INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

NURHIMA KIRAM FORNAN AND OTHERS

Claimants

v.

THE KINGDOM OF SPAIN

Respondent

(ICSID Case No. ARB/24/45)

AWARD

Members of the Tribunal
Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Prof. Dr. Stephan Schill, Arbitrator
Prof. Alexis Mourre, Arbitrator

Secretary of the Tribunal
Mr. Marco Tulio Montañés-Rumayor

Assistant to the Tribunal
Dr. David Khachvani

6 November 2025

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TABLE OF ABBREVIATIONS

***Ad hoc* Arbitration**	The arbitration proceedings between the Claimants and Malaysia under the 1878 Agreement
BIT or Treaty	The Philippines-Spain Bilateral Investment Treaty of 1993
CL-[#]	Claimants' Legal Authority
Claimants	The claimants in this arbitration, citizens of the Philippines, whose identity documents are set out in Exhibit A to the RfA
Final Award	Final Award issued by Dr. Gonzalo Stampa on 28 February 2022
Hearing	Hearing on the Rule 41 Objection held by video conference on 16 July 2025
ICSID or the Centre	International Centre for Settlement of Investment Disputes
ICSID Arbitration Rules	ICSID Rules of Procedure for Arbitration Proceedings 2022
ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States dated 18 March 1965
Ministry	Spain's Ministry of Foreign Affairs
PO	Procedural Order
Preliminary Award	Preliminary Award issued by Dr. Gonzalo Stampa on 25 May 2020
R-[#]	Respondent's Exhibit
Respondent or Spain	The Kingdom of Spain
Response	The Claimants' Response to the Rule 41 Objection dated 16 June 2025
RfA	Claimants' Request for Arbitration dated 14 August 2024

Rule 41 Objection	The Respondent's Objection under Rule 41 of the ICSID Arbitration Rules dated 2 May 2025
TSJM	*Tribunal Superior de Justicia de Madrid,* a court in Madrid, Spain
1878 Agreement	The Agreement of 22 January 1878 between the Sultan of Sulu and representatives of the British North Borneo Company concerning the lease of certain territories in North Borneo

I. INTRODUCTION

1. The present dispute was submitted to the International Centre for Settlement of Investment Disputes ("**ICSID**") under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "I**CSID Convention**") and the Philippines-Spain Bilateral Investment Treaty of 1993 (the "**Treaty**" or the "**BIT**").[1] The dispute arises out of the Respondent's alleged conduct in relation to arbitral proceedings between the Claimants and the Government of Malaysia (the "***ad hoc* Arbitration**") under the 1878 Agreement related to the compensation for the lease of territory on and around North Borneo (the "**1878 Agreement**").

A. THE PARTIES

1. The Claimants

2. The Claimants are the following individuals, nationals of the Philippines and members of the Royal Family of Sulu, an archipelagic region in Southeast Asia (the "**Claimants**").

Ms. Nurhima Kiram Fornan
Mr. Fuad A. Kiram
Ms. Sheramar T. Kiram
Ms. Parmaisuli Kiram-Guerzon
Mr. Taj-Mahal Kiram-Tarsum Nuqui
Ms. Jenny K.A. Sampang
Mr. Widz-Raunda Kiram Sampang

3. The Claimants are represented in this arbitration by:

Mr. Paul H. Cohen, Attorney-at-Law (New York)
Mr. Pedro Aránguez Díaz, Attorney-at-Law (New York)

2. The Respondent

4. The Respondent is the Kingdom of Spain ("**Spain**" or the "**Respondent**").

5. The Respondent is represented in this arbitration by the following officials of the General

[1] BIT (**RfA Exh. C**; **R-01**).

