

**ARBITRATION BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES**

ICSID Case No. ARB/23/2

HONDURAS PRÓSPERA INC., ST. JOHN'S BAY DEVELOPMENT COMPANY LLC, AND PRÓSPERA
ARBITRATION CENTER LLC

(Claimants)

v.

REPUBLIC OF HONDURAS

(Respondent)

Request for Bifurcation

7 January 2026



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GLOSSARY OF TERMS

§(§)	Section (sections)
Agreement for Legal Stability	Agreement for Legal Stability and Investor Protection between Honduras Próspera and Honduras
Arbitration	<i>Honduras Próspera Inc., St. John's Bay Development Company LLC, and Próspera Arbitration Center LLC v. Republic of Honduras</i> , ICSID Case No. ARB/23/2
Articles of the ILC	Articles of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts
CAMP	Committee for the Adoption of Best Practices
ICSID	International Centre for Settlement of Investment Disputes
CNI	National Investment Council
Constitution of Honduras	Political Constitution of the Republic of Honduras
Vienna Convention	Vienna Convention on the Law of Treaties
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
Claim	Claimants' Statement of Claim dated 15 October 2025
Respondent	Republic of Honduras
Claimants	Honduras Próspera Inc., St. John's Bay Development Company LLC, and Próspera Arbitration Center LLC
DR-CAFTA	Free Trade Agreement between the United States, Central America, and the Dominican Republic
Próspera Group	Honduras Próspera Inc., St. John's Bay Development Company LLC, and Próspera Arbitration Center LLC
Honduras	Republic of Honduras
HPI	Honduras Prospera Inc.

Organic Law on ZEDE

Organic Law on Employment and Economic Development Zones, Decree No. 120-2013 of the Republic of Honduras

Legal Framework of the ZEDE / ZEDEs Legal Framework

Constitutional provisions on ZEDE and the Organic Law on ZEDE

PAC

Prospera Arbitration Center LLC

SJBDC

St. John's Bay Development Company LLC

NAFTA

North American Free Trade Agreement

ZEDE

Economic Development and Employment Zones

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. Pursuant to Procedural Order No. 5 dated 14 May 2025, the Republic of Honduras (the “**Republic**,” the “**State**,” “**Honduras**,” or the “**Respondent**”) submits its Request for Bifurcation and Summary of Jurisdictional Objections on the date set forth in the amended Procedural Calendar, following the filing of the Statement of Claim (“**Memorial**”) by Honduras Próspera Inc. (“**HPI**”), St. John’s Bay Development Company LLC (“**SJBDC**”), and Próspera Arbitration Center LLC (“**PAC**”) (collectively, the “**Claimants**” and, together with the Republic, the “**Parties**”).

2. The Claimants have decided to initiate this arbitration against the Republic of Honduras, even though their claims are completely without factual or legal merit.¹ As indicated in their Statement of Claim, the Claimants attempt—unsuccessfully—to persuade the Tribunal that they have a viable claim under the Dominican Republic-Central America-United States Free Trade Agreement (“**DR-CAFTA**” or the “**Treaty**”) and are essentially seeking an order from this Tribunal requiring the Republic of Honduras to restore a legal framework relating to the Employment and Economic Development Zones (“**ZEDE**”) that has been rendered ineffective by legislative and judicial actions of the National Congress of Honduras and the Supreme Court of Justice, respectively.²

3. Notwithstanding their multiple and unfounded allegations, the Claimants present five claims that allegedly constitute a violation of the Treaty. In particular:

- (i) The Claimants allege that Honduras violated Article 10.5 of DR-CAFTA by allegedly causing them to lose their legitimate expectations and by engaging in arbitrary and unreasonable conduct.³

¹ For greater certainty, the Respondent rejects the factual and legal allegations of the Claimants in their Statement of Claim dated October 15, 2025, and denies having breached any obligation under DR-CAFTA.

² Claimants’ Statement of Claim (“**Statement of Claim**”) (October 15, 2025), ¶ 542.

³ Statement of Claim, § IV.A.1(b)(c).

- (ii) The Claimants present a conditional argument that they have been victims of indirect expropriation, in violation of Article 10.7 of DR-CAFTA, subject to the arguments presented by Honduras in this arbitration.⁴
- (iii) The Claimants invoke Article 10.4 of DR-CAFTA (“MFN Clause”) to import a legal stability clause and umbrella clause from the Bilateral Investment Treaties (“**BITs**”) signed by Honduras.⁵
- (iv) The Claimants allege that their rights are protected through a Legal Stability Agreement, which would constitute an “Investment Agreement” and an “Investment Authorization” under Article 10.28 of DR-CAFTA, and that Honduras has breached its alleged obligations.⁶
- (v) The Claimants allege that the constituent document of the Prospera ZEDE constitutes an “Investment Agreement,” which Honduras has allegedly breached.⁷

4. This arbitration does not constitute a legitimate investment dispute. It constitutes an attempt at political pressure aimed at forcing a sovereign State to cede control over its territory. The facts surrounding the filing and evolution of this claim confirm this.

5. The Claimants initiated this proceeding on 19 December 2022, announcing potential losses of up to USD 10,775,000,000. This amount constituted one of the largest claims in the history of ICSID, ranking among the largest claims filed before the Centre and significantly exceeding the historical average for claims. The extreme exaggeration of this claim provoked widespread criticism, even from renowned US senators, who publicly questioned the legitimacy of the investment system and called for its reassessment. It was clear that this exaggerated amount was intended solely to force a negotiation with Honduras.

⁴ Statement of Claim, § IV.A.3.

⁵ Statement of Claim, § IV.A.2.

⁶ Statement of Claim, § IV.B.

⁷ Statement of Claim, § IV.C.

6. Subsequent events confirmed this. After multiple requests for an extension of the deadline to file their own claim (unusual behavior for investors alleging urgent and actual damages), they finally filed their Memorial on 15 October 2025, lowering their claim to only USD 1,630,000,000. This represents an 85% reduction of the amount initially announced. This reveals the speculative nature of the Claimants' claims and confirms that the initial amount was intended solely to exert pressure on Honduras.

7. This is confirmed by the petition itself in the Statement of Claim. The Claimants' main claim does not seek monetary compensation. It requests that this Tribunal order Honduras to adopt “the necessary measures for the restitution” of their investments, which—as they explain—means: (a) recognition of their rights under the Legal Framework of the ZEDE and a guarantee that they will remain in force throughout the period of legal stability; (b) in the event that the Legal Framework for the ZEDE is not maintained, its reinstatement; and (c) the cessation of acts of interference, harassment, and defamation. In essence, the Claimants are requesting that an investment tribunal compel a sovereign State to reinstate a legal regime that was repealed by the National Congress and declared unconstitutional by the Supreme Court of Justice. It is clear that an investment tribunal does not have the power to grant this request. The opposing party, its attorneys, and all members of this Tribunal know that under the instruments that allegedly grant jurisdiction to this Tribunal, it is not possible to grant this request. This only confirms the instrumental nature of the Claimants' request for arbitration. It should be remembered that it was even filed prematurely before the Court's decision was issued.

8. The Statement of Claim faces three insurmountable barriers that render it unviable, without the need to examine its merits. Let us consider them:

First barrier: Honduras exercised its sovereign right to protect its territory

9. **Preliminary Objection 1 - Essential security exception.** The legal question raised by this objection can be formulated as follows: Does the Tribunal have jurisdiction to examine measures that Honduras adopted—as expressly stated by the three branches of government—to protect its territorial sovereignty against a regime that allowed foreign companies to exercise governmental functions over Honduran territory, when Article 21.2(b) of DR-CAFTA excludes

from the application of the Treaty measures that a State “considers necessary” for the “protection of its own essential security interests”?

10. The answer is simple and does not require examining the merits of the dispute. Article 21.2(b) of DR-CAFTA establishes a self-judging essential security exception. Its text is unequivocal: “[n]othing in this Agreement shall be construed to preclude a Party from applying measures it considers necessary [...] for the protection of its own essential security interests.” The term “considers” gives the State the discretionary power to determine when a measure is necessary to protect its essential security interests.

11. Decrees 32-2022 and 33-2022 expressly state that the ZEDE regime violated “the formal and material limits imposed by the constitution” related to “our national territory and form of government,” and that the National Congress would not allow “the sovereignty of the people to be violated.” The Supreme Court of Justice described the issuance of the ZEDE regime as a subversion of popular sovereignty that “constitutes the crime of treason” and is contrary to “the territorial integrity, sovereignty, and independence of the republic.” It could not be clearer: the three branches of the Honduran state—legislative, executive, and judicial—declared that the measures protected Honduras’ territorial sovereignty.

12. Territorial sovereignty is at the very core of the state's existence. There is no security interest more essential than the integrity of the territory and the exercise of sovereign authority over it. To claim that an arbitral tribunal can review a state's decision to protect its territorial sovereignty—when the treaty expressly excludes such measures from its scope—ignores both the text of DR-CAFTA and the fundamental principles of public international law.

13. This first barrier is directly linked to the impossibility of granting the requested remedy:

14. **Preliminary Objection 6 - Remedies outside the jurisdiction of the Tribunal.** The legal question raised by this objection is as follows: Does the Tribunal have the power to order Honduras to reinstate repealed constitutional and legal provisions, when Article 10.26(1) of DR-CAFTA expressly limits the available remedies to (a) pecuniary damages and (b) restitution of

property, and when Article 10.26(4) provides that the award shall have effect only between the disputing parties and with respect to the specific case?

15. Again, the answer is simple and does not require examination of the merits. The term “restitution of property” in Article 10.26(1) has a specific meaning in the context of DR-CAFTA and its model—NAFTA. Specialized doctrine and arbitral jurisprudence agree: this term refers to material restitution (physical return of property), not legal restitution (revocation of legislative measures or reinstatement of regulatory frameworks).

16. Ordering Honduras to reinstate the ZEDEs Legal Framework would imply: (i) revoking Decrees 32-2022 and 33-2022 of the National Congress; and (ii) setting aside the Supreme Court of Justice ruling of 25 November 2024. This order would have general effects—applicable to the other two existing ZEDEs and to any future investors in ZEDEs—in contravention of Article 10.26(4), which limits the effects of the award to the disputing parties and the specific case. More fundamentally, this order would require the Tribunal to invalidate acts of the three branches of the Honduran government, replacing Honduras' sovereign discretion over the organization of its territory with the discretion of an arbitral tribunal. Certainly, DR-CAFTA does not grant such powers.

Second barrier: no protected investment

17. **Preliminary Objection 2 - Illegal investment from the outset.** The legal question raised by this objection is as follows: Can an investment that was not made in accordance with the host State's legislation at the time of its establishment qualify as a “covered investment” under DR-CAFTA, specifically when the investor did not obtain the approval of the National Congress that Articles 206 and 329 of the Constitution and Article 38 of the Organic Law of the ZEDE established as an exclusive, non-delegable, and mandatory requirement for the creation of any ZEDE?

18. This question is resolved by interpreting DR-CAFTA and applying Honduran law—without the need to examine whether Honduras breached substantive obligations. Article 10.28 of DR-CAFTA defines “covered investment” but does not expressly state that the investment must be made in accordance with the laws of the host state. However, this requirement is implicit—

as the United States, the country of origin of the Claimants, has repeatedly acknowledged in its submissions as a Non-Contesting Party in DR-CAFTA arbitrations. In the words of the United States: *“While Article 10.28 does not expressly provide that each type of investment must be made in compliance with the laws of the host state, it is implicit that the protections in Chapter Ten only apply to investments made in compliance with the host state's domestic law at the time that the investment is established or acquired.”*⁸

19. The application of this principle to the present case is straightforward. Articles 206 and 329 of the Constitution of Honduras established that the creation of a ZEDE was “the exclusive power of the National Congress” and that this power was “non-delegable.” Article 38 of the Organic Law on ZEDEs specified that “the National Congress is responsible for creating Zones for Employment and Economic Development (ZEDEs) by decree.” Próspera ZEDE never obtained a decree from the National Congress authorizing its creation. The Supreme Court of Justice confirmed in its ruling of 25 November 2024, that “to date, there is no publication in La Gaceta providing for the approval, constitution, or creation of a ZEDE” and that therefore “the existence of acquired rights originating in the regulations under analysis is ruled out.”

Third barrier: the alleged jurisdictional bases are non-existent

20. Beyond the above barriers, the Claimants invoke jurisdictional bases that lack legal foundation. Each raises questions of law that can be resolved without examining the merits of the dispute.

21. **Preliminary Objection 3 - The MFN clause does not create new rights.** The legal question raised by this objection is: Can the Most-Favored-Nation clause in Article 10.4 of DR-CAFTA be used to import into the Treaty (a) a legal stability clause from the Honduras-Kuwait BIT and (b) umbrella clauses from other bilateral investment treaties, when these standards of protection are not expressly provided for in DR-CAFTA?

22. This question is resolved by interpreting Article 10.4, without examining the merits. Arbitral jurisprudence is consistent: the MFN clause operates within the scope of protection of the

⁸ *Sargeant Petroleum, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/22/1, Statement of the United States (November 9, 2023) (**RLA-0115**), ¶¶ 7-8.

treaty that contains it but cannot be used to import substantive rights that the parties to the treaty did not expressly include. Allowing the Claimants to import legal stability clauses and umbrella clauses through the MFN clause would subvert the carefully negotiated balance of DR-CAFTA.

23. Under this objection, the Tribunal will have to declare that it lacks jurisdiction *ratione voluntatis* to hear claims based on the alleged violation of the legal stability clause of the Honduras-Kuwait BIT and umbrella clauses of other treaties. The Claimants could only invoke the protections expressly provided for in DR-CAFTA, which again substantially reduces the scope of their claims.

24. **Preliminary Objection 4 - There is no investment agreement under DR-CAFTA.** This objection raises two legal questions. The first is: Does the so-called “Legal Stability Agreement” constitute an “investment agreement” under Article 10.28 of DR-CAFTA when (a) it was signed by the Technical Secretary of the Próspera ZEDE—who is not a “national authority” within the meaning of footnote 13 of Chapter 10, which requires “an authority of the central level of government”; (b) it does not identify natural resources or other assets controlled by a national authority that would be its subject matter; and (c) it was concluded in March 2021, almost five years after the Claimants made their investment decisions, and therefore cannot have been the basis for those investments?

25. The second legal question is: Can a legal stability agreement entered into between the Technical Secretary of the Próspera ZEDE, who is merely its legal representative, and HPI grant consent on behalf of the Republic of Honduras, without its knowledge or approval, to resolve any monetary dispute arising therefrom under the exclusive and binding jurisdiction of ICSID?

26. This question is resolved by simply applying the definitions in Article 10.28 of DR-CAFTA and Article 25 of the ICSID Convention, without examining the merits. This objection deserves particular attention because of the uniqueness—one might say audacity—of the Claimants' argument. The so-called “Legal Stability Agreement” is a contract that the Claimants themselves entered into with themselves. It was signed between HPI (one of the Claimants) and the “Technical Secretary of the ZEDE Próspera”—an employee appointed by the Claimants themselves, acting as the “legal representative” of the ZEDE controlled by the Claimants. To claim that this self-contract constitutes (i) an “investment agreement” that grants the Claimants rights

with respect to assets controlled by a Honduran national authority, and (ii) an expression of Honduras' consent to submit to ICSID arbitration, defies both common sense and the jurisdictional requirements of DR-CAFTA and the ICSID Convention. This is evident because the Technical Secretariat does not represent Honduras but rather the ZEDE. The Claimants' claim implies that an official appointed by them can bind Honduras internationally through a contract that he himself signs on behalf of an entity that they control. This argument not only lacks legal basis—it is absurd. This is another example demonstrating that the Statement of Claim is legally unviable and was only filed for instrumental purposes.

27. **Preliminary Objection 5 - There is no investment authorization.** The legal question raised by this objection is: Has HPI received an “investment authorization” under Article 10.28 of DR-CAFTA when (a) current Honduran legislation (Decree 51-2011) does not provide for the granting of “investment authorizations”; (b) CAMP is not a “foreign investment authority” within the meaning of that provision; (c) CAMP lacked the authority to authorize the establishment of a ZEDE—an exclusive and non-delegable power of the National Congress under Articles 206 and 329 of the Constitution—; and (d) none of the documents that the Claimants invoke as “authorizations” create obligations for Honduras?

28. This question is resolved by interpreting Article 10.28 and its footnote 10, without examining the merits. Article 10.28 of DR-CAFTA defines “investment authorization” as “an authorization granted by the foreign investment authorities of a Party to a covered investment or to an investor of another Party.” Footnote 10 to Article 10.28 clarifies that the determination of whether an instrument has the characteristics of an investment depends “on factors such as the nature and scope of the rights that the holder has under the host State's law.” Among the instruments that do not have the characteristics of an investment are “those that do not give rise to rights protected under domestic law.”

29. The Certificate of Registration and Incorporation into the ZEDE Regime issued by CAMP merely certifies that “a parcel of land” was incorporated into a “special land registry” administered by CAMP. It does not grant rights to the Claimants or create obligations for Honduras. The Próspera ZEDE Statutes are an internal document through which the Claimants themselves imposed rules to organize their project. They were designed, enacted, and signed by

the Claimants themselves. They are not binding on Honduras. To claim that these instruments constitute “investment authorizations” that create international obligations for Honduras is without merit.

The bifurcation is reasonable, necessary, and indispensable

30. The six preliminary objections that the Republic will raise admit clear answers based on the interpretation of legal instruments. They do not require an examination of whether Honduras actually breached substantive obligations.

31. The bifurcation allows these issues to be resolved efficiently. If the Tribunal upholds either of the first two objections, the dispute will be resolved in its entirety. If the Tribunal upholds Objection 6, the main claim—which is the real objective of this arbitration—will be dismissed. If the Tribunal upholds any of Objections 3, 4, or 5, the scope of the dispute will be substantially reduced. In all cases, bifurcation will avoid the waste of resources that would be involved in a full proceeding on the merits of claims that are destined to fail on jurisdictional grounds.

