

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Continental Gold Inc.

v.

Republic of Colombia

(ICSID Case No. ARB/24/25)

PROCEDURAL ORDER NO. 5

Members of the Tribunal

Prof. Dr. Klaus Sachs, President of the Tribunal

Ms. Elisabeth Eljuri, Arbitrator

Ms. Loretta Malintoppi, Arbitrator

Assistant to the Tribunal

Mr. Marcus Weiler

Secretary of the Tribunal

Ms. Elisa Méndez Bräutigam

18 August 2025

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I. INTRODUCTION

1. The present Procedural Order No. 5 is issued in the arbitration between Continental Gold Inc. (“**Claimant**”) and the Republic of Colombia (“**Respondent**”) (together with Claimant, the “**Parties**”), pursuant to the Free Trade Agreement between Canada and the Republic of Colombia signed on 21 November 2008 and entered into force on 15 August 2011 (the “**Treaty**” or “**FTA**”), and the Arbitration Rules of the International Centre for Settlement of Investment Disputes in force as of 1 July 2022 (“**ICSID Arbitration Rules**”).
2. Claimant filed a request for bifurcation by letter dated 10 July 2025 (“**Request for Bifurcation**” or “**Request**”), which accompanied its Memorial, and Respondent responded with various alternative requests in its letters dated 18 July 2025 (“**Response to the Request for Bifurcation**” or “**Response**”) and 1 August 2025. Due to the substantive connection of the Parties’ requests, the Tribunal considers it appropriate to decide on them jointly in this Procedural Order. In it, the Tribunal first summarizes the relevant procedural background (**II.**) and the Parties’ positions (**III.**) and then provides a reasoned ruling on the Parties’ requests (**IV.** and **V.**).

II. PROCEDURAL BACKGROUND

3. On 28 May 2025, the Tribunal issued Procedural Order No. 4, thereby adopting the revised procedural calendar agreed upon by the Parties and moving the date for the submission of Claimant’s Memorial to 10 July 2025.
4. On 10 July 2025, Claimant submitted its Memorial accompanied by its Request for Bifurcation. In its Request, Claimant notified the Tribunal that its Memorial does not include its submissions and evidence on damages and requested that:

the Tribunal exercise its authority under ICSID Arbitration Rule 42 to bifurcate this arbitration, so that the Tribunal may hear and decide issues of jurisdiction and liability, before turning to issues of damages in a separate phase.

5. By letter dated 18 July 2025 and upon the Tribunal’s invitation to comment on Claimant’s Request, Respondent filed its Response to the Request for Bifurcation, together with a Declaration of Dr. Daniel Flores dated 18 July 2025 attached as Annex A, requesting that the Tribunal deny Claimant’s Request, and further requesting as follows:

- 1) *The Tribunal order Claimant to submit its full case on damages and causation, or explain in detail why it is not able to do so,*

including a sworn statement to that effect from its quantum expert, within a period of 20 days from the Tribunal's decision.

- 2) *If Claimant asserts that it is unable to submit its case on damages and causation in the suggested time period of 20 days, Colombia respectfully requests that the Tribunal order a suspension of the proceedings for a period not to exceed 150 days. If Claimant is unable to submit its case on damages and causation within 150 days from the initiation of the suspension, Colombia respectfully requests that the Tribunal order the proceedings be discontinued in accordance with Arbitration Rule 56.*
 - 3) *If the Tribunal is not inclined to order the Claimant to submit its full case on damages and causation, Colombia respectfully requests that the Tribunal order Claimant to, at a minimum, submit within 20 days of its decision, an amended Memorial with a full articulation and substantiation of how the alleged damage it suffered was caused by the challenged State actions, as set out further below, in order for the Tribunal to maintain its jurisdiction over the case.*
 - 4) *Should the Tribunal ultimately decide to bifurcate the proceedings, Colombia respectfully requests that it truncate the written submissions of the Parties in any subsequent quantum phase (i.e., scheduling only a memorial and counter-memorial on quantum) in order to minimize the cost to the State.*
6. By letter dated 25 July 2025, Claimant replied to Respondent's Response, reiterating its request for bifurcation and requesting the rejection of all of Respondent's alternative requests.
7. By letter dated 1 August 2025, Respondent replied to Claimant's letter dated 25 July 2025, reiterating its requests as filed with its Response and furthermore requesting:
- 5) *That the Tribunal schedule a Procedural Hearing on the issue of bifurcation, allowing for the examination of Dr. Flores regarding the subject matter of his expert testimony; and*¹
 - 6) *That the Tribunal find that Claimant's merits case is not ripe for adjudication. Colombia reserves the right to seek summary dismissal on that basis.*²