State Attorney's Office:

Ms. María Andrés Moreno
Mr. Guillermo Blanco Cenjor
Mr. Jaime Campmany Márquez de Prado
Ms. Inés Guzmán Gutiérrez
Ms. Lourdes Martínez de Victoria Gómez
Ms. Elena Oñoro Sainz
Ms. Marina Adela Porta Serrano
Ms. Amparo Sánchez Aguilar
Mr. Eduardo Tahoces López

B. THE TRIBUNAL

6. The Arbitral Tribunal is composed of:

- Prof. Gabrielle Kaufmann-Kohler, President
- Prof. Dr. Stephan Schill, Arbitrator
- Prof. Alexis Mourre, Arbitrator

7. The Centre appointed Mr. Marco Tulio Montañés-Rumayor as Secretary of the Tribunal.

8. With the consent of the Parties, the Tribunal appointed Dr. David Khachvani, a lawyer of the President's law firm, as Assistant to the Tribunal. His *curriculum vitae* and a declaration of impartiality and independence were circulated to the Parties.

C. SCOPE OF THIS AWARD

9. This Award rules on the Respondents' objection under Rule 41 of the 2022 ICSID Rules of Procedure for Arbitration Proceedings ("**ICSID Arbitration Rules"**) filed on 2 May 2025, seeking the dismissal of the claims for a manifest lack of legal merit (the "**Rule 41 Objection**").

D. REQUESTS FOR RELIEF

10. The Claimants requested the following relief at paragraphs 56 and 57 of the Request for Arbitration ("**RfA**"):

> 56. The Claimants will bring claims of breach of fair and equitable treatment, denial of justice, failure of full protection and security (via Article 3 of the BIT), and other such claims as it deems appropriate, to be particularised at a later stage of this arbitration.
>
> 57. The Claimants seek the full value of the Final Award, with interest, offset by any amounts collected in enforcement of the Final Award elsewhere. The current value of the Final Award, with interest, stands at approximately $18 billion.

11. Specifically with respect to the Rule 41 Objection, the Claimants made the following requests at paragraph 64 of their Response to the Rule 41 Objection (the "**Response**"):

> 64. For the reasons stated above, Claimants respectfully request that this Tribunal reject the Objections, and award Claimants all attorney's fees and arbitration costs in relation therewith.

12. The Respondent sought relief in Section V of the Rule 41 Objection as follows:

> In view of the foregoing, the Kingdom of Spain considers that, in the interests of the principles of efficiency and procedural economy and in compliance with Article 41 of the ICSID Convention and Rule 41 of the ICSID Arbitration Rules, the Arbitral Tribunal should deliver a preliminary ruling on the ground of manifest lack of legal merit set forth in this submission prior to any other procedural action.
>
> Kingdom of Spain respectfully requests that the Arbitral Tribunal declare that Claimants claims are manifestly without legal merit due to this Arbitral Tribunal lack of jurisdiction to consider the present matter, in the terms set forth in this Submission.
>
> Kingdom of Spain respectfully requests that the Arbitral Tribunal order Claimants to pay all costs and expenses that may arise from the present arbitration, including the administrative expenses incurred by ICSID, arbitrators' fees and the fees of Kingdom of Spain's legal representatives, as well as any other costs or expenses which may have been incurred, all including a reasonable interest rate from the date upon which said costs were incurred until the effective date of payment.

II. PROCEDURAL HISTORY

13. On 15 August 2024, ICSID received Claimants' RfA, accompanied by exhibits A to F. The RfA was supplemented on 21 August, and 10 and 11 September 2024.

14. On 24 October 2025, ICSID's Secretary-General registered the RfA.

15. On 7 February 2025, following appointment by the Claimants, Prof. Dr. Stephan Schill, a national of Germany, accepted his appointed as arbitrator.

16. On 14 February 2025, following appointment by the Respondent, Prof. Alexis Mourre, a national of France, accepted his appointed as arbitrator.

17. On 19 March 2025, following appointment by agreement of the Parties, Prof. Gabrielle Kaufmann-Kohler, a national of Switzerland, accepted her appointment as President of the Tribunal.

