

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Fernando Paiz Andrade and Anabella Schloesser de León de Paiz

v.

Republic of Honduras

(ICSID Case No. ARB/23/43)

PROCEDURAL ORDER NO. 6

DECISION ON BIFURCATION OF ADDITIONAL OBJECTIONS

Members of the Tribunal

Prof. Nicolas Angelet, President of the Tribunal

Mr. Stephen L. Drymer, Arbitrator

Prof. Brigitte Stern, Arbitrator

Secretary of the Tribunal

Ms. Gabriela González Giráldez

31 July 2025

Table of Contents

| | |
|---|-----------|
| I. INTRODUCTION..... | 1 |
| II. PROCEDURAL BACKGROUND | 1 |
| III. SUMMARY OF THE PARTIES' POSITIONS | 2 |
| A. THE RESPONDENT'S POSITION | 2 |
| B. THE CLAIMANTS' POSITION | 3 |
| IV. TRIBUNAL'S ANALYSIS..... | 5 |
| A. THE TREATY'S LIMITATION PERIOD (ADDITIONAL OBJECTION 1) | 5 |
| B. THE OWNERSHIP AND CONTROL (ADDITIONAL OBJECTION 2)..... | 7 |
| C. THE ALLEGED PURELY CONTRACTUAL NATURE OF THE CLAIMS (ADDITIONAL OBJECTION 3)..... | 8 |
| V. DECISION..... | 11 |

I. INTRODUCTION

1. This Procedural Order No. 6 addresses an issue of bifurcation additional to that decided in Procedural Order No. 3 dated 20 December 2024 (“**PO3**”), as foreseen in Procedural Order No. 4 dated 4 April 2025 (“**PO4**”). This issue is whether the three jurisdictional objections which the Republic of Honduras (also the “**Respondent**”) raised for the first time in its Memorial on Jurisdictional Objections dated 25 February 2025 (the “**Additional Objections**”) should, in whole or in part, be bifurcated.

II. PROCEDURAL BACKGROUND

2. On 20 December 2024, the Tribunal issued its Decision on Bifurcation as PO3, deciding to bifurcate some, but not all, of the Respondent’s preliminary objections enunciated in its Summary of Jurisdictional Objections and Request for Bifurcation of 21 October 2024 (the “**Initial Objections**”) and requested the Respondent to raise any additional jurisdictional objections it may have in its memorial in the bifurcated proceeding.
3. On 25 February 2025, the Respondent filed its Memorial on Jurisdictional Objections, in which it set out the Additional Objections. These Additional Objections are:
 - **Additional Objection 1** concerning the Treaty’s limitation period;
 - **Additional Objection 2** regarding the Claimants’ ownership of and control over the investment; and
 - **Additional Objection 3** regarding the alleged purely contractual nature of the Claimants’ claims.
4. In PO4, the Tribunal requested the Parties to address the Additional Objections and whether they should, in whole or in part, be bifurcated or joined to the merits, in their respective submissions pursuant to the calendar in Annex B to PO1, as amended per the Tribunal’s decision of 20 January 2025. The Tribunal further gave the Parties some indicative guidance on aspects they were requested to address in their submissions on bifurcation. The Tribunal stated that it would then decide whether the Additional Objections should, in whole or in part, be bifurcated within 30 days after the Rejoinder on Jurisdictional Objections. This is the subject-matter of the present Procedural Order.
5. After summarizing the Parties’ positions in **Section III**, the Tribunal analyses the issues before it in **Section IV**. The Tribunal’s decision is set out in **Section V**. This decision does not prejudice any decision regarding the merits of the Additional Objections and all considerations herein are made on the basis of a preliminary analysis.

III. SUMMARY OF THE PARTIES' POSITIONS

6. The following summary focuses on the Parties' positions regarding the bifurcation of the Additional Objections. It does not repeat the Parties' positions already set out in PO4 and is complemented with further elements, including on the Parties' respective arguments on the Additional Objections themselves, which the Tribunal considers relevant for its decision.