¹ Request No. 1 of Respondent's letter of 1 August 2025; numeration changed for the ease of reference.

² Request No. 2 of Respondent's letter of 1 August 2025; numeration changed for the ease of reference.

8. By email dated 5 August 2025, Claimant rejected the statements made by Respondent in its letter dated 1 August 2025 and declared that it stands by its prior requests.

III. THE PARTIES' POSITIONS

A. CLAIMANT'S POSITION

9. Claimant requests bifurcation of the proceedings into two phases with a first phase dedicated to jurisdiction and liability, and a second phase dedicated to quantum.³
10. According to Claimant, the circumstances of the case support the Tribunal exercising its authority in favor of bifurcation since (i) Claimant is not in a position to present a damages assessment due to the dynamic security situation at the Mine, (ii) bifurcation of damages is well established in ICSID arbitration, and (iii) the relevant circumstances favor a grant of bifurcation.⁴
- (i) The dynamic security situation at the Mine impedes Claimant's ability to present a damages assessment at this time*
11. Claimant states that it has made every effort to present a damages assessment in its Memorial.⁵ However, Claimant asserts, the Mine has suffered several attacks in the past weeks causing a dynamic, evolving, and dangerous security situation, which renders a firm quantification of losses impossible.⁶ Specifically, Claimant refers to three attacks that happened in June and July 2025 and resulted in damage to equipment and infrastructure and injuries to Claimant's personnel.⁷
12. With regard to Respondent's claim that the Claimant's expert's inability to access the Mine should not hinder Claimant's capability to quantify its damages,⁸ Claimant contends that its request is not predicated on the issue of accessibility of the Mine.⁹

³ Request for Bifurcation.

⁴ Claimant's letter dated 25 July 2025.

⁵ Request for Bifurcation; Claimant's letter dated 25 July 2025, p. 1-2.

⁶ Claimant's letter dated 25 July 2025, p. 1-2.

⁷ Claimant's letter dated 25 July 2025, p. 2.

⁸ Response to the Request for Bifurcation, p. 7-8.

⁹ Claimant's letter dated 25 July 2025, p. 1-2.

(ii) Bifurcation of damages is well established in ICSID arbitration

13. Claimant argues that bifurcation of damages is well established in ICSID practice.¹⁰ It further contends that a claimant's request for bifurcation should be given substantial weight, considering that a claimant bears the burden of proof on damages and has no interest in delaying the adjudication of its own claims.¹¹

(iii) The relevant circumstances favor a grant of bifurcation

14. Claimant asserts that the relevant circumstances to be considered by the Tribunal pursuant to ICSID Arbitration Rule 42(4) support a grant of bifurcation.
15. *First*, Claimant argues that bifurcation of damages could materially reduce the time and cost of the proceeding. Claimant contends that bifurcation of quantum can result in efficiency gains and cost savings, and that Respondent adopted this position itself in other arbitration proceedings.¹²
16. Claimant opposes Respondent's view that bifurcation would result in delay and an increase in cost,¹³ contending that the precedents cited by Respondent to support its argument are inapposite.¹⁴ In these cases, Claimant argues, the denied bifurcation had been requested by respondents.¹⁵
17. *Second*, Claimant states that bifurcation could dispose of all or a substantial portion of the dispute by eliminating the necessity of a quantum phase entirely or limiting its scope if the Tribunal fully or partly declines jurisdiction or liability in the first phase.¹⁶
18. *Third*, Claimant submits that the questions to be addressed in a separate damages phase are not so intertwined with the issues of jurisdiction and liability as to make bifurcation impractical.¹⁷

¹⁰ Claimant's letter dated 25 July 2025, p. 3.