32. The alternative—proceeding directly to the merits without resolving these preliminary issues—would involve forcing Honduras to defend itself on the merits of claims over which the Tribunal lacks jurisdiction. It would subject the Parties and the Tribunal to an extensive and costly proceeding that would include the production of thousands of documents, the hearing of testimony and expert evidence, multiple rounds of briefs, and one or more hearings—all of which would be potentially unnecessary if the Tribunal concludes that it lacks jurisdiction for any of the reasons stated above.

33. Common sense dictates that in this case the Tribunal must first determine whether it has jurisdiction before investing resources in examining the merits. It is quite clear that the Claimants' case faces insurmountable legal barriers that render an examination of the merits of the dispute unnecessary—and uneconomical. Each objection raises a question of law that can be resolved by interpreting legal instruments, without the need to analyze facts or examine whether Honduras actually breached substantive obligations. These are issues that the Tribunal must resolve in any case—whether in the preliminary phase or together with the merits—but whose

early resolution would avoid the time and financial resources that would be involved in a full proceeding on the merits of claims that are destined to fail on jurisdictional grounds.

34. As will be demonstrated, the objections that the Republic of Honduras proposes to raise satisfy all the requirements for bifurcation of the proceedings. In accordance with Rule 44 of the applicable ICSID Arbitration Rules, it is clear that bifurcation would significantly reduce the time and cost of the proceedings, since the objections raised here, if successful, would resolve the case in its entirety or, at a minimum, in a significant part. Furthermore, these are preliminary objections whose analysis and resolution are independent of the merits of the claim. There is also no doubt that the objections announced by the Republic of Honduras are serious and substantial, although this is not an independent requirement under Rule 44.

35. The arguments that the Republic submits for the Tribunal's consideration are developed in this Submission as follows:

- **Section II** presents a summary of the objections to the jurisdiction of the Tribunal.
- **Section III** explains why each of the jurisdictional objections should be addressed as a preliminary matter.
- **Section IV** presents the Republic's petition and its reservation of rights.

36. The Republic submits with this request documentary annexes **R-0067** to **R-0073** and legal authorities **RLA-0057** to **RLA-0119**.

II. PRELIMINARY OBJECTIONS PROPOSED BY THE REPUBLIC OF HONDURAS

37. As this party will demonstrate in the corresponding procedural phase, this Tribunal lacks jurisdiction entirely. The Republic of Honduras hereby submits a summary of the jurisdictional objections it proposes to raise.

A. Preliminary Objection 1: The Republic of Honduras invokes the Essential Security Exception under the terms of Article 21.2 of DR-CAFTA.

38. The measures taken by the Republic of Honduras in relation to the Legal Regime of the ZEDE were implemented with the aim of safeguarding its essential security interests in relation to its territorial sovereignty. Therefore, as demonstrated below and as will be further elaborated in the memorial on jurisdictional objections, the Statement of Claim is not justiciable under Article 21.2(b) of DR-CAFTA and, consequently, the Tribunal manifestly lacks jurisdiction over this dispute.

39. As demonstrated below, the essential security exception in Article 21.2(b) of DR-CAFTA is a *self-judging* provision that manifestly excludes the Tribunal's jurisdiction, without it being possible to question its applicability (**Subsection 1**). In any event, should the Tribunal consider that it can analyze the conditions under which the Republic of Honduras may invoke the essential security exception (*quod non*), such analysis is subject only to a “*light touch*” review of the principle of good faith (**Subsection 2**).

1. The essential security exception in Article 21.2(b) of DR-CAFTA is a self-judging provision that manifestly excludes the jurisdiction of the Tribunal.

40. Honduras' first jurisdictional objection is based on Article 21.2(b) of DR-CAFTA, which contains the essential security exception. Under this provision, measures that a Party has implemented because it considers them necessary for the protection of its own essential security interests are manifestly excluded from the jurisdiction of the Tribunal:

Article 21.2: Essential Security

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of

***which it determines to be contrary to its essential security interests;
or***

(b) to preclude a Party from applying measures *that it considers necessary* for the fulfillment of its obligations with respect to the

*maintenance or restoration of international peace or security, or the protection of its own essential security interests.*⁹

41. It follows from the text of this Article that it is a “self-judging” provision¹⁰ and, consequently, that the Tribunal lacks jurisdiction to decide both on the State's decision to invoke that clause and on whether the measures implemented by the Republic of Honduras – and challenged by the Claimants¹¹ – were “*necessary*” to protect its “*essential security interests*.”

42. An interpretation of subparagraph (b) of Article 21.2 of DR-CAFTA, in accordance with Article 31 of the Vienna Convention on the Law of Treaties, “in good faith and 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,”¹² confirms this understanding.

43. *First*, an interpretation in good faith must follow the principle of *pacta sunt servanda*.¹³ That is, it must adhere to the framework agreed upon by the contracting parties to the treaty and allow the treaty to have its intended effects.¹⁴

⁹ Dominican Republic-Central American Free Trade Agreement (“DR-CAFTA”) (August 5, 2004) (**CLA-0002**), art. 21.2 (emphasis added).

¹⁰ This is the translation that other courts have given to the term “self-judging” when ruling on essential security exceptions. *See, e.g., Angel Samuel Seda et al. v. The Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (**RLA-0112**), ¶ 662; *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (October 17, 2025) (**RLA-0119**), ¶ 257. Alternatively, it could be considered a “discretionary provision for the State.”

¹¹ Statement of Claim, § IV.

¹² CVDT (**CLA-0001**), art. 31 (emphasis added).

¹³ Draft Articles on the Law of Treaties with Commentaries, in *Yearbook of the International Law Commission*, Vol. II (1966) (**CL-0029**), p. 219 (“*First, the interpretation of treaties in good faith and according to law is essential if the pacta sunt servanda rule is to have any real meaning. [...] When a treaty is open to two interpretations, one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted.*”). *See also Daimler Financial Services AG v. Argentine Republic*, ICSID Case No. ARB/05/1, Award (August 22, 2012) (**CLA-0107**), ¶ 173 (“*The Vienna Convention itself unequivocally emphasizes the foundational role of State consent in the law of treaties. The Convention employs the word ‘consent’ no fewer than 62 times, including in the titles to six articles. Within the Convention’s interpretive prescriptions, it is well-known that article 31(1) begins by instructing interpreters to interpret a treaty ‘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.’ While the article does not explicitly mention consent, the reference to ‘good faith’ nevertheless reinforces the duty of tribunals to limit themselves to interpretations falling within the bounds of the framework mutually agreed to by the contracting state parties. As stated by the International Law Commission in its commentary to the draft version of Article 31, the requirement of interpretation in good faith ‘flows directly from the rule pacta sunt servanda.’*”).

¹⁴ *Ibid.*

44. In this case, it follows from the text of Article 21.2(b) itself,¹⁵ as well as from its object and purpose,¹⁶ that the effect expected by the Contracting Parties to DR-CAFTA was to allow States to implement the measures that, in their own discretion, they deemed necessary to protect their essential security interests, without this constituting a violation of the obligations enshrined in the Treaty, including those contained in Chapter 10.

45. *Second*, the ordinary meaning that should be attributed to the terms “considers necessary” in Article 21.2(b) of the Treaty confirms that when the essential security exception is invoked, the Tribunal is automatically prevented from ruling on the legality of the measures that the Republic declared necessary for the protection of its essential security interests.

46. In this regard, according to the Royal Spanish Academy, the term “consider” means “to think or believe, based on some information, that someone or something is as expressed,”¹⁷ and the term “necessary” means “indispensable for something.”¹⁸ The meaning of these terms confirms that the provision allows each Contracting Party to qualify, at its discretion, a measure as indispensable to its essential security interests, which in turn makes it a self-judging provision.

47. *Third*, the context of Article 21.2(b), together with the other provisions of the Treaty,¹⁹ also confirms that the essential security exception is not subject to review by an arbitral

¹⁵ The Treaty refers to measures that a Party “*considers necessary*,” granting absolute discretion to the State to classify measures as measures intended to protect its security interests. DR-CAFTA (CLA-0002), art. 21.2(b).

¹⁶ The preamble to the Treaty refers to the interest of the Contracting States in “*PRESERVING their flexibility to safeguard the public welfare*,” an interest that is clearly reflected in the exceptions provided for in Chapter 21 of the Treaty and, in particular, in the exception provided for in Article 21.2(b). DR-CAFTA (CLA-0002), Preamble.

¹⁷ Royal Spanish Academy, “considerar,” *Dictionary of the Spanish Language*, available at <https://dle.rae.es/considerar> (R-0071), p. 2 PDF. The English definition of the term “consider” confirms the same understanding: “*To fix the minimum, with a view to careful examination*” Black’s Law Dictionary, definitions of *consider* and *necessary* (6th ed. 1990) (R-0068), p. 2 PDF.

¹⁸ Royal Spanish Academy, “necesario,” *Dictionary of the Spanish Language*, available at <https://dle.rae.es/necesario?m=form> (R-0072), p. 1 PDF. The English definition of the term “necessary” confirms the same understanding: “*that which is indispensable*” Black’s Law Dictionary, definitions of *consider* and *necessary* (6th ed. 1990) (R-0068), p. 3 PDF.

¹⁹ See United Nations General Assembly, *Vienna Convention on the Law of Treaties*, U.N. Doc. A/CONF.39/27, 1155 U.N.T.S. 331 (“VCLT”) (May 23, 1969) (CLA-0001), art. 31(2). Similarly, the Tribunal in *Eskosol v. Italy* considered that this includes “both the words and sentences found in close proximity to that passage, including definitional terms, and other provisions of the same treaty which help illuminate its object and purpose.” See *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Decision on Motion to Dismiss and Intra-EU Objection (May 7, 2019) (RLA-0099), ¶ 80 (emphasis added).

tribunal when invoked by a Contracting Party and, therefore, excludes the jurisdiction of such a tribunal. This is confirmed by Article 10.2.1 of DR-CAFTA, which establishes that in the event of “any inconsistency” between the Investment Chapter and another Chapter of the Treaty, “the other Chapter shall prevail.”²⁰

48. In light of the foregoing, an interpretation of the essential security exception under Article 31 of the CVDT leads unequivocally to the conclusion that its application is under the complete authority of the DR-CAFTA Contracting Parties, and nothing in the text of Article 21.2(b) suggests that its application is subject to the analysis and scrutiny of an arbitral tribunal.

49. Therefore, when the essential security exception is invoked in relation to the measures adopted by Honduras in connection with the ZEDE, the Claimant's claim alleging the supposed illegality of those measures is not justiciable and is manifestly outside the jurisdiction of the Tribunal.

2. In the event that the Tribunal considers that it can analyze the conditions for invoking the essential security exception (*quod non*), a review of the application of this exception, in accordance with the principle of good faith and with a “light touch,” also excludes the jurisdiction of the Tribunal in the present case.

50. Even if the Tribunal considers that it has jurisdiction to analyze the elements for the invocation of the essential security exception by the Republic, such analysis must be limited to determining whether Honduras has invoked Article 21.2(b) in good faith.

51. In this regard, the tribunal in *Riverside Coffee v. Nicaragua*, which found that the essential security exception was correctly invoked by Nicaragua under DR-CAFTA, considered that the review of the principle of good faith in relation to the invocation of the essential security clause should focus on “whether the measures in question are reasonably or plausibly related to the alleged essential security interests.”²¹

²⁰ DR-CAFTA (CLA-0002), art. 10.2.1 (“**Article 10.2: Relation to Other Chapters 1.** In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.”) (emphasis added).

²¹ *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (October 17, 2025) (RLA-0119), ¶ 271 (emphasis added).

52. The tribunal's considerations in *Riverside Coffee* were based on the award issued in the case of *Seda v. Colombia*, in which the tribunal adopted a “*plausibility standard*” for reviewing an essential security exception, which consists of a benchmark “for assessing the nexus between the measures taken by the State and the essential security interest it seeks to protect.”²²

53. Similarly, the tribunal in *Seda v. Colombia* established that the existence of an essential security interest is determined on the basis of at least two qualities: (i) “it must be of greater importance than simply *any* interest—vital and **going to the core of the principal functions of the State**”; and (ii) “it must be related to security matters, that is, protection against threats.”²³ Along these lines, the court in *Seda* concluded that “the essential security interests of a State **are an expression of its sovereignty**.”²⁴

54. Based on this definition, in its application of the “standard of plausibility” for analyzing the good faith principle of the essential security exception, the court in *Seda* considered that its task was to ascertain whether it was “plausible” that the essential security interest declared by the State (in that case, the fight against organized crime) “could be connected” to the measures taken by Colombia in defense of that particular interest.²⁵

55. Similarly, in its analysis, the tribunal in *Riverside Coffee v. Nicaragua* determined that there was “a reasonable and plausible connection” between one of the measures adopted by Nicaragua (the May 2018 barracks order) and its essential security interest in addressing the civil unrest that had arisen in the country.²⁶

56. As can be seen, the application of these considerations is consistent with the tribunal's conclusion in *Seda*, according to which review of the essential security exception

²² *Ángel Samuel Seda et al. v. The Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112), ¶¶ 655, 742-743, 748.

²³ *Ángel Samuel Seda et al. v. The Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112), ¶ 642 (emphasis added).

²⁴ *Ángel Samuel Seda et al. v. The Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112), ¶ 644 (emphasis added).

²⁵ *Ángel Samuel Seda et al. v. The Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (RLA-0112), ¶ 792 (emphasis added).

²⁶ *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (October 17, 2025) (RLA-0119), ¶ 277 (emphasis added).

“involves a good faith review with a 'light touch,' **not so restrictive as to infringe upon the explicit self-judgmental language of the ESI Provision.**”²⁷

57. In the present case, there is no doubt that the measures adopted by the Republic bear a reasonable and credible relationship to the essential security interest of protecting the territorial sovereignty of Honduras.

58. Essentially, the Claimants allege that the Republic of Honduras repudiated the Legal Regime of the ZEDE by issuing Decrees 32-2022 and 33-2022, which repealed the constitutional provisions relating to the ZEDE;²⁸ as well as through the ruling dated 25 November 2024, of the Supreme Court of Justice of Honduras,²⁹ which declared the Legal Regime of the ZEDE to be completely and *ex tunc* unconstitutional.³⁰

59. From a simple reading of these decrees and the aforementioned ruling it is clear that Honduras adopted these measures with the sole objective of protecting its territorial sovereignty, which was affected by the implementation of the Legal Regime of the ZEDEs, which modified constitutional provisions whose reform is strictly prohibited by the Constitution of the Republic of Honduras and is closely related to the manifestation of the sovereignty of Honduras in its territory.³¹ In effect, this regime allowed Próspera ZEDE to act in the territory of the Republic of Honduras as if it were a sovereign state.

²⁷ *Ángel Samuel Seda et al. v. Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (**RLA-0112**), ¶ 655 (emphasis added).

²⁸ Statement of Claim, ¶¶ 252-261.

²⁹ Statement of Claim, ¶¶ 306-312.

³⁰ The legal regime governing the ZEDE, which was declared wholly unconstitutional by the Supreme Court of Justice ruling, includes (i) Legislative Decree No. 236-2012, which ordered the creation of the ZEDE; (ii) Legislative Decree No. 120-2013, which contains the Organic Law of the ZEDE; (iii) Legislative Decree No. 368-2013, which ratifies the appointment of the members of the CAMP; Legislative Decree No. 153-2013, which contains the Program for the establishment of the ZEDE; (iv) Legislative Decree No. 32-2021 related to the tax levied on sales of goods and services that the ZEDEs or companies make in the Honduran market; (v) Legislative Decree No. 68-2021; and (v) any other regulation or legal act related to the ZEDEs. See Judgment of the Supreme Court of Justice of Honduras (Gazeta No. 36,698) (November 25, 2024) (**C-0559**), pp. 58-59.

³¹ See Preliminary Objections of the Republic, ¶¶ 2-5; see also Republic of Honduras, *Decree No. 32-2022, which decrees the repeal of Constitutional Reform Decrees* (April 21, 2024) (**C-0057**), p. 4; Republic of Honduras, *Decree No. 33-2022, decreeing the repeal of the Organic Law on ZEDEs* (April 22, 2022) (**C-0060**), pp. 8-9; Judgment of the Supreme Court of Justice of Honduras (Gazeta No. 36,698) (November 25, 2024) (**C-0559**), pp. 16-17.

60. In this regard, when issuing Decrees 32-2022 and 33-2022, the Republic expressly stated that it was adopting these measures because the Legal Regime of the ZEDEs violated the territorial sovereignty of Honduras and was contrary to fundamental constitutional precepts.³²

61. For example, in the recitals of Decree 32-2022, it is expressly stated that the Legal Regime of the ZEDEs transgresses “the formal and material limits imposed by the constituent assembly on the powers of the State, which protect our national territory and form of government.”³³ Similarly, Decree 33-2022 stipulated that the National Congress of the Republic would not allow “the form of government and national territory of Honduras to be violated, affected, damaged, modified, or altered” and would not allow “the sovereignty of the people to be violated” through the Legal Regime of the ZEDEs.³⁴

62. For its part, in its ruling, the Supreme Court of Justice was equally emphatic in pointing out that the issuance of the Legal Regime of the ZEDEs constituted a supplanting of popular sovereignty, which “is classified as a crime of treason,”³⁵ and contrary to the “territorial integrity, sovereignty, and independence of the Republic.”³⁶

63. In any case, the Supreme Court of Justice's decision only ruled on the unconstitutionality of the ZEDE Legal Regime, without affecting the companies that sought to operate within the ZEDEs. In its decision, the Court declared that “the investments of companies or enterprises established in good faith that sought to become zones of employment and economic development, as well as their property, acquired in good faith,” would be protected and subject to the legal regime in force prior to the issuance of the ZEDE Legal Regime. Thus, the Court concluded that these companies “have at their disposal all the civil, commercial, tax,

³² Republic of Honduras, *Decree No. 32-2022, decreeing the repeal of Constitutional Reform Decrees* (April 21, 2024) (C-0057), pp. 4-5; Republic of Honduras, *Decree No. 33-2022, decreeing the repeal of the Organic Law on ZEDE* (April 22, 2022) (C-0060), pp. 8-9.