18. On 19 March 2025, the Tribunal was constituted in accordance with Article 37(2)(b) of the ICSID Convention.

19. On 2 May 2025, the Respondent filed the Rule 41 Objection, with annexes R-01 to R-30.

20. On 14 May 2025, the Tribunal held the first session with the Parties by videoconference.

21. On 15 May 2025, the Tribunal issued Procedural Order No. 1 ("**PO No. 1**").

22. On 16 June 2025, the Claimants filed their Response, with legal authorities CL-0001 to CL-0042.

23. On 16 July 2025, the Tribunal held a hearing on the Rule 41 Objection by videoconference ("**Hearing**"). Participating at the Hearing were:

Tribunal:

Prof. Gabrielle Kaufmann-Kohler	President
Prof. Alexis Mourre	Co-arbitrator
Prof. Dr. Stephan Schill	Co-arbitrator

ICSID Secretariat:

Mr. Marco Tulio Montañés-Rumayor	Secretary of the Tribunal
Ms. Ivania Fernández	Paralegal

Tribunal Assistant:

Dr. David Khachvani	Assistant to the Tribunal

On behalf of the Claimants:

Mr. Paul Cohen	4-5 Gray's Inn
Mr. Pedro Aránguez Díaz	Aránguez Abogados

On behalf of the Respondent:

Ms. María Andrés Moreno	Head of the International Arbitration Department, General State Attorney's Office

Ms. Lourdes Martínez de Victoria Gómez	International Arbitration Department, General State Attorney's Office
Ms. Marina Porta Serrano	International Arbitration Department, General State Attorney's Office
Ms. Inés Guzmán Gutiérrez	International Arbitration Department, General State Attorney's Office
Mr. Eduardo Tahoces López	International Arbitration Department, General State Attorney's Office
Mr. Guillermo Blanco Cenjor	International Arbitration Department, General State Attorney's Office

Court Reporters:

Ms. Dawn Larson	English Court Reporter
Ms. Elizabeth Cicoria	DR-Esteno, Spanish Court Reporter
Mr. Maximiliano Pessoni	DR-Esteno, Spanish Court Reporter
Ms. María Agustina Iezzi	DR-Esteno, Spanish Court Reporter

Interpreters:

Ms. Silvia Colla	Spanish/English interpreter
Mr. Daniel Giglio	Spanish/English interpreter
Mr. Charlie Roberts	Spanish/English interpreter

24. On 17 July 2025, the Tribunal issued Procedural Order No. 2.

25. On 23 July 2025, the Parties submitted their agreed revisions to the Hearing transcript, which were approved by the Tribunal on 24 July 2025.

26. On 29 and 30 July, the Claimants and the Respondent, respectively, filed their statements of costs.

III. FACTUAL BACKGROUND

27. In this section, the Tribunal summarizes the factual background of the dispute. The summary is not meant to be exhaustive and intends to put the Tribunal's analysis in the proper context. For the purposes of the analysis under ICSID Rule 41, the facts as alleged by the Claimants are presumed to be established.

A. THE 1878 AGREEMENT BETWEEN THE CLAIMANTS AND MALAYSIA

28. The facts relevant to the dispute trace back to the 1878 Agreement pursuant to which the

Sultan of Sulu granted lease rights over a territory in and around North Borneo to the British North Borneo Company in return for an annual payment.

29. Malaysia, as successor to the British North Borneo Company, continued making such payments to the successors of the Sultan for decades after independence. The Claimants, who allege to be the successors of the Sultan, assert that Malaysia ceased the payments in 2013, which gave rise to a dispute between the Claimants and Malaysia.[2]

B. THE *AD HOC* ARBITRATION BETWEEN THE CLAIMANTS AND MALAYSIA

30. To enforce their rights under the 1878 Agreement, the Claimants sought to commence arbitration under the 1878 Agreement, which contained an *ad hoc* arbitration clause.

