? USD 22,444.50 on 22 May 1995 (cf. pp. 1692-1693);
- ?? USD 93,105.40 on 2 and 4 August 1995 (cf. pp. 1689-1690);
- ?? USD 118,862.15 on 22 May 1995 (cf. pp. 1686-1687);
- ?? USD 99,605.90 on 29 January 1996 (cf. pp. 1683-1684);
- ?? USD 104,221.11. on 12 April 1996 (cf. pp. 1680-1681);
- ?? USD 119,264.01 on 6 August May 1996 (cf. pp. 1677-1678);
- ?? USD 127,310.61 on 26 November 1996 (cf. pp. 1673-1674);
- ?? USD 48,198.56 on 15 April 1997 (cf. pp. 1670-1671);
- ?? USD 79,193.05 on 19 August 1997 (cf. pp. 1667-1668);

That thus, from the commencement of the contract, the commissions provided by the agreements of 11 March and 29 June 1994 were regularly paid on the following accounts between May 1995 and September 1997 (cf. pp. 1080 to 1109) for a total of:

- ?? **BOMER FINANCES INC.** USD 8,190,085.00 (eight million one hundred ninety thousand eighty five dollars);
- ?? **NASSAM OVERSEAS INC.** USD 3,807,338.00 (three million eight hundred seven thousand three hundred thirty eight dollars);
- ?? Mr. Jens **SCHLEGELMILCH** USD 1,538,014.00 (one million five hundred thirty eight thousand and fourteen dollars);

That in effect at the time of the first payment of commissions by **SGS**, on 24 may 1995, **MARISTON SECURITIES INC.**, which was initially going to be used to receive 6% of the billed amounts, was replaced by the company **BOMER FINANCE INC.**, a company incorporated in the Virgin Islands whose beneficial owners are Mr. Asif Ali **ZARDARI** and Benazir **BHUTTO** (cf. p. 1662).

That by decision of the shareholders of **BOMER** on 25 June 1991, Mr. Jens **SCHLEGELMILCH** is the sole Director/Chairman;

That Mr. Jens **SCHLEGELMILCH** had received from Mr. Asif Ali **ZARDARI** a management mandate for the company **BOMER**;

That Mr. Jens **SCHLEGELMILCH** acknowledged having started to hold the accounting for account n° 552.343 of the company **BOMER** at UBS Geneva;

That such accounting mentioned: 50% AAZ – 50% BB;

That when interrogated regarding that accounting sheet, Mr. Jens **SCHLEGELMILCH** indicated that he had received instruction from Asif Ali **ZARDARI** according to which in case of death, the sum should be divided between his family and the family of his wife;

That the instruction had moreover shown that Benazir **BHUTTO** had a true discretionary power on the disposition of the **BOMER** account;

That thus, in August 1997, when her husband Asif Ali **ZARDARI** was in prison in Pakistan, Benazir **BHUTTO** acquired an item of jewelry in London for the price of GBP 117,000.00;

The item of jewelry was paid for partly in cash and, for the balance, by a bank payment from the account of **BOMER**;

That in September 1997, following the discovery of these practices, Hans **FISCHER** was laid off by **SGS**;

That by judgment of 15 April 1999, the High Court of Lahore (Pakistan) condemned Benazir **BHUTTO** and Asif Ali **ZARDARI** to 5 years of imprisonment and USD 8.6 million of fines.

That on 6 April 2001, said judgment was annulled by the Supreme Court of Pakistan which sent the case back to the first judges for a new decision (cf. pp. 949 to 1002).

CONSIDERING IN LAW:

That by taking useful means to enrich herself or enrich her husband by way of a contract concluded for the account of the State of which she assumed the supreme

direction, Benazir BHUTTO was guilty, at least, of acts relating to the unfair management of the public interests which she had the mission of defending;

That nothing effectively permits the conclusion that SGS and COTECNA, for themselves, Hans FISCHER and Robert MASSEY, had consented to a sacrifice of more than USD 5 million for the sole purpose of making a donation, without compensation, to the couple BHUTTO-ZARDARI. These payments were without a doubt made in order to obtain the desired contract, in such a manner that SGS and COTECNA therein found their benefit. If Benazir BHUTTO had acted fairly, it would not be herself or her husband, but rather the State of Pakistan, which should have benefited, by example in the form of a discount on amounts billed by SGS and COTECNA, from the financial sacrifice that SGS and COTECNA were prepared to make;

That it is moreover not doubtful that the behavior of Benazir BHUTTO and her husband is criminally reprehensible in Pakistan, as evidenced by the criminal procedures undertaken in this regard and to which the recent decision by the Supreme Court does not put an end;

That the above finding dispenses the judge to examine whether the behavior of Benazir BHUTTO meets the constitutive elements of a crime of passive corruption, within the meaning of article 315a CP and the corresponding provisions of the Pakistani penal code, it being nevertheless remembered that Pakistan has always contended that the contracts concluded by Benazir BHUTTO acting for Pakistan with SGS and COTECNA on 29 September 1994 were in violation, by Benazir BHUTTO, of the duties of her office;

