

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

China Machinery Engineering Corporation

v.

Republic of Trinidad and Tobago

(ICSID Case No. ARB/23/8)

PROCEDURAL ORDER No. 3

Members of the Tribunal

Ms. Juliet Blanch, President of the Tribunal

Mr. David R. Haigh KC, Arbitrator

Lord David Hope, Arbitrator

Secretary of the Tribunal

Mr. Govert Coppens

22 May 2024

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I. PROCEDURAL HISTORY

1. On March 22, 2024, the Claimant, as part of its comments on the draft of Procedural Order No. 1, filed a request to address the quantum of damages in a separate phase of the proceeding (the “**Request for Bifurcation**”).
2. On March 24, 2024, the Tribunal accepted the Parties’ joint proposal to submit simultaneously their written submissions regarding the Request for Bifurcation by 10 April 2024. The same day, the Tribunal agreed that oral submissions regarding the Request would be made by each Party at the first session on 24 April 2024.
3. On 10 April 2024, the Claimant filed its Written Submission on Request for Bifurcation of Damages (the “**Claimant’s Submissions**”), together with Factual Exhibits C-0035 and C-0059 and Legal Authorities CL-0004 through CL-0019 and the Respondent filed its Submission on the Claimant’s Request for Bifurcation of Liability and Damages (the “**Respondent’s Submissions**”), together with Factual Exhibits R-0001 through R-0007 and Legal Authorities RL-0001 through RL-0024.
4. On 24 April 2024, the Tribunal held a first session by video conference. The same day the Tribunal confirmed that no further written submissions were to be filed by the Parties regarding the Request for Bifurcation.

II. THE PARTIES’ POSITIONS

A. THE CLAIMANT’S POSITION

5. The Claimant contends that bifurcation of the quantum phase of the proceedings will promote the overall efficiency, economy and fairness in the reference. Whilst the Claimant accepts that it is unusual for a claimant party to propose the bifurcation of quantum, it submits that it is not unique and there are sensible case management reasons for the Claimant’s Request for Bifurcation.

6. The Claimant explains there is widespread acceptance of bifurcation, citing Rule 42 of the 2022 edition of the ICSID rules. The Claimant then submits that whilst there may be some cynicism as to the effect on procedural economy of the bifurcation of jurisdictional issues, the position is different with regard to bifurcation of quantum issues. In particular, the Claimant refers to the decision in *Coropi v Serbia* in which the tribunal granted the respondent's request for bifurcation of quantum issues for "*efficient case management reasons*",¹ noting firstly that quantum and valuation evidence was not an essential component in the liability phase and secondly that a determination with regard to each of the treaty breaches claimed "*may have a bearing on the quantification of damages that may be warranted.*"²
7. The Claimant submits that the circumstances of the present case and those in *Coropi v Serbia*, are similar, noting that in both cases (i) multiple treaty breaches are asserted, "*leading to diverse variables of liability scenarios*"³ and (ii) the case asserted on expropriation concerned the requirement to compensate and not the adequacy of compensation.
8. The Claimant refers to Rule 42(4) which sets out the circumstances a tribunal should consider when determining whether to bifurcate.

Rule 42(4)(a)

9. The Claimant says that the overarching factor in determining the Request for Bifurcation is contained in Rule 42(4)(a) which requires the Tribunal to consider the effect of such an order on the time and cost of the present arbitration. This, it contends, will be the result if bifurcation of quantum is ordered.

¹ *Coropi Holdings Limited, Kalemegdan Investments Limited and Erinn Bernard Broshko v. Republic of Serbia*, ICSID Case No. ARB/22/14, Procedural Order No. 4 (Bifurcation of Liability and Damages Phases), 21 August 2023 (CL-0007), para 6.

² *Id.*, para 24.

³ Claimant's Submissions, para 17.