A. THE RESPONDENT'S POSITION

7. According to the Respondent, its Additional Objections must be considered in full and decided upon in the bifurcated proceeding.
8. In its Memorial on Jurisdictional Objections dated 25 February 2025, the Respondent submitted that the three Additional Objections should be decided upon in the bifurcated proceeding on jurisdiction.¹
9. In its Reply on Jurisdiction dated 4 June 2025, the Respondent maintains its position. It notably argues that each of the Additional Objections can eliminate the whole or a substantial part of the dispute, that none of the Additional Objections is intertwined with the merits in such a manner as to render its bifurcation impracticable, and that bifurcation will contribute to efficiency and justice.²
10. With respect to the first criterion, namely the elimination of the whole or a substantial part of the dispute, the Respondent argues that each of the Additional Objections would – if upheld – terminate the entire dispute, but that it is in any event sufficient that an objection may clarify the legal criteria to be applied at the next phase of the proceeding. Further, the Respondent's detailed arguments and the questions asked by the Tribunal in PO4 evidence that the objections are raised in good faith and are not frivolous or manifestly unfounded.³
11. With respect to the second criterion, namely whether the objections are intertwined with the merits, the Respondent argues that both the factual and the legal aspects of Additional Objection 1 on the Treaty's limitation period can be decided without addressing the merits of the case, that Additional Objection 2 on ownership and control is a discrete legal issue which must be bifurcated, and that Additional Objection 3 asserting that the claims are purely contractual in nature can be addressed in its *legal* aspects.⁴ More specifically:
 - With respect to Additional Objection 1, the Respondent agrees with the Tribunal's preliminary suggestion in PO4 that, while the qualification of the alleged facts appears to also be a factual issue which may be intertwined with the merits, it may prove unnecessary to make an actual

¹ Respondent's Memorial on Jurisdictional Objections, pp. 36 ff., 45 ff., 85 ff. and the *petitum* at p. 98.

² Respondent's Reply on Jurisdictional Objections, paras. 580 ff. and 622.

³ Respondent's Reply on Jurisdictional Objections, paras. 589-593.

⁴ Respondent's Reply on Jurisdictional Objections, paras. 594 ff.

- factual finding in this respect if “the Parties address Additional Objection 1 based on the assumption that the facts alleged by [the] Claimants as constituting violations of the Treaty are established.”⁵ The Respondent further argues that a finding on facts for the purpose of a jurisdictional objection does not necessarily qualify as a question of merits,⁶ and that no rule exists according to which jurisdictional objections *ratione temporis* cannot be bifurcated.⁷
- With respect to Additional Objection 2, the Respondent argues that the Claimants have not discussed in their Counter-Memorial on Jurisdictional Objections whether this objection should be bifurcated or not, thereby implicitly acknowledging that it should be addressed by the Tribunal as a preliminary matter.⁸
 - With respect to Additional Objection 3, the Tribunal observes that the Respondent initially submitted that this objection might be considered to be intertwined with the merits,⁹ but that the Respondent raised it in its Memorial on Jurisdictional Objections to comply with the Tribunal’s PO3.¹⁰ And while the Respondent argues in its Reply on Jurisdictional Objections that the *legal* question whether the Tribunal has jurisdiction over purely contractual claims is not linked to the merits and can be addressed in the bifurcated proceeding,¹¹ the Respondent ultimately requests the Tribunal, in the *petitum* of its Reply, to order “the bifurcation of the Additional Objections to address or decide all or any of the additional objections as a preliminary matter”.¹²
12. With respect to the third criterion, namely whether bifurcation will contribute to efficiency and substantive justice, the Respondent notably observes that even if, for argument’s sake, the Additional Objections were not upheld, addressing them in the bifurcated proceeding would allow to save time in the next stage of the proceeding.¹³

B. THE CLAIMANTS’ POSITION

13. The Claimants argue, in substance, as follows:
14. With respect to Additional Objection 1, CAFTA-DR tribunals have generally only bifurcated preliminary objections based on the limitation period set forth in Article 10.18(1) when the Treaty mandated it; that is, when the respondent invoked Article 10.25.5 of the CAFTA-DR or Rule 41 of the ICSID Arbitration Rules, triggering automatic bifurcation. In those circumstances, multiple

⁵ Respondent’s Reply on Jurisdictional Objections, para. 602.