31. The arbitration clause had no reference to the seat of the arbitration or the applicable law. It provided for the resolution of disputes by a sole arbitrator to be appointed by the Consul-General of the British Crown in Borneo, a function that no longer exists.[3]

1. Commencement of the *ad hoc* Arbitration and appointment of sole arbitrator by Spanish courts

32. In an attempt to start the *ad hoc* Arbitration against Malaysia, the Claimants first approached the UK authorities, asking them to designate a substitute appointing authority. However, the UK refused to act.

33. On 31 January 2018, the Claimants requested a Spanish court, the *Tribunal Superior de Justicia de Madrid* (the "**TSJM**") to appoint a sole arbitrator, citing historical ties between Spain and the Sultanate of Sulu, and arguing that Spain was a suitable neutral forum with jurisdiction to assist in appointing an arbitrator under the 1878 Agreement. They relied on provisions of the Spanish Arbitration Act, which allow Spanish courts to appoint arbitrators in international cases where the dispute has a nexus with Spain, and where not doing so would result in a denial of justice.[4]

34. On 21 May 2018, the TSJM requested an advisory opinion on Malaysia's sovereign immunity from jurisdiction from the International Legal Advisory Services of Spain's Ministry of Foreign Affairs (the "**Ministry**"). The TSJM also instructed the Ministry to serve Malaysia with the petition in accordance with Spanish procedural requirements. The

[2] RfA, paras. 3-4 and Exhibit D.

[3] RfA, para. 5.

[4] *Ibid*.

Ministry served Malaysia at its Embassy in Madrid and produced a Note Verbale documenting service; Malaysia did not reply.[5]

35. On 12 June 2018, the Ministry advised the TSJM that Malaysia did not enjoy immunity from jurisdiction, referring to the existence of an arbitration clause in the 1878 Agreement.[6]

36. On 29 March 2019, the TSJM thus granted the Claimants' application and proceeded to appoint an arbitrator. It invited the Madrid Bar to put forward the names of three English-speaking arbitrators having no connection to the Philippines or Malaysia. From the shortlist provided, the TSJM selected Dr. Gonzalo Stampa as sole arbitrator.[7] Dr. Stampa accepted his appointment on 31 May 2019 and the *ad hoc* Arbitration thus commenced. The sole arbitrator set the seat of the arbitration in Madrid.

2. Malaysia's objections to the appointment of the sole arbitrator

37. While Malaysia had not been participating in the *ad hoc* Arbitration, in the latter part of 2019, Malaysian courts issued an injunction against that arbitration. Among the reasons for the injunction was that the Ministry had not properly notified Malaysia of the request to appoint an arbitrator.[8]

38. After soliciting the parties' views, Dr. Stampa decided to proceed with the *ad hoc* Arbitration. On 25 May 2020, he issued a Preliminary Award affirming jurisdiction under the 1878 Agreement (the "**Preliminary Award**").[9]

39. In June 2020, the Claimants filed their statement of claim in the *ad hoc* Arbitration, seeking approximately USD 32 billion in damages from Malaysia.[10]

40. In March 2021, Malaysia filed a petition for extraordinary vacatur of the TSJM decision appointing an arbitrator, arguing that the service of process on Malaysia had not complied with the applicable procedural rules as the Spanish Ministry should have served its Malaysian counterpart directly in Malaysia, *via* the Spanish Embassy in Kuala Lumpur.[11]

[5] Rule 41 Objection, para. 28.
[6] *Ibid*, para. 29.
[7] *Ibid*, para. 30.
[8] RfA, para. 29.
[9] *Ibid*, para. 30.
[10] *Ibid*, para. 31.
[11] *Ibid*, para. 34.