10. Firstly, the Claimant contends that bifurcation would “*materially shorten and accelerate the briefing schedule in the jurisdiction and liability phase*”⁴ as it will avoid premature, unnecessary, or unduly complex work on damages. The Claimant notes that the quantification of damages in construction disputes tends to be more time consuming and hence costly than in other types of disputes, typically requiring the “*substantial involvement of specialist experts reviewing a large variety and number of documents and assessing highly technical matters*”.⁵ The Claimant contends that the quantum phase will entail consideration of a very significant number of documents; whilst 1,300 documents have been provided to date, there are a very significant further number of documents to be considered as part of the quantum exercise.
11. Secondly, the Claimant contends that bifurcation of quantum would allow the Parties an opportunity to discuss compensation without an expensive quantum phase, or at least to agree a more efficient and inexpensive procedure for determining damages. The Claimant notes with disappointment the Respondent’s submission that there is no possibility of settlement in this case. Thirdly, the Claimant contends bifurcation would ensure quantum evidence and submissions are focused on the real issues in dispute. Finally, the Claimant notes that in the event it is unsuccessful on either jurisdiction or liability, the costs of a damages phase are avoided.

Rule 42(4)(b)

12. The Claimant next turns to Rule 42(4)(b) and says that whilst the Respondent’s case on jurisdiction or liability will not be dispositive of the entire case, “*it is reasonably foreseeable*” that the Tribunal’s determinations on liability would “*meaningfully define the scope of the investigations with respect to the determination of damages and reduce the scope or complexity of the relevant analysis and evidential record*.”⁶ The Claimant cites *Pildegovics v Norway* in which the tribunal found that in considering an application for bifurcation, “[...] *what matters most is the range of possible outcomes in which the*

⁴ Claimant’s Submissions, para 9.1.

⁵ Claimant’s Submissions, para 27.2.1

⁶ Claimant’s Submissions, para 28.

*Claimants' case is defeated only in part. Those outcomes have the potential to make a very substantial difference to the way in which the issue of quantum would have to be approached. [...].”*⁷

Rule 42(4)(c)

13. The Claimant finally considers the requirement under Rule 42(4)(c) and contends there is no “*obvious overlap between issues of jurisdiction and liability and those of damages*”.⁸ The Claimant explains that issues of quantum are irrelevant to the legal points in principle. In particular, questions of jurisdiction are not contingent on any monetary threshold and its case on expropriation is that no compensation was paid such that the issues in dispute do not relate to the adequacy of compensation. Therefore, the question of whether or not there was expropriation does not involve considerations of quantum. The Claimant further notes that as the Request for Arbitration is not fully particularised (as that is not required), and as no reply was filed by the Respondent, it is not appropriate at this stage for the Tribunal to undertake a forensic analysis of the constituent elements of the Claimant’s case on liability.
14. The Claimant then turns to the Respondent’s assertion of abuse of process, noting that it was lightly claimed and that it was extraordinary to contend that the transaction was fictitious. The Claimant notes that assertions of inflation of damages claimed is not uncommon on the part of respondent States, but that does not mean there has been an abuse of process. There is no requirement for the Claimant to be put to proof as to the damages claimed at such an early stage of the process.
15. The Claimant explains (i) that it has raised its Request for Bifurcation early in the proceedings; (ii) there is no breach of any agreement reached as to the procedural timetable; and (iii) there is no risk of trifurcation as the Parties are agreed that issues of jurisdiction and liability will be heard together.

⁷ *Peteris Pildegovics and Sia North Star v. Kingdom of Norway*, ICSID Case No. ARB/20/11, Procedural Order No. 5 (Decision on Respondent's Renewed Request for Bifurcation), 6 December 2021 (CL-0009) , para 22.

⁸ Claimant’s Submissions, para 27.5.

16. Finally, the Claimant submits that the Respondent's opposition to the Request for Bifurcation is an indication that the Respondent has an appreciation of the weakness of its case on jurisdiction and liability.

