

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Continental Gold Inc.

v.

Republic of Colombia

(ICSID Case No. ARB/24/25)

PROCEDURAL ORDER NO. 9

Members of the Tribunal

Prof. Dr. Klaus Sachs, President of the Tribunal

Ms. Elisabeth Eljuri, Arbitrator

Ms. Loretta Malintoppi, Arbitrator

Assistant to the Tribunal

Ms. Kira Schuck

Secretary of the Tribunal

Ms. Elisa Méndez Bräutigam

19 May 2026

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I. INTRODUCTION

1. This Procedural Order No. 9 is issued in the arbitration between Continental Gold Inc. (“**Claimant**”) and the Republic of Colombia (“**Respondent**” or “**Colombia**”) (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. The present Order concerns a petition to appear as non-disputing parties in this arbitration submitted on 20 March 2026 by Prof. Ian M. Kysel of Cornell Law School Transnational Disputes Clinic (the “**Petition**”) on behalf of petitioners Prof. Stuart Maslen and Prof. Chiara Redaelli (the “**Petitioners**”) and the Parties’ associated requests. The Tribunal’s decision on all other pending requests of the Parties remains reserved.
3. In this Order, the Tribunal provides a summary of the relevant procedural background (at **II.**), the Petitioners’ application (at **III.**), and the Parties’ observations on the Petition (at **IV.**), as well as a reasoned ruling for its decision (at **V.** and **VI.**).

II. PROCEDURAL BACKGROUND

4. This arbitration commenced on 12 July 2024, when the International Centre for Settlement of Investment Disputes (“**ICSID**” or “**Centre**”) registered a request for arbitration from Claimant dated 28 June 2024.
5. On 14 March 2025, the Tribunal issued Procedural Order No. 1. Paragraph 25 of Procedural Order No. 1 indicates the following:

25.1. An application to the Tribunal for leave to file a non-disputing party submission, and the filing of a submission, if allowed by the Tribunal, shall be made in accordance with ICSID Arbitration Rule 67, and Article 831 and Annex 831 of the Treaty.

25.2. The Parties shall have the right to submit observations in relation to any non disputing party submissions, in accordance with the schedule prescribed by the Tribunal or as agreed to between the Parties.

25.3. In accordance with ICSID Arbitration Rule 67(4) and Article 831 of the Treaty, the Tribunal shall ensure that any non-disputing party submission does

not unduly disrupt the proceeding or unduly burden or unfairly prejudice either Party. Accordingly, such submissions shall not affect the dates fixed by the Procedural Calendar outlined in Annex B.

6. Claimant submitted its Memorial on 10 July 2025 and its Updated Memorial on 20 October 2025.
7. On 13 March 2026, by letter dated 12 March 2026, Respondent requested leave to file an application for summary dismissal of the arbitration and suspension of the main proceedings.
8. On 20 March 2026, Prof. Ian M. Kysel of Cornell Law School Transnational Disputes Clinic submitted the Petition for leave to intervene as a non-disputing party on behalf of the Petitioners, requesting as follows:
 1. *An order permitting Petitioners' appearance as non-disputing parties;*
 2. *An order permitting Petitioners' filing of a public written submission addressing the Tribunal's authority to consider [International Human Rights Law, "IHRL"] and [International Humanitarian Law, "IHL"], the existence of a [non-international armed conflict, "NIAC"] in Colombia and the [...] control [of the Autodefensas Gaitanistas de Colombia ("AGC")] over Buriticá, and the content and legal consequences of Colombia's IHRL and IHL obligations for the dispute and Colombia's duties under the FTA;*
 3. *An order permitting Petitioners access to non-confidential arbitral documents, including procedural orders;*
 4. *An order permitting [Petitioners] to attend oral hearings when they take place and to reply to any specific questions of the Tribunal and/or the Parties.*
9. On 25 March 2026, the Tribunal invited the Parties to submit their observations and comments on the Petition by 1 April 2026 and propose a schedule for a potential non-disputing party submission, indicating that such schedule could most appropriately align with the schedule agreed upon by the Parties for a non-disputing treaty party submission, pursuant to which such submission is due 60 days following Respondent's Counter-Memorial.
10. Upon invitation of the Tribunal, on 26 March 2026, Claimant submitted its comments to Respondent's request for leave to file an application for summary dismissal and its associated requests. Claimant requested that Respondent's