⁶ Respondent’s Reply on Jurisdictional Objections, paras. 605-608.

⁷ Respondent’s Reply on Jurisdictional Objections, paras. 609-617.

⁸ Respondent’s Reply on Jurisdictional Objections, para. 595.

⁹ At para. 251 of Respondent’s Memorial on Jurisdictional Objections, the Respondent more specifically asserts that the Tribunal is in possession of all the information to decide the question in the bifurcated proceeding, but submits that the Tribunal might consider that the question should be joined to the merits.

¹⁰ Respondent’s Memorial on Jurisdictional Objections, paras. 249-251.

¹¹ Respondent’s Reply on Jurisdictional Objections, paras. 598-601.

¹² Respondent’s Reply on Jurisdictional Objections, para. 622(2).

¹³ Respondent’s Reply on Jurisdictional Objections, paras. 620-621.

tribunals have ultimately dismissed these limitations objections relying on assumptions that the facts that the claimants had alleged qualified as violations of the applicable treaty.¹⁴

15. With respect to Additional Objection 2, the Claimants observe that PO4 asked the Parties to address two “well-circumscribed” issues, namely: (i) whether the Claimants own and control the investment through the various corporations that are mentioned in the Claimants’ Memorial and (ii) whether the Claimants have transferred their rights over Pacific Solar to a third party, [REDACTED]. In doing so, the Claimants have not conceded that this objection is adequate for bifurcation. The Respondent has effectively transformed what could have been a circumscribed objection into a fishing expedition and, at a minimum, a dispute that is highly fact intensive while PO4 aimed at avoiding overly burdensome evidence-intensive determination in an incidental proceeding with short deadlines and a short hearing.¹⁵
16. With respect to Additional Objection 3, the Respondent’s allegation that the Claimants’ claims are purportedly contractual is, by definition, intertwined with the merits. It would be inefficient to address the legal issue whether the Tribunal has jurisdiction over purely contractual claims without considering the nature of the Claimants’ claims under the Treaty.¹⁶ The Respondent does not in fact comply with the Tribunal’s instruction to assume that “the facts alleged by Claimants qualify as violations of the Treaty”, so that the Respondent’s time limitation and contractual objections hinge on the Respondent’s self-serving characterization of the Treaty breaches.¹⁷ In any event, “accepting Respondent’s recasting of Claimants’ claims would necessarily require delving into issues that go to the heart of the merits, which is not appropriate for a bifurcated phase.”¹⁸
17. Nevertheless, the Claimants recognize and support the Tribunal’s observation that it “should aim at making the most efficient use of time that has been allocated to the bifurcated proceeding in the procedural calendar.” In this vein, the Claimants request that the Tribunal dismiss Respondent’s Additional Objections for the reasons set out in the Claimants’ Rejoinder on Jurisdictional Objections.¹⁹ To do so, the Tribunal only needs to recognize that:
 - The Claimants’ claims in fact arise from the State policy and measures enshrined in the New Energy Law from May 2022 and the subsequent conduct pursued in furtherance thereof. Therefore, these claims—as pled—are timely and within the jurisdiction of the Tribunal.²⁰

¹⁴ Claimants’ Rejoinder on Jurisdictional Objections, para. 168.

¹⁵ Claimants’ Rejoinder on Jurisdictional Objections, paras. 175-177.

¹⁶ Claimants’ Rejoinder on Jurisdictional Objections, para. 169.

¹⁷ Claimants’ Rejoinder on Jurisdictional Objections, para. 170.

¹⁸ Claimants’ Rejoinder on Jurisdictional Objections, para. 171.

¹⁹ Claimants’ Rejoinder on Jurisdictional Objections, para. 178.