B. THE RESPONDENT'S POSITION

17. The Respondent first says that an application by the Claimant for damages to be bifurcated, as in this case, is possibly unique.
18. The Respondent then reviews the material engendered in the transition from the 2006 Rules (which did not provide for bifurcation) to the 2022 Rules, to explain how the power to bifurcate should be exercised. The Respondent refers, in particular to Working Paper number 1, published in August 2018,⁹ in support of its submissions that (i) there is no presumption in favour of bifurcation; (ii) bifurcation should not be ordered automatically but that the facts of the case in question should be considered; (iii) the Tribunal should exercise its discretion in deciding whether or not to bifurcate having heard the Parties; (iv) the guidelines in Rules 42(4)(a) to (c) are not exhaustive; and (v) it is important to note that the word used in Rules 42(4)(a) and (b) is "could" not "would".
19. The Respondent further contends, citing *Orazul International Espana Holdings S.L. v. Argentine Republic*, that it is the Claimant who bears the burden of persuading the Tribunal that, on balance, bifurcation will facilitate the relevant objectives.¹⁰
20. Finally, the Respondent notes that bifurcation of the damages phase is "*not common*",¹¹ contending that this is because upon the application of the Rule 42(4) guidelines, it is clear it is rarely appropriate. Indeed, in none of the cases it has cited with regard to bifurcation of quantum has the claimant requested bifurcation of liability and quantum.

⁹ Proposals for Amendment of the ICSID Rules - Working Paper, Volume 3, ICSID Secretariat, 2 August 2018 (**R-0001**).

¹⁰ ICSID Case No. ARB/19/25, Decision on Bifurcation, 7 January 2021 (**RL-0009**, para 30).

¹¹ Respondent's Submissions, para 8.

Rule 42(4)(c)

21. The Respondent contends that the factor contained in Rule 42(4)(c) is the most important of the factors detailed in Rule 42(4) to be considered by the Tribunal; where there are overlapping facts or issues between the phases of the dispute sought to be bifurcated, that, in itself, is sufficient to justify a refusal of an application to bifurcate.¹² The Respondent asserts that “*in this case issues of liability and damages are singularly “intertwined”, rendering bifurcation “impractical”... .*”¹³
22. The Respondent submits that each of the four Treaty obligations upon which the Claimant relies involves only the Respondent’s failure to pay the Claimant amounts the Claimant asserts are due. The Respondent’s defence to each is that “*they have been grossly exaggerated and/or are not supported by necessary documentation and/or are plainly unsustainable.*”¹⁴ The Claimant has not referred to any alternative or other compensation aside from contractual debt. Accordingly, the Respondent says, the Tribunal will have to consider whether the Claimant was contractually entitled to the sums claimed such that issues of damages are “*intrinsic to the resolution of the Claimant’s pleaded case as to the Respondent’s alleged liability under the BIT.*” The Respondent further notes that the quantum of damages sought appears to be the same as the damages sought in the Claimant’s contractual claim against Alutrint. As such, establishing the Claimant’s entitlement to the contractual claim will be part and parcel of the Claimant’s liability claim under the BIT and further, as the quantum of the contractual and BIT claims appears to be identical, “*there seems to be no further damages issue under the BIT claim which is capable of being severed from the liability issue under the BIT claim.*”¹⁵

¹² *Gavrilovic and Gavrilovic d.o.o v. Republic of Croatia*, ICSID Case No. ARB/12/39, Decision on Bifurcation, 21 January 2015 (**RL-0005**), para 76; *Mesa Power Group, LLC v. Government of Canada*, PCA Case No. 2012-17, Procedural Order No. 2, 18 January 2013 (**RL-0006**).

¹³ Respondent’s Submissions, para 22.

¹⁴ Respondent’s Submissions, para 23.

¹⁵ Respondent’s Submissions, para 40.

The expropriation claim

23. The Respondent explains that the amounts due under the EPC Contracts are the subject matter, or at least an essential ingredient, of the expropriation claim. Firstly, the Respondent contends that a refusal to pay does not equate to expropriation in circumstances where there is an unresolved dispute as to the amount payable.¹⁶ Therefore, the Respondent asserts, there can be no finding of expropriation until the amount owed has been determined and such dispute as to the amount payable will need to be determined at the liability stage.
24. Secondly, the Respondent refers to the decision in *Coropi v. Serbia*, in which the tribunal in that case expressly accepted that “[...] *there are also cases in which quantum evidence will be an essential component of a party’s case at the liability phase [...]*” giving the following example, namely where “*a claimant contends the breach of a non-expropriation provision of an investment treaty on the basis of the inadequate offer or payment of compensation. In such a case, the claimant’s valuation evidence is likely to go to the core of the claimant’s liability case.*”¹⁷
25. Then, the Respondent contends, if the Tribunal were to make a finding of expropriation, it will need to determine whether the expropriation was unlawful, including whether it was made against compensation.¹⁸ The Respondent contends that at the merits stage, it will contend that there was a contractual mechanism for determining disputes arising under the EPC Contracts which the Claimant failed to pursue. Accordingly, the Respondent will contend that it did not fail to settle the true amount of the contractual debt; there was instead a genuine dispute as to the Claimant’s purported quantification of this debt. This submission will require the Tribunal to determine whether or not there was a bona fide dispute as to the amount of contractual debt and or the compensation due to be paid. Accordingly, the Respondent will contend that the alleged expropriation was lawful.¹⁹

¹⁶ *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, 29 January 2004 (RL-0010).