requests be rejected and the Tribunal confirm that the arbitration shall proceed in accordance with the revised procedural calendar of 4 September 2025.

11. On 1 April 2026, Respondent submitted that it had no objections to Petitioners Professors Stuart Maslen and Chiara Redaelli appearing as non-disputing parties. Respondent requested that, in case of objections on the side of Claimant,

the Tribunal reserve a decision or further debate on this matter until the Tribunal resolves Colombia's currently pending Request for Leave to File a Summary Dismissal Application and Request for Suspension of the Principal Proceedings.

12. On that same date, Claimant submitted a letter with its objections to the Petitioners' application and requested that the Tribunal

a) Deny the Petition for leave to file a non-disputing party written submission, on the grounds that Petitioners have failed to satisfy the requirements of Article 831 and Annex 831 of the Treaty and of the ICSID Arbitration Rules;

b) Deny Petitioners' request for access to non-confidential arbitral documents;

c) Deny Petitioners' request for permission to respond orally or in writing to questions from the Tribunal or the Parties; and

d) Confirm that, pursuant to Article 830(2) of the Treaty, Petitioners — like any member of the public — are entitled to attend oral hearings in this arbitration, subject to any in camera arrangements that the Tribunal may establish in consultation with the Parties for the protection of confidential and other nonpublic information.

13. On 22 April 2026, the Tribunal issued Procedural Order No. 7. In that Order, the Tribunal denied Respondent's requests for leave to file a summary dismissal application and suspension of the main proceedings. Further to Respondent's request for an extension of the deadline to file its Counter-Memorial of 17 April 2026 and Claimant's comments to that request of 20 April 2026, the Tribunal adopted a revised procedural calendar attached to Procedural Order No. 7 as Annex A, granting both Parties, respectively, a two-week extension for the filing of Respondent's Counter-Memorial and Claimant's Reply.

14. By e-mail of 6 May 2026, the Tribunal informed the Parties that it had decided to defer its decision on the Petitioners' application until after receipt of Respondent's Counter-Memorial, now due on 8 May 2026.

15. On 1 and 6 May 2026, the Parties agreed to certain amendments to the procedural calendar. On 8 May 2026, the Tribunal issued Procedural Order No. 8, adopting the revised procedural calendar agreed upon by the Parties.
16. On the same date, Respondent submitted its Counter-Memorial.

III. THE PETITION

17. The Petitioners introduce themselves as “*two leading scholars of IHL, both of whom have conducted substantial research on the conflict between Colombia and the AGC*”.¹
18. Professor Stuart Maslen is “*a Visiting Professor of International Law at the University Johannesburg and Head of the IHL in Focus Project at the Geneva Academy. His work focuses on the use of force, compliance with international norms by armed non-state actors, and civilian protection under international law*”.²
19. Professor Chiara Redaelli is a “*Research Fellow at the University of Geneva; IHL and ICL expert for International Development Law Organization’s Ukraine office; an Adjunct Professor of International Humanitarian Law at the International Institute in Geneva; a Visiting Professor at the Universidad de La Sabana in Colombia; and a former Legal Advisor to both the Diakonia IHL Centre and the Geneva Academy. Her academic work addresses key practical and doctrinal challenges for applying IHL to non-state actors, particularly criminal enterprises, in complex conflict settings*”.³
20. The Petitioners submit that pursuant to Article 44 of the ICSID Convention and Article 831 of the FTA, the Tribunal has the authority to grant the Petitioners’ request to appear as *amici curiae* in this arbitration.⁴ According to the Petitioners, each of the factors the Tribunal may consider for its decision under ICSID Arbitration Rule 67(2) weigh in favor of admitting the Petitioners as non-disputing parties.⁵
21. *First*, the Petitioners assert that their proposed submission falls within the scope of the present dispute since the Tribunal has the authority to assess the challenged State conduct in light of all relevant rules of international law, and Colombia’s

¹ Petition, para. 4.

