

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

FREEPORT-MCMORAN INC.
Applicant on Annulment

and

REPUBLIC OF PERU
Respondent on Annulment

ICSID Case No. ARB/20/08
Annulment Proceeding

**DECISION ON THE RESPONDENT'S REQUEST FOR
SUSPENSION OF THE PROCEEDING**

Members of the *ad hoc* Committee

Sir Christopher Greenwood, President

Ms. Dyalá Jiménez Figueres

Ms. Carita Wallgren-Lindholm

Assistant to the President of the *ad hoc* Committee

Mr. Arjun Solanki

Secretary of the *ad hoc* Committee

Ms. Marisa Planells-Valero

Date of dispatch to the Parties: 10 April 2026

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I. PROCEDURAL HISTORY

1. On 16 September 2024, Freeport-McMoRan Inc. (the “**Applicant**” or “**Freeport-McMoRan**”) filed with the Secretary-General of the International Centre for Settlement of Investment Disputes (the “**Centre**” or “**ICSID**”) an application (the “**Application**”) for the partial annulment of the Award rendered on 17 May 2024 (the “**Award**”).
2. On 20 September 2024, pursuant to Rule 50(2) of the ICSID Arbitration Rules (the “**Arbitration Rules**”), the Acting Secretary-General of ICSID registered the Application.
3. By letter dated 12 December 2024, in accordance with Rules 6 and 53 of the ICSID Arbitration Rules, the Parties were notified that an *ad hoc* Committee composed of Sir Christopher Greenwood, a national of the United Kingdom, designated as President of the *ad hoc* Committee, Prof. José A. Moreno Rodríguez, a national of Paraguay, and Ms. Carita Wallgren-Lindholm, a national of Finland, had been constituted (the “**Committee**”). On the same date, the Parties were notified that Ms. Marisa Planells-Valero, Legal Counsel, ICSID, would serve as Secretary of the *ad hoc* Committee.
4. On 27 January 2025, in accordance with ICSID Arbitration Rules 53 and 13(1), the Committee held a first session with the Parties, by video conference.
5. Following the first session, on 12 February 2025, the Committee issued Procedural Order No. 1, recording the agreement of the Parties on procedural matters and the decision of the Committee on disputed issues. Procedural Order No. 1 provides, *inter alia*, that the applicable Arbitration Rules would be those in effect from April 10, 2006, that the procedural languages would be English and Spanish, and that the place of proceeding would be Washington DC. Procedural Order No. 1 also sets out a procedural calendar for the proceeding.
6. In accordance with Procedural Order No. 1, on 23 May 2025, Freeport-McMoRan filed its Memorial on Annulment (the “**Memorial**”), together with Factual Exhibits AA-0001 to AA-0019, Legal Authorities AALA-0001 to AALA-0018 and the Index of Factual Exhibits and Legal Authorities.

7. On 17 September 2025, in accordance with the procedural calendar, the Republic of Peru (“**Peru**” or the “**Respondent**”, and together with Freeport-McMoRan, the “**Parties**”) filed its Counter-Memorial on Partial Annulment (the “**Counter-Memorial**”), together with Factual Exhibits RA-0001 to RA-0003, Legal Authorities RALA-0001 to RALA-0054 and the Index of Documentation. On the same date, Peru submitted a revised version of its Counter-Memorial, and, on 24 September 2025, a revised version of the Index of Documentation.
8. On 7 November 2025, following the resignation of Prof. José A. Moreno Rodríguez, the Centre notified the Parties of the vacancy on the Committee and the suspension of the proceeding pursuant to ICSID Arbitration Rules 10(2) and 53.
9. By letter dated 8 December 2025, the Secretary-General notified the Parties of the reconstitution of the *ad hoc* Committee as follows: Sir Christopher Greenwood, a national of the United Kingdom, as President of the *ad hoc* Committee, and Ms. Dyalá Jiménez Figueres, a national of Costa Rica, and Ms. Carita Wallgren-Lindholm, a national of Finland, as Committee Members. The Secretary-General also notified the Parties of the resumption of the proceeding pursuant to ICSID Arbitration Rules 12 and 53.
10. On 12 December 2025, within the extension of the deadline granted by the Committee, Freeport-McMoRan filed its Reply on Annulment (the “**Reply**”), together with Factual Exhibits AA-0020 to AA-0068, Legal Authorities RALA-0025 and AALA-0019 to AALA-0027, and the Index of Factual Exhibits and Legal Authorities.
11. On 16 December 2025, after consultation with the Parties, the Committee confirmed that the Pre-Hearing Conference (the “**PHC**”) would be held on 30 March 2026.
12. On 16 January 2026, the Centre, on behalf of the President of the Committee, wrote to the Parties to inquire whether they agreed to the appointment of Mr. Arjun Solanki as the assistant to the President of the Committee in this case. The Parties agreed to the proposed appointment on 23 January 2026.
13. On 24 February 2026, within the extension of the deadline granted by the Committee, Peru filed its Rejoinder on Partial Annulment (the “**Rejoinder**”), together with Factual Exhibits