¹⁷ *Coropi v. Serbia*, paras 20 – 21.

¹⁸ *Tidewater Inc., Tidewater Investment SRL, Tidewater Caribe, C.A., et al. v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/5, Award, 13 March 2015 (RL-0011)

¹⁹ *Ibid.*

Failure to afford fair and equitable treatment (“FET”)

26. The Respondent asserts ICSID case law provides that it is not appropriate for a conclusion to be reached on the merits of a FET claim based on the State’s non-payment under a contract while there is an unresolved dispute as to the amount payable.²⁰

Non-impairment

27. The Respondent contends that the standard of ‘reasonableness’ necessitates a showing that the State’s conduct bears a reasonable relationship to some rational policy. The Respondent submits that the particulars of the alleged breach of non-impairment overlap with those of the alleged FET breach and further contend that a decision as to whether there has been a breach of the non-impairment obligation will require an antecedent determination of the amount due under the EPC Contracts.

Umbrella Clause

28. The Respondent first contends that this claim is a “*non-starter*” given the wording of Article 13(2) of the Treaty.²¹ In any event, the Respondent contends that the damages claimed are simply the contractual debt.
29. The Respondent contends that with regard to each of the first three Treaty breaches claimed, crystallisation of the amount of the contractual debt is critical to establishing the alleged Treaty breaches. It would therefore be “*wholly unwarranted and impractical*” for the Tribunal to bifurcate liability and damages just in respect of the alleged breach of the umbrella clause breach in isolation from the liability and damages in respect of the other alleged Treaty breaches.²²

²⁰ *SGS v. Philippines; Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. The Republic of Paraguay*, ICSID Case No. ARB/07/9, Decision of the Tribunal on Objections to Jurisdiction, 29 May 2009 (**RL-0015**).

²¹ Respondent’s Submissions, para 112.

²² Respondent’s Submissions, para 114.

30. The Respondent also asserts that the Claimant has claimed exaggerated damages. There are five main heads of claim.

Engineering Drawings

31. Firstly, the Respondent explains that “*the central feature of the Claimant’s damages claim is in respect of the production of engineering drawings for the smelter.*”²³ The work on the drawings was terminated before the claims were made by the Claimant and yet, the Respondent notes, the quantum sought by the Respondent has ballooned between 4 September 2012, when the claim was first made for these drawings in the approximate sum of US\$25 million and 17 May 2013, when the claim was brought in the sum of US\$66 million, without explanation for the increase, any breakdown or supporting documentation.

Loss of profit

32. The Respondent next submits that there is no complexity in the loss of profit claim which has been calculated as a simple 5% of the Contract price. The Respondent further notes that in any event, even on the Claimant’s case, pursuant to the provisions of the Contract, where the Contract is terminated under Clause 16.2(e) for prolonged suspension (as has been asserted by the Claimant), a claim for loss of profit is excluded.

Overhead cost

33. Another head of claim is for ‘Overhead cost’ which is said to be calculated on the basis of a monthly cost of US\$100,000. Again, no basis for this claim has been provided and it is unsupported.

Downtime cost

34. The Respondent asserts that even if this claim is recoverable in law, it is predominantly for interest.

²³ Respondent’s Submissions, para 45.