² Petition, para. 5.

³ Petition, para. 6.

⁴ Petition, para. 7.

⁵ Petition, para. 8.

obligations under IHRL and IHL directly impact the measures legally available for compliance with its obligations to protect Claimant's investment under the Treaty.⁶

22. *Second*, the Petitioners maintain that they offer unique expertise materially different from that of the disputing Parties, enabling them to provide the Tribunal with an independent and extensive analysis of the source, scope, and reconciliation of Colombia's IHRL and IHL obligations with its duties under the Treaty.⁷
23. *Third*, the Petitioners argue that they have a significant interest in this arbitration "*because its outcome could directly affect the interpretation and application of IHL and IHRL, bodies of law that Petitioners actively defend and work to advance*".⁸ The Petitioners assert that the Tribunal's award could shape the broader understanding of how investment protections are balanced against IHRL and IHL in conflict-related disputes, which would directly impact the Petitioners' work.⁹
24. *Fourth*, the Petitioners state that they satisfy the remaining procedural criteria because they are independent, have no financial or other affiliation with either Party, and will not burden or disrupt the proceedings.¹⁰
25. *Fifth*, the Petitioners emphasize the importance of Colombia's compliance with IHRL and IHL, claiming that their participation as *amici curiae* would advance the public interest by improving transparency, understanding, and public confidence in the legitimacy of investor-state proceedings involving armed conflicts.¹¹

IV. THE PARTIES' OBSERVATIONS ON THE PETITION

A. CLAIMANT'S OBSERVATIONS

26. Claimant opposes the Petition, arguing that it fails to meet the relevant requirements of the Treaty, the ICSID Arbitration Rules and Procedural Order No. 1.
27. According to Claimant, the Petitioners have failed to show the required "*significant interest in the arbitration*". Referring to investment arbitration case law, Claimant contends that the showing of a "*significant interest*" pursuant to Article 831 of the Treaty and ICSID Arbitration Rule 67 is not satisfied in cases of a generalized academic, policy, or public-interest concern, but requires that the arbitration's

⁶ Petition, paras. 2, 9-12.

⁷ Petition, paras. 13-14.

⁸ Petition, para. 15.

⁹ Petition, para. 16.

¹⁰ Petition, para. 17.

¹¹ Petition, para. 18.

outcome may have a direct or indirect impact on the applicant's rights or principles. Claimant argues that the Petitioners assert only a generalized scholarly interest and concern over the development of IHRL and IHL and do not claim to be affected by the arbitration's outcome.¹²

28. Claimant contends that, moreover, the Petitioners have failed to demonstrate that their submission would be within the scope of the dispute since the proposed submission focuses on issues concerning IHRL and IHL concepts that have not been raised by either Party and are thus outside the present scope of the dispute. Claimant cites case law to show that tribunals have found that an admission as *amicus curiae* is improper where it introduces a new legal framework that neither party has raised in its pleadings.¹³
29. Furthermore, Claimant argues that the Petitioners fail to demonstrate a perspective, particular knowledge or insight that is different from that of the Parties and would assist the Tribunal beyond what the Parties can provide themselves. Claimant refers to investment arbitration cases in which the tribunals have decided that even sophisticated academic expertise in the relevant legal field does not satisfy this requirement where the Parties are represented by experienced legal counsel capable of presenting the same arguments.¹⁴
30. Claimant asserts that, lastly, granting the Petition would unfairly prejudice Claimant and disrupt the arbitral proceedings. Claimant argues that the Petitioners' proposed submissions are not neutral doctrinal propositions, but factual and legal arguments trying to justify Respondent's alleged failure to protect the Buriticá Mine that Respondent itself could raise in its submissions, while Claimant would be unduly burdened by the added expense of having to address the non-disputing party submission. Claimant contends that the proposed submissions would also be