RA-0004 to RA-0009, Legal Authorities RALA-0055 to RALA-0067, and the Index of Supporting Documentation.

14. On 18 March 2026, Peru filed an Application for Interpretation of the Award rendered on 17 May 2024 in ICSID Case No. ARB/20/8 (the “**Request for Interpretation**”), together with Annexes A through E and Legal Authorities RA-177 and RA-178.
15. On 19 March 2026, Peru filed a Request for Suspension of this Annulment Proceeding, together with Annexes 1 and 2 (the “**Request for Suspension**”), in light of its Request for Interpretation of the Award.
16. On 26 March 2026, pursuant to Rule 50 of the ICSID Arbitration Rules, the Acting Secretary-General of ICSID registered the Request for Interpretation.
17. On 27 March 2026, following the Committee’s invitation, Freeport-McMoRan filed its observations in opposition to Peru’s Request for Interpretation, together with Annexes A to P.
18. On 29 March 2026, the Committee invited the Parties to comment, during the PHC, on the possible suspension of the annulment proceeding pending the outcome of the Request for Interpretation.
19. On 30 March 2026, the Committee held the PHC with the Parties by video conference. On the same date, the Committee confirmed the calendar for the second round of pleadings on the Request for Suspension, as discussed with the Parties during the PHC.
20. In accordance with the calendar confirmed by the Committee, on 31 March 2026, Peru submitted its reply in response to Freeport-McMoRan’s observations of 27 March 2026 on the Request for Suspension. On 2 April 2026, Freeport-McMoRan submitted its rejoinder in response to Peru’s reply of 31 March 2026.

II. THE PARTIES' POSITIONS

A. THE RESPONDENT'S POSITION

21. The Respondent seeks the suspension of the annulment proceeding and the vacation of the hearing dates scheduled for 5-6 May 2026.¹
22. The Respondent advances three principal arguments in support of its request. First, it contends that its Request for Interpretation goes to the heart of the Applicant's Annulment Application. According to the Respondent, the Parties fundamentally disagree on the meaning of the Award: the Respondent interprets the Award as declining jurisdiction over the penalties and interest claims with respect to both the Tax Assessments and the Royalty Assessments, whereas the Applicant contends that the Tribunal asserted jurisdiction over the penalty and interest claims relating to the Royalty Assessments but failed to decide them on the merits. The Respondent submits that the Tribunal's decision on interpretation will have a "*direct and substantial, if not dispositive, effect*" on the annulment proceeding. In particular, the Respondent argues that confirmation by the Tribunal of the Respondent's interpretation could render the Applicant's Annulment Application moot.²
23. Secondly, the Respondent argues that it would be contrary to procedural economy to conduct parallel proceedings for interpretation before the Tribunal and for annulment of the Award before the Committee. It submits that maintaining the currently scheduled hearing while the interpretation proceeding is pending would risk unnecessary duplication of efforts and additional costs which might ultimately prove unnecessary. The Respondent contends that a decision on interpretation, which it expects the Tribunal would render in an expeditious manner, would facilitate the work of the *ad hoc* Committee and narrow the scope of the annulment proceeding. Further, the Respondent adds that if the hearing proceeds in May before the interpretation decision is issued, additional rounds of submissions and further procedural steps would probably be required, whereas a brief

¹ Request for Suspension, pp. 1-3; Respondent's Email to the *ad hoc* Committee dated 27 March 2026, attaching ICSID's Cover Letter and Notice of Registration dated 26 March 2026; Annex 1 (E-mail from Respondent's Counsel to ICSID, 18 March 2026); Annex 2 (Request for Interpretation).