³³ Republic of Honduras, *Decree No. 32-2022, decreeing the repeal of Constitutional Reform Decrees* (April 21, 2024) (C-0057), p. 5.

³⁴ Republic of Honduras, *Decree No. 33-2022, decreeing the repeal of the Organic Law on Special Economic Development Zones* (April 22, 2022) (C-0060), pp. 8-9.

³⁵ Ruling of the Supreme Court of Justice of Honduras (Gazeta No. 36,698) (November 25, 2024) (C-0559), pp. 17-22.

³⁶ *Ibid.*

administrative, and other legislation and procedures to legalize and regularize their status, in order to continue operating in Honduras under the constitutionally established economic regime.”³⁷

64. From the foregoing, it is clear that the measures that are the subject of the Claimants' claim in this arbitration were implemented by the Republic with the sole objective of protecting its territorial sovereignty and the integrity of the Political Constitution of Honduras, which constitutes a clear and unquestionable essential security interest of the Republic of Honduras, as they are directly related to the “core of the main functions of the State,”³⁸ and are a clear expression of the sovereignty of the Republic.³⁹

65. Having demonstrated the application in good faith and the clear connection between the measures adopted by Honduras and the essential security interest of protecting its territorial sovereignty, it is evident that the Claimants' claim is not justiciable under DR-CAFTA by express mandate of Article 21.2(b) and, consequently, falls outside the jurisdiction of the Tribunal.

B. Preliminary Objection 2: The Claimants have not made a protected investment in accordance with Honduran law and DR-CAFTA

66. The Claimants allege that their operations in Honduras “*qualify as covered investments*” under DR-CAFTA.⁴⁰ To this end, they list a series of assets, which would take one of the forms that, according to Article 10.28 of the Treaty, an investment may take.⁴¹ As can be seen from their allegations, all of them have as their basis and common denominator the defunct Legal Regime of the ZEDE and the activities of ZEDE Próspera in Honduras.⁴²

³⁷ *Ibid*, pp. 59-60.

³⁸ *Ángel Samuel Seda et al. v. The Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (**RLA-0112**), ¶ 642.

³⁹ *Ibid.*, ¶ 644.

⁴⁰ Statement of Claim, ¶ 346.

⁴¹ Statement of Claim, ¶¶ 356-357.

⁴² Statement of Claim, ¶ 347 (“*HPI’s investments in Honduras include (i) direct and indirect ownership of shares in enterprises incorporated under the laws of Honduras and of Próspera ZEDE [...] (ii) capital contributions to fund acquisitions, operations, and the development of its businesses in Próspera ZEDE [...] (iii) contributions to and development of Próspera ZEDE’s governance services [...] (ix) other intangible property rights, including, without limitation, acquired rights under the ZEDE Legal Framework.*”); *ibid.*, ¶ 348 (“*SJBDC’s investments in Honduras include (i) shares in enterprises incorporated under the laws of Próspera ZEDE [...] (vii) other intangible property rights, including, without limitation, acquired rights under the ZEDE Legal Framework.*”); *ibid.*, ¶ 349 (“*PAC’s*

67. As is widely accepted in international law,⁴³ for an investment to fall within the scope of protection of an international treaty such as DR-CAFTA, it is necessary that such investment be made in accordance with the domestic law of the host State at the time of its establishment.⁴⁴ This has been reiterated by the U.S. Department of State itself, the Claimants' country of origin and a Contracting Party to DR-CAFTA, in its submissions as a Non-Disputing Party in other cases under DR-CAFTA. In its words:

"The determination as to whether a particular instrument has the characteristics of an investment is a case-by-case inquiry, involving an examination of the nature and extent of any rights conferred under the State's domestic law. While Article 10.28 does not expressly provide that each type of investment must be made in

investments in Honduras include (i) contracts with related entities and third parties necessary to provide dispute resolution services in Próspera ZEDE [...] and (iv) other intangible property rights, including, without limitation, acquired rights under the ZEDE Legal Framework.")

⁴³ See C. McLachlan et al., "6. Investment," in *International Investment Arbitration: Substantive Principles* (2nd ed. 2017) (RLA-0089), ¶ 6.110 ("[A]n investment that is made in breach of the laws of the host State will not qualify as an investment under an investment treaty. This will be the case even where the applicable treaty does not contain an express requirement of compliance with the laws of the host State."). See also *Mamidoil Jetoil Greek Petroleum Products S.A. v. Republic of Albania*, ICSID Case No. ARB/11/24, Award (March 30, 2015) (RLA-0082), ¶¶ 359-360 ("[T]he Tribunal shares the widely-held opinion that investments are protected by international law only when they are made in accordance with the legislation of the host State. States accept arbitration and agree to waive part of their immunity from jurisdiction to encourage and protect investments in international conventions. In doing so, they cannot be expected to have agreed to extend that mechanism to investments that violate their laws; likewise, it cannot be expected that States would want illegal investments by their nationals to be protected under those international conventions. This principle [...] applies to the substance of the protection when the relevant international instrument, such as the ECT in this case, does not specifically refer to a requirement of legality."); *Blusun S.A. et al. v. Italian Republic*, ICSID Case No. ARB/14/3, Award (December 27, 2016) (RLA-0087), ¶ 264 ("[I]t is true that the ECT does not lay down an explicit requirement of legality, but the Tribunal concludes that it does not cover investments which are actually unlawful under the law of the host state at the time they were made because protection of such investments would be contrary to the international public order."); *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award (April 15, 2009) (CLA-0069), ¶ 101 ("In the Tribunal's view, States cannot be deemed to offer access to the ICSID dispute settlement mechanism to investments made in violation of their laws. If a State, for example, restricts foreign investment in a sector of its economy and a foreign investor disregards such restriction, the investment concerned cannot be protected under the ICSID/BIT system. These are illegal investments according to the national law of the host State and cannot be protected through an ICSID arbitral process."); *Yukos Universal Limited (Isle of Man) v. Russian Federation*, CPA Case No. 2005-04/AA227, Final Award (July 18, 2014) (CLA-0235), ¶ 1349 ("The Tribunal notes that there is support in the decisions of tribunals in investment treaty arbitrations for the notion that, even where the applicable investment treaty does not contain an express requirement of compliance with host State laws (as is the case with the ECT), an investment that is made in breach of the laws of the host State may either: (a) not qualify as an investment, thus depriving the tribunal of jurisdiction; or (b) be refused the benefit of the substantive protections [...]").

⁴⁴ This is clear from the definition of "enterprise" in Article 2.1 of DR-CAFTA, according to which "enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association." The same is clear from Article 10.28, which recognizes as a form of investment "(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law." See DR-CAFTA (CLA-0002), arts. 2.1, 10.28.

*compliance with the laws of the host state, it is implicit that the protections in Chapter Ten only apply to investments made in compliance with the host state's domestic law at the time that the investment is established or acquired.”*⁴⁵

68. In this case, and without prejudice to the original unconstitutionality affecting the entire Legal Regime of the ZEDE, which was declared by the Supreme Court in its decision dated 20 September 2024, the Claimants did not even comply with the requirements of Honduran law applicable at the time they claim to have made their investment. In particular, ZEDE Próspera *never* obtained the approval of the National Congress to be established as a ZEDE, an essential requirement under the applicable regulations, leaving aside—for the purposes of this analysis—its unconstitutionality.

69. Indeed, given the serious legal consequences of creating a ZEDE in terms of the transfer of eminently sovereign prerogatives, Article 329, paragraph six, of the Constitution of the Republic of Honduras, in accordance with Article 206 of the same Constitution,⁴⁶ established as an essential requirement that only the National Congress—by a qualified majority—could create a ZEDE. In other words, and without prejudice to the foregoing, such approval constituted an “exclusive” and “non-delegable” power of Congress:

“The creation of a zone subject to a special regime is the exclusive power of the National Congress, by a qualified majority, following a plebiscite approved by two-thirds, in

⁴⁵ *Sargeant Petroleum, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/22/1, Statement of the United States (November 9, 2023) (RLA-0108), ¶¶ 7-8 (emphasis added). See also *Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, Statement of the United States (February 19, 2021) (RLA-0103), ¶¶ 7-8 (“Article 10.28 sets out a list of forms that ‘investment’ may take, including, at subparagraph (g) of the definition, ‘licenses, authorizations, permits, and similar rights conferred pursuant to domestic law.’ Subparagraph (g), together with its footnote 10, refers to domestic law to provide guidance as to when such an instrument may have the requisite characteristics of an investment. Specifically, whether such an instrument may constitute an investment will depend on such factors as the nature and extent of the rights that the holder has under the law of the host State Party. As the United States has previously explained with respect to the meaning of footnote 10, the determination as to whether a particular instrument has the characteristics of an investment is a case-by-case inquiry, involving examination of the nature and extent of any rights conferred under the State’s domestic law.”) (emphasis added); *Sea Search-Armada, LLC v. The Republic of Colombia*, CPA Case No. 2023-37, Statement of the United States (December 8, 2023) (RLA-0109), ¶¶ 7-8.

⁴⁶ Constitution of the Republic of Honduras (1982) with amendments through March 20, 2013 (C-0004), art. 206.

accordance with the provisions of Article 5 of the Constitution.
[...]"⁴⁷

70. This is also reiterated in Article 38 of the repealed Organic Law on ZEDEs, specifying that the creation of ZEDEs is the exclusive responsibility of the National Congress by means of a **legislative decree**, which must also comply with (i) the issuance of a ruling by the National Institute of Statistics ("INE"), if located in an area with low population density, certifying this circumstance, or (ii) the holding of a plebiscite in the area where the ZEDE is located, if it is an area with high population density:

"The National Congress is responsible for creating Employment and Economic Development Zones (ZEDE) by decree, in compliance with the following rules:

1) When the Zone to be declared is of low population density, the opinion of the National Institute of Statistics (INE) must be obtained, certifying this situation in accordance with the provisions of Article 329 of the Constitution of the Republic; and,

2) When the Zone to be declared is located in an area with a high population density, prior to its creation, a plebiscite must be held in the area where the zone is located, and its creation may only be decreed if the result of the consultation is favorable in accordance with Article 5 of the Constitution of the Republic."⁴⁸

71. As stated in their Memorial, the Claimants have sought to bypass this parliamentary approval—aware that they had no way of obtaining it due to the enormous social and political opposition that the ZEDE regime had generated in Honduras—⁴⁹ arguing that Article 329 of the

⁴⁷ Constitution of the Republic of Honduras (1982) with amendments through March 20, 2013 (C-0004), art. 329 (emphasis added).

⁴⁸ Decree No. 120-2013, approving the Organic Law of the ZEDE (September 6, 2013) (C-0006), art. 38 (emphasis added).

⁴⁹ See J. Burgos, "Bar Association and Association of Mayors of Honduras demand repeal of ZEDEs," *Criterio* (June 18, 2021) (R-0023); Honduran Council of Private Enterprise, *Legal Analysis of ZEDEs in Honduras* (June 2, 2021) (R-0021); National Anti-Corruption Council & Anti-Corruption Criminal Policy Observatory, *The Deadly Sins of ZEDEs* (June 2021) (R-0020); United Nations in Honduras, *Press Release: ZEDEs could pose serious risks to the Honduran State's guarantee of human rights* (June 8, 2021) (R-0022); "Diocese of La Ceiba says ZEDEs 'are a perverse project' and calls for demonstrations against them," *Proceso Digital* (June 18, 2026) (R-0073); L. Vijil Saybe and O. O. Hendrix, "ZEDE in Honduras: rupture between territoriality and democracy," *Reflection, Research, and Communication Team of the Society of Jesus* (July 26, 2021) (R-0070); Report of the Investigative Delegation of the National Bar Association on Employment and Economic Development Zones in Honduras (September 14, 2014) (R-0069), p. 27 ("Honduras urgently needs economic development, but development policies cannot replicate decades of neoliberal initiatives that have done nothing to alleviate the suffering of the majority of the population and have only

Constitution would make such approval unnecessary in areas of low population density.⁵⁰ They argue that ZEDE Próspera would fall under this exception, as the municipalities of Roatán and La Ceiba (where they operate de facto) were declared low-density population areas in accordance with Article 39 of the Organic Law on ZEDEs.⁵¹

72. However, the Claimants' interpretation has no basis whatsoever. Article 329 of the Constitution clearly requires that the “creation” of any ZEDE must be approved by the National Congress, which is reiterated by Article 38 of the Organic Law on ZEDEs. The declaration of the departments adjacent to the Gulf of Fonseca and the Caribbean Sea as “low population density areas” made by Article 39 of the Organic Law on ZEDEs only allows ZEDE Próspera to be exempted—subject to approval by the INE (which they have not proven to have)—from holding a favorable plebiscite, but never from the need to have a legislative decree specially issued by the National Congress.⁵²

73. It goes without saying that Article 39 of the Organic Law on ZEDEs is a provision of infra-constitutional rank, and therefore cannot be interpreted in terms that imply a reform of the Constitution, much less by ignoring the quorums established for that purpose, as the Claimants claim. Nor could that article have attributed to the CAMP—an entity whose operations remain outside any democratic control and whose vacancies are filled indefinitely by its own members—a function that it did not legally have, in accordance with Article 11 of the aforementioned Organic

served to enrich the country's economic and political elites. Against this backdrop, the prospect of ZEDEs raises considerable alarm about the future of the hundreds of thousands of Hondurans for whom the government no longer provides security, stability, and basic human needs. The broad description presented in the ZEDE Law itself will strip citizens of rights guaranteed under Honduran and international law, and the implementation of these zones threatens to violate a wide range of internationally protected rights. Instead of fulfilling its obligations to protect its citizens, Honduras is ceding those obligations to international investors who are focused on increasing profits rather than providing economic and personal security.

⁵⁰ Statement of Claim, ¶ 67 (“*The creation of a specific ZEDE is a power of the National Congress, which may create a ZEDE by a two-thirds majority of votes. However, in zones of low population density, ZEDEs may be created without a vote of Congress. [...].*”)

⁵¹ This is the view of Mr. Aldo Federico Cosenza Bungener in his legal report prepared for the Claimants. See Legal Report by Aldo Federico Cosenza Bungener-Statement of Claim (October 10, 2025), ¶ 68.

⁵² J. A. Mejía Rivera, “Notes for reflection on international claims arising from the repeal of the ZEDEs,” *Revista Envío Honduras*. Year 21. No. 73 (April 2023) (RLA-0106), p. 25 (“Although the Organic Law on ZEDE creates the Committee for the Adoption of Good Practices, this is an administrative body and none of the ten functions assigned to it by law empower it to create ZEDE. In this regard, it is important to note that Article 39 of the Organic Law on ZEDEs establishes that low-density population areas in municipalities located in the departments of Golfo de Fonseca and Mar Caribe are 'declared subject' to the ZEDE regime. For its part, Article 329 of the Constitution states that the 'creation' of a ZEDE 'subject' to a special regime 'is the exclusive power of the National Congress'.”)

Law (which regulates its functions in detail)⁵³ and which, as we have seen, belongs “exclusively” and “non-delegably” to the National Congress by express constitutional mandate.⁵⁴⁻⁵⁵

74. In these circumstances, it is clear that the Claimants do not have an investment protected under DR-CAFTA and that they have been operating irregularly all this time, as the Republic of Honduras has previously stated,⁵⁶ various social actors denounced many years ago,⁵⁷ and the Supreme Court itself pointed out in its decision dated 20 September 2024.⁵⁸

C. Preliminary Objection 3: The Tribunal lacks jurisdiction *ratione voluntatis* to hear the Claimants' claim regarding the alleged violation of Most-Favored-Nation (“MFN”) treatment.

75. The Tribunal lacks jurisdiction *ratione voluntatis* with respect to the MFN claim under Article 10.4 of DR-CAFTA, as the Claimants cannot import rights that are not provided for

⁵³ See Decree No. 120-2013, approving the Organic Law on ZEDEs (September 6, 2013) (C-0006), art. 11 on the functions of the Committee for the Adoption of Best Practices.

⁵⁴ Constitution of the Republic of Honduras (1982) with amendments up to March 20, 2013 (C-0004), arts. 206, 329. See also J. A. Mejía Rivera, “Notes for reflection on international claims arising from the repeal of the ZEDE,” *Revista Envío Honduras*. Year 21. No. 73 (April 2023) (RLA-0106), p. 25 (“In light of the grammatical or literal interpretation of a rule that focuses on the words used to communicate its meaning, Article 39 of the law only empowers the National Congress to ‘declare subject’ areas with low population density, but it is the National Congress that has the ‘exclusive power to create them. It is obvious that the verb “declare” is not synonymous with “create.” Furthermore, in order to declare such areas subject, Article 329 of the Constitution states that the INE must calculate the population density and issue a ruling.”).

⁵⁵ Furthermore, the fact that the Board of Directors of the Property Institute, in Agreement No. CD-IP-008-2019, referred to Article 39 of the Organic Law and its mechanism for incorporating real estate, in no way confirms the Plaintiffs' interpretation. It suffices to read the aforementioned agreement—which at no point mentions Próspera ZEDE—to see that all it does is regulate how property title transfers will take place in the event that a ZEDE is effectively established, which is also not for the aforementioned Board to determine. See Legal Report by Aldo Federico Cosenza Bungener—Complaint Memorandum (October 10, 2025), ¶ 69, referring to Agreement No. CD-IP-008-2019 of June 10, 2019, published in the Official Gazette “La Gaceta” (June 14, 2019) (C-0325).

⁵⁶ Preliminary Objections of the Republic of Honduras pursuant to Article 10.20.5 of DR-CAFTA (“**Preliminary Objections of the Republic**”) (August 30, 2024), ¶ 6.

⁵⁷ See, e.g., Honduran Council of Private Enterprise. *Legal Analysis of ZEDEs in Honduras* (June 2, 2021) (R-0021); J. Burgos, “Bar Association and Association of Mayors of Honduras Demand Repeal of ZEDEs,” *Criterio* (June 18, 2021) (R-0023); National Anti-Corruption Council & Anti-Corruption Criminal Policy Observatory, *The Deadly Sins of the ZEDE* (June 2021) (R-0020).