¹² Claimant's letter dated 1 April 2026, pp. 3-5, citing *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 6, Decision on Non-Disputing Parties' Application (18 Feb. 2019); *Resolute Forest Products Inc. v. Government of Canada*, PCA Case No. 2016-13, Procedural Order No. 6 on the participation of Prof. Robert Howse and Mr. Barry Appleton as Amici Curiae (29 Jun. 2017) ; *Odyssey Marine Exploration, INC. v. The United Mexican States*, ICSID Case No. UNCT/20/1, Procedural Order No. 6, Decision on the Application for leave to file a non-disputing party submission (Amicus Curiae) (20 Dec. 2021).

¹³ Claimant's letter dated 1 April 2026, pp. 5-6, citing *Bernhard Von Pezold and others v. Republic of Zimbabwe and Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Developments Co. (Private) Limited v. Republic of Zimbabwe*, ICSID Case No. ARB/10/25, Procedural Order No. 2 (26 Jun. 2012) ; *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 6, Decision on Non-Disputing Parties' Application (18 Feb. 2019).

¹⁴ Claimant's letter dated 1 April 2026, pp. 6-8, citing *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 6, Decision on Non-Disputing Parties' Application (18 Feb. 2019) ; *Resolute Forest Products Inc. V. Government of Canada*, PCA Case No. 2016-13, Procedural Order No. 6 on the participation of Prof. Robert Howse and Mr. Barry Appleton as Amici Curiae (29 Jun. 2017) ; *Odyssey Marine Exploration, INC. v. The United Mexican States*, ICSID Case No. UNCT/20/1, Procedural Order No. 6, Decision on the Application for leave to file a non-disputing party submission (Amicus Curiae) (20 Dec. 2021).

unnecessarily disruptive, taking into account the level of intervention coinciding with the requested access to all non-confidential arbitral documents, attendance of oral hearings and permission to respond to any questions of the Tribunal and/or the Parties. Claimant further argues that the Treaty does not authorize such participation, save for attendance of public portions of the hearing, to which the Petitioners are entitled as members of the public irrespective of the Tribunal's decision on the Petition.¹⁵

31. In addition, Claimant submits that, should the Tribunal allow the proposed non-disputing party submission despite Claimant's objections, Claimant would have no objection to the submission aligning with the schedule agreed upon by the Parties for a non-disputing treaty party submission. Claimant further notes that any non-disputing party submission must comply with the Treaty's clear requirements, including that it "*be concise, and in no case longer than 20 typed pages, including any appendices*" pursuant to Annex 831(2)(b) to the FTA.¹⁶

B. RESPONDENT'S OBSERVATIONS

32. Respondent submits that it has no objection to the Petitioners appearing as non-disputing parties in the present arbitration. Respondent states that with a view to the conservation of the Parties' costs, it would request that the Petitioners' written submissions be limited in length to 30 pages (letter sized, double-spaced, Times New Roman font, pt 12).¹⁷
33. Additionally, Respondent states that it has no objections to the Petitioners attending the hearing, provided that any time the Petitioners be permitted to speak be limited to 20 minutes, and to the Petitioners' third request of having access to non-confidential documents, or documents with confidential information redacted, including Procedural Orders, which have been submitted in this proceeding.¹⁸
34. Respondent further submits that it has no objection to adopting the agreed-upon schedule applicable to a non-disputing treaty party submission for the Petitioners' submission.¹⁹

¹⁵ Claimant's letter dated 1 April 2026, pp. 8-9.