² Request for Suspension, p. 2.

suspension would avoid wasted effort and ensure that any hearing is conducted once, on a complete and settled record.³

24. Lastly, the Respondent relies on Article 53(2) of the ICSID Convention, which provides that a decision on interpretation becomes part of the Award. The Respondent submits that it would be inappropriate for the *ad hoc* Committee to decide the annulment application without having the complete Award before it, and that the *ad hoc* Committee should not base its procedural decisions on speculation as to how the Tribunal might rule on the Request for Interpretation. The Respondent characterises suspension not as an extraordinary remedy but as a “*prudent measure*” in the circumstances.⁴
25. In response to the Applicant’s opposition, the Respondent makes a number of additional points. It maintains that the Applicant’s criticisms of the Request for Interpretation, which the Applicant characterises as untimely, tactical, abusive, and improper, are irrelevant to the question of suspension, as it is for the Tribunal that rendered the Award, not the Committee, to determine whether the Request for Interpretation is admissible, timely, or well-founded. The Respondent further argues that even the Applicant concedes that the Tribunal’s interpretation decision may affect the issues before the Committee, noting that the Applicant acknowledges that the interpretation decision could at least “*partially narrow the issue of whether the Tribunal manifestly exceeded its powers.*” The Respondent contends that whether the Tribunal’s decision will “*partially narrow*” the Annulment Request or have a more significant effect cannot be predicted and that the Committee should not proceed on the basis of speculation. The Respondent also submits that the Applicant’s reliance on *Tethyan Copper v. Pakistan* is misplaced, as that case is distinguishable on its facts.⁵
26. The Respondent submits that the Applicant’s contention that the Request for Interpretation will become “*academic*” once the annulment is decided assumes an outcome on annulment that the *ad hoc* Committee cannot, and should not, prejudge. In the Respondent’s view, the Applicant deliberately chose not to seek rectification under Article 49 of the ICSID Convention because it knew that the outcome would not be favourable, and instead pursued

³ Request for Suspension, p. 2; Respondent’s Letter of 31 March 2026, p. 3.

⁴ Request for Suspension, pp. 2-3; Respondent’s Letter of 31 March 2026, pp. 2-4.

⁵ Respondent’s Letter of 31 March 2026, pp. 1-3.

annulment in an effort to secure a sixth opportunity to relitigate its case, despite having lost at every prior stage. The Respondent also submits that the Applicant's request for costs in relation to the suspension request is unfounded, contending that questions concerning the merits or admissibility of the Request for Interpretation are for the Tribunal alone to decide and provide no basis for an adverse costs order.⁶

B. THE APPLICANT'S POSITION

27. The Applicant opposes the Respondent's Request for Suspension. The Applicant contends that suspension of a proceeding is an extraordinary remedy which should only be granted for the most compelling reasons. The Applicant relies on the principle that the starting point for evaluating any suspension request is the presumption that either party is entitled to have the proceeding conducted at a normal pace, and that a party seeking suspension bears the burden of providing compelling reasons why that exceptional remedy is warranted. The Applicant submits that the Respondent has cited no authority other than Article 44 of the ICSID Convention, which is merely a general procedural provision, and has failed to acknowledge the high threshold applicable to suspension requests.⁷
28. Turning to the merits of the Respondent's request, the Applicant advances six principal arguments. First, the Applicant argues that a suspension will not promote efficiency or avoid inconsistent decisions because, regardless of the outcome of the Request for Interpretation, the *ad hoc* Committee will still have to decide the Annulment Application. The Applicant identifies three possible outcomes: (i) the Tribunal holds the Request for Interpretation inadmissible or declines to decide it; (ii) the Tribunal agrees with the Applicant's interpretation; (iii) the Tribunal agrees with the Respondent's interpretation. In either of the first two cases, the annulment proceeding would be unaffected and the Committee would still have to decide the issues as they are currently presented. In the third case, the *ad hoc* Committee would still need to decide whether annulment was warranted on the grounds of absence of reasoning and violation of fundamental rules of procedure.