⁵⁸ Supreme Court of Justice, *Appeal of Unconstitutionality SCO-0738-2021, Judgment* (September 21, 2024) (R-0066), p. 24 (“To date, there has been no publication in La Gaceta providing for the approval, constitution, or creation of a ZEDE, by virtue of which the existence of acquired rights originating in the regulations under analysis is ruled out, and which is considered unconstitutional for violating irreformable or immutable articles.”).

in the Treaty. Therefore, the Claimants are precluded from bringing this claim for violation of MFN.

76. In their Statement of Claim, the Claimants attempt to import a legal stability clause from the Honduras-Kuwait BIT⁵⁹ and umbrella clauses contained, for example, in the Switzerland-Honduras BIT and the Germany-Honduras BIT.⁶⁰ The Claimants' attempt to import new clauses from other treaties must fail because the MFN clause of DR-CAFTA cannot be used to import a right or standard that is not explicitly provided for in its provisions.

77. In effect, the MFN clause of a treaty cannot be used to import rights or standards of protection that are not provided for in the treaty containing the MFN clause. As seen in *Teinver v. Argentina*, with respect to the attempt to import an umbrella clause, the tribunal concluded that if the parties “had intended to include such a clause in the Treaty, they would have done so.”⁶¹

78. As McLachlan, Shore, and Weiniger explain:

*It is the subject matter scope of the treaty containing the MFN clause that defines the outer boundaries of the operation of the clause. **It is essential to ensure that the provisions relied upon as constituting the more favorable treatment are properly applicable and will not***

⁵⁹ See Statement of Claim, ¶ 455 (“[...] Honduras’s conduct also constitutes a breach of the MFN provision in Article 10.4 of CAFTA-DR, which also makes Article 16 of the Honduras-Kuwait BIT applicable to U.S. investors, as explained below.”); *ibid.*, ¶ 518 (“Specifically, under Article 10.4 of CAFTA-DR, the MFN provision, Honduras is bound to observe its LSA obligations pursuant to the umbrella clauses in other treaties to which Honduras is a party that oblige Honduras to observe all commitments or obligations into which it has entered with respect to Claimants.”).

⁶⁰ Statement of Claim, ¶ 366, referring to Agreement between the Swiss Confederation and the Republic of Honduras on the Reciprocal Promotion and Protection of Investments, signed on October 14, 1993, which entered into force on August 31, 1994 (CLA-0130), art. 11 (“Each Contracting Party shall at all times ensure the fulfillment of the commitments made with respect to investments by investors of the other Contracting Party.” [translation by the Republic]); Treaty between the Federal Republic of Germany and the Republic of Honduras on the Promotion and Reciprocal Protection of Capital Investments, signed on March 21, 1995, which entered into force on May 27, 1998 (CLA-0131), art. 8(2) (“Each Contracting Party shall fulfill any other obligation it has assumed in relation to capital investments by nationals or companies of the other Contracting Party in its territory”).

⁶¹ *Teinver S.A., Transportes de Cercanías S.A., and Autobuses Urbanos del Sur S.A. v. The Argentine Republic*, ICSID Case ARB/09/1, Award (July 21, 2017) (RLA-0091), ¶ 884 (“According to the Tribunal, the clear and ordinary meaning of this formula is to refer to the various rights or forms of protection contained in the individual provisions of the Treaty. The Tribunal accepts that the parties to the Treaty were in all likelihood aware of the existence of umbrella clauses and that if they had intended to include such a clause in the Treaty, they would have done so.”). See also *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award (December 14, 2023) (RLA-0110) ¶ 999.

have the effect of fundamentally subverting the carefully negotiated balance of the investment treaty being applied.⁶²

79. Along the same lines, the tribunal in *Hochtief v. Argentina* emphasized:

[T]he MFN clause stipulates how investors must be treated when they are exercising the rights given to them under the BIT but does not purport to give them any further rights in addition to those given to them under the BIT.

The MFN clause is not a renvoi to a range of totally distinct sources and systems of rights and duties: it is a principle- - applicable to the exercise of rights and duties that are actually secured by the BIT in which the MFN clause is found.⁶³

80. The International Law Commission has observed that an MFN clause “operates only with respect to the subject matter referred to by the two States when they inserted the clause in their treaty.”⁶⁴ Therefore, MFN clauses “should not be interpreted or applied to create new causes of action beyond those to which the Parties have consented to arbitrate.”⁶⁵

81. It is also incorrect to argue—as the Claimants do—that, through MFN treatment, Article 16 of the Honduras-Kuwait BIT on legal stability automatically applies to all investors in a ZEDE.⁶⁶ DR-CAFTA clearly establishes that the application of the MFN clause is an exercise of

⁶² C. McLachlan *et al.*, “Part III Substantive Rights, 7. Treatment of Investors,” in *International Investment Arbitration: Substantive Principles* (2nd ed. 2017) (RLA-0088), p. 346, ¶ 7.313 (translation by the Republic: “It is the scope of the subject matter of the treaty containing the most-favored-nation clause that defines the outer limits of the clause’s application. It is essential to ensure that the provisions on which it relies as constituting the most favorable treatment are correctly applicable and do not have the effect of fundamentally subverting the carefully negotiated balance of the investment treaty being applied.”) (emphasis added).

⁶³ *Hochtief AG v. Argentine Republic*, ICSID Case No. ARB/07/31, Decision on Jurisdiction (October 24, 2011) (CLA-0075), ¶¶ 79, 81.

⁶⁴ International Law Commission, “Draft Articles on Most-Favored-Nation Clauses” in *Yearbook of the International Law Commission* (Vol. II, Part Two) (1978) (RLA-0058), p. 28, commentary (1) to articles 9 and 10. See also Lord McNair, “Most-Favored-Nation Clauses,” in *The Law of Treaties* (1986) (RLA-0059) p. 287 (“*The reason, which seems to rest on the common intention of the parties, is that the clause can only operate in regard to the subject-matter which the two States had in mind when they inserted the clause in their treaty.*”).

⁶⁵ *Accession Mezzanine Capital L.P. and Danubius Kereskedőház Vagyongkezelő Zrt v. Hungary*, ICSID Case No. ARB/12/3, Decision on the Respondent’s Objection under Rule 41(5) (January 16, 2013) (RLA-0075), ¶ 73.

⁶⁶ Statement of Claim, ¶ 565

analysis and comparison between investors who are “in similar circumstances,” which implies an analysis of facts and circumstances by the Tribunal;⁶⁷ that is, it is not automatically applicable.

82. The Claimants allege that Honduras violated the MFN standard of Article 10.4 of DR-CAFTA by not granting them the same guarantee of legal stability enshrined in Article 16 of the Kuwait-Honduras BIT. They maintain that this guarantee would have been automatically extended to all investors in the ZEDE through the MFN clause contained in Article 32 of the Organic Law of the ZEDE.⁶⁸ The Claimants are mistaken.

83. On the one hand, the protection conferred by the MFN standard necessarily requires a comparison to establish that another investor (in this case, a Kuwaiti investor) in circumstances similar or comparable to those of the Claimants would *effectively* enjoy protection that the Claimants lack. Once again, the Claimants avoid addressing this requirement and say nothing about it.

84. On the other hand, a simple reading of Article 32 confirms that the protection granted by the MFN clause does not extend to any type of matter, but only to benefits granted on customs matters.⁶⁹

⁶⁷ DR-CAFTA (CLA-0002), Art. 10.4

⁶⁸ Statement of Claim, ¶ 455.

⁶⁹ Decree No. 120-2013, approving the Organic Law on ZEDEs (September 6, 2013) (C-0006), art. 32 (“Employment and Economic Development Zones (ZEDEs) are extraterritorial fiscal and customs zones, distinct from the rest of the national territory.”)

Imports made by legal entities operating in an Employment and Economic Development Zone (ZEDE), upon entering the national customs territory, shall be exempt from the payment of all taxes, tariffs, charges, surcharges, consular fees, internal taxes, consumption taxes, and levies that are directly or indirectly related to import and export operations. They shall be processed without the intervention of a customs agent or special customs representative, using a single customs declaration.

Purchases of goods and services made by companies operating within an Employment and Economic Development Zone (ZEDE) on the domestic market are subject to the corresponding taxes.

When companies operating within Employment and Economic Development Zones (ZEDE) sell products, goods, or services in the rest of the country, they must pay the tariffs or taxes determined by the National Congress.

Individuals and legal entities operating within the Employment and Economic Development Zones (ZEDE) will be treated on the basis of the Most Favored Nation (MFN) principle, whereby they will automatically receive any better treatment granted or that has been granted to other parties in an international trade agreement signed by the State of Honduras.

85. For these reasons, the importation of the legal stability clause and umbrella clauses from other treaties is inadmissible, and therefore the Tribunal does not have jurisdiction to hear claims regarding such imported protections, which simply cannot be understood as falling under the scope of Article 10.4 of DR-CAFTA or Article 32 of the Organic Law of the ZEDE.

D. Preliminary Objection 4: The Tribunal lacks jurisdiction to rule on alleged violations of the Legal Stability Agreement

86. In their Memorial, the Claimants, in an attempt to broaden the scope of the Tribunal's jurisdiction under the Agreement, argue that the alleged legal stability agreement (or the “**LSA**,” as referred to by the Claimants) constitutes an “investment agreement” under the terms of Article 10.28 of DR-CAFTA and that therefore their contractual claim relating to Honduras' alleged violation of the LSA should be resolved by the Tribunal under Article 10.16(1)(a) of the Treaty.⁷⁰

87. Alternatively, the Claimants also attempt to bypass the Centre's jurisdictional requirements, arguing that the LSA expressly refers to ICSID as the exclusive and mandatory jurisdiction for resolving the contractual claim relating to the alleged violation of the LSA.⁷¹ The Claimants base this argument on a reference contained in the text of the LSA itself, signed between the Technical Secretary of the Próspera ZEDE and HPI.⁷²

88. The Claimants' arguments seek to bypass the jurisdictional requirements necessary for the Tribunal to rule on their claim for the alleged violation of the LSA. However, this claim is clearly outside the jurisdiction of the Tribunal and ICSID, since the so-called Legal Stability Agreement is not an investment agreement under DR-CAFTA (**Subsection 1**). Furthermore, and in any case, Honduras did not consent to ICSID arbitration under the so-called Legal Stability Agreement (**Subsection 2**).

⁷⁰ Statement of Claim, ¶¶ 354-365.

⁷¹ *Ibid*, ¶ 366.

⁷² *Ibid*, ¶¶ 203, 366.

1. The so-called Legal Stability Agreement is not an investment agreement under DR-CAFTA

89. The Claimants also attempt to develop a claim based on the existence of an alleged “investment agreement” that Honduras allegedly breached. However, this tactic cannot succeed. The Claimants’ invocation of such an agreement is fundamentally flawed and is not supported by the facts or the applicable Treaty.

90. Article 10.28 of DR-CAFTA defines an investment agreement as follows:

[An] investment agreement means a written agreement [...] that takes effect on or after the date of entry into force of this Agreement between a national authority [...] of a Party and a covered- - investment or an investor of another Party that grants the covered investment or investor rights:

(a) with respect to natural resources or other assets that a national authority controls; and

(b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself.⁷³

91. Footnote 12 establishes what is meant by a written agreement:

*“Written agreement” refers to an agreement in writing, **executed by both parties**, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity or a decree, order, or judgment; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.⁷⁴*

92. Both DR-CAFTA and consistent case law, including cases such as *Duke Energy v. Ecuador* and *Burlington Resources v. Ecuador*, impose strict limitations on what can constitute an investment agreement.⁷⁵ In *Duke Energy*, the Tribunal held that “an investment agreement must

⁷³ DR-CAFTA (CLA-0002), art. 10.28.

⁷⁴ DR-CAFTA (CLA-0002), note 12 (emphasis added).

be concluded between the **host State** and the foreign investor, and not by a State entity or a local company established by the investor.”⁷⁶

93. Thus, an investment agreement under the Treaty is (i) a written agreement; (ii) that creates an exchange of rights and obligations; (iii) between a national authority of a Contracting Party to the Treaty and a covered investment or an investor of another Contracting Party; (iv) with respect to natural resources or other assets controlled by a national authority, and (v) on which the covered investment or investor relies to establish or acquire a covered investment other than the written agreement itself.

94. In this case, the claimants attempt to argue that the Stability Agreement or “LSA” constitutes an investment agreement under DR-CAFTA, which is without factual or legal basis.

95. *First*, the LSA was not executed by a national authority of a Party, as the Technical Secretariat of the ZEDE does not qualify as a national authority within the meaning of Article 10.28 of DR-CAFTA. Note 13 to Chapter 10 defines that, under Article 10.28 of DR-CAFTA, “national authority” means “*authority at the central level of government.*”⁷⁷ The Technical Secretariat of the ZEDEs is not part of the central level of government under Honduran law.⁷⁸ Therefore, the LSA was not executed by a national authority as described in DR-CAFTA.

96. *Second*, the Claimants fail to meet their burden of proving why the LSA would grant them rights that qualify under the definition of natural resources or other assets controlled by a Honduran national authority under DR-CAFTA. The Claimants have not provided a clear

⁷⁶ *Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award (August 18, 2008) (**RLA-0069**), ¶¶ 182-183 (“an investment agreement must be one concluded ‘between a State Party and a national or an enterprise of the other State Party. In this case, the [CAEs] were concluded between INECCEL—a State entity—and Electroquil, a company incorporated in Ecuador that, at the time the Contracts were signed, was not owned by foreign investors. Consequently, it appears that for the purposes of Article VI(1)(a)—as required by Article X(2)(c)—the PPAs cannot be considered investment agreements.”) (emphasis added); *ibid.*, ¶ 186 (“Duke Energy did not sign the PPAs or assume any obligations under their terms”).

⁷⁷ DR-CAFTA (**CLA-0002**), Chapter 10, note 13.

⁷⁸ General Law on Public Administration (Decree No. 146-86) (November 29, 1986) (**R-0067**), arts. 9-10. The General Law on Public Administration of Honduras expressly defines that “[t]he Centralized Public Administration is constituted by the organs of the Executive Branch.” These organs include: (i) the Presidency of the Republic, (ii) the Council of Ministers, and (iii) the Secretaries of State.

explanation of how the alleged rights granted⁷⁹ would meet the definition of natural resources or other assets. They have merely listed rights that cannot be categorized as natural resources or other assets. It should also be noted that the Claimants have not demonstrated that the alleged natural resources or other assets listed are controlled by a national authority. As explained above, the Technical Secretariat of the ZEDE is not considered a national authority according to the definition in the DR-CAFTA. Therefore, even if the rights met the above definition, they would not be under the control of a Honduran national authority.

97. Thus, the alleged rights granted by the LSA do not pertain to natural resources or assets controlled by a national authority, but rather to goods and services within the ZEDE, under the control of the ZEDE authority.

98. *Third*, the Claimants do not prove that the LSA was the basis for their alleged investment. A simple chronological review of the facts presented by the Claimants themselves shows that their decision to invest occurred at least as early as 2016.⁸⁰ Mr. Brimen even explains that the legal stability on which he based his investment would be the BIT between Honduras and Kuwait and not the LSA.⁸¹

99. The LSA was signed on 9 March 2021,⁸² that is, almost five years after their decision to invest, thus it is not and could not be the basis for the Claimants' alleged investment.⁸³

100. Therefore, it is clear that the LSA does not meet the criteria established under Article 10.28 of DR-CAFTA to be considered an investment agreement protected under the Treaty.

⁷⁹ Statement of Claim, ¶ 363 (“the LSA granted HPI and its affiliates legal stability with respect to the rights that Honduras conferred on Próspera ZEDE under the ZEDE Legal Framework in relation to governance, land and property, sea and air navigation, and the environment, which are ‘natural resources or other assets’ that the Technical Secretary, a national authority [...] controlled in his capacity as Technical Secretary of Próspera ZEDE.”).

⁸⁰ Statement of Claim, ¶¶ 120-123.

⁸¹ Statement of Claim, ¶ 123. Testimonial Declaration of Erick A. Brimen-Statement of Claim (October 14, 2025), ¶¶ 22-24.

⁸² Agreement for Legal Stability and Investor Protection between the Republic of Honduras and Honduras Próspera Inc. (“**Agreement for Legal Stability**”) (March 9, 2021) (CLA-0006), p. 10 (“WHEREAS Honduras Próspera and its majority-owned or controlled affiliates have invested more than TEN MILLION US DOLLARS (\$10,000,000.00 USD).”).

⁸³ See Statement of Claim, §§ II.C.1, II.C.2., II.C.3, and II.C.4.

Accordingly, the Tribunal lacks jurisdiction *ratione materiae* over this claim, which must be dismissed in its entirety.

2. In any case, Honduras did not consent to ICSID arbitration under the so-called Legal Stability Agreement

101. In their Statement of Claim, the Claimants allege their contractual claim that Honduras violated the LSA, signed between the Technical Secretary of ZEDE Próspera and HPI, and is under the jurisdiction of the Centre because the LSA designated ICSID “*as the exclusive mandatory jurisdiction*.”⁸⁴

102. The Claimants allege that the national authority that committed to the alleged legal stability on behalf of the State and designated ICSID as the “*exclusive mandatory jurisdiction*” is the Technical Secretary of Próspera ZEDE.⁸⁵

103. According to the Claimants, the Centre's jurisdictional requirements are met in this case.⁸⁶ The Claimants are mistaken, and their claim regarding the alleged violation of the LSA falls outside the jurisdiction *ratione voluntatis* of the Tribunal, as it falls outside the jurisdiction of the Centre, as demonstrated below.