²⁰ *Ibid.*

- Regarding the Tribunal's question of whether, and if so, under what conditions, the Tribunal has jurisdiction over purely contractual claims, the Respondent's sovereign actions have, *inter alia*, repudiated critical rights set forth in the Agreements, forced renegotiations of the PPA under threats of expropriation and termination of the same, and threatened generators with criminal proceedings if they interrupt energy supply. In any event, the Claimants' briefing of these facts and the various obligations of the CAFTA-DR that they breach show that the Claimants' claims stem from a situation that goes well beyond a "purely" contractual claim. The Tribunal can therefore, affirm jurisdiction over these claims.²¹
 - The Claimants (i) indirectly own or control their investment in Pacific Solar, which they have established by producing evidence confirming that they indirectly own 99.99% of Pacific Solar's shares while Mr. Paiz directly owns the other 0.01%, that they are the ultimate beneficial owners of Pacific Solar's shares and assets, and (ii) control their investment by making all important decisions related to Pacific Solar, including its day-to-day operations, among others.²²
18. In conclusion, the Claimants request a decision "(a) [r]ejecting Respondent's bifurcated objections; (b) [d]enying Respondent's request to bifurcate the limitations period, contract claims, and ownership objections, or if bifurcation is granted, dismissing all objections during the bifurcated phase".²³

IV. TRIBUNAL'S ANALYSIS

19. The Tribunal will now determine whether the Additional Objections should be bifurcated, in whole or in part, or not. The relevant criteria have been identified in PO3 and PO4²⁴ and need not be repeated here.

A. THE TREATY'S LIMITATION PERIOD (ADDITIONAL OBJECTION 1)

20. With respect to Additional Objection 1, the Respondent requests bifurcation while the Claimants oppose it. Both Parties, however, express some degree of support for the possibility to address Additional Objection 1 based on the assumption that the facts alleged by the Claimants as constituting violations of the Treaty are established.²⁵
21. As concerns the objection itself, the debate between the Parties has focused on three questions: *first*, the starting date of the limitation period on the assumption that a treaty breach is instantaneous;

²¹ *Ibid.*

²² *Ibid.*

²³ Claimants' Rejoinder on Jurisdictional Objections, para. 311.

²⁴ PO3, paras. 30 ff.; PO4, paras. 30 ff.

²⁵ Respondent's Reply on Jurisdictional Objections, para. 602; Claimants' Rejoinder on Jurisdictional Objections, para. 176.

second, the impact of a qualification as a continuous act; and *third*, the impact of a qualification as a composite act.

22. With respect to the *first question*, the Respondent argues (as it does in more detail under Additional Objection 3, discussed below) that the Claimants' claims are truly contractual claims relating to facts starting more than three years before the Request for Arbitration, with the consequence that they are time-barred.²⁶ The Claimants argue that the Respondent takes this approach "notwithstanding the Tribunal's instruction in Procedural Order No. 4 that Respondent 'address the [time limitation objection] based on the assumption that the facts alleged by the Claimants qualify as violations of the Treaty'".²⁷
23. PO4 did not 'instruct' the Parties to address the objection based on the just-mentioned assumption (hereafter, "**the assumption**"), but rather requested the Parties to consider this hypothesis.²⁸ It remains that there is indeed a tension between the assumption and the Respondent's argument that regard must be had to the 'real nature' of the claims. Both may well prove reconcilable. At this stage, however, the Tribunal finds that deciding on bifurcation on the basis of the assumption risks prejudging the Respondent's argument regarding the real nature of the claims.
24. In addition, while the Respondent argues that not all questions of fact raised by a preliminary objection pertain to the merits,²⁹ a determination of the so-called "real nature" of the claims clearly pertains to the merits of the case.
25. Accordingly, the first question raised by Additional Objection 1, namely the starting date of the limitation period if the alleged breaches are considered instantaneous, shall not be bifurcated.
26. This finding impacts the *second question*, which is the application of the limitation period where the alleged breach qualifies as a continuous act. While the Claimants argue that, "where treaty breaches are based on continuing acts, the time bar begins to run only when the conduct ceases,"³⁰ the Respondent disagrees and argues that the starting date remains the same as for instantaneous acts.³¹ The Respondent's position thus again depends on the "real nature" of the Claimants' claims. Accordingly, the second question raised by Additional Objection 1 cannot be bifurcated either.

²⁶ Respondent's Reply on Jurisdictional Objections, paras. 479 and 523-532.

²⁷ Claimants' Rejoinder on Jurisdictional Objections, para. 181.