⁶ Respondent's Letter of 31 March 2026, p. 4.

⁷ Applicant's Letter of 27 March 2026, pp. 2-4.

The Applicant accordingly submits that, in all three scenarios, the only effect of a suspension would be delay.⁸

29. Secondly, the Applicant argues that proceeding with the annulment will itself promote efficiency because any outcome of the annulment will render the Request for Interpretation unnecessary. If the Award is partially annulled, the Request for Interpretation will be moot because the relevant part of the Award will no longer be operative; and if the Respondent prevails in avoiding annulment, the Request for Interpretation will equally be unnecessary. The Applicant maintains that the Request for Suspension is therefore directly counterproductive to the goals of economy and efficiency, and that no “*speculation*” about the outcome of either proceeding is required to reach this conclusion.⁹
30. Thirdly, the Applicant contends that the belated timing of the Respondent’s request undermines any claim that suspension would promote efficiency. The Applicant notes that the hearing date was set nearly a year ago in April 2025, the Parties have submitted two rounds of written submissions, and preparations for the hearing are well advanced. The Applicant observes that the interpretive issue the Respondent purports to identify could have been raised as soon as the Award was issued in May 2024, or at the very latest upon receipt of the Applicant’s Memorial on Annulment in May 2025. The Applicant notes that the Respondent’s own Counter-Memorial on Partial Annulment, filed in September 2025, confirms that the Respondent already understood this was a disputed issue. The Applicant accordingly submits that the Respondent’s decision to wait until weeks before the hearing to file its Request for Interpretation and Request for Suspension reveals the request to be little more than a tactic to cause delay.¹⁰
31. Fourthly, the Applicant argues that the Respondent’s Request for Interpretation is not a proper request for interpretation under Article 50 of the ICSID Convention. The Applicant submits that the *dispositif* of the Award states explicitly that the Tribunal has jurisdiction over the Claimant’s claims except for claims based on the Tax Assessments’ penalties and interest, and that the Award consistently distinguishes Royalty Assessments from Tax Assessments. The Applicant contends that what the Respondent seeks is not an

⁸ Applicant’s Letter of 27 March 2026, pp. 5-6; Applicant’s Letter of 2 April 2026, pp. 2-3.

⁹ Applicant’s Letter of 27 March 2026, p. 6; Applicant’s Letter of 2 April 2026, p. 3.

¹⁰ Applicant’s Letter of 27 March 2026, pp. 6-8.

interpretation of the Award but rather the addition of conclusions that the Award does not contain, namely, that claims relating to penalties and interest on the Royalty Assessments constitute taxation measures and were dismissed on jurisdictional grounds, and that the Respondent is thereby seeking a correction or supplementation of the Award that should have been requested under Article 49(2) of the ICSID Convention within the 45-day time limit, which has long since expired. The Applicant invokes a number of decisions in which tribunals have held interpretation requests inadmissible on the ground that they sought to rewrite, reconsider, or supplement an award rather than ascertain its meaning.¹¹