104. *First*, Article 25 of the ICSID Convention only covers disputes arising out of an investment between a Contracting Party to the Convention (or a constituent subdivision or agency previously authorized by the State) and an investor of another Contracting Party. For a dispute to fall within the jurisdiction of the Centre, all the requirements of Article 25 of the ICSID Convention must be met.⁸⁷

105. Article 25 of the ICSID Convention provides that the consent of the State party that is a constituent subdivision or public agency of the respondent State must have been approved by that State, or the State must have notified the Centre that such approval is not necessary:

⁸⁴ Statement of Claim, ¶ 366.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ S. Schill *et al.*, “Article 25” in *Schreuer's Commentary on the ICSID Convention* (2022) (RLA-0055), p. 101.

(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State **(or any constituent subdivision or agency of a Contracting State designated to the Centre by that State)** and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.

[...]

(3) **Consent by a constituent subdivision or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required.**⁸⁸

106. Thus, Article 25 is clear that, *“if ICSID jurisdiction is sought in relation to the host State, the latter's consent is needed, even if a constituent subdivision or agency has consented to ICSID jurisdiction.”*⁸⁹

107. According to this provision, for the Claimants' contractual claim regarding the alleged violation of the LSA to fall under the jurisdiction of the Centre, the alleged agreement would have had to be signed directly by an authority representing the Republic of Honduras, or by a constituent subdivision or agency expressly authorized by the State to do so and to submit exclusively to the jurisdiction of the Centre on behalf of the Republic.

108. Contrary to Claimants' assertions, neither of these conditions is met in this case, as Honduras has not consented, under any circumstances, to sign the LSA and therefore to submit any dispute arising therefrom to the exclusive jurisdiction of the Centre.

109. *Second*, the LSA was not signed by Honduras or by a constituent subdivision or agency authorized by the State.

⁸⁸ ICSID, Convention, Rules and Regulations (July 2022) (**RLA-0009 bis**), Convention, art. 25 (emphasis added).

⁸⁹ S. Schill *et al.*, “Article 25” in *Schreuer's Commentary on the ICSID Convention* (2022) (**RLA-0055**), ¶ 531. Similarly, in other cases such as *Cable TV v. St. Kitts and Nevis*, the dispute arose from an agreement between the investor and an autonomous entity within the Federation of St. Kitts and Nevis, in which that entity consented under ICSID, but the host State did not. In view of this, the tribunal in *Cable TV v. St. Kitts and Nevis* considered that it did not have jurisdiction, since the State was not a party to the agreement containing the consent to ICSID jurisdiction and the autonomous entity (NIA) had not been designated as a political subdivision or public body. *See Cable Television of Nevis, Ltd. and Cable Television of Nevis Holdings, Ltd. v. Federation of St. Kitts and Nevis*, ICSID Case No. ARB/95/2, Award (January 13, 1997) (**RLA-0060**), ¶¶ 2.01-2.17, 2.22-2.33, 5.06-5.10, 7.02.

110. The Claimants allege that the Organic Law of the ZEDE establishes the power of the technical secretaries of the ZEDE to act on behalf of the Republic of Honduras and to sign legal stability agreements with foreign investors and to submit to the jurisdiction of the Centre on behalf of the State.⁹⁰ Specifically, they refer to Article 12 of the Organic Law on ZEDEs, which allegedly grants such broad powers to the technical secretaries of the ZEDEs, including the power to represent Honduras in the signing of legal stability agreements.⁹¹ The same basis was invoked by the Technical Secretary of Próspera ZEDE when signing the alleged LSA of 9 March 2021,⁹² as well as the subsequent amendment thereto.⁹³

111. However, the Claimants do not explain how paragraph 2 of Article 12 of the Organic Law of the ZEDE grants them the power to represent the Republic of Honduras in the signing of legal stability agreements on behalf of the State. On the contrary, and faithful to their decontextualized reading, the Claimants ignore that the only representative function that Article 12 attributes to technical secretaries is the legal representation of the ZEDEs. Nothing more.

112. A simple reading of this provision shows that the technical secretaries of the ZEDEs—including that of Próspera ZEDE—are nothing more than legal representatives of the ZEDEs and, under no reasonable interpretation, can they be understood as national authorities of the Republic of Honduras. Textually, Article 12 of the Organic Law of the ZEDEs provides as follows:

TECHNICAL SECRETARIAT

ARTICLE 12.- The Technical Secretary of the Employment and Economic Development Zones (ZEDE) **is the highest-ranking executive official of the same and its legal representative;** this position shall have a term of seven (7) years and may be extended or revoked. He or she shall be accountable for his or her actions before the Committee for the Adoption of Best Practices.

⁹⁰ Statement of Claim, ¶ 203.

⁹¹ *Ibid.*; see also Republic of Honduras, Decree No. 120-2011, *Organic Law on Employment and Economic Development Zones (ZEDE)* (September 5, 2013) (C-0006), art. 12.

⁹² Agreement for Legal Stability (CLA-0006), p. 1.

⁹³ Amendment to the Legal Stability Agreement signed between the Legal Representative of ZEDE Próspera and HPI (November 18, 2021) (CLA-0007), p. 1.

[...]

His duties are:

1) **To represent the Employment and Economic Development Zone (ZEDE);**

2) To sign legal stability agreements for matters deemed necessary;

[...]

4) **To direct the administration and governance of the Employment and Economic Development Zone (ZEDE)** and to implement the policy measures determined by the Committee for the Adoption of Best Practices;⁹⁴

113. As is clear from the aforementioned provision, the technical secretaries of the ZEDEs have the function of governing and administering the respective ZEDE and, within the framework of that function, have the power to “sign legal stability agreements for matters deemed necessary,” on behalf of the ZEDE, not the Honduran State.⁹⁵

114. Nothing in the text of the Organic Law of the ZEDEs can even suggest that the technical secretaries of the ZEDEs also have the power to exercise the sovereign representation of Honduras. Nor can the Claimants point to any provision that indicates otherwise.

115. The Technical Secretary of Próspera ZEDE is not a legally recognized public authority in Honduras that can bind the Honduran State internationally, nor is it a constituent subdivision or agency that has received approval from the State to sign such an agreement and designate ICSID as the exclusive jurisdiction thereof.

116. Accordingly, it is clear that the LSA was not signed by Honduras as a Contracting Party to the Convention, nor by a constituent subdivision or agency approved by the State to designate the Centre as the exclusive and mandatory jurisdiction.

⁹⁴ Republic of Honduras, *Decree No. 120-2011, Organic Law on Employment and Economic Development Zones (ZEDE)* (September 5, 2013) (C-0006), art. 12.

⁹⁵ Republic of Honduras, *Decree No. 120-2011, Organic Law on Employment and Economic Development Zones (ZEDE)* (September 5, 2013) (C-0006), art. 12(2).

117. *Third*, the LSA's reference to DR-CAFTA as the basis for the Centre's jurisdiction in relation to claims for monetary damages does not cover the present claim under ICSID jurisdiction.

118. In establishing ICSID as the exclusive and mandatory jurisdiction, the LSA refers to the provisions of DR-CAFTA:

*Claims for monetary damages by the Parties arising under or in any way related to this Agreement shall be arbitrated pursuant to the rules and procedures set forth by the International Centre for the Settlement of Investment Disputes (ICSID) as stated under the DR-CAFTA. To such extent, the Parties acknowledge and agree that this Agreement subjects them to the jurisdiction of ICSID pursuant to the terms of the DR-CAFTA as this Agreement constitutes an investment authorization and/or investment agreement within the terms thereof.*⁹⁶

119. However, regardless of the fact that the LSA does not constitute an agreement signed by an authority of the Republic of Honduras, or under its authorization, the reference it makes to the DR-CAFTA regarding the jurisdiction of the Centre is completely irrelevant.

120. The disputing Parties cannot simply celebrate contracts to circumvent the jurisdictional requirements of Article 25 and thereby expand the scope of ICSID's jurisdiction.⁹⁷ A simple reference does not automatically trigger the jurisdictional requirements that must be met for a dispute to fall under the jurisdiction of ICSID. In this case, those requirements are not met.

121. Based on the foregoing, it is clear that the Claimants' contractual claim regarding the alleged violation of the LSA falls outside the jurisdiction of the Centre and, consequently, outside the jurisdiction *ratione voluntatis* of the Tribunal, as there is no consent on the part of the Republic of Honduras.

⁹⁶ Agreement for Legal Stability (CLA-0006), p. 6, ¶ 2.2 (emphasis added).

⁹⁷ S. Schill *et al.*, "Article 25" in *Schreuer's Commentary on the ICSID Convention* (2022) (RLA-0055), p. 101.

E. Preliminary Objection 5: HPI does not have an investment authorization under DR-CAFTA

122. The Claimants further allege that, through the issuance of the Certificate of Registration and Incorporation into the ZEDE Regime in December 2017, as well as the establishment of the Statute and Amended Statute of Próspera in August 2018 and September 2019, respectively, the Republic of Honduras granted an “investment authorization” in favor of HPI through CAMP, in accordance with Articles 10.16(1)(a) and 10.28 of DR-CAFTA.⁹⁸

123. According to Article 10.16.1(a) of DR-CAFTA, an investor may submit a claim to arbitration alleging that the respondent State has violated an investment authorization.⁹⁹ In such cases, the Tribunal is required to apply the domestic law of the respondent State, as provided for in Article 10.22.2 of DR-CAFTA.¹⁰⁰ In turn, Article 10.28 of DR-CAFTA defines “investment authorization” in the following terms:

*investment authorization [...] means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of another Party.*¹⁰¹⁻¹⁰²

124. As explained below and as will be further elaborated in the brief of jurisdictional objections, the Tribunal has absolutely no jurisdiction under DR-CAFTA to hear the claims brought by the Claimants on the basis of this alleged “investment authorization.” HPI has not received any such authorization, much less from a competent foreign investment authority, as

⁹⁸ Statement of Claim, ¶¶ 356-357, 603 (“[...] *DECLARE, with respect to HPI, that Honduras also has breached [...] (ii) the Charter of Próspera ZEDE, which is a breach of an investment authorization as defined in CAFTA-DR*”).

⁹⁹ DR-CAFTA (CLA-0002), art. 10.16.1(a) (“1. *In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation: (a) the claimant, on its own behalf, may submit to arbitration under this Section a claim (i) that the respondent has breached (A) an obligation under Section A, (B) **an investment authorization**, or (C) an investment agreement;*”) (emphasis added).

¹⁰⁰ DR-CAFTA (CLA-0002), art. 10.22.2. According to this provision, if a claim is filed in accordance with Article 10.16.1(a)(i)(B) or (C)—investment authorization or agreement, respectively—without specifying the applicable legal rules, the tribunal shall observe “(i) *the law of the respondent, including its rules on the conflict of laws*” and “(ii) *such rules of international law as may be applicable.*”

¹⁰¹ DR-CAFTA (CLA-0002), art. 10.28.

¹⁰² This is without prejudice to the fact that the Claimants have not demonstrated that they have made a covered “investment” or that they are “*investors of another Party*” under the Treaty.

required by Article 10.28 of DR-CAFTA, and therefore has no jurisdictional basis to invoke Article 10.16.1(a) of DR-CAFTA.

125. *First*, Honduran law does not provide for the granting of “investment authorizations” under the terms of DR-CAFTA. Unlike the former Investment Promotion and Protection Law,¹⁰³ the current Decree No. 51-2011,¹⁰⁴ which created the National Investment Council (“CNI”), does not provide for this concept.¹⁰⁵ In particular, Article 44 of the aforementioned law, when listing the specific functions of the CNI, does *not* include the granting of investment permits, licenses, and/or authorizations.¹⁰⁶

126. *Second*, even if the concept existed, the CAMP is not a “foreign investment authority” under the terms required by DR-CAFTA and, therefore, could not grant investment authorizations. Note that legal doctrine has been emphatic that an “investment authorization”—to be such—must be granted by the competent foreign investment authority, not by any state authority. In the words of Professor Mark Kantor:

*“[...] the concept of 'investment authorization' is limited to authorizations granted by the 'foreign investment authority' of a Party, not all competent authorities.”*¹⁰⁷

¹⁰³ Article 18 of the repealed Decree No. 80-92 established the possibility of establishing by law a list of activities for which authorization from the Honduran government would be required in order to invest. Such authorization was granted through the Ministry of Economy and Commerce. See Honduran Investment Law (Decree No. 80-92) (May 29, 1992) (**C-0161**), art. 18.

¹⁰⁴ Law for the Promotion and Protection of Investments in Honduras (Decree No. 51-2011) (July 15, 2011) (**C-0165**).

¹⁰⁵ Law for the Promotion and Protection of Investments in Honduras (Decree No. 51-2011) (July 15, 2011) (**C-0165**), Art. 42 (“The National Investment Council (CNI) is hereby created as a public law entity with legal personality and its own assets, whose main purposes shall be: 1) The promotion and development of private investment; 2) The establishment of facilitation and assistance offices for investors; and 3) The formulation of public policy proposals aimed at creating a favorable climate for both domestic and foreign investment.”).

¹⁰⁶ Law for the Promotion and Protection of Investments in Honduras (Decree No. 51-2011) (July 15, 2011) (**C-0165**), art. 44.

¹⁰⁷ M. A. Kantor, The New Draft Model U.S. BIT: Noteworthy Developments,” *Journal of International Arbitration*, Vol. 21, No. 4 (2004) (**RLA-0063**), p. 386 (emphasis added); Along these lines, see also Lee M. Caplan, Jeremy K. Sharpe, “18. United States,” in C. Brown, Commentaries on Selected Model Investment Treaties (January 17, 2013) (**RLA-0076**), p. 817 (“A third type of claim is a breach of an ‘investment authorization,’ a term defined as ‘an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party,’ e.g., an authorization issued by a Party’s investment screening authority.”) (emphasis added).

127. In the case of the CAMP, Article 11 of the repealed Organic Constitutional Law of the ZEDE lists a total of ten functions assigned to the CAMP, including approving its own internal regulations, appointing and removing the Technical Secretary of the ZEDE, and establishing internal policy guidelines.¹⁰⁸ However, none of these functions includes the granting of “investment authorizations.” Not even the power to “incorporate plots of land” referred to by the Claimants can be found in these regulations.¹⁰⁹

128. *Third*, and as if the above were not enough, the CAMP is not—nor was it during the term of the old ZEDEs Legal Framework—the competent authority to authorize the establishment of a ZEDE. As explained above, this power—which cannot be delegated under the Constitution—¹¹⁰ was exclusively vested in the National Congress and no one else.¹¹¹ This was also stated by the Supreme Court in its decision dated 20 September 2024, in application of the relevant Honduran law.¹¹²

129. *Fourth*, and in any case, none of the instruments referred to by the Claimants could constitute an “investment authorization,” since no obligation whatsoever arises from them for the Republic of Honduras. As the DR-CAFTA State Parties have specified in the Treaty itself,¹¹³ and

¹⁰⁸ At most, Article 11 of the Organic Law on ZEDEs recognized CAMP’s power to designate areas for *the “future expansion”* of a ZEDE, which is essentially different from the authorization of foreign investments. *See* Decree No. 120-2013, approving the Organic Law on ZEDEs (September 6, 2013) (C-0006), art. 11(8).

¹⁰⁹ Statement of Claim, ¶ 356 (“*CAMP is the relevant foreign investment authority for the purposes of ZEDEs pursuant to the ZEDE Law. [...] and is responsible for key aspects of ZEDE governance and oversight on behalf of Honduras, including the incorporation of land into the ZEDE regime.*”).

¹¹⁰ Constitution of the Republic of Honduras (1982) with amendments through March 20, 2013 (C-0004), art. 206 (“**The powers of the Legislative Branch are non-delegable** except for that of receiving the constitutional oath from high-ranking government officials, in accordance with this Constitution.”) (emphasis added).

¹¹¹ *See* Section II.D above.

¹¹² Supreme Court of Justice, Appeal of Unconstitutionality SCO-0738-2021, Judgment (September 20, 2024) (R-0066), p. 24 (“Honduran jurist Dr. Joaquín Mejía Rivera, explains in an academic publication that, in order to establish a ZEDE, it is an unavoidable requirement, in accordance with the amended Article 329, that the zone be approved by the honorable National Congress, by means of a qualified vote and with prior citizen participation in an approval plebiscite, with a result of two-thirds of the population in accordance with Article 5 of the Constitution. The jurist emphasizes the exclusive and non-delegable nature of the National Congress’s power to approve a ZEDE. To date, there has been no publication in La Gaceta providing for the approval, constitution, or creation of a ZEDE, thereby ruling out the existence of acquired rights originating in the regulations under analysis, which are considered unconstitutional for violating unreformable or immutable articles.” (emphasis added).

¹¹³ DR-CAFTA (CLA-0002), Chapter 10, Note 10 (“*Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has*

as the United States has reiterated in its submissions as a non-disputing party in other DR-CAFTA cases,¹¹⁴ it is essential that an investment authorization grant rights to the investor and impose obligations on the State. This is not the case here, as none of the instruments referred to by the Claimants impose obligations on Honduras.¹¹⁵

130. In summary, the foregoing explains that the Tribunal lacks jurisdiction to hear the Claimants' claims pursuant to Articles 10.16(1)(a) and 10.28 of DR-CAFTA, as HPI does not have an investment authorization issued by a competent foreign investment authority under applicable Honduran law.

F. Preliminary Objection 6: The remedies sought by the Claimants as the principal part of their claim are outside the jurisdiction of the Tribunal

131. The Claimants request, as their main claim in their Statement of Claim,¹¹⁶ that the Tribunal order the Republic of Honduras “to take the necessary measures for the restitution of the Claimants' property.”¹¹⁷ These measures consist, according to their allegations, of: (i) recognition of the Claimants' rights under the ZEDEs Legal Framework and a guarantee that they will remain

under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.”) (emphasis added).

¹¹⁴ *Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, Statement of the United States (February 19, 2021) (**RLA-0103**), note 12 (“For example, under U.S. law, it is well established that revocable government-granted licenses or permits do not confer property interests that give rise to claims for compensation.”).