¹⁶ Claimant's e-mail dated 1 April 2026.

¹⁷ Respondent's e-mail dated 1 April 2026.

¹⁸ Respondent's e-mail dated 1 April 2026.

¹⁹ Respondent's e-mail dated 1 April 2026.

V. THE TRIBUNAL'S ANALYSIS

35. The Tribunal has thoroughly considered the Petition and the Parties' observations to it. The absence of express reference to certain arguments in this Order should not be interpreted as an indication that they have not been considered.
36. To recall, the Tribunal has decided on Respondent's requests for leave to file a summary dismissal application and suspension of the main proceedings in Procedural Order No. 7. Having resolved these procedural matters, and upon receipt of Respondent's Counter-Memorial, the Tribunal now issues this Order.
37. In its analysis provided below, the Tribunal will first address the Petitioners' requests to appear as non-disputing parties and file a written submission (at **A.**) before turning to the Petitioners' requests for access to documents (at **B.**), to attend oral hearings (at **C.**), and for permission to respond orally or in writing to any questions of the Tribunal and/or the Parties (at **D.**).

A. PETITIONERS' REQUESTS TO APPEAR AS NON-DISPUTING PARTIES AND FILE A WRITTEN SUBMISSION

1. Legal Standard for the Admission of Non-Disputing Party Submissions

38. It is undisputed that the Tribunal has the power under the Treaty and the ICSID Arbitration Rules to allow a non-disputing party to appear in the arbitration and make submissions.²⁰
39. In particular, Article 831 of the FTA provides as follows:

Article 831: Submissions by a Non-Disputing Party

1. A Tribunal shall have the authority to consider and accept written submissions from a person or entity that is not a disputing party and that has a significant interest in the arbitration. The Tribunal shall ensure that any non-disputing party submission does not disrupt the proceedings and that neither disputing party is unduly burdened or unfairly prejudiced by it.

2. An application to the Tribunal for leave to file a non-disputing party submission, and the filing of a submission, if allowed by the Tribunal, shall be made in accordance with Annex 831.

40. In turn, Article 2 of Annex 831 to the FTA provides in relevant parts:

²⁰ Claimant's letter dated 1 April 2026, p. 2; Respondent's e-mail dated 1 April 2026.

2. The submission filed by a non-disputing party shall:

[...]

(d) only address matters within the scope of the dispute.

41. ICSID Arbitration Rule 67(2) identifies circumstances to be considered by the Tribunal when exercising its discretion to grant a non-disputing party submission, and provides as follows:

(2) In determining whether to permit a non-disputing party submission, the Tribunal shall consider all relevant circumstances, including:

(a) whether the submission would address a matter within the scope of the dispute;

(b) how the submission would assist the Tribunal to determine a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the parties;

(c) whether the non-disputing party has a significant interest in the proceeding;

(d) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a party or a non-disputing Treaty Party; and

(e) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submission.

42. Furthermore, according to ICSID Arbitration Rule 67(4),

[t]he Tribunal shall ensure that the non-disputing party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party.

2. Analysis of the Petitioners' Application

43. Based on the legal standard laid out above, the Tribunal has considered the relevant criteria in determining whether to grant the Petitioners' requests.

a. Significant Interest

44. Article 831 of the FTA grants the Tribunal the authority to consider and accept written submissions from a non-disputing party that has a significant interest in the

arbitration. ICSID Arbitration Rule 67(2)(c) similarly requires the Tribunal to consider the significant interest criterion.