32. Fifthly, the Applicant submits that denial of suspension will cause no prejudice to the Respondent, whereas a suspension would cause real and immediate prejudice to the Applicant. The Applicant notes that four years of arbitration preceded the Award, that the Parties have spent two years litigating the annulment proceeding, and that the Parties and the Committee have expended substantial resources preparing for the hearing. The Applicant observes that the claim at issue is valued at approximately USD 417 million and that any further delay would compound the prejudice already suffered.¹²
33. Finally, the Applicant submits that the Respondent is asking the Committee to presuppose a particular outcome for the Request for Interpretation, since the Respondent's case for suspension depends on the assumption that the Tribunal will decide the interpretation request in the Respondent's favour. The Applicant notes that tribunals have routinely found interpretation requests of the kind filed by the Respondent to be inadmissible. The Applicant contends that allowing a party to secure the suspension of an annulment proceeding by filing a belated request for interpretation on the eve of the hearing would invite abuse and undermine the integrity of the ICSID annulment mechanism. The Applicant accordingly requests that the *ad hoc* Committee deny the Request for Suspension and order the Respondent to reimburse the Applicant for all costs and expenses incurred in connection therewith.¹³

¹¹ Applicant's Letter of 27 March 2026, pp. 8-10.

¹² Applicant's Letter of 2 April 2026, p. 3.

¹³ Applicant's Letter of 27 March 2026, p. 10; Applicant's Letter of 2 April 2026, pp. 2-3.

III. THE COMMITTEE'S ANALYSIS

34. The Committee begins by noting three principles which it considers must guide its decision. First, it is not for the Committee to decide whether the Request for Interpretation has been filed in a timely fashion, whether it is well founded or, indeed, whether it is a genuine request for interpretation. These are matters for the Tribunal (as reconstituted in accordance with Article 50(2) of the ICSID Convention on 7 April 2026¹⁴). On the other hand, it is for the Committee to decide whether the Request for Suspension is timely, well founded or an abuse of process. The Tribunal and the Committee are each responsible for the conduct of the proceedings before them.
35. The *ad hoc* committee in *Tethyan* decided that an *ad hoc* committee has the authority, under Article 52(4) of the ICSID Convention, to suspend or continue the annulment proceeding in the face of an application for revision of the award.¹⁵ While the present case concerns an application for interpretation rather than one for revision, the Committee considers that the same principle applies and that it has the power to suspend or continue the proceeding. A decision on such a matter is one in respect of which an *ad hoc* committee has a broad discretion.
36. The central consideration in the exercise of that discretion is, in the words of the *Tethyan* committee “*whether procedural efficiency or economy is better served through suspension or continuing the proceeding*”.¹⁶ That involves a delicate balancing act. On the one hand, if an annulment proceeding is suspended then there is inevitably delay in that proceeding and, depending on the stage which the proceeding has reached, a degree of wasted costs. On the other hand, if a tribunal’s decision on interpretation has a significant effect on the issues in the annulment proceeding, it may become necessary to have further pleadings and even a supplementary hearing which would entail both a degree of delay and additional costs.¹⁷

¹⁴ Letter from ICSID to the Parties of 7 April 2026.

¹⁵ *Tethyan Copper Company Pte Limited v. Islamic Republic of Pakistan* (ICSID Case No. ARB/12/1 (annulment)), Procedural Order No. 3 of 2 April 2021 (**Annex K** to the Applicant’s Letter of 27 March 2026), (“*Tethyan*”), para. 22.

¹⁶ *Tethyan*, para. 26.

¹⁷ See *Tethyan*, paras. 26-29.

37. Secondly, a proceeding under Article 52 of the ICSID Convention is about whether or not to annul – in whole or in part – the award given by the tribunal in an earlier proceeding in the same case. The award is therefore at the heart of the annulment proceeding. For that reason the question whether or not an *ad hoc* committee should suspend an annulment proceeding pending a ruling by the tribunal is quite different from the question whether a tribunal should suspend the proceeding before it pending a ruling in another arbitration or in national court proceedings.¹⁸ The decisions of tribunals in such cases are, therefore, of little assistance in resolving the issue currently before the Committee.
38. Of the cases cited before it in relation to the Request for Suspension, the one which the Committee has found directly relevant is the decision of the *ad hoc* committee in *Tethyan*.¹⁹ While that decision is not, of course, in any way binding upon the Committee, the Committee has found the analysis in that decision of considerable assistance, although it notes that the circumstances differed from those in the present case in that the request for suspension was there brought by the applicant for annulment and the request for suspension was based upon a request for revision, rather than interpretation, of the award.
39. Lastly, the Committee agrees with the Applicant that suspension is an extraordinary remedy to be granted only when there are compelling reasons to do so. While the Respondent characterised suspension as a “*prudent measure*” rather than an extraordinary remedy, it did not develop that proposition or advance an alternative legal standard.
40. Applying these principles the *Tethyan* noted that “[o]ne of the most relevant factors is the stage of the proceeding” and considered that the fact that an annulment proceeding had reached an advanced stage would favour rejection of any request for suspension.²⁰ In that case the proceeding was at an advanced stage with the hearing only two months away and written pleadings complete.
41. There is no escaping the fact that the Respondent in the present case has made its Request for Suspension at a very late stage. The proceeding is, if anything, even more advanced than that in *Tethyan* since there are fewer than four weeks to go before the date scheduled