²⁸ PO4, para. 38: "the Tribunal considers, on a preliminary basis, that there is a possibility that it will prove unnecessary to make an actual factual finding in this respect if (always without prejudice to their right to bring further arguments) the Parties address Additional Objection 1 based on the assumption that the facts alleged by the Claimants as constituting violations of the Treaty are established." And *ibid.*, para. 55(B): "Without prejudice to their right to present any additional argument, the Parties are requested to: [...]"

²⁹ Respondent's Reply on Jurisdictional Objections, paras. 605-608.

³⁰ Claimants' Rejoinder on Jurisdictional Objections, para. 237.

³¹ Respondent's Reply on Jurisdictional Objections, paras. 554-560.

27. The above inevitably impacts also on whether the *third question* – that of the application of the limitation period to composite acts – should be bifurcated or not. It would not serve efficiency to bifurcate this question while the two others are joined to the merits. In addition, the qualification as a composite act is very fact-sensitive and may also, from the Respondent’s perspective, raise issues regarding the “real nature” of the claims.
28. In conclusion, therefore, Additional Objection 1 shall not be bifurcated.

B. THE OWNERSHIP AND CONTROL (ADDITIONAL OBJECTION 2)

29. Additional Objection 2 relates to whether the Claimants own and/or control the investment. This objection essentially focuses on two issues: *first*, the corporate structure between the Claimants and Pacific Solar; and *second*, the effect of an agreement with [REDACTED] through which, the Respondent alleges, the Claimants have transferred ownership to said bank.
30. The Respondent submits that this objection should be bifurcated. The Claimants submit that the objection should not be bifurcated and, in the alternative that, if bifurcated, it should be dismissed.
31. The subject-matter has been thoroughly documented and debated by the Parties. While the Claimants maintain their position that the objection should not be bifurcated, they consider that their position on the matter has been set out in detail to the Tribunal.³²
32. An important question before the Tribunal is whether Additional Objection 2 is intrinsically linked to the merits. That might at first sight be the case of the objection’s second limb, given the Claimants’ argument that it is the Respondent’s behaviour which caused the Claimants to enter into an agreement with [REDACTED].³³ In PO4, the Tribunal invited the Parties to address this issue in the following terms:

“Discuss whether, on the assumption that, as the Claimants allege, Pacific Solar was forced by the Respondent’s behaviour to transfer its rights to [REDACTED], this transfer should be disregarded for purposes of establishing the Claimants’ ownership and control over the investment as a condition to the Tribunal’s jurisdiction.”³⁴

33. In their Rejoinder, the Claimants do not specifically engage with this question. Rather, they argue that they retain *beneficial ownership* of the investment, and therefore still own and control the investment *within the meaning of international law*.³⁵ To that extent, the Claimants’ position on ownership and control is not linked to the merits.

³² See e.g. Claimants’ Rejoinder on Jurisdictional Objections, p. 166: “Claimants Have Established that They Are Beneficial Owners of Their Investment in Pacific Solar”, and p. 176, “Claimants Also Control Their Investment in Pacific Solar”.

³³ Claimants’ letter of 10 March 2025, pp. 2-3 and footnote 12, referred to in PO4 at p. 6.

³⁴ PO4, para. 55(B)2.c.

³⁵ E.g. Claimants’ Rejoinder on Jurisdictional Objections, p. 176 ff., notably para. 277.

34. Even if the Claimants were to argue that they lost their property and control because of the Respondent's wrongful acts, Additional Objection 2 could still be addressed at the jurisdictional phase, based on the assumption set out in PO4 that the facts which the Claimants allege to be violations of international law (and which allegedly caused them to lose the property or control), indeed qualify as such violations.³⁶
35. It follows that Additional Objection 2 is not intertwined with the merits in a manner that makes bifurcation impossible or inappropriate.
36. In addition, the Tribunal observes as follows:
- Whether a claimant owns the alleged investment is one of the very starting points of an investment treaty claim. It is typically an issue which, if at all possible, should be addressed early in the proceeding.
 - As the debate between the Parties makes clear, the objection is not frivolous nor manifestly unfounded.
 - The objection would, if upheld, dispose of the entire dispute.
 - The objection involves some complex issues which the Parties have briefed in detail. Addressing them in the bifurcated proceeding will save time at the merits stage, if any.
37. In conclusion, Additional Objection 2 on the Claimants' ownership of and control over the alleged investment, shall be bifurcated.