3. Revocation of the Appointment of the Sole Arbitrator by the Spanish Court

41. In June 2021, at the TSJM's request, the Ministry issued an emergency advisory opinion concluding that the method of service through the Malaysia Embassy in Madrid did not comply with the legal requirements for notifying a sovereign State under the 2004 United Nations Convention on Jurisdictional Immunities of States and their Property.[12]

42. On 29 June 2021, the TSJM panel hearing the vacatur application found that Malaysia had suffered "actual defenselessness" because service had been made to its Embassy in Madrid. On this ground, the TSJM annulled the appointment of the sole arbitrator and directed that the proceedings be restarted and Malaysia served again.[13]

43. In the aftermath of the TSJM vacatur decision, the law clerk of the TSJM wrote *ex parte* to Dr. Stampa, instructing him to abandon the arbitral proceedings.[14] According to the Claimants, the law clerk subsequently confirmed that he did so at the behest of Malaysia's lawyers, not the judges of the TSJM.[15]

4. Relocation of the *ad hoc* Arbitration to France and issuance of the Final Award

44. Faced with the mounting legal challenges in Spain, towards the end of 2021, Dr. Stampa, acting on the Claimants' request, decided to change the seat of the *ad hoc* Arbitration from Madrid to Paris, where the Claimants had already obtained the recognition of the Preliminary Award.[16]

45. On 28 February 2022, Dr. Stampa issued his final award, in which he awarded compensation to the Claimants, which together with interest, amounted to USD 18 billion as of the date of the filing of the RfA in this arbitration (the "**Final Award**").[17]

C. SPANISH CRIMINAL PROCEEDINGS AGAINST THE SOLE ARBITRATOR

46. In the course of 2022, Spanish prosecutors started criminal proceedings against Dr. Stampa, accusing him of *desobediencia* and *intrusismo*, which are rough equivalents of contempt of court and unlicensed practice. In December 2023, the first instance court

[12] *Ibid*, para. 35.
[13] *Ibid*, para. 39.
[14] *Ibid*, para. 43.
[15] *Ibid*, para. 44.
[16] *Ibid*, para. 47.
[17] *Ibid*, paras. 47 and 57.

convicted Dr. Stampa of *desobediencia*, dismissing the charge of *intrusismo*.[18]

47. Dr. Stampa appealed his conviction. The appellate court rejected the appeal in May 2024.

48. According to the Claimants, the criminal conviction and other conduct of the Spanish authorities affected their rights under the Final Award, as they could possibly have an impact on the annulment and enforcement of the Final Award.

IV. ANALYSIS

A. PRELIMINARY MATTERS

1. Applicable procedural rules

49. This arbitration is governed by the ICSID Convention, the 2022 ICSID Arbitration Rules, and the procedural orders adopted in the course of this arbitration, in particular PO No. 1.

2. Law governing jurisdiction

50. The jurisdiction of this Tribunal is governed by international law, primarily by Article 25 of the ICSID Convention and the BIT.

51. Article 25(1) of the ICSID Convention reads in relevant part as follows:

> The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

52. To establish consent to arbitrate, the Claimants rely on Article 9 of the BIT, which reads as follows:

> 1. All kinds of disputes or differences, including disputes over the amount of compensation for expropriation or similar measures, between one Party and an investor of the other Party concerning an investment or income from investment of that investor in the territory of the other shall be settled amicably through negotiations.
>
> 2. If such disputes or differences cannot be settled according to the provisions of paragraph (1) of this Article within six months from date of request for settlement, the investor concerned may submit the dispute to:

[18] *Ibid*.

> a. the competent court of the Party for decision; or
>
> b. the International Centre for the [sic] Settlement of Investment Disputes through conciliation or arbitration, established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, of March 18, 1965 done in Washington, D.C.
>
> 3. Neither Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Party has failed to abide by or to comply with the award rendered by the International Centre for Settlement of Investment Disputes.
>
> [internal footnote omitted]

3. Relevance of previous decisions and awards

53. In support of their positions, both Parties have relied on previous decisions or awards, either to conclude that the same approach should be adopted in the present case or in an effort to explain why this Tribunal should depart from the solution reached by another tribunal.