¹⁸ See, e.g., in *Bayindir İnşaat Turizm Ticaret ve Sanayi A.Ş. v. Islamic Republic of Pakistan* (ICSID Case No. ARB/03/29), Decision on Jurisdiction of 14 November 2005 (**Annex D** to the Applicant’s Letter of 27 March 2026).

¹⁹ *Tethyan*, note 15, above.

²⁰ *Tethyan*, para. 25.

for the hearing. Moreover, the Committee must express its serious concern that the Request for Suspension has been made at such a late stage. The Respondent defends the timing of its Request by saying that it was not until it filed its Rejoinder on Annulment that the issue about the proper interpretation of the Award crystallised. But it was clearly stated in the Applicant's Memorial, filed on 23 May 2025, that the Applicant considered that the Tribunal had upheld jurisdiction in respect of the claim for penalties and interest on the Royalty Assessments.²¹ The Respondent set out its contrary view in its Counter-Memorial, filed on 16 September 2025.²² That the Parties differed as regards the proper interpretation of the Award was therefore apparent six months before the Respondent made its Requests for Interpretation and Suspension. As the *Tethyan* committee stated, that factor weighs in favour of rejecting the Request for Suspension and continuing with the proceeding.

42. There are, however, other factors which the Committee must also weigh in the balance in exercising its discretion. In *Tethyan*, the committee attached much weight to the following consideration:

*The Committee also finds that Pakistan has not sufficiently demonstrated how the grounds on which it seeks revision and the grounds on which it seeks annulment overlap and how a revision of the "factual matrix" on which the Award is based would significantly affect the annulment proceeding. This further supports continuation of the proceeding.*²³

43. In the present case, the Applicant argues that, however the Tribunal deals with the Request for Interpretation, its decision would either have no effect on the issues in the annulment proceeding or, at most would serve only to "narrow" the scope of the proceeding.²⁴ As set out in paragraph 28, above, the Applicant considers that only three outcomes are possible: (i) the Tribunal holds the Request for Interpretation inadmissible or declines to decide it; (ii) the Tribunal agrees with the Applicant's interpretation; (iii) the Tribunal agrees with the Respondent's interpretation. The Applicant contends that in either of the first two cases, the annulment proceeding would be unaffected and the Committee would still have to decide the issues as they are currently presented. In the third case, the Committee would

²¹ Memorial on Annulment, paras. 8-10, 28-37.

²² Counter-Memorial on Annulment, paras. 150-153.

²³ *Tethyan*, para. 31.

²⁴ Applicant's Letter of 27 March 2026, pp. 5-6; Applicant's Letter of 2 April 2026, pp. 2-3.

still need to decide whether annulment was warranted on the grounds of absence of reasoning and violation of fundamental rules of procedure.