**C. THE ALLEGED PURELY CONTRACTUAL NATURE OF THE CLAIMS
(ADDITIONAL OBJECTION 3)**

38. Additional Objection 3 concerns the Respondent's argument that the Claimants' claims are in fact purely contractual in nature, and therefore outside the Tribunal's jurisdiction. The objection has two limbs. *First*, it raises the question, which may be of law and fact combined, whether the Claimants' claims are indeed purely contractual in nature, as the Respondent asserts. *Second*, it raises the legal question of whether the Tribunal has jurisdiction over purely contractual claims.
39. As concerns the *first limb*, the Tribunal already found in PO4 that this aspect of the objection is intertwined with the merits in a manner that makes it improper to be decided in the bifurcated proceeding. As stated in PO4, "the Tribunal cannot find that the Claimants' claims are purely contractual absent a prior finding that the Respondent did not breach any of the substantive standards of the Treaty. Yet, it follows from PO3 that the Claimants' allegations regarding expropriation and

³⁶ PO4, paras. 31-32. For clarity's sake, this would not dispense the Claimants of establishing that they originally owned/controlled the investment.

full security and protection will be addressed at the merits phase, if any. Accordingly, the Tribunal cannot find in the present bifurcated proceeding that the Claimants' claims are purely contractual".³⁷

40. The Tribunal observes *obiter* that this conclusion is further reinforced by the Parties' respective arguments since PO4. While asserting that the objection can be decided on the basis of the Claimants' claims and starting from their own narrative,³⁸ the Respondent insists that the Tribunal should have regard to the "real dispute"³⁹. Therefore, the Tribunal would be at risk of prejudging this issue to the detriment of the Respondent if it were to address Additional Objection 3 on the assumption that the facts alleged by the Claimants qualify as violations of the Treaty. This confirms that the objection must not be bifurcated.
41. As concerns the *second limb*, the Tribunal had requested the Parties in PO4 to specifically address the legal question whether and, if so, under what conditions, the Tribunal has jurisdiction over purely contractual claims. The Parties, however, have not done so in as many details, if any, as the Tribunal envisaged:
- The Respondent argues that the relevant legal framework is that of the difference between contract claims and investment treaty claims, and that the Claimants' claims are essentially contract claims.⁴⁰ It notably states that investment tribunals have jurisdiction over "treaty breaches" even if they relate to contractual violations,⁴¹ but that claimants are not entitled to just dress up their contract claims as treaty claims.⁴² What is needed is some kind of sovereign behaviour,⁴³ and there will be no treaty breach if the investor has access to an ordinary means of redress for its contract claims,⁴⁴ which according to the Respondent is the case in the present instance.⁴⁵
 - The Claimants are adamant that their claims are not purely contractual in nature, but they do not argue that the Tribunal would have jurisdiction if the claims were purely contractual. Rather, they argue that it would be inefficient to address the legal issue whether the Tribunal has jurisdiction over purely contractual claims without considering the nature of the Claimants' claims under the Treaty.⁴⁶ The Claimants also argue that it is irrelevant whether they can resort

³⁷ PO4, para. 51.

³⁸ Respondent's Reply on Jurisdictional Objections, paras. 601 and 416, 420.

³⁹ Respondent's Reply on Jurisdictional Objections, para. 417.

⁴⁰ Respondent's Reply on Jurisdictional Objections, paras. 423 ff.

⁴¹ Respondent's Reply on Jurisdictional Objections, para. 424.

⁴² Respondent's Reply on Jurisdictional Objections, para. 422.

⁴³ Respondent's Reply on Jurisdictional Objections, paras. 431-433.

⁴⁴ Respondent's Reply on Jurisdictional Objections, para. 434.

⁴⁵ Respondent's Reply on Jurisdictional Objections, paras. 462 ff.