Interest cost

35. Finally, the Respondent asserts the interest cost claim is unsustainable as being calculated by reference to claims which are grossly exaggerated, unsupported by evidence or unsustainable.
36. The Respondent further notes that it is entitled to frame its defence as it chooses and “*if [its] defence will necessarily raises issues of damages....this will point against making an order to bifurcate.*”²⁴

Rule 42(4)(a)

37. The Respondent contends that the calculation of damage will not, in this case, be so complex such that time and costs would be saved. Indeed, the Respondent contends that bifurcation will incur additional time and costs, citing the tribunal in *Churchill Mining v. Indonesia* that “[...] *if bifurcation of liability and quantum were accepted and liability established at the end of the liability phase, there would be a need for a further phase dealing with quantum, with the result that the totality of the two merits phases would be significantly longer and more expensive than non-bifurcated merits proceedings.*”²⁵
38. The Respondent first notes that the Claimant has not provided any documentation to support its claims summarised in paragraphs 23 – 35 above, such that unless the Claimant is to rely on documentation not yet proffered, the case should not be document heavy. Further, the interest claims are not document dependent. In addition, the Respondent submits that its non-bifurcated preliminary objections will require consideration of quantum issues as the abuse of process claim relates to the Claimant’s “*transplant of its successive quantified contractual claims against Alutrint Limited into its present claims under the BIT against the Respondent, being claims which are grossly exaggerated, plainly unsupported as presented and for which there is no reasonable basis.*”

²⁴ Respondent’s Submissions, para 20.

²⁵ *Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/40 and ARB/12/14, Procedural Order No. 8 (Bifurcation), 22 April 2014 (**RL-0008**), para. 14.

39. Finally, the Respondent says that the Claimant's claims comprise numerous issues so there is no chance of settlement. As noted by the Respondent during the First Session, "*there is no realistic possibility at the moment that the Parties can sit down and sort out damages*" and resolving the damages consensually is "*not a viable prospect and not a realistic prospect*".²⁶
40. The Respondent concludes that the Claimant's damages case is "*obviously very weak*"²⁷ and contends that bifurcation should not be ordered to mask a weak claim.

III. THE TRIBUNAL'S ANALYSIS

41. The Parties are in agreement that the Tribunal has jurisdiction to order the requested bifurcation. The applicable test is contained in Rule 42(4) which provides as follows:

In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:

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

(b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and

(c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.

42. The Tribunal accepts that there is no presumption in favour of bifurcation, that each case should be considered on the basis of its own circumstances, that the Tribunal has discretion in deciding how to determine a request for bifurcation and that the burden of proof is on the Claimant to show that bifurcation will facilitate the relevant objectives.
43. Rule 42(4) details certain circumstances which must be considered by the Tribunal in exercising its discretion as to whether or not bifurcation should be ordered. However, it is

²⁶ Audio Recording of the First Session, 24 April 2024 (Mark Strachan from 00:34:19. to 00:35:00).

²⁷ Respondent's Submissions, para 115.

clear from the text of Rule 42(4) that these are not the only factors the Tribunal may consider. The Tribunal further does not accept that any one individual circumstance is more or less important than any other circumstance. The Tribunal must consider all the circumstances in the present case to determine whether or not it would be appropriate case management, pursuant to the objectives set out in Rule 3(1), to order bifurcation to ensure the proceedings are conducted in an efficient and cost-effective manner. Finally, the Tribunal does not accept that each of the circumstances detailed in Rule 42(4) must mitigate for or against bifurcation, indeed it may be that one circumstance alone makes clear bifurcation would, or would not be, efficient or cost effective. The exercise for the Tribunal is to consider all the submissions before it, in order to decide whether bifurcation would lead to a more efficient and cost-effective process.

44. In undertaking this analysis, the Tribunal has not considered the merits of the Claimant's case on liability nor the Respondent's defences. Those will fall to be considered after the Parties have filed their respective Statements of Case and their reply Memorials. The Tribunal therefore does not address in this PO3 those of the Respondent's submissions that go to substantive issues in dispute between the Parties.
45. The Tribunal accepts that the burden is on the Claimant to persuade the Tribunal that, on balance, bifurcation will facilitate the relevant objectives. For the reasons detailed below, the Tribunal does not find that the Claimant has succeeded in meeting this burden.
46. Whilst the Tribunal does not find that any of the limbs of Rule 42(4) have more or less weight than the other limbs, the Tribunal finds it convenient first to address the question of whether or not the questions to be addressed in the liability and damages phase are "*so intertwined to make bifurcation impracticable*" as detailed in Rule 42(4)(c).
47. Whilst the Tribunal has not considered the merits of the Respondent's defences, it is clear to the Tribunal that a significant element of the Claimant's claim comprises the debts it asserts are due and payable under the EPC Contracts. The Respondent has asserted that, in defending these claims, it will put at the centre of its defence, the legitimacy and quantum of these contractual debts. The Respondent made detailed submissions on this issue and it is of note that the Claimant's submissions were more limited. The Claimant asserts that in