That until 1 May 2000, the active corruption of foreign public agents was not subject to prosecution in Switzerland, so that Jens **SCHLEGELMILCH** cannot be reproached in Geneva for actions relating to such a corruption;

That he cannot either be blamed in Switzerland for the participation in unfair management of the Pakistani public interest or participation in the passive corruption of Benazir BHUTTO (ATF 104 IV 239);

That on the other hand, since the unfair management of public interests is a crime and that it does not matter whether this crime was committed abroad (art. 305bis, al. 3 CP), Mr. Jens **SCHLEGELMILCH** may be reproached in Switzerland for having committed acts of laundering money arising from the criminal activities of Benazir **BHUTTO**;

That by virtue of the principle of abstract double incrimination, which prevails in doctrine and in jurisprudence, the acts which, in Switzerland, were carried out in order to obstruct the identification of the origin, the discovery or the confiscation of assets of criminal origin are indeed punishable, even if the principal infraction did not occur in Switzerland (ACKERMANN, *Einziehung, organisiertes Verbrechen und Geldwäscherei*, vol. I, pp. 453 ss, n. 175 ss and citations);

That under Swiss law, the author of the principal crime may also be prosecuted for money laundering if he carries out actions proscribed by article 305bis CP (ATF 120 IV 329; 122 IV 211; 124 IV 276 = SJ 1999 p. 193);

That a fortiori he who, without being the so-called author of the principal crime, however contributes to its commission, must be prosecuted if, moreover, he participated in the putting into place of a structure having as its purpose that certain assets be paid according to modalities clearly destined to camouflage their real destination;

For this is clearly the case in the present matter: Mr. Jens **SCHLEGELMILCH** not only carried out actions so that the agreement between BOMER FINANCE INC. be kept secret, but he also participated in the putting in place of companies which he knew would serve as a screen to camouflage the real recipients of funds which he would cause to be paid by SGS and COTECNA;

That use of “screen” companies is typical of acts punishable under article 305bis CP (ATF 119 IV 245; 124 IV 276 = SJ 1999 p. 193; CASSANI, *Commentaire du droit penal suisse*, vol. 9, pp. 72 ss, n. 31 ss; CORBOZ, *Les principales infractions*, vol. II, p. 312, n. 25);

The behavior covered by article 305 bis CP is only punishable if the author knew or should have known that the estate assets which he helped to conceal came from a crime;

That this subjective element is also met in the present case, notwithstanding the denials of Mr. Jens **SCHLEGELMILCH**. Since:

- ?? It is not necessary that the author knew—or should have known—with precision from which precise principal infraction came the assets in question, nor that he knew the author of this infraction: it suffices that the author had envisaged or accepted that these assets came from a behavior capable of a large sanction, or that they served as remuneration of such behavior (CASSANI, op. Cit., p. 8, n. 51);
- ?? Jens **SCHLEGELMILCH** knew that the “bribes” paid by SGS and COTECNA were destined for the spouse of the Prime Minister Benazir BHUTTO (cf. PV SCHLEGELMILCH, pp. 105-106);
- ?? The precautions taken by Mr. Jens **SCHLEGELMILCH** in order to keep the concluded agreement secret clearly demonstrate that he was aware of its illicit character;

That in summary, Mr. Jens **SCHLEGELMILCH** thus knew that Benazir BHUTTO was acting in a criminally reprehensible manner by abusing her role in order to obtain for herself or her husband, considerable sums in the sole private interest of her family at the cost of the ISLAMIC REPUBLIC OF PAKISTAN;

That, in order to fix a penalty, the Investigation Magistrate has applied the criteria of article 63 CPS;

That the accused fulfills the objective and subjective conditions for the granting of a measure of probation, the Judge of Investigation esteeming that such a measure would be of such a nature to deter him from committing new infractions;

That the laundered assets may be confiscated provided that they are still in the possession of the launderer. If not, the confiscation may only bear on the considerations obtained by the author in remuneration for the committed infractions. If the assets which served as this remuneration are no longer available, notably because they have been mixed with the estate of the author, the confiscation may be replaced by the payment of a compensatory claim (art. 59. ch.1 and 2 CP; ATF O. of 19.2.2001 cons. 3c, n° 6S.667/2001; ATF 126 I 197 cons. 3c. bb; 122 IV 365= SJ 1999 I 419-420; CASSANI, "Le blanchiment d'argent, un crime sans victime ?"; in *Wirtschaft und Strafrecht*, Zürich 2001, p. 498-499);

That the file has established that Mr. Jens **SCHLEGELMILCH** was paid:

- ?? USD 1,538,014.00 by SGS and COTECNA;
- ?? USD 164,626.00 by BOMER FINANCE INC.;
- ?? CHF 53,437.00 by NASSAM OVERSEAS;
- ?? USD 300,000.00 by HOSPITAL MIDDLE EAST;

being in total USD 2,002,640.00 (two million two thousand six hundred forty dollars) and CHF 53,437.00 (fifty three thousand four hundred thirty seven Swiss francs) in remuneration of his participation in the laundering of the product of unfair management of Pakistani public interests;

That such remuneration was paid to him on accounts at SBS Geneva, today UBS, UBS Geneva and Banque Pasche Geneva;