¹¹ Claimant's letter dated 25 July 2025, p. 3.

¹² Claimant's letter dated 25 July 2025, p. 4.

¹³ Response to the Request for Bifurcation, p. 4-5.

¹⁴ Claimant's letter dated 25 July 2025, p. 4.

¹⁵ Claimant's letter dated 25 July 2025, p. 4 (with a reference to Response to the Request for Bifurcation, p. 5 and *OOO Manolium Processing v. Belarus*, PCA Case No. 2018-06, Decision on Bifurcation (1 Aug 2018), para. 5; *Churchill Mining PLC and Planet Mining Pty Ltd v. Indonesia*, ICSID Cases No. ARB/12/14 and 12/40, Procedural Order No. 8 (Bifurcation) (22 Apr 2014), para. 14).

¹⁶ Claimant's letter dated 25 July 2025, p. 5.

¹⁷ Claimant's letter dated 25 July 2025, p. 5.

19. In this regard, Claimant opposes Respondent's view that the Tribunal may only exercise jurisdiction under Articles 819, 820 and 821(2)(c)(iv) of the Treaty once Claimant has submitted and substantiated its case on damages and causation.¹⁸ Claimant argues that a tribunal could never bifurcate the damages phase of a proceeding under the Treaty if proof of quantum were required in order to establish jurisdiction. This, according to Claimant, cannot be the proper interpretation of the Treaty, as is also shown by previous proceedings in which the tribunal granted bifurcation of the quantum phase under the same Treaty.¹⁹
20. According to Claimant, Articles 819 and 820 of the Treaty relate exclusively to the Parties' consent to arbitrate, while Article 821 of the Treaty relates exclusively to the required contents of Claimant's Notice of Intent. Neither provision, Claimant argues, establishes jurisdictional requirements or requirements for the content of Claimant's Memorial.²⁰
21. Claimant asserts that the only jurisdictional requirement, if any, that could be derived from these provisions would be for a claimant to establish the fact of a loss or damage. As Claimant argues, it has sufficiently established the fact of its losses in its Memorial by providing as evidence witness statements on the effects of illegal mining on the Mine. The quantification of these losses, Claimant maintains, poses a distinct issue.²¹
22. Claimant adds that Respondent's argument of the questions of liability and quantum being inextricably intertwined similarly fails, since – if that were true – quantum could then never be bifurcated. Claimant further contends that its submissions are sufficient to establish that Respondent's breaches of the Treaty have caused substantial deprivation of Claimant's investment.²²

B. RESPONDENT'S POSITION

23. Respondent objects to Claimant's Request for Bifurcation and argues that Claimant's refusal to submit its case on damages and causation is not legitimate. According to Respondent, bifurcation of damages is inappropriate because (i) absent Claimant's proof of damages caused by Respondent, the Tribunal lacks

¹⁸ Claimant's letter dated 25 July 2025, p. 5.

¹⁹ Claimant's letter dated 25 July 2025, p. 5 (with a reference to *Eco Oro Minerals Corp. v. Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum (9 Sept. 2021) § VIII.A, para. 902).

²⁰ Claimant's letter dated 25 July 2025, p. 5-6.

²¹ Claimant's letter dated 25 July 2025, p. 6.

²² Claimant's letter dated 25 July 2025, p. 6-7.

jurisdiction, and (ii) the relevant circumstances to be considered by the Tribunal pursuant to ICSID Arbitration Rule 42(4) do not counsel in favor of bifurcation.²³

(i) Bifurcation of damages is inappropriate because absent Claimant's proof of damages caused by the State, the Tribunal lacks jurisdiction

24. Respondent submits that the Tribunal may only exercise jurisdiction in the present case if Claimant submits and substantiates its case on damages and causation. In Respondent's view, Articles 819 and 820 of the Treaty require, as a prerequisite for Respondent's consent to arbitration to come into effect, that an investor claims specific treaty violations and that those violations have caused it damage or loss, which Claimant has failed to do in its Memorial.²⁴ Without Claimant's specific articulation of the alleged damages and causation, its case is deficient, Respondent claims.