44. The Applicant is obviously right about the first two scenarios. The third is not, however, as straightforward as the Applicant suggests. The Application is based on three grounds: (i) that, having (as the Applicant sees it) upheld jurisdiction over the claim for penalties and interest in respect of the Royalty Assessments, the Tribunal manifestly exceeded its jurisdiction by then failing to decide that claim on the merits; (ii) that it failed to state reasons for its decision to dismiss those claims; and (iii) that it seriously departed from a fundamental rule of procedure by violating its duty to decide the questions before it and depriving the Applicant of the opportunity to be heard.²⁵
45. If the Tribunal decides, on the Request for Interpretation, that the correct interpretation of the Award is that it decided there was no jurisdiction to hear the claims for penalties and interest on the royalties assessments (and therefore agrees with the Respondent's interpretation), that would dispose of the first ground for annulment and, in that sense would narrow the issues before the Committee. If that happened after the hearing on annulment, there would be an element of wasted costs since the Parties would have used part of the hearing to set out their arguments on that first ground. However, most of the costs of arguing this issue have already been incurred. When weighed against the fact that the Request for Suspension has been made at such a late stage, the relatively slight saving in costs in respect of the hearing would not be sufficient to justify suspension. If this possible "*narrowing*" of the proceeding were the only consideration, the Committee would decide in favour of a continuation of the proceeding.
46. The problem is that it is not the only consideration. The Applicant submits that, if the Tribunal were to rule that the Award decided that there was no jurisdiction in respect of the claim for penalties and interest in respect of the Royalty Assessments, the Committee would still have to decide whether the Award should be annulled in part on either or both of the grounds of failure to state reasons and departure from a fundamental rule of procedure. The Committee cannot exclude that possibility. However, in that scenario the nature of the case on both grounds would be different from that currently pleaded. The

²⁵ Application for Partial Annulment, para. 7; Memorial on Annulment, para. 10.

Applicant has argued its case on the basis that the Tribunal failed to state reasons and failed to respect a fundamental rule of procedure in the way in which it dealt with the *merits* of the claim. If the Tribunal were to interpret the Award as rejecting jurisdiction over that claim, the issue would presumably shift to whether there was a failure to state reasons or a failure to respect a fundamental rule of procedure in the way the Tribunal dealt with *jurisdiction*.

47. That would be not a narrowing but a marked shift in the very nature of the issues before the Committee. If that were to result from a decision by the Tribunal given after the Committee's hearing on annulment, it would necessarily entail fresh pleadings and possibly a supplementary hearing.
48. It is, of course, by no means certain what will be the outcome before the Tribunal. That is a matter for the Tribunal, and it would be impermissible for the Committee to speculate. Nor is there any certainty about when the Tribunal might issue its decision. Given that the hearing on annulment is scheduled for 5-6 May 2026, it is difficult to see how the Tribunal could give a decision before that date. But if the annulment proceeding is suspended and the scheduled hearing dates are abandoned, it is impossible to know how long it might be before the annulment proceeding could resume.
49. The Committee has weighed these considerations carefully. What it considers decisive is that it cannot exclude the possibility that, were the Tribunal to admit the Request for Interpretation and adopt the interpretation advanced by the Respondent, it would become necessary to hold further proceedings, including fresh pleadings and possibly a supplementary hearing, after the hearing currently scheduled. The delay and additional costs which could result from that eventuality outweigh the delay and wasted costs which will result from a suspension of the proceeding. Considerations of procedural efficiency and economy are accordingly better served by suspending the proceeding pending the decision of the Tribunal on the Request for Interpretation.
50. The Committee has reached that conclusion with considerable reluctance. The very late filing of the Requests for Interpretation and Suspension, which it considers has not been properly explained and for which it can see no justification (see paragraph 41, above), will necessarily lead to both a delay and a waste of costs which could have been avoided. That

may suggest that, irrespective of the outcome of the proceeding on annulment, the additional costs incurred as a result of the last-minute suspension should be borne by the Respondent. It is not, however, possible to take a decision on that issue at this stage and the matter is therefore reserved.

IV. DECISION

51. For the reasons set forth above, the Committee DECIDES as follows:

- (1) the proceeding on annulment is suspended pending the outcome of the proceeding on the Request for Interpretation;
- (2) the hearing dates scheduled for 5 and 6 May 2026 are vacated;
- (3) the question of costs is reserved.

On behalf of the *ad hoc* Committee:

[Signed]

Sir Christopher Greenwood
President of the *ad hoc* Committee
Date: 10 April 2026