45. The Tribunal agrees with the findings in *Eco Oro v. Colombia*, *Odyssey v. Mexico*, and *Resolute v. Canada* that a significant interest must “comprise more than a general interest in the proceeding”²¹ and that the applicant must show, for example, that “the outcome of the arbitration may have a direct or indirect impact on the rights or principles the applicant represents and defends”.²² As investment arbitration tribunals have previously found, a mere scholarly interest in the interpretation and application of certain legal principles does not suffice.²³ The Tribunal agrees with this approach.
46. The Petitioners claim that they have a significant interest in the dispute since its “outcome could directly affect the interpretation and application of IHL and IHRL” and “set a precedent for how investment obligations must be balanced against IHRL and IHL duties in conflict settings”, which would impact the Petitioners’ work as “scholars and practitioners deeply engaged in the development and application of IHRL and IHL”.²⁴
47. The Tribunal acknowledges the Petitioners’ commendable interest in the coherent development of international law. However, as the Petitioners state themselves, this is primarily a public interest.²⁵ The Petitioners’ claim to be directly affected by the outcome of the arbitration is limited to the presumption that the Tribunal’s decision could influence the development of public international law in the Petitioners’ research field, which would, in turn, influence the Petitioners’ work in that field. In the Tribunal’s view, this would, at most, constitute an indirect effect on the Petitioners’ work as scholars and practitioners. The Tribunal considers that the Petitioners have not shown an interest beyond the general interest of a scholar of

²¹ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 6, Decision on Non Disputing Parties’ Application (18 Feb. 2019), para. 34, citing *Apotex Holdings Inc. and Apotex Inc. v USA* (ICSID Case No ARB (AF)/12/1), Procedural Order on the Participation of the Applicant, Mr Barry Appleton, as a Non-Disputing Party, 4 March 2013, para. 38; *Resolute Forest Products Inc. v. Government of Canada*, PCA Case No. 2016-13, Procedural Order No. 6 on the participation of Prof. Robert Howse and Mr. Barry Appleton as *Amici Curiae* (29 Jun. 2017), para. 4.6; *Odyssey Marine Exploration, INC. v. The United Mexican States*, ICSID Case No. UNCT/20/1, Procedural Order No. 6, Decision on the Application for leave to file a non-disputing party submission (*Amicus Curiae*) (20 Dec. 2021) para. 19.

²² *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 6, Decision on Non Disputing Parties’ Application (18 Feb. 2019), para. 34, citing *Apotex Holdings Inc. and Apotex Inc. v USA* (ICSID Case No ARB (AF)/12/1), Procedural Order on the Participation of the Applicant, Mr Barry Appleton, as a Non-Disputing Party, 4 March 2013, para. 38.

²³ *Resolute Forest Products Inc. v. Government of Canada*, PCA Case No. 2016-13, Procedural Order No. 6 on the participation of Prof. Robert Howse and Mr. Barry Appleton as *Amici Curiae* (29 Jun. 2017), para. 4.6; *Odyssey Marine Exploration, INC. v. The United Mexican States*, ICSID Case No. UNCT/20/1, Procedural Order No. 6, Decision on the Application for leave to file a non-disputing party submission (*Amicus Curiae*) (20 Dec. 2021), para. 19.

²⁴ Petition, paras. 15-16.

²⁵ Petition, para. 18.

IHL or IHRL in academic questions on the interpretation and application of these bodies of law.

48. Accordingly, the Tribunal concludes that the Petitioners do not satisfy the requirement of a significant interest in the arbitration sufficient to merit access to this arbitration as a non-disputing party pursuant to Article 831 of the FTA and ICSID Arbitration Rule 67(2)(c).