¹¹⁵ The Certification of Registration and Incorporation into the ZEDE Regime dated December 29, 2017—issued by the incompetent authority of the CAMP—does not bind the State in any way. On the contrary, it merely states that “a parcel of land in Crawfish Rock” was incorporated into the “special land registry” administered by the CAMP. For their part, the original Bylaws of Próspera ZEDE, as well as its Amended Bylaws, do not imply any obligation on the part of the Republic of Honduras either. On the contrary, these instruments comprise a list of rules that the foreign investors of Próspera ZEDE imposed on themselves to organize their project, rules that were designed and promulgated by themselves and signed by their employee, Technical Secretary Tristán Monterroso. See Committee for the Adoption of Best Practices in Employment and Economic Development Zones, Certificate of Registration and Incorporation into the ZEDE Regime for the Socio-Economic Development Society of Honduras LLC. (June 20, 2019) (**C-16**); Bylaws of ZEDE “Village of North Bay” (August 23, 2018) (**CL-0004**); Amended and Restated Bylaws and Regulations of “Próspera ZEDE” (July 26, 2019) (**CLA-0005**).

¹¹⁶ The subsidiary nature of its claim for damages is expressly stated in paragraph 33 and reiterated in section V(B) of the Statement of Claim. See Statement of Claim, ¶ 33; § V(B). Furthermore, the inclusion of the word “or” at the end of subparagraph (c)—followed by subparagraph (d) et seq., relating to monetary compensation and other remedies—reveals that the Plaintiffs’ monetary claims are subsidiary to the remedies sought in subparagraphs (a) to (c). *Ibid.*, ¶ 603.

¹¹⁷ Statement of Claim, ¶ 603(c).

in force throughout the period of legal stability; (b) in the event that the ZEDEs Legal Framework is not deemed in force, its reinstatement; and (c) the cessation of alleged acts of interference, harassment, and defamation.¹¹⁸

132. As can be seen, and as noted in section II.E above, what the Claimants are actually seeking is not the restitution of any property—which remains in their possession and has not been taken from them—but rather the restoration of the constitutional and legal provisions that made up the former legal framework of the ZEDE and the cessation of alleged acts of interference, harassment, and defamation.¹¹⁹ In other words, they are seeking an order requiring the State to undo the legislative and judicial processes that have taken place in recent years and to refrain from taking any further action in that direction.

133. This request by the Claimants is clearly inadmissible. Neither of the two alleged jurisdictional bases invoked for this purpose—DR-CAFTA and the Agreement for Legal Stability, the latter only with respect to HPI—authorizes or allows the Tribunal to order this type of remedy, which is clearly outside its jurisdiction.

1. The Tribunal does not have jurisdiction to order the reinstatement of the ZEDEs Legal Framework under DR-CAFTA

134. Unlike other treaties, Article 10.26(1) of DR-CAFTA—in terms similar to NAFTA and other more recent model treaties¹²⁰—precisely identifies the remedies that the Tribunal may (and, as a corollary, may *not*) order in the event of an alleged breach. In this regard, the aforementioned provision states that:

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest;

¹¹⁸ *Ibid.*, ¶¶ 33, 542, 603(c).

¹¹⁹ *Ibid.*, ¶¶ 33, 542, 603(c).

¹²⁰ North American Free Trade Agreement (1992) (CL-0012), art. 1135(1); *See also* United States Model Bilateral Investment Treaty (2012) (RLA-0073), art. 34(1); Canada Model Bilateral Investment Treaty (2004) (RLA-0064), art. 44.

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

*A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.*¹²¹

135. Unlike the ILC Articles invoked by the Claimants, which use the term “restitution” in a broader sense,¹²² DR-CAFTA specifically limits the availability of this remedy to “restitution of property.” That is, what the Claimants refer to as “material restitution” or “physical return of property,” and not including in any case, the revocation, annulment, or modification of measures that may have affected the investor.¹²³

136. First, as recognized by various authors—including *Borzu Sabahi*, whose work supports the analysis of the decision on restitution in *Border Timbers Limited v. Zimbabwe*, cited by the Claimants—¹²⁴ the term “return of property” in Article 1135 of NAFTA, whose wording is virtually identical to that of Article 10.26(1) of DR-CAFTA and which served as its model,¹²⁵ is limited exclusively to “material restitution”:

¹²¹ DR-CAFTA (CLA-0002), art. 10.26(1).

¹²² The Claimants refer to Article 35, comment (5) of the ILC Articles to argue that the term “restitution” in those articles has a broad meaning. Statement of Claim, note 1223. Although the ICJ Articles have been used as a guide in investment arbitrations, caution should be exercised in their use in matters of remedies, as they themselves recognize that they do not apply directly in cases involving States and persons or entities other than a State. United Nations General Assembly, *Yearbook of the International Law Commission*, A/CN.4/SER.A/2001/Add.1 (Vol. II, Part Two) (2001) (RLA-0061), art. 28, comment 3 (“However, in cases where a State may commit an internationally wrongful act, the second part has a more limited scope. It does not apply to obligations of reparation insofar as these arise in relation to or are invoked by a person or entity other than a State.”); See also J. Crawford, “Investment Arbitration and the ILC Articles on State Responsibility,” *ICSID Review - Foreign Investment Law Journal*, Vol. 25, No. 1 (2010) (RLA-0071), p. 130 (“But it is true—as confirmed by Article 33(2)—that the ILC Articles make no attempt to regulate questions of breach between a state and a private party such as a foreign investor. Those rules must be found elsewhere in the corpus of international law, to the extent that they exist at all.”).

¹²³ Statement of Claim, ¶ 535.

¹²⁴ *Border Timbers Limited, Border Timbers International (Private) Limited, and Hangan Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award (July 28, 2015) (CLA-0219), ¶¶ 680, 682, 692, 697, 700.

¹²⁵ In effect, CAFTA-DR represents an evolution in U.S. practice with regard to multilateral treaties, incorporating lessons learned from the NAFTA experience and substantially revising its investment chapter—among other things, with regard to expropriation, transparency of arbitration, and mechanisms to prevent frivolous claims—in accordance with the guidance of the U.S. Congress. Office of the United States Trade Representative, *CAFTA Policy Brief, Investment Provisions in CAFTA* (May 2005) (RLA-0065).

*The great majority of investment treaties (especially BITs) generally do not circumscribe the power of the arbitral tribunals to grant restitution. Exceptions include NAFTA Article 1135 and the recent model BITs of the United States and Canada, which narrow the scope of the remedies that a tribunal may award to monetary damages and return of property (i.e., material restitution for our purposes) or a combination thereof, thereby excluding juridical restitution.*¹²⁶

137. Second, this interpretation stems from both the ordinary meaning of the terms used by DR-CAFTA¹²⁷ and from a reading of this provision together with Article 10.26(4), according to which the award only has effect between the disputing parties and with respect to the specific case.¹²⁸ Indeed, as other tribunals have noted, the type of remedy sought by the Claimants would necessarily have effects on third parties, as it would involve the restoration of constitutional and legal norms that had been repealed with general effect.¹²⁹

¹²⁶ B. Sabahi, “Chapter 4: Restitution,” *Compensation and Restitution in Investor-State Arbitration: Principles and Practice*, Oxford University Press (2011) (**RLA-0072**), p. 64; See also G. Stephens-Chu, “Is it Always All About the Money? The Appropriateness of Non-Pecuniary Remedies,” in *Investment Treaty Arbitration, Arbitration International*, Vol. 30, No. 4 (January 7, 2017) (**RLA-0090**), pp. 662-663 (“Article 1135(1) of the North American Free Trade Agreement (NAFTA) limits the range of remedies that may be awarded to compensation and material restitution, and allows the respondent state to pay damages in lieu of such restitution”); G. Yusuf, “Bridging the Gap between Theory and Practice: Revisiting the Role of Restitution” in *Investment Treaty Arbitration, African Yearbook of International Law Online* (November 28, 2018) (**RLA-0096**), p. 127 (“The vast majority of investment treaties do not circumscribe the power of arbitral tribunals to grant restitution. Noteworthy exceptions include the North American Free Trade Agreement, the 2012 U.S. Model Bilateral Investment Treaty, and the 2004 Canadian Model Bilateral Investment Treaty that only permit restitution of property (thereby excluding juridical restitution), in which case the award shall provide that the disputing party may pay monetary damages and any applicable interest in lieu of restitution”); This practice of “cross” interpretation between treaties is based on Article 31(1) of the Vienna Convention, in that it allows recourse to the ordinary meaning given to identical or substantially similar terms or expressions. CVDT (**CLA-0001**), art. 31(1); Precisely because of their close connection, numerous tribunals constituted under CAFTA-DR have systematically resorted to the jurisprudence issued by NAFTA tribunals, as well as other instruments associated with that treaty, to interpret provisions of CAFTA-DR. P. Dumberry, “‘Cross Treaty Interpretation,’ en bloc or How CAFTA-DR Tribunals Are Systematically Interpreting the FET Standard Based on NAFTA Case Law,” in *The Law and Practice of International Courts and Tribunals* 22 (July 21, 2023) (**RLA-0107**), pp. 406-410.

¹²⁷ CVDT (**CLA-0001**), art. 31(1).

¹²⁸ DR-CAFTA (**CLA-0002**), art. 10.26(4).

¹²⁹ This would have an effect on other ZEDES established in Honduras, such as ZEDE Morazán and ZEDE Orquídea, among others. Statement of Claim, ¶¶ 201-202. In this regard, the Court of Appeal of Canada, in interpreting Article 1135 of NAFTA—which is almost identical in wording to Article 10.26(1) of CAFTA-DR—noted that “the tribunal award cannot invalidate the impugned government measure or have any other effect on domestic law beyond the disputants and the particular case,” reaffirming the limited nature of the restitution allowed by the treaty. *Council of Canadians, CUPW and the Charter Committee on Poverty Issues v. Attorney General of Canada*, Ontario Court of Appeal Decision (November 30, 2006) (**RLA-0068**), ¶ 14.

138. *Third*, the alleged precedents cited by the Claimants to assert that “[t]he tribunals have granted restitution in various forms”¹³⁰ differ significantly from the present case and, if anything, confirm what the Republic of Honduras has stated. Indeed, in none of the three cases cited by the Claimants did the applicable treaty establish a limitation on the remedies that the tribunal could grant.¹³¹ Furthermore, those cases refer to restitution measures linked precisely to the property of investors or companies controlled by them, and not to the restoration of a regulatory framework of general application.¹³²

139. *Fourth*, the Claimants’ attempts to base their peculiar request for restitution on the ILC Articles cannot succeed.¹³³ As the Articles themselves make clear, they do not apply to situations involving a State and persons or entities that are not States:

However, while the first part applies to all cases in which a State may commit an internationally wrongful act, the second part has a more limited scope. It does not apply to obligations of reparation

¹³⁰ Statement of Claim, ¶ 535.

¹³¹ *Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award (July 28, 2015) (**CLA-0219**), ¶ 708 (“As mentioned, ICSID tribunals have jurisdiction to award restitution, unless otherwise agreed (for example, where the BIT prohibits it). In this dispute, neither BIT prohibits the Tribunal from ordering restitution.”); *Cairn Energy PLC and Cairn UK Holdings Limited (CUHL) v. Republic of India (I)*, CPA Case No. 2016-7, Final Award (December 21, 2020) (**CLA-0220**), ¶ 1873 (“The present BIT contains no provision that would derogate from this general rule, providing that ‘[t]he decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award’, without specifying or restricting the form that such award may take.”); *Peter Pázmány University v. The State of Czechoslovakia*, PCIJ Decisions, Orders, and Legal Opinions, Appeal against a Judgment of the Hungarian-Czechoslovak Mixed Arbitral Tribunal, Decision (December 15, 1933) (**CLA-0221**), p. 239 (“The conclusions already reached by the Court enable it to be said that, *prima facie*, the University was justified in claiming the restitution of the property in question, under Article 250 of the Treaty of Trianon.”).

¹³² In *Border Timbers Limited v. Zimbabwe*, the Tribunal ordered the restitution of certain properties expropriated by Zimbabwe to a company controlled by the investor in conjunction with its water permits, not the restoration of general rules. *Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Award (July 28, 2015) (**CLA-0219**), ¶ 743; In *Cairn v. India*, the Tribunal ordered the State to withdraw a tax assessment that had been directed solely against the investor, not the reinstatement of general rules. *Cairn Energy PLC and Cairn UK Holdings Limited (CUHL) v. Republic of India (I)*, CPA Case No. 2016-7, Final Award (December 21, 2020) (**CLA-0220**), ¶ 1870-1877; In the case of *Peter Pázmány University v. Czechoslovakia*, the Tribunal ordered the State to return “the real estate claimed by it, free of any transfer, compulsory administration or seizure measures, and in the condition in which it was prior to the application of the measures in question.” In other words, it ordered material restitution, not legal restitution. *Peter Pázmány University v. The State of Czechoslovakia*, PCIJ Decisions, Orders and Legal Opinions, Appeal against a Judgment of the Hungarian-Czechoslovak Mixed Arbitral Tribunal, Decision (December 15, 1933) (**CLA-0221**), p. 249.

¹³³ Statement of Claim, ¶¶ 533-535.

insofar as these arise in respect of a person or entity other than a State or are invoked by such a person or entity.¹³⁴

140. In conclusion, in light of the foregoing, it is clear that DR-CAFTA limits the Tribunal's remedies to pecuniary damages and, exceptionally, to the material restitution of property, excluding the annulment or restoration of general rules and the cessation requested by the Claimants.

2. The Tribunal does not have jurisdiction to order the restitution of the ZEDEs Legal Framework under the Agreement of Legal Stability

141. Notwithstanding the above, the Agreement of Legal Stability establishes that restitution is excluded from the remedies that may be sought by the parties.

142. According to Article 2.2—invoked by the Claimants to support the jurisdiction of this Tribunal—¹³⁵ only “[c]laims for monetary damages” may be submitted to the jurisdiction of an ICSID tribunal, in accordance with the terms of DR-CAFTA.¹³⁶ This provision is complemented, in turn, by Article 2.1 of the same instrument, which establishes that “actions for preliminary injunctive or emergency relief, claims for specific performance, actions for declaratory judgment, or other non-monetary forms of relief” must be submitted to arbitration under the rules of the ICDR of the AAA, based in Washington, D.C. or in Roatán, Bay Islands.¹³⁷

143. From a plain reading of these provisions, and as the Tribunal will note, it is absolutely clear that this instrument only allows, assuming it has any validity (which this party categorically rejects), the pursuit of the State's financial liability, and does not permit the granting of non-monetary remedies such as restitution.

144. In conclusion, none of the alleged jurisdictional bases invoked by the Claimants authorizes the Tribunal to order the restoration of the constitutional and legal provisions that made

¹³⁴ United Nations General Assembly, *Yearbook of the International Law Commission*, A/CN.4/SER.A/2001/Add.1 (Vol. II, Part Two) (2001) (**RLA-0061**), art. 28, comment 3.

¹³⁵ Statement of Claim, ¶ 335.

¹³⁶ Agreement for Legal Stability (**CLA-0006**), art. 2.2; Amendment to the Agreement for Legal Stability signed between the Legal Representative of ZEDE Próspera and HPI (November 18, 2021) (**CLA-0007**).

¹³⁷ Agreement for Legal Stability (**CLA-0006**), art. 2.1; Amendment to the Agreement for Legal Stability signed between the Legal Representative of ZEDE Próspera and HPI (November 18, 2021) (**CLA-0007**).

up the former ZEDEs Legal Framework and/or the cessation of alleged acts of interference, harassment, and defamation, which would clearly be outside its jurisdiction.

III. THE REQUEST OF THE REPUBLIC OF HONDURAS SATISFIES ALL THE REQUIREMENTS ESTABLISHED BY THE ICSID ARBITRATION RULES FOR THE BIFURCATION OF THE PROCEEDINGS TO BE ORDERED.

145. The Republic of Honduras submits this Request for Bifurcation pursuant to Article 41(2) of the ICSID Convention, Rules 42 and 44 of the ICSID Arbitration Rules of 2022.¹³⁸ The first of these articles allows the Tribunal to address preliminary objections in a separate phase from the merits in the following terms:¹³⁹

(2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

146. In line with the above provision, Rules 42(1) and (2) of the 2022 ICSID Arbitration Rules provide that a party may request that a preliminary objection be dealt with in a separate phase of the proceedings, in which case Rule 44 shall apply.¹⁴⁰ Furthermore, Rules 42(6) and 43(4) of the 2022 ICSID Arbitration Rules grant the Tribunal discretionary authority to divide the proceedings into separate phases:

(6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.

[...]

(4) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits. It may do so upon request of a party pursuant to Rule 44 or at any time on its own initiative, in accordance with the procedure in Rule 44(2)-(4).

¹³⁸ In accordance with the provisions of Section 1.1 of Procedural Resolution No. 5 ("RP5"), this proceeding is governed by the ICSID Arbitration Rules in force as of July 1, 2022 (the "**Arbitration Rules**" or the "**Rules**"), except to the extent that they are modified and/or supplemented by the Treaty. See Procedural Order No. 5 (May 14, 2025), § 1.1.

¹³⁹ ICSID, Convention, Rules and Regulations (July 2022) (**RLA-0009 bis**), Convention, art. 41.

¹⁴⁰ ICSID, Convention, Rules and Regulations (July 2022) (**RLA-0009 bis**), Rules of Arbitration, arts. 42(1), 42(2).

147. These provisions reflect that bifurcation is a “standard procedure” in ICSID arbitration.¹⁴¹ This is also recognized by multiple tribunals in investment arbitrations—particularly in cases subject to DR-CAFTA¹⁴²—which routinely bifurcate proceedings to address jurisdictional and admissibility objections as preliminary issues.¹⁴³

148. The criteria for determining the appropriateness of bifurcating proceedings were defined many years ago in *Glamis Gold Ltd. v. United States of America*¹⁴⁴ and then reiterated and developed by numerous tribunals,¹⁴⁵ including those in *Phillip Morris v. Australia*,¹⁴⁶ *Carlos*

¹⁴¹ C. Schreuer *et al.*, “Article 41” in *The ICSID Convention: A Commentary* (2009) (RLA-0070), ¶ 77 (“In the practice of ICSID tribunals, treatment of jurisdictional issues as preliminary questions is standard procedure.”); A. Carlevaris, “Preliminary Matters: Objections, Bifurcation, Request for Provisional Measures,” in *Litigating International Investment Disputes: A Practitioner’s Guide* (2014) (RLA-0080), p. 186 (noting that “it is still common practice for ICSID tribunals to treat jurisdictional objections as preliminary questions and to suspend proceedings on the merits pending a decision on jurisdiction”). (translation by La República, original in English: “it is still common practice for ICSID tribunals to treat jurisdictional objections as preliminary questions, and to suspend the proceedings on the merits pending a decision on jurisdiction.”).