⁴⁶ Claimants' Rejoinder on Jurisdictional Objections, para. 169, referring to their Counter-Memorial on Jurisdictional Objections.

to the contractual dispute resolution clauses, but that in any case they cannot in the present instance.⁴⁷

42. This leaves an important legal question undiscussed, which is an important aspect of the question whether the Tribunal has jurisdiction over purely contractual claims, and which is of potential relevance in the present instance. This question is the following.
43. Article 10.16 of the Treaty confers the Tribunal jurisdiction over alleged breaches of an obligation under Section A of the Treaty, an investment authorization, or an investment agreement. This *prima facie* raises the question whether the Tribunal's jurisdiction over investment agreements extends to *any* breach of an investment agreement, or whether it requires something more – such as, for instance, in line with the Respondent's general position, a sovereign act. The import of an umbrella clause through the Treaty's MFN clause, which is advocated by the Claimants and disputed by the Respondent, may lead to the similar question whether the umbrella clause does or does not elevate *any* contract breach to a Treaty breach.
44. Yet, the Parties have not specifically addressed these questions. Also, the case law referred to by the Parties does not sufficiently brief the Tribunal on these specific questions. The Respondent does refer to several arbitral decisions and other sources, in support of its general argument that a mere contract claim does not qualify as a treaty claim. However, these decisions are essentially, if not exclusively, concerned with the question whether a contract breach could qualify as a breach of a *substantive treaty standard* such as fair and equitable treatment, full security and protection,⁴⁸ or the minimum standard of treatment.⁴⁹ And while the Respondent refers to *Abaclat v. Argentina* stating that investment tribunals in principle lack jurisdiction over purely contract claims, the *Abaclat* tribunal then proceeds with stating *obiter* that

“[a]s an exception to this principle, a BIT sometimes provides for a so-called ‘Umbrella Clause’, which requires a State to observe any obligation arising from particular commitments it has entered into with regard to investments. Under a broad - and not undisputed - interpretation of these clauses as adopted by some arbitral tribunals and scholars, a State's breach of contract with a foreign investor or breach of an obligation under another treaty or law becomes, by virtue of an Umbrella Clause contained in the

⁴⁷ Claimants' Rejoinder on Jurisdictional Objections, paras. 264 ff.

⁴⁸ That was the case in *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Decision on Annulment, 3 July 2002; referred to in the Respondent's Reply on Jurisdictional Objections at para. 429. *Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. Republic of Paraguay*, ICSID Case No. ARB/07/9, Decision on Jurisdictional Objections, 29 May 2009; quoted in the Respondent's Reply on Jurisdictional Objections at para. 431, related to Article 3.1 of the BIT on fair and equitable treatment. Likewise, when it refers to the International Law Commission's Commentaries on the Articles on State Responsibility, at para. 429 of its Reply on Jurisdictional Objections, the Respondent refers to an additional wrong, such as a denial of justice.

⁴⁹ This was the case in *Glamis Gold, Ltd. v. United States of America*, UNCITRAL, Award, 8 June 2009; referred to at para. 429 of the Respondent's Reply on Jurisdictional Objections.

relevant BIT, a breach of the BIT actionable through the mechanism provided in such treaty, i.e., through ICSID arbitration”.⁵⁰

45. The Tribunal does not in any way take a position on these issues at this stage, but it does consider that they are an essential part of the question whether the Tribunal has jurisdiction over purely contractual claims, which the Tribunal invited the Parties to address with a view to potential bifurcation, as they may be relevant for the present instance. Since the Tribunal considers that it has not been sufficiently briefed on these issues at the present stage, it finds that it is in the interest of the Parties’ procedural rights and in the interest of justice not to decide Additional Objection 3 in the bifurcated proceeding.

V. DECISION

46. For these reasons, the Tribunal decides as follows:

- (A) Additional Objection 1 on the Treaty’s limitation period shall not be bifurcated.
- (B) Additional Objection 2 on the Claimants’ ownership of and control over the Investment shall be bifurcated.
- (C) Additional Objection 3 on the alleged purely contractual nature of the Claimants’ claims shall not be bifurcated.
- (D) The issue of costs is reserved for a later stage of the proceeding.

On behalf of the Tribunal,

[signed]

Prof. Nicolas Angelet
President of the Tribunal
Date: 31 July 2025

⁵⁰*Abaclat and others v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, para. 317.