b. Scope of the Dispute

49. Article 2(d) of Annex 831 of the FTA establishes that a non-disputing party submission may only address matters within the scope of the dispute. Similarly, ICSID Arbitration Rule 67(2)(a) requires the Tribunal to consider whether the non-disputing party submission would address a matter within the scope of the dispute.
50. In their submission, the Petitioners wish to address questions of IHRL and IHL that, according to the Petitioners, arise in the present dispute due to the existence of a NIAC between Colombia and the AGC. In particular, the Petitioners want to file a submission addressing “*the Tribunal’s authority to consider IHRL and IHL, the existence of a NIAC in Colombia and the AGC’s control over Buriticá, and the content and legal consequences of Colombia’s IHRL and IHL obligations for the dispute and Colombia’s duties under the FTA*”.²⁶
51. The Tribunal observes that Claimant stated in its letter of 1 April 2026 that the “*proposed submission focuses on issues – the relevance (or not) of IHRL and IHL concepts to Colombia’s obligations under the Treaty – that have not been raised by either [Party]*”.²⁷ Having received and reviewed Respondent’s Counter-Memorial, however, the Tribunal notes that Respondent submits that its State actions to protect the Mine are limited by its obligations under the Colombian Constitution as well as IHRL and IHL, while not yet entering into a detailed analysis of these matters.²⁸
52. On this basis, the Tribunal acknowledges that the Petitioners’ proposed submission, to some extent, relates to matters that are addressed – albeit briefly – by Respondent in its Counter-Memorial and thus fall within the scope of the dispute.
53. Notwithstanding, the Tribunal finds that, in any event, a non-disputing party submission should not be granted on the grounds alone that the matter falls within the scope of the dispute when other relevant requirements are not met. In particular,

²⁶ Petition, para. 20.

²⁷ Claimant’s letter dated 1 April 2026, pp. 1-2, 5-6.

²⁸ Respondent’s Counter-Memorial dated 8 May 2026, paras. 194-198, 253, 515.

under Article 831(1) of the FTA, the criterion that the applicant has a “significant interest” in the arbitration constitutes an imperative requirement for the Tribunal to accept a non-disputing party application. The Petitioners have not demonstrated that they have such significant interest, as described above (at **a.**), and this lack of significant interest cannot be outweighed by a showing that the submission would address matters within the scope of the dispute.

c. Assistance to the Tribunal

54. Pursuant to ICSID Arbitration Rule 67(2)(b), the Tribunal shall consider how the submission would be of assistance in determining a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the parties.
55. The Petitioners claim to “*offer unique expertise as to the application of IHRL and IHL rules binding on States in the context of NIACS*” based on their “*combined academy authority, field-based research expertise, and deep knowledge of Colombia’s conflict dynamics*”.²⁹
56. The Tribunal considers that, notwithstanding the significant academic authority and expertise of the Petitioners as scholars and practitioners, the Petitioners have not shown that they offer particular knowledge or insight that is different from that of the Parties. The Petitioners themselves do not assert that they could provide factual information that goes beyond the submissions of the Parties. Moreover, they do not specify any particular knowledge of the conflict between Colombia and the AGC that is not available to and could not be submitted by Respondent.
57. The Tribunal further considers that both Parties in this arbitration are represented by experienced counsel and are thus well-equipped to address the legal considerations raised by the Petitioners, including through expert evidence if necessary, if they wish to do so.³⁰
58. Consequently, based on the dispute as it is currently presented to the Tribunal, the Tribunal considers that the Petitioners will most likely not assist the Tribunal by bringing a perspective, particular knowledge or insight that is different from that of the Parties. The Tribunal expects that, without such particular knowledge or insight, a submission by Petitioners would also be unlikely to provide an additional benefit for the furtherance of the public interests related to Colombia’s compliance with

²⁹ Petition, para. 13.

³⁰ See letter from Claimant dated 1 April 2026, p. 7.