¹⁴² In fact, of the six public decisions that this party has been able to identify in which rulings have been made in accordance with the new ICSID regulations, four have opted to bifurcate the proceedings, two of which applied DR-CAFTA. See *Fernando Paiz Andrade and Anabella Schloesser de León de Paiz v. Republic of Honduras*, ICSID Case No. ARB/23/43, Procedural Order No. 3 (Decision on Severance) (December 20, 2024) (RLA-0117), ¶¶ 54, 60, 65; *Mario Noriega Willars v. United Mexican States*, ICSID Case No. ARB/23/29, Procedural Order No. 3 (Decision on Bifurcation) (March 24, 2025) (RLA-0118), ¶¶ 107, 114, 117; *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3 (Decision on Bifurcation) (October 16, 2024) (RLA-0116), ¶ 69; *JLL Capital, S.A.P.I. de C.V. v. Republic of Honduras*, ICSID Case No. ARB/23/3, Decision on Bifurcation (September 3, 2024) (RLA-0115), ¶ 88.

¹⁴³ N. Blackaby *et al.*, *Redfern and Hunter on International Arbitration* (2023) (RLA-0105), ¶ 6.52; C. Schreuer *et al.*, “Article 41” in *The ICSID Convention: A Commentary* (2022) (RLA-0104), ¶ 76 (“[i]t does not make sense to go through a lengthy and costly proceeding dealing with the merits of the case unless the tribunal’s jurisdiction has been determined authoritatively.”).

¹⁴⁴ *Glamis Gold, Ltd. v. United States of America*, UNCITRAL, Procedural Order No. 2 (Revised) (May 31, 2005) (RLA-0066), ¶ 12(c).

¹⁴⁵ C. M. Esteban, “Bifurcation of ICSID Awards and Reconsideration of Interlocutory Decisions: The Fine Balance of Procedural Economy,” 87 *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 1 (2021) (RLA-0102), pp. 10-15.

¹⁴⁶ *Philip Morris Asia Ltd. v. Commonwealth of Australia*, Procedural Order No. 8 relating to the Decision on Bifurcation (April 14, 2014) (RLA-0081), ¶ 109.

Sastre et al. v. Mexico,¹⁴⁷ *Lighthouse v. Timor-Leste*,¹⁴⁸ *Lee-Chin v. Dominican Republic*,¹⁴⁹ *Suffolk v. Portugal*¹⁵⁰, *A11Y v. Czech Republic*¹⁵¹ and *Paiz v. Honduras*.¹⁵²

149. In line with these decisions, Article 44(2) of the 2022 ICSID Arbitration Rules sets forth, in its relevant part, a non-exhaustive list of criteria that the Tribunal shall take into account in deciding whether to grant the Request for Bifurcation of the objections raised by the Republic of Honduras:¹⁵³

(a) bifurcation would materially reduce the time and cost of the proceeding;

(b) determination of the preliminary objection would dispose all or a substantial part of the dispute; and

(c) the preliminary objection and the merits are so intertwined as to make the bifurcation impractical.

150. In analyzing the merits of the Request for Bifurcation in light of these requirements, the Tribunal must analyze all of the objections submitted by the Republic of Honduras as a whole, not in isolation. This is how Rule 44 was applied, for example, by the tribunal in *Doups Holdings v. Mexico*, concluding that “the decision as to whether or not it is appropriate to bifurcate involves assessing the objections as a whole”¹⁵⁴ and that “the appropriateness of bifurcation must be assessed both in light of each of the objections and of the possible admissibility of several of them,

¹⁴⁷ *Carlos Sastre et al. v. United Mexican States*, ICSID Case No. UNCT/20/2, Procedural Order No. 2 (Decision on Bifurcation) (August 13, 2020) (**RLA-0101**), ¶ 39.

¹⁴⁸ *Lighthouse Corporation Pty Ltd and Lighthouse Corporation Ltd, IBC v. Democratic Republic of Timor-Leste*, ICSID Case No. ARB/15/2, Procedural Order No. 3 (Decision on Bifurcation) (July 8, 2016) (**RLA-0085**), ¶ 20.

¹⁴⁹ *Michael Anthony Lee-Chin v. Dominican Republic*, ICSID Case No. UNCT/18/3, Procedural Order No. 2 (Decision on Bifurcation) (March 6, 2019) (**RLA-0098**), ¶ 44.

¹⁵⁰ *Suffolk (Mauritius) Limited et al. v. Portuguese Republic*, CADI Case No. ARB/22/28, Procedural Order No. 3 (Request for Bifurcation) (March 1, 2024) (**RLA-0111**), ¶ 42.

¹⁵¹ *A11Y LTD. v. Czech Republic*, ICSID Case No. UNCT/15/1, Decision on Bifurcation (October 5, 2015) (**RLA-0084**), ¶ 56.

¹⁵² *Fernando Paiz Andrade and Anabella Schloesser de León de Paiz v. Republic of Honduras*, ICSID Case No. ARB/23/43, Procedural Order No. 3 (Decision on Bifurcation) (December 20, 2024) (**RLA-0117**), ¶ 33.

¹⁵³ ICSID, Convention, Rules and Regulations (July 2022) (**RLA-0009 bis**), Rules, art. 44(2).

¹⁵⁴ *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3 (Decision on Bifurcation) (October 16, 2024) (**RLA-0116**), ¶ 51.

which necessarily implies considering the possibility that a combination of the objections may be upheld.”¹⁵⁵

151. In this regard, if the Tribunal determines that at least one of the objections justifies bifurcation, for reasons of procedural efficiency, it will be necessary for the rest of the objections that are independent of the merits to also be decided in the preliminary phase. This was indicated, for example, by the tribunal in *Suffolk v. Mauritius*, which applied the 2022 ICSID Arbitration Rules and considered that subparagraph (b) of the second paragraph of Rule 44 is satisfied when any of the claims is dismissed and, consequently, ordered bifurcation in that case.¹⁵⁶

152. Furthermore, in a case involving a sovereign State, bifurcation also serves to ensure that the Tribunal only resolves disputes in which the State has consented to arbitration. In fact, “[it is] a fundamental rule of international law and a principle of international relations that a State is not obliged to account for itself on substantive issues before an international tribunal that lacks jurisdiction or whose jurisdiction has not yet been established.”¹⁵⁷

153. Similarly, the fact that there has already been a preliminary objection stage based on Article 10.20.5 of the DR-CAFTA does not prevent the Republic from filing this Request for Bifurcation with the respective jurisdictional objections, nor does it prevent the Tribunal from bifurcating the proceedings to decide on them. The same occurred in the case of *Pac Rim v. El Salvador*, in which, as in the present case, a preliminary objection procedure was conducted under Article 10.20.5 of DR-CAFTA, and subsequently, after being rejected by the tribunal, the proceedings were bifurcated to resolve the jurisdictional objections presented by El Salvador.¹⁵⁸ In its decision on additional jurisdictional objections raised during the merits stage, the tribunal in

¹⁵⁵ *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3 (Decision on Severance) (October 16, 2024) (**RLA-0116**), ¶ 51.

¹⁵⁶ *Suffolk (Mauritius) Limited et al. v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 3 (Request for Severance) (March 1, 2024) (**RLA-0111**), ¶¶ 94-104.

¹⁵⁷ T. D. Gill, *Rosenne's the World Court: What It Is and How It Works* (2003) (**RLA-0062**), p. 81.

¹⁵⁸ *Pac Rim Cayman LLC v. The Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Objections to Jurisdiction (June 1, 2012) (**CLA-0106**), ¶¶ 6.10-6.12.

Pac Rim considered that it had the power and duty to analyze any relevant jurisdictional issue regardless of the stage of the proceedings.¹⁵⁹

154. In view of the foregoing, the Republic of Honduras will demonstrate in this section: *first*, that in this case, bifurcation would significantly reduce the time and cost of the proceedings, since the objections raised here, if successful, would resolve the dispute in its entirety or, at least, in a substantial part (**III.A**); *second*, that these are preliminary objections whose analysis and resolution are independent of the merits of the claim (**III.B**); *third*, although it is not an independent requirement in the new Rule 44¹⁶⁰, that there is no doubt that the preliminary objections of the Republic of Honduras are serious and substantial and, therefore, strongly warrant bifurcation.

A. Each of the Republic's objections will significantly reduce the time and cost of the proceedings, insofar as they dismiss the Claimants' claims in their entirety or, at least, in a substantial part.

155. The objections raised by the Republic of Honduras, if upheld, would lead to the total rejection of the Claimants' claim or, at a minimum, a substantial reduction in the dispute, which would result in a more efficient, fairer, more expeditious, and less costly process. In particular:

- *Preliminary Objection 1*, relating to the essential security exception contained in Article 21.2(b) of DR-CAFTA, clearly excludes the Tribunal's jurisdiction

¹⁵⁹ *Pac Rim Cayman LLC v. The Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections (June 1, 2012) (**CLA-0106**), ¶ 1.15.

¹⁶⁰ Given that, in applying Rule 42, some tribunals have concluded that the tribunal must consider whether the objections are *prima facie* serious and substantial, the Republic of Honduras also demonstrates below, *out of an abundance of caution*, that its objections have a plausible basis. When the ICSID Arbitration Rules were amended, consideration was given to whether it should be expressly stated that the list of relevant circumstances to be considered by arbitral tribunals when deciding on requests for bifurcation is not exhaustive, but this statement was not added. Along these lines, the working documents for the proposed amendments to the Rules mentioned that ICSID tribunals have consistently considered the merits of preliminary objections—and their non-frivolousness—as a relevant circumstance when deciding on requests for bifurcation. See Proposed Amendments to the ICSID Rules – Working Paper, Vol. No. 3 (August 2, 2018) (**RLA-0095**), ¶ 393; See, e.g., *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3 (Decision on Severance) (October 16, 2024) (**RLA-0116**), ¶ 52; *Suffolk (Mauritius) Limited et al. v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 3 (Request for Bifurcation) (March 1, 2024) (**RLA-0111**), ¶ 103; *Access Business Group v. United Mexican States*, ICSID Case No. ARB/23/15, Procedural Order No. 3 (Forking) (August 29, 2024) (**RLA-0114**), ¶ 36; *Naftiran Intertrade Co. (NICO) Limited v. Kingdom of Bahrain*, ICSID Case No. ARB/22/34, Procedural Order No. 4 (Forking Decision) (August 12, 2024) (**RLA-0113**), ¶ 43; *Resolute Forest Products Inc. v. Government of Canada*, CPA Case No. 2016-13, Procedural Order No. 4 (Bifurcation Decision) (November 18, 2016) (**RLA-0086**), ¶ 4.4.

over the entirety of the Claimants' claim, since it is a discretionary or self-judging clause and the measures adopted by the Republic of Honduras with respect to the Legal Regime of the ZEDE were, in any case, implemented for the protection of its essential security interests.

- *Preliminary Objection 2*, relating to the lack of investment protected under DR-CAFTA and the ICSID Convention, also excludes the entirety of the Claimants' claim, since the existence of an investment made in accordance with applicable domestic law is a basic condition for jurisdiction under DR-CAFTA and for the Claimants to assert their claims in the present arbitration against the Republic of Honduras under this Treaty.
- *Preliminary Objection 3*, relating to the claim based on the MFN clause, would result in the rejection of the entire claim referring to the MFN standard invoked by the Claimants. Specifically, the objection would allow for the dismissal of both the alleged breach of the guarantee of legal stability enshrined in the Kuwait-Honduras BIT—through which the Claimants seek to extend their alleged right to maintain the legal framework of the ZEDE intact from 10 to 50 years and exponentially increase their claims for compensation— as well as the applicability of the LSA as an effect of the umbrella clauses included in other investment treaties signed by Honduras.
- *Preliminary Objection 4*, relating to the non-existence of an investment agreement covered under DR-CAFTA and the absence of consent by the Republic of Honduras before the Centre on monetary claims arising from the alleged Legal Stability Agreement (or the “LSA”), excludes the Claimants' claims regarding the alleged violation of the LSA by the Republic of Honduras—one of the three sources of alleged rights and obligations of immutability of the ZEDE legal regime invoked by the Claimants—along with DR-CAFTA and the Prospera ZEDE Statutes—thus significantly limiting the scope of the dispute and HPI's claims in particular.

- *Preliminary Objection 5*, referring to the non-existence of an “investment authorization” granted in accordance with domestic law and DR-CAFTA, also excludes the claims made by HPI regarding the alleged breach by the Republic of Honduras of the Prospera ZEDE Statutes—the third source of alleged rights and obligations cited by the Claimants—thus significantly reducing the scope of the dispute and the alleged sources that the Tribunal must consider in resolving it.
- *Preliminary Objection 6*, concerning the inadmissibility of the remedies sought by the Claimants, clearly excludes the main claim in the Memorial. Indeed, if the Tribunal finds that it does not have jurisdiction to rule on the remedies of legal restitution and cease and desist, this will necessarily imply the total dismissal of the Claimants' main claim and, consequently, a significant reduction in the scope of the dispute to be heard in the merits phase.

156. It should be noted that various investment tribunals have held that bifurcation should be granted when a decision on an objection leads to a “**material reduction**” in the subsequent phase of the proceedings.¹⁶¹ This may occur when an objection, even “if unsuccessful, would reduce the scope of the next phase,” thereby simplifying the issue by focusing solely on the merits of the dispute.¹⁶² In this regard, in the eventual and hypothetical case that the Tribunal, after hearing the preliminary objections in a bifurcated proceeding, concludes that the merits claim should proceed, the fact of having bifurcated the proceeding will produce a material reduction in the next phase of the proceedings. Therefore, the objections raised here must be dealt with in any instance by the Tribunal, either at a preliminary stage or at the same time as the substantive issues. Considering that they would already have been raised and resolved in a previous instance, the proceedings on the merits and the resources invested therein will, consequently, be reduced.¹⁶³

¹⁶¹ *Glamis Gold, Ltd. v. United States of America*, UNCITRAL, Procedural Order No. 2 (Revised) (May 31, 2005) (RLA-0066), ¶ 12(c).

¹⁶² *Guardian Fiduciary Trust, Ltd, f/k/a Capital Conservator Savings & Loan, Ltd. v. The Former Yugoslav Republic of Macedonia*, ICSID Case No. ARB/12/31, Award (September 22, 2015) (RLA-0083), ¶ 34.

¹⁶³ *Lighthouse Corporation Pty Ltd and Lighthouse Corporation Ltd, IBC v. Democratic Republic of Timor-Leste*, ICSID Case No. ARB/15/2, Procedural Order No. 3 (Decision on Bifurcation) (July 8, 2016) (RLA-0085), ¶ 24.

157. Furthermore, requiring a State to present its defense on the merits of a claim before a tribunal that lacks jurisdiction is inherently unfair and contrary to fundamental legal principles. As Professor Thirlway stated, “a jurisdictional issue must be treated as a preliminary point, since a State has the right to refuse to allow its conduct to be examined by a tribunal unless it has conferred jurisdiction to that tribunal.”¹⁶⁴

158. In this regard, “the benefits of procedural fairness and efficiency” weigh heavily in favor of bifurcation. Granting bifurcation would avoid a situation in which, as the tribunal in *Caratube v. Kazakhstan* described, “in retrospect,” if the proceedings had been bifurcated and the preliminary objections had been heard at a preliminary stage, “most of the costs and expenses of each party and of the dispute, both in duration and amount, would have been avoided.”¹⁶⁵

159. Furthermore, relevant doctrine and jurisprudence recognize that¹⁶⁶ “the Tribunal will consider as a general matter whether procedural fairness and efficiency would be preserved or enhanced.”¹⁶⁷ Furthermore, “it is good practice to deal with jurisdictional objections preliminarily, to avoid imposing full proceedings on a disputing party that is subject to arbitration, provided that bifurcating such objections is likely to result in greater efficiency in both time and

¹⁶⁴ H. Thirlway, “Preliminary Objections,” in *Max Planck Encyclopedia of Public International Law* (August 2006) (RLA-0067), ¶ 4.

¹⁶⁵ *Caratube International Oil Company LLP v. Republic of Kazakhstan (I)*, ICSID Case No. ARB/08/12, Award (June 5, 2012) (RLA-0074), ¶ 487 (“With the wisdom of hindsight, the majority of the costs and expenses of each party and of the dispute, both in duration and expense, would have been avoided had the Respondent opted for bifurcation and preliminary determination of its Rule 41(1) equivalent objections under the Rules.”) (translation from the Republic, original in English: “*With the wisdom of hindsight, the majority of the costs and expenses of each party and of the dispute, both in duration and expense, would have been avoided had Respondent opted for bifurcation and the preliminary determination of its equivalent of Rule 41(1) objections under the Rules.*”).

¹⁶⁶ See C. Schreuer *et al.*, “Article 41” in *The ICSID Convention: A Commentary* (2009) (RLA-0070), ¶ 77 (“In the practice of ICSID tribunals, the treatment of jurisdictional issues as preliminary issues is a common procedure. [...] The tribunal either formally declares the matter a preliminary question or simply suspends the proceedings on the merits. [...] *The tribunal either formally declares the matter a preliminary question or simply suspends the proceedings on the merits. Treatment of jurisdictional issues as preliminary questions is particularly important if the respondent defaults and therefore does not avail itself of the possibility to present jurisdictional objections.*”); L. Greenwood, “Revisiting Bifurcation and Efficiency in International Arbitration Proceedings,” in 36 *Journal of International Arbitration* 4 (2019) (RLA-0097), p. 3 PDF.