25. Moreover, Respondent argues that Claimant has failed to indicate with sufficient precision in its Request for Arbitration the approximate amount of damages claimed, as required by Articles 821(2)(c)(iv) and 823(1) of the Treaty.²⁵

26. In its Response, Respondent consequently submits several alternative requests, all of which are aimed at ordering Claimant to submit its case on damages and causation – in full or at least partially – or provide further explanation why it is not able to do so.

(ii) Relevant circumstances do not counsel in favor of bifurcating the proceedings

27. With regard to Claimant's Request for Bifurcation, Respondent submits that there is no presumption in favor of bifurcation according to the ICSID case law.²⁶ It asserts that Claimant has failed to show that bifurcation would be appropriate in this case considering the relevant circumstances under ICSID Arbitration Rule 42(4).²⁷

28. *First*, Respondent claims that bifurcation would prolong the proceedings. Respondent asserts that Claimant should have already prepared its damages assessment prior to the Memorial deadline. Claimant should be capable of

²³ Response to the Request for Bifurcation; Respondent's letter dated 1 August 2025.

²⁴ Response to the Request for Bifurcation, p. 2; Respondent's letter dated 1 August 2025, p. 2-4.

²⁵ Response to the Request for Bifurcation, p. 2 (with a reference to Claimant's Request for Arbitration dated 8 January 2025, para. 50).

²⁶ Respondent's letter dated 1 August 2025, p. 4.

²⁷ Response to the Request for Bifurcation, p. 3; Respondent's letter dated 1 August 2025, p. 4, 7.

providing a quantification of its damages, given that it has not presented any plausible justification of its inability to do so and that it could update its analysis in subsequent submissions. According to Respondent and its expert witness Daniel Flores, quantification of damages should be possible based on company documents and financial records, without the necessity of a site visit.²⁸

29. In addition, Respondent cites investment tribunals that have found that the potential benefit of bifurcation – if the proceedings end after the first phase – is offset by the converse scenario in which the proceedings continue to a second phase.²⁹
30. *Second*, Respondent contends that the criterion of whether determination of the question to be bifurcated would dispose of a substantial portion of the dispute is of little significance in the present scenario where Claimant requests bifurcation of quantum as the final phase of the proceedings.³⁰
31. *Third*, Respondent argues that the questions of damages and causation are inextricably intertwined with the jurisdictional analysis and the merits in the present case. In particular, (i) the full protection and security claim would require a showing that the State caused the alleged damage, and (ii) the substantial deprivation of an investment required for the claim of expropriation could only be assessed by taking into account Claimant's concrete losses.³¹
32. *Fourth*, Respondent invokes additional circumstances to be considered.
33. According to Respondent, Claimant's Request for Bifurcation is untimely since ICSID Arbitration Rule 42(3)(a) requires bifurcation requests to be made as soon as the party becomes aware of the basis for bifurcation.³² In Respondent's view, Claimant has failed to do so since it should have been aware of its inability to submit its damages case prior to the Memorial deadline.³³

²⁸ Response to the Request for Bifurcation, p. 4.

²⁹ Response to the Request for Bifurcation, p. 5 (with a reference to *OOO Manolium Processing v. Belarus*, PCA Case No. 2018-06, Decision on Bifurcation (1 Aug 2018), para. 5; *Churchill Mining PLC and Planet Mining Pty Ltd v. Indonesia*, ICSID Cases No. ARB/12/14 and 12/40, Procedural Order No. 8 (Bifurcation) (22 Apr 2014), para. 14).

³⁰ Response to the Request for Bifurcation, p. 5.

³¹ Response to the Request for Bifurcation, p. 5; Respondent's letter dated 1 August 2025, p. 6.

³² Response to the Request for Bifurcation, p. 6; Respondent's letter dated 1 August 2025, p. 7.

³³ Response to the Request for Bifurcation, p. 6; Respondent's letter dated 1 August 2025, p. 7.