IHRL and IHR as well as transparency of and public confidence in the arbitral proceedings.

d. Procedural Disruptions, Fairness, and Independence

59. Paragraph 25.3 of Procedural Order No. 1 in conjunction with Article 831(1) of the Treaty and ICSID Arbitration Rule 67(4) require the Tribunal to ensure that the non-disputing party appearance neither disrupts the proceedings nor unduly burdens or unfairly prejudices either Party. Further, ICSID Arbitration Rules 67(2)(d) and (e) stipulate that the Tribunal shall consider any affiliation between the non-disputing party, a party or a non-disputing treaty party, and whether the non-disputing party receives financial or other assistance to file the submission.
60. The Petitioners affirm that they are entirely independent, have no financial or other affiliations with either Party, and undertake to comply with any restrictions established by the FTA or the Tribunal as to not disrupt the proceedings.³¹
61. Notwithstanding, in light of the Tribunal's findings set out above, the Tribunal considers it unnecessary to engage with any theoretical disruptions to the proceedings or assess the independence of the Petitioners.

e. Conclusion

62. The above analysis leads the Tribunal to the conclusion that the Petitioners' requests to appear as non-disputing parties and file a written submission in this arbitration should be denied.

B. PETITIONERS' REQUEST FOR ACCESS TO DOCUMENTS

63. Based on its decision that the Petitioners are not granted leave to appear as non-disputing parties and file a written submission, the Tribunal also rejects the Petitioners' request to be granted access to arbitral documents.
64. The Tribunal notes that the Petitioners' access to those documents that the Parties have agreed to publish pursuant to Paragraphs 10-15 of Procedural Order No. 2, and which are accessible to the general public, remains unaffected.

³¹ Petition, para. 17.

C. PETITIONERS' REQUEST TO ATTEND ORAL HEARINGS AND CLAIMANT'S REQUEST TO CONFIRM THAT PETITIONERS ARE ENTITLED TO ATTEND PUBLIC PARTS OF ORAL HEARINGS

65. With regard to the Petitioners' request to attend and observe oral hearings, the Tribunal acknowledges that Article 830(2) of the FTA provides as follows:

Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings in camera to the extent necessary to ensure the protection of confidential information. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties.

66. Procedural Order No. 2 provides in relevant parts:

16. In accordance with Article 830(2) of the FTA, hearings shall be open to the public by providing a live stream of the proceedings on a video sharing platform. The live stream of proceedings shall not be made available for on-demand viewing by the public.

17. The Tribunal may hold portions of hearings in camera to the extent necessary to ensure the protection of confidential information.

67. The Tribunal considers that, in line with these provisions, the Petitioners are entitled to attend the public parts of the oral hearings in this arbitration as members of the public.³² The Tribunal therefore confirms, as requested by Claimant, that the Petitioners are, like any member of the public, entitled to attend oral hearings in this arbitration, subject to any *in camera* arrangements, pursuant to Article 830(2) of the Treaty and Paragraphs 16-17 of Procedural Order No. 2.

D. PETITIONERS' REQUEST FOR PERMISSION TO REPLY TO ANY SPECIFIC QUESTIONS

68. The Petitioners' request for permission to respond orally or in writing to any questions of the Tribunal and/or the Parties is rendered moot as the Tribunal has come to the conclusion that the Petitioners are denied appearance as non-disputing parties.

³² The tribunal in *Eco Oro* reached the same conclusion based on the same Treaty. See *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 6, Decision on Non-Disputing Parties' Application (18 Feb. 2019), paras. 38-40.

VI. ORDER

69. For the foregoing reasons:

- a) The Tribunal **DENIES** the Petitioners' requests to permit their (i) appearance as non-disputing parties, (ii) filing of a public written submission, (iii) access to non-confidential arbitral documents, (iv) replies to any specific questions of the Tribunal and/or the Parties.
- b) The Tribunal **CONFIRMS** that pursuant to Article 830(2) of the Treaty and Paragraphs 16-17 of Procedural Order No. 2, the Petitioners – like any member of the public – are entitled to attend oral hearings in this arbitration, subject to any *in camera* arrangements that the Tribunal may establish in consultation with the Parties for the protection of confidential and other non-public information.
- c) All issues of costs in connection with the Petitioners' application are reserved for later determination.

On behalf of the Tribunal,

[Signed]

Professor Dr. Klaus Sachs
President of the Tribunal
Date: 19 May 2026