That Mr. Jens **SCHLEGELMILCH** will be condemned to reimburse the remuneration obtained for his participation in money laundering, being USD 2,002,640.00 (two million two thousand six hundred forty dollars) or in Swiss francs, at an exchange rate of 1.324, CHF 2,651,495.00 (two million six hundred fifty one thousand four hundred ninety five Swiss francs) and CHF 53,437.00 (fifty three thousand four hundred thirty seven Swiss francs);

That Mr. Jens **SCHLEGELMILCH** will thus be condemned to reimburse the total sum of CHF 2,704,932.00 (two million seven hundred four thousand nine hundred thirty two Swiss francs);

That has first to be ordered the confiscation of the assets on the following accounts of Mr. Jens **SCHLEGELMILCH**:

- ?? D1-101.228 with UBS SA (ex SBS) being CHF 641,360.00;
- ?? 433142 with UBS SA Geneva, being CHF 212,166.00;

being a total of CHF 853,526.00;

That the amounts frozen do not fully cover the sum to be reimbursed; therefore, Mr. Jens **SCHLEGELMILCH** shall be condemned to the payment of a compensatory

claim in the amount of CHF 1,851,406.00 (one million eight hundred fifty one thousand four hundred and six Swiss francs);

That the Islamic Republic of Pakistan having been recognized the quality as civil plaintiff and being the victim of the actions of Mr. Jens **SCHLEGELMILCH**, it is right to order the restitution of the confiscated amounts and compensating credit to the Islamic Republic of Pakistan;

That, for the remainder, Mr. Jens **SCHLEGELMILCH** shall be condemned to the participation of a third of the costs of the procedure which amount to CHF 23,000.00, the fee being fixed at Fr. 500.00.

FOR THESE REASONS

Given in law articles 36, 41.1, 48, 50.2, 63, 68, 69, 305bis CPS; articles 218 and following CPPG;

THE INVESTIGATING MAGISTRATE

Finds Mr. Jens **SCHLEGELMILCH**, born on 25.11.1942, guilty of participation in money laundering, infraction under article 305bis paragraph 1 CP;

Sentences him to 120 days of imprisonment.

Grants him the benefit of probation with a period of testing of three years.

Orders the confiscation of CHF 853,52.00 on the following accounts:

?? D1-101.228 with UBS SA (ex SBS) being CHF 641,360.00;

?? 433142 with UBS SA Geneva, being CHF 212,166.00;

And orders the restitution thereof to the Islamic Republic of Pakistan;

Sentences Mr. Jens **SCHLEGELMILCH** to the payment of the Islamic Republic of Pakistan of CHF 1,851,406.00 as a compensatory claim;

Also condemns him to a participation in one third of the CHF 23,000.00 costs of the procedure, being CHF 8,166.00, including a fee of CHF 500.00.

Notifies the present sentencing order:

?? to the condemned Mr. Jens **SCHLEGELMILCH**, being for him at his counsel Dominique PONCET, Esq., P.O. Box 5715, 1211 Geneva 11

?? to the **Islamic Republic of Pakistan**, being for it at its counsel Jacques PYTHON, Esq., rue Massot 9, 1206 Geneva

?? to **UBS SA**, P.O. Box 2600, 1211 Geneva 2

The clerk

The Investigating Magistrate

Patricia CHRISTEN

Daniel DEVAUD

OPPOSITION

This sentencing order is susceptible to OPPOSITION by the parties within a period of FOURTEEN DAYS from its notification by simple written declaration without cause addressed to the Greffe du Tribunal de Police, P.O. Box 3715, 1211 GENEVE 3.

The opposition of a civil party may only be in regard to a civil judgment. The General Attorney, in lieu of opposition, may request during the same period of fourteen days, the transmission of the file to the competent jurisdiction for reasons of prosecution.

In the absence of opposition, the ordinance of condemnation becomes FINAL and ENFORCEABLE (art. 218 C and 370 CPP).

The period for opposition and the opposition stay the procedure until a decision is rendered on the opposition, unless the law provides otherwise (art. 369, paragraph 2 CPP).

For persons already imprisoned without warrant, the ordinance condemns them to a firm sentence taking place of the warrant and is effective as long as the condemnation has not become definitive and executory, under reserve of a provisional liberation in conformity with the provisions of articles 151 to 163 8art. 369, paragraph 3 CPP).

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STATE OF COSTS

(according to the list of procedural costs)

Emolument	CHF 500.00
Expenses	CHF 7,666.00
Emoluments and costs of the non-judicial administration	CHF

TOTAL

Found the present state of costs at CHF 8,166.00

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OPPOSITION TO TAX

(art. 6 of regulation on tariffs of costs and expenses in criminal matters)

The parties, or if it is condemned, the plaintiff, may oppose the taxation by the state of costs of the State or the taxation of costs of a party within a period of THIRTY DAYS from the notification of the decision of condemnation of costs or expenses.

Opposition is made by written request addressed to the criminal section of the Cour de Justice, which rules in last resort.

N.B.: The service of contraventions shall send you a payment slip when this ordinance of condemnation becomes definitive and executory.