¹⁶⁷ See *Accession Mezzanine Capital L.P. and Danubius Kereskedőház Vagyonkezelő Zrt. v. Hungary*, ICSID Case No. ARB/12/3, Decision on the Respondent’s Notice of Jurisdictional Objections and Request for Bifurcation (August 8, 2013) (RLA-0079), ¶ 35; *Emmis International Holding, B.V. et al. v. Hungary*, ICSID Case No. ARB/12/2, Decision on Request for Severance (June 13, 2013) (RLA-0078), ¶ 41.

cost.”¹⁶⁸ In the present case, bifurcation of the proceedings will promote efficiency, as litigating issues of substance and quantum will necessarily be costly, burdensome, and time-consuming.

160. The alternative to bifurcation would require the Parties to fully litigate the merits of the dispute, which would be an extremely costly and burdensome task. Given the complexity of the case, this would require extensive briefs, the production of extensive financial and technical documents, and substantial witness and expert testimony, which would be a considerable waste of resources for all parties involved.¹⁶⁹

161. On the other hand, bifurcation, if granted, will allow for procedural efficiency in this case and significantly reduce the time and costs of the proceedings. In addressing whether objections should be decided as preliminary issues or together with the merits, as Professor Schreuer observed, “the choice between a preliminary decision and a joinder to the merits is a matter of procedural economy. [...] It makes no sense to go through lengthy and costly proceedings dealing with the merits of the case unless the jurisdiction of the tribunal has been determined authoritatively.”¹⁷⁰

162. Consequently, the preliminary objections filed by Honduras meet the requirements set forth in ICSID Arbitration Rules 44.2(a) and 44.2(b), since, if upheld, they would lead to the total dismissal of the Claimants' claim or, at least, to a substantial reduction in its scope and, in any case, of the next procedural phase. The bifurcation will therefore allow for a more efficient use of time and a reduction in costs for the Parties and the Tribunal, generating significant savings. For this reason, its examination as a preliminary matter is fully justified.

B. Each of the Republic's objections can be resolved independently of the merits

¹⁶⁸ *Lighthouse Corporation Pty Ltd and Lighthouse Corporation Ltd, IBC v. Democratic Republic of Timor-Leste*, ICSID Case No. ARB/15/2, Procedural Order No. 3 (Decision on Bifurcation) (July 8, 2016) (**RLA-0085**), ¶ 19. See also *Rand Investments Ltd. et al. v. Republic of Serbia*, ICSID Case No. ARB/18/8, Procedural Order No. 3 (Bifurcation Decision) (June 24, 2019) (**RLA-0100**), ¶ 15; *Mesa Power Group LLC. v. Government of Canada*, CPA Case No. 2012-17, Procedural Order No. 2 (January 18, 2013) (**RLA-0077**), ¶ 6.

¹⁶⁹ *Raymond Charles Eyre and Montrose Developments (Private) Ltd. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/16/25, Procedural Order No. 2 (Decision on Bifurcation) (February 21, 2018) (**RLA-0093**), ¶ 30 (“It would be a significant waste of time and funds for the Parties to address the merits in the first phase if the Tribunal rules in favor of the Respondent, in whole or in substantial part, on jurisdiction.”).

¹⁷⁰ See C. Schreuer *et al.*, “Article 41” in *The ICSID Convention: A Commentary* (2022) (**RLA-0104**), ¶ 76.

163. The preliminary objections announced by the Republic of Honduras are also independent of the substantive issues involved in this case and can therefore be resolved by the Tribunal on their own merits. Arbitral tribunals have recognized that this requirement is met when the preliminary objection can be examined without the Tribunal having to intervene in the merits of the case.¹⁷¹ Thus, bifurcation is considered appropriate when “the facts relevant to the objection are distinct from those likely to be involved in the determination of the merits of the claims” and when the objection involves “legal issues separate from those arising on the merits.”¹⁷²

164. Furthermore, tribunals have held that even if the analysis of preliminary objections involves some overlap of issues relevant to both jurisdictional and merits issues, bifurcation should not be ruled out. Only a substantial overlap would require merging an objection with the merits because “such a jurisdictional issue could not be decided efficiently without also ruling on the merits of the case.”¹⁷³

165. In this case, as shown above, the Tribunal does not need to enter into the merits of the case to resolve any of the six preliminary objections:

- *Preliminary Objection 1*, concerning the application of the essential security exception contained in Article 21.2(b) of DR-CAFTA, does not require an analysis of the merits of the dispute and clearly excludes the Tribunal's jurisdiction as it is a self-judging clause concerning the essential security interest declared by the Republic. Alternatively, this Objection only requires the Tribunal to conduct a good faith analysis with a “light touch” that undoubtedly leads to the conclusion that the essential security interest declared

¹⁷¹ *Philip Morris Asia Ltd. v. Commonwealth of Australia*, Procedural Order No. 8 relating to the Decision on Bifurcation (April 14, 2014) (RLA-0081), ¶ 109.

¹⁷² *Mesa Power Group LLC. v. Government of Canada*, CPA Case No. 2012-17, Procedural Order No. 2 (January 18, 2013) (RLA-0077), ¶ 20.

¹⁷³ *Presidente Allende Fundación, Victor Pey Casado, and Coral Pey Grebe v. Republic of Chile*, CPA Case No. 2017-30, Decision on Motion for Separation (June 27, 2018) (RLA-0094), ¶ 106.

by Honduras *may* be related to the measures adopted by the Republic, without requiring a substantive analysis of the merits.¹⁷⁴

- *Preliminary Objection 2*, referring to the lack of a protected investment under DR-CAFTA and the ICSID Convention, seeks to determine whether the Claimants made the investment they invoke in accordance with Honduran law. Specifically, it would involve a specific legal analysis of whether the Próspera ZEDE, claimed by the Claimants, was established in accordance with the legal framework applicable to ZEDEs, having obtained the necessary approvals, without it being necessary to examine the other substantive issues raised by the Claimants.
- *Preliminary Objection 3*, relating to the claim for MFN treatment and the importation of clauses from other treaties, is limited to a legal analysis of the Treaty and a *prima facie* reading of the Claimants' allegations, as formulated by them. Specifically, the Tribunal's work would be limited to a purely legal question, namely whether the text of DR-CAFTA and/or Article 32 of the Organic Law on ZEDE allow the Claimants to import new substantive rights such as legal stability and umbrella clauses into the present dispute; and does not require the Tribunal to rule on whether Honduras breached any of these alleged obligations. Recently, in response to a similar objection, the tribunal in *Paiz v. Honduras* determined that this type of objection “would significantly reduce the time and cost of the proceedings.”¹⁷⁵

¹⁷⁴ See, e.g., *Riverside Coffee, LLC v. Republic of Nicaragua*, ICSID Case No. ARB/21/16, Award (October 17, 2025) (**RLA-0119**), ¶ 271; *Angel Samuel Seda et al. v. The Republic of Colombia*, ICSID Case No. ARB/19/6, Award (June 27, 2024) (**RLA-0112**), ¶¶ 655, 742-743, 748.

¹⁷⁵ *Fernando Paiz Andrade and Anabella Schloesser de León de Paiz v. Republic of Honduras*, ICSID Case No. ARB/23/43, Procedural Order No. 3 (Decision on Bifurcation) (December 20, 2024) (**RLA-0117**), ¶ 52 (“Accordingly, Preliminary Objection 4 does not require the Tribunal to delve into the facts of the case, although an assessment of certain facts relevant to both jurisdiction and the merits may be necessary. It does not raise the same evidentiary issues as the umbrella clause case on the merits. Rather, the issues it raises are well circumscribed and do not appear to require either testimonial evidence or extensive factual debates. Accordingly, if this objection is granted, the bifurcation will significantly reduce the time and cost of the proceedings.”).

- *Preliminary Objection 4*, relating to the non-existence of an investment agreement covered under DR-CAFTA and the absence of consent by the Republic of Honduras before the Centre on monetary claims arising from the alleged LSA, does not require a substantive analysis of the merits of the case brought by the Claimants, since a simple reading of the LSA in light of the Organic Law of the ZEDE shows that the claim relating to the alleged violation of the LSA by Honduras does not come close to meeting the requirements set forth in DR-CAFTA and is therefore outside the jurisdiction of the Tribunal and the Centre.
- *Preliminary Objection 5*, concerning the alleged lack of investment authorization, seeks to clarify whether the Claimants—specifically, HPI—have one of the jurisdictional bases they invoke to bring their claims before the Tribunal, in accordance with the provisions of DR-CAFTA. This can be done without delving into the merits of the dispute by analyzing the Prospera ZEDE Statutes submitted by the Claimants and determining whether that document complies with the definitions established under DR-CAFTA (which it clearly does not).
- *Preliminary Objection 6* clearly excludes the remedies requested by the Claimants, insofar as the Tribunal lacks the authority to grant them. The resolution of this objection does not require an assessment of the veracity or merits of the substantive allegations, but only a determination—as a strictly legal matter—of whether the remedies requested, in particular legal restitution and cease and desist orders, fall within the powers conferred on this Tribunal by DR-CAFTA and the Agreement of Legal Stability.

166. In short, each of these objections addresses purely legal issues or factual issues that fall outside the scope of the merits of the dispute initiated by the Claimants. As noted above, although the analysis of the Respondent's objections may, in certain cases, require the review of some facts, this would not imply any real evaluation or determination of the merits of the case. By way of example, with respect to an objection identical to Preliminary Objection 4, the tribunal in

Paiz v. Honduras determined “that the debate between the Parties fundamentally concerns the interpretation of the relevant provisions of DR-CAFTA and their application in the present case, which raises some well-defined questions. The Preliminary Objection [...] does not require the Tribunal to delve into the facts of the case and whether or not the relevant agreements have been violated. The evidentiary issues raised by this objection are essentially different from those raised by the merits of the argument.”¹⁷⁶ This same reasoning with respect to the objection regarding the non-existence of an Investment Agreement can be applied to Jurisdictional Objection 5 regarding the non-existence of an Investment Authorization.

167. As the Permanent Court of International Justice has emphasized, “the determination by the Court of its jurisdiction may 'involve [...] touching upon matters pertaining to the merits of the case.’”¹⁷⁷ The essential factor is whether resolving the preliminary objections would amount to deciding the merits of the case. In this case, this would clearly not be the case, and therefore any minor overlap between jurisdictional and substantive issues cannot prevent the Tribunal from considering the Respondent's objections at a preliminary stage of the proceedings.

168. For example, in *Emmis v. Hungary*, the tribunal decided to resolve the respondent's *ratione materiae* objection at a preliminary stage, noting that only after “precisely identifying” the existence and nature of property rights would it be possible to “determine the nature and incidents of the rights possessed by the claimants that may be considered investments capable of enjoying the protection of international law against expropriation.”¹⁷⁸ The tribunal further concluded that “deferring the resolution of that issue to the merits phase could lead to confusion and lack of clarity on a fundamental issue,” leading to inefficiencies in the merits phase.¹⁷⁹ That is precisely the case

¹⁷⁶ *Fernando Paiz Andrade and Anabella Schloesser de León de Paiz v. Republic of Honduras*, ICSID Case No. ARB/23/43, Procedural Order No. 3 (Decision on Separation) (December 20, 2024) (**RLA-0117**), ¶ 57.

¹⁷⁷ *Certain German Interests in Polish Upper Silesia (Germany v. Poland)*, Jurisdiction, Judgment No. 6, P.C.I.J., Series A, No. 6 (August 25, 1925) (**RLA-0057**), p. 15.

¹⁷⁸ *Emmis International Holding, B.V. et al. v. Hungary*, ICSID Case No. ARB/12/2, Decision on Request for Bifurcation (June 13, 2013) (**RLA-0078**), ¶¶ 43-49.

¹⁷⁹ *Emmis International Holding, B.V. et al. v. Hungary*, ICSID Case No. ARB/12/2, Decision on Request for Bifurcation (June 13, 2013) (**RLA-0078**), ¶ 50 (“The Tribunal considers that deferring resolution of this issue to the merits phase could create confusion and lack of clarity on a fundamental issue.”).

here, where the Claimants and Honduras would have to present alternative cases on the merits and damages, depending on the scope of the admissible claims.

169. In conclusion, Honduras' preliminary objections comply with Rule 44.2(c) of the ICSID Arbitration Rules, as they are not linked to the merits of the claim and the Tribunal would not have to make decisions on the merits of the case.

C. Each of the preliminary objections of the Republic of Honduras is serious and substantial

170. As noted above, the 2022 Arbitration Rules do not require that objections be *prima facie* serious and substantial in order to provide for bifurcation of the proceedings.¹⁸⁰ However, some tribunals have concluded that the tribunal should nevertheless analyze this criterion with respect to each objection that is requested to be bifurcated.¹⁸¹

171. In the present case, each of the preliminary objections raised by the Republic of Honduras is serious and substantial, far from being frivolous:

- Preliminary Objection 1, relating to the essential security exception contained in Article 21.2(b) of the DR-CAFTA, is serious and substantial, since it is based on clear evidence that the actions of Honduras challenged by the Claimants in this arbitration were taken by the Republic to protect an essential security

¹⁸⁰ Proposed Amendments to the ICSID Rules - Working Paper, Vol. No. 3 (August 2, 2018) (RLA-0095), ¶ 393 (“ICSID case law has uniformly held that there is no presumption in favor of bifurcation, and has identified certain factors to be considered. For jurisdictional objections these factors include: (i) whether the objection is closely intertwined with the merits of the claim; (ii) whether the objection is capable of disposing of the entire case; (iii) whether the objection has merit and is not frivolous; and (iv) whether procedural economy would be served by dealing with the objection prior to the merits [...]. The last factor addresses whether bifurcation would materially reduce time and cost, and applies to all bifurcation scenarios. This test is incorporated into the proposed rule. Time and cost savings are likely if the proceeding on jurisdiction leads to an Award on jurisdiction disposing of the case. However, if jurisdiction is upheld and the case continues on the merits, the proceeding could be longer and more expensive (see Schedule 9 on Time and Cost). Therefore, the WP proposes to maintain the current discretion of Tribunals to decide whether to bifurcate depending on the circumstances of each case.

¹⁸¹ *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 2 (Decision on the Respondent's Motion to Separate Issues) (December 14, 2017) (RLA-0092), ¶ 100 (“tribunals should be guided by the paramount considerations of fairness and efficiency and should consider the following three factors, as identified by the tribunals in *Philip Morris v. Australia* and *Emmis v. Hungary*: a. whether the objection is *prima facie* serious and substantial; b. whether the objection can be examined without prejudging or entering the merits; and c. whether the objection, if successful, could dispose of all or an essential part of the claims before the Tribunal”); See also *Resolute Forest Products Inc. v. Government of Canada*, CPA Case No. 2016-13, Procedural Order No. 4 (Bifurcation Decision) (November 18, 2016) (RLA-0086), ¶ 4.4.

interest that is fundamental to the existence of the State—its territorial sovereignty—which was violated by the Legal Regime of the ZEDE. Therefore, this is not a procedural delaying tactic or anything remotely similar, but rather is based on the protection of vital interests of the State that are expressly recognized and protected by DR-CAFTA.

- Preliminary Objection 2, relating to the non-existence of a protected investment, is also serious and substantial, since it refers to compliance with the most basic requirements for establishing an investment in Honduras under the defunct legal framework of the ZEDE and thus being entitled to invoke the protection granted by DR-CAFTA and the ICSID Convention, as alleged by the Claimants.
- Preliminary Objection 3, relating to the claim for MFN treatment, is also serious and substantial, since it directly affects the viability of one of the Claimants' main claims in this case. In particular, this objection focuses on refuting the incorrect interpretation of the MFN clause of DR-CAFTA and Article 32 of the Organic Law of the ZEDE, through which they seek to import alleged rights that they do not have and that are completely inadmissible.
- Preliminary Objection 4, relating to the non-existence of an investment agreement covered under DR-CAFTA and the absence of consent by the Republic of Honduras before the Centre on monetary claims arising from the alleged LSA, is serious and substantial, since it refers to the absence of consent by Honduras to resolve any dispute related to the LSA, as it is a document signed solely between the legal representative of ZEDE Próspera and HPI, without any participation of the State. Consequently, this objection concerns the fundamental basis of any arbitration—consent—which, in relation to claims arising from the LSA, is manifestly non-existent.
- Preliminary Objection 5, referring to the lack of an investment authorization under DR-CAFTA, is also serious and substantial, since it refers to the complete

absence of one of the alleged jurisdictional bases invoked by the Claimants to submit their claims to the Tribunal.

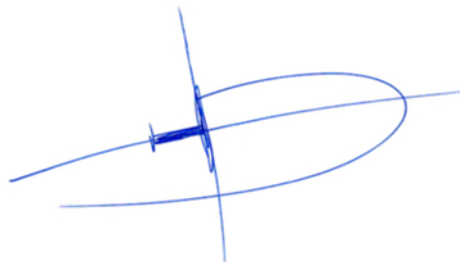
- Preliminary Objection 6 is serious and substantial in that it is based on the express exclusion, in both DR-CAFTA and the LSA, of the remedies claimed by the Claimants in their main claim.

IV. PETITION AND RESERVATION OF RIGHTS

172. For all the reasons set forth above, the Republic of Honduras respectfully requests that the Tribunal bifurcate the proceedings in accordance with the procedural timetable established by the Tribunal in Scenario 2 of Annex B to Procedural Order No. 5.¹⁸²

173. The State reserves the right to supplement or modify these submissions and to present all additional arguments necessary in accordance with the ICSID Arbitration Rules, Procedural Orders, and orders of the Arbitral Tribunal to respond to any allegations made by the Claimants in relation to this case. The Republic also reserves the right to raise additional jurisdictional objections in the future.

Respectfully,



Attorney General's Office
Manuel Antonio Díaz Galeas

¹⁸² Amended October 28, 2025.



Jana & Gil Dispute Resolution

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