34. Respondent further argues that Claimant should not benefit from its disregard of the procedure, having been granted an extension of the Memorial deadline and not having provided a damages assessment in its Memorial.³⁴
35. Finally, Respondent reiterates that Claimant should be capable of providing a damages assessment given that the alleged security concerns do not impede the quantification of all types of alleged losses.³⁵
36. In its letter of 1 August 2025, Respondent reserved its right to seek costs associated with addressing Claimant's alleged procedural misconduct.³⁶

IV. THE TRIBUNAL'S ANALYSIS

37. The Tribunal has thoroughly reviewed and considered all arguments advanced by the Parties. The absence of express reference to certain arguments in this Procedural Order should not be interpreted as an indication that they have not been considered.
38. For the ease of analysis, the Tribunal will first address Respondent's alternative requests Nos. 1 and 3 on ordering Claimant to make its case on damages and causation, before turning to Claimant's Request for Bifurcation and, finally, briefly addressing the remainder of Respondent's requests.

A. RESPONDENT'S REQUESTS NOS. 1 AND 3 TO ORDER CLAIMANT TO SUBMIT ITS CASE ON DAMAGES AND CAUSATION

39. Respondent requests that the Tribunal order Claimant, within a period of 20 days from the Tribunal's decision, (i) to submit its full case on damages and causation or explain in detail why it is not able to do so, including a sworn statement to that effect from its quantum expert (Request No. 1), or – alternatively – (ii) to submit an amended Memorial with a full articulation and substantiation of how the alleged damage was caused by the challenged State actions (Request No. 3).
40. Respondent's key argument for both of its alternative requests is that a showing of damages and causation is required under Articles 819 and 820 of the Treaty for the Tribunal to be able to establish its jurisdiction. The Tribunal notes that, at present, it is not requested – nor would it be in a position – to make a jurisdictional finding. Therefore, the considerations below are without prejudice to the Tribunal's decision on its jurisdiction, which remains reserved until a later stage of the proceedings.

³⁴ Response to the Request for Bifurcation, p. 6; Respondent's letter dated 1 August 2025, p. 8.

³⁵ Response to the Request for Bifurcation, p. 7-8; Respondent's letter dated 1 August 2025, p. 6, 8.

³⁶ Respondent's letter dated 1 August 2025, p. 9.

41. The Tribunal takes Claimant's point that – in general – a party can choose how to plead its own case. However, this liberty is curtailed in situations where a party's pleading is indispensable for either the other party to be able to make its case or the Tribunal to be able to establish its jurisdiction to proceed to the merits. In the Tribunal's view, both considerations are relevant in the present case.
42. Articles 819 and 820 of the Treaty allow an investor to submit to arbitration a claim "*that the other Party has breached [one of the enumerated obligations under the Treaty]*" and that the investor "*has incurred loss or damage by reason of, or arising out of, that breach.*" In contrast to some other investment treaties, this would suggest that all three elements – breach, harm, and the causal link between the two – are constituent elements of establishing a tribunal's jurisdiction under the widely accepted *prima facie* test.
43. This would lead to the conclusion that Claimant's *prima facie* case on damages and causation is necessary for Respondent to be able to formulate meaningfully its own case on jurisdiction (including by putting forth preliminary objections, if any, with its next scheduled pleading), and – ultimately – for the Tribunal to assess its jurisdiction before proceeding to hearing the case on the merits.
44. This interpretation of the Treaty would not render a bifurcation of the quantum phase impossible, as Claimant argues. A *prima facie* pleading on damages and causation does not equal a full pleading on quantum, and – having made the former – a claimant may request that the latter be bifurcated if it can be shown that this is in the interest of procedural economy.
45. The Tribunal acknowledges that Claimant's Request for Arbitration, Memorial, and accompanying witness statements contain, *inter alia*, a categorization of its alleged losses³⁷ and a claim that these were caused by Respondent's alleged lack of support.³⁸ The Tribunal notes, however, that Claimant itself admits that its Memorial does not include its submissions and evidence on damages.³⁹
46. The Tribunal appreciates Claimant's difficulties in formulating its case on damages, owing to the alleged ongoing developments at the Mine. However, the Tribunal notes that it is not altogether uncommon in investment arbitration proceedings that the situation giving rise to the claim continues to develop. Claimant's explanation as to why the current situation at the Mine is so unique as to render *any* pleading on

³⁷ Claimant's Request for Arbitration, para. 49.