circumstances where no compensation has been paid, or even offered, by the Respondent, such that the quantum of loss is of no relevance to a finding of expropriation. The Tribunal does not accept it can reach such a conclusion at this stage of the proceedings, where the only legal submission before it is the Request for Arbitration. The Tribunal cannot, currently, have a clear understanding of the nature of the Parties' submissions on liability. The Tribunal accepts the Claimant's submissions that it is perfectly proper, indeed in the Tribunal's experience it is customary, for a claimant not to include significant detail as to its case in the Request for Arbitration. However, given it is clear from the content of the Request for Arbitration that the claims being brought are for damages relating to unpaid sums claimed under the EPC Contracts, the Tribunal does not find it can hold at this time, that issues of quantification of the damages sought will have no relevance to issues of liability.

48. The Tribunal accepts that there will be cases, such as *Coropi v. Serbia*, where bifurcation of damages is appropriate. Indeed, the Tribunal shares the views expressed by the *Coropi* tribunal as to the frustration experienced where the quantum evidence filed with the submissions on liability becomes redundant as a result of the Tribunal's finding on liability. However, the Tribunal does not find that the present case bears the similarities with *Coropi* for which the Claimant contends. Indeed, whilst there are multiple Treaty breaches asserted in the present case, the basis of each breach is the same, namely the asserted wrongful termination of the EPC Contracts leaving debts unpaid and/or without proper compensation. Whilst it is a matter for submission on liability, the Tribunal does not accept the Claimant's proposition that it will not have to consider the validity and quantum of the contractual debts when determining liability. Accordingly, the Tribunal finds that there may be intertwining of issues between the liability and damages phases such that bifurcation is likely to be impractical.
49. The Tribunal next turns to consider whether bifurcation would materially reduce the time and cost of the proceeding, pursuant to Rule 42(4)(a). Whilst the Claimant correctly noted that the damages exercise in construction projects can be significantly more complex in construction cases, the Tribunal's experience is that this is not always the case. The Tribunal does not accept that, on the basis of its understanding to date, the likely quantum

exercise in this case will be of the nature and extent suggested by the Claimant. Indeed, whilst the Claimant contends both that 1300 documents have already been provided to the Respondent with regard to the drawings and that there are a significant number of additional documents that will need to be produced, the Tribunal notes that the claim for the drawings was first made in September 2012.²⁸ Accordingly, whilst the complete set of relevant documentation may remain to be produced, given the damages were quantified in September 2012, the Tribunal would anticipate that these documents have been collated and it should not be a significant task for them to be produced. Of course, it may be a sizeable task for the Respondent to review them but the Respondent has not made any complaint as to the size of the task to be performed in reviewing these documents.

50. The Tribunal also notes that the other major heads of claim are based on mathematical calculations and do not appear to be complex. For example, the claim for loss of profit which appears to be a percentage of the Contract price, the claim for interest, and the claim for Overhead cost which appears to be claimed on the basis of a fixed monthly sum. It may be the case that there are complicated underlying issues such as a dispute as to the state of construction at the time the contracts were terminated, but as at the present time such an allegation has not been raised in submission.
51. For these reasons, the Tribunal is not persuaded that bifurcation of quantum will promote the overall efficiency, economy and fairness in the reference.

²⁸ Respondent's Submissions, para 50.

IV. DECISION

52. In view of the above, the Tribunal determines as follows:

- a. The Claimant's Request for Bifurcation is denied, and the Parties' arguments on damages are joined to the merits;
- b. The Parties are directed to confer regarding the procedural calendar and inform the Tribunal of their agreement, or the reasons for their disagreement, **by May 31, 2024**; and
- c. The decision on costs is reserved.

On behalf of the Tribunal,

[signed]

Ms. Juliet Blanch
President of the Tribunal
Date: 22 May 2024