³⁸ Claimant's Memorial, para. 165 ff.

³⁹ Request for Bifurcation.

damages and causation impossible is, in the Tribunal's view, inconclusive. Specifically, it remains unclear why Claimant is not in a position to provide at least a preliminary damages and causation case, with a possibility of supplementing it at a later stage.

47. For the avoidance of doubt, the Tribunal is not yet making a finding on how Articles 819 and 820 of the Treaty are to be interpreted – and neither is it making a finding on whether Claimant has satisfied the jurisdictional requirements under the Treaty, whatever they may be. At this stage, with only one of the Parties having made a – partial – submission, the Tribunal is chiefly concerned with ensuring the equality of arms and procedural efficiency.
48. In light of these considerations, the Tribunal directs Claimant to submit an updated Memorial including its submissions on damages and causation to the extent presently possible. Where such pleading remains, in Claimant's view, impossible, Claimant should include with its updated Memorial a reasoned explanation to that effect.
49. Taking into account the extension granted for the submission of Claimant's Memorial, the Tribunal considers a time limit of 60 days after the issuance of this Order for the submission of the updated Memorial to be appropriate.
50. The Tribunal acknowledges the evolving situation at the Mine and the difficulties it poses for Claimant. It therefore confirms that Claimant may update and/or amend its pleading on damages and causation at a later stage of the proceedings to account for any future developments.

B. CLAIMANT'S REQUEST FOR BIFURCATION

1. Legal Standard for Bifurcation

51. The Parties agree that the Tribunal has the power to bifurcate the proceedings by virtue of ICSID Arbitration Rule 42.⁴⁰
52. Pursuant to ICSID Arbitration Rule 42(4),

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

⁴⁰ Request for Bifurcation; Response to the Request for Bifurcation, p. 3.

phases of the proceeding are so intertwined as to make bifurcation impractical.

53. The guiding principle in applying this procedural discretion is procedural efficiency and economy.⁴¹ The ICSID Convention, the ICSID Arbitration Rules, as well as the case law cited by the Parties do not suggest that there is a presumption either in favor or against bifurcation, regardless of which party launches the respective request. The Tribunal will, therefore, apply the general rule that a party making a request for bifurcation must demonstrate that bifurcation would promote procedural efficiency while ensuring the parties' ability to present their respective cases.
54. The Tribunal has considered Claimant's Request for Bifurcation in light of the entirety of the legal and factual circumstances as they are currently presented in the record.

2. Bifurcation in the Present Case

55. Guided by the circumstances explicitly referred to in ICSID Arbitration Rule 42(4), the Tribunal's analysis is as follows:

a. Procedural Efficiency

56. *First*, the Tribunal cannot at this stage of the proceedings find sufficient confirmation that a bifurcation of the quantum phase, as requested by Claimant, would be in the interest of procedural efficiency.
57. The Tribunal acknowledges that bifurcation of quantum *could* in principle materially reduce the time and cost of the proceedings should the Tribunal find in favor of Respondent at the stages of jurisdiction or liability, as Claimant argues. However, the adverse scenario of longer and more costly proceedings is also a distinct possibility.
58. At present – without the benefit of Claimant's full case on damages and causation and Respondent's first substantive pleading – the probability of either scenario cannot be predicted with the level of certainty required to bifurcate the proceedings. While the Tribunal appreciates that it is often the case that requests for bifurcation necessitate a level of educated guesswork on the side of the parties and the tribunals, making such guesses in the absence of practically any information as in this instance is procedurally imprudent if not impossible.

⁴¹ See Koh/Yeo, Commentary to Rule 42, in *ICSID Rule and Regulations 2022: Article-by-Article Commentary* (Richard Happ & Stephan Wilske eds.), para. 21.

59. Consequently, Claimant has not demonstrated that the criterion of procedural efficiency set forth in ICSID Arbitration Rule 42(4)(a) is satisfied.

b. *Capability of Disposing of the Dispute*

60. *Second*, the Tribunal considers that in the context of bifurcating issues of quantum, the criterion in ICSID Arbitration Rule 42(4)(b) – namely, whether bifurcation could dispose of the dispute – carries less weight, because a finding on liability – by definition – is capable of resolving the case in its entirety.

c. *Intertwined Matters*

61. *Third*, the Tribunal is not convinced by Claimant's pleading that questions of quantum are sufficiently separate from issues to be assessed at the stages of jurisdiction and liability in these proceedings. The Tribunal refers to its considerations above regarding the potential impact of Claimant's pleading on damages and causation on the determination of the Tribunal's jurisdiction under the Treaty.⁴² The Tribunal also agrees with Respondent that some of the breaches alleged by Claimant in the present case may necessitate a discussion of the matters of quantum in conjunction with the matters of liability.
62. Therefore, based on the limited information available to the Tribunal at present, the Tribunal deems it not improbable that bifurcation of the quantum phase may give rise to duplication of evidence.
63. It follows that Claimant has not made a sufficient showing that the matters to be considered in the bifurcated phases would not be unduly intertwined, as required by ICSID Arbitration Rule 42(4)(c).

d. *Other Relevant Circumstances*

64. *Finally*, the Tribunal has taken into account other circumstances relevant in its view for Claimant's Request for Bifurcation – namely, the procedural equality of the Parties.
65. In principle, a claimant's memorial shall include a statement of all relevant facts, law, and arguments, pursuant to ICSID Arbitration Rule 30.

⁴² See above at para. 43.

66. In the present case, the Parties have previously agreed on an extended deadline for the submission of Claimant's Memorial, without an indication on Claimant's side that it would not be in a position to submit it in full.
67. Respondent, for its part, should be able to rely on Claimant's Memorial to put forth its own case and, in particular, to raise its jurisdictional objections, if any, as discussed above.⁴³
68. As also discussed above, the Tribunal is not convinced that Claimant is entirely prevented from making even a *prima facie* case on damages and causation by the ongoing developments at the Mine.⁴⁴
69. Therefore, the Tribunal considers that procedural equality of the Parties at the present stage would militate against bifurcating the proceedings, as requested by Claimant.

* * *

70. The above assessment leads the Tribunal to the conclusion that this arbitration should proceed without bifurcation of the quantum phase, as presently requested by Claimant.
71. The Tribunal notes that Respondent may, of course, submit a request for bifurcation following Claimant's updated Memorial, as envisaged in the Procedural Calendar, and that Claimant may then renew its request for bifurcation, if it so wishes, with the benefit of a better developed record.

C. RESPONDENT'S OTHER REQUESTS

72. Apart from the requests rendered moot by the Tribunal's findings above, Respondent requests the Tribunal to find that Claimant's merits case is not ripe for adjudication and reserves the right to seek summary dismissal on that basis (*see* Respondent's Request No. 6).
73. The Tribunal considers that a decision on this request – should Respondent develop it in detail – may be deferred until a later stage of the proceedings.

⁴³ See above at para. 43.

⁴⁴ See above at para. 46.

V. ORDER

74. Based on the foregoing:

- a) Claimant's Request for Bifurcation of 10 July 2025 is **DENIED**.
- b) With regard to Respondent's alternative requests Nos. 1 and 3 contained in its letter of 18 July 2025, the Tribunal **ORDERS** Claimant to submit an updated Memorial with a pleading on damages and causation, developed to the extent possible, within 60 days of this Order. To the extent such pleading is impossible, Claimant is **ORDERED** to provide a reasoned explanation to that effect with its updated Memorial. Claimant shall have the right to update and/or amend its pleading on damages and causation at a later stage of the proceedings if the evolving situation so requires.
- c) The Tribunal **DEFERS** its decision on Respondent's Request No. 6 contained in its letter of 1 August 2025.
- d) All other requests are **DENIED**.
- e) The Parties are invited to confer with a view to agreeing on the Procedural Calendar for the remainder of the arbitration in light of this Order and revert to the Tribunal **by 28 August 2025**.
- f) All issues of costs in connection with the Parties' requests are reserved for later determination.

On behalf of the Tribunal,

[Signed]

Professor Dr. Klaus Sachs
President of the Tribunal
Date: 18 August 2025