54. The Tribunal is not bound by the decisions of other arbitral tribunals. At the same time, however, the Tribunal considers that, unless there are compelling reasons to the contrary, it may be guided by the legal solutions reflected in a series of consistent cases, subject, of course, to the specifics of the BIT and to the circumstances of the actual case. In so doing, the Tribunal is of the view that it will contribute to the harmonious development of investment law and thereby meet the legitimate expectations of the community of States and investors towards legal certainty and the rule of law.

4. *Jura novit arbiter*

55. When applying the law, the Tribunal is of the view that it is not bound by the arguments and sources invoked by the Parties. In accordance with the principle of *jura novit curia,* or better *jura novit arbiter,* a tribunal may form its own opinion as to the content of the law, provided it does not base its decision on a legal theory that the Parties could not anticipate.[19]

B. RULE 41 OBJECTION

56. In the Rule 41 Objection, the Respondent argues that the Tribunal manifestly lacks

[19] *Daimler Financial Services AG v. Argentine Republic*, ICSID Case No. ARB/05/1, Decision on Annulment, 7 January 2015, para. 295; *AES Solar and others (PV Investors) v. Kingdom of Spain*, PCA Case No. 2012-14, Final Award, 28 February 2020, para. 519; *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, 19 April 2021, para. 20; *Albert Jan Oostergetel and Theodora Laurentius v. The Slovak Republic*, UNCITRAL Case, Award, 23 April 2012, para. 141.

jurisdiction as the Claimants have made no investment within the definition of the BIT or the ICSID Convention. The Claimants oppose the objection, stating that it falls beyond the scope of Rule 41 and is in any event unfounded. Before analyzing the merits of the Rule 41 Objection (2), the Tribunal sets out the applicable standard (1).

1. Applicable Standard

57. The Tribunal notes that the Parties agree on the essentials of the applicable standard. Accordingly, it does not set out separate summaries of the Parties' positions, but makes reference to the Parties' positions within its assessment.

58. Rule 41 of the ICSID Arbitration Rules provides for the early dismissal of claims that manifestly lack legal merit:

> Rule 41: Manifest Lack of Legal Merit
>
> (1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal.
>
> (2) The following procedure shall apply:
>
> (a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal;
>
> (b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments;
>
> (c) the Tribunal shall fix time limits for submissions on the objection;
>
> (d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and
>
> (e) the Tribunal shall render its decision or Award on the objection within 60 days after the later of the constitution of the Tribunal or the last submission on the objection.
>
> (3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding.
>
> (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to Rule 43 or to argue subsequently in the proceeding that a claim is without legal merit.

59. Rule 41(1) which sets the applicable test is virtually identical to that of Rule 41(5) of the

previous edition of the ICSID Arbitration Rules.[20] It aims at "protect[ing] states against frivolous investor claims" by allowing such claims to be dismissed in expedited proceeding.[21] At the same time, it seeks to balance the interest of States in being protected from frivolous claims against the investors' right to due process. The Tribunal in *Global Trading v. Ukraine* summarized these competing interests as follows:

> [A] balance evidently has to be struck between the right (however qualified) given to the objecting party under Rule 41(5) to have a patently unmeritorious claim disposed of before unnecessary trouble and expense is incurred in defending it, and the duty of the tribunal to meet the requirements of due process.[22]

60. Given that the procedure envisaged under Rule 41 only allows for limited submissions and evidence, the threshold to dismiss a claim for manifest lack of legal merit is high.[23] In the words of the tribunal in *PNG v. Papua New Guinea*, a claim will only be dismissed under Rule 41, if it is "unequivocally unmeritorious" and the Claimant has no "tenable arguable case".[24]

61. Three key features emerge from the text of Rule 41 and from the jurisprudence of ICSID tribunals with respect to the standard for dismissal of claims for manifest lack of legal merit.

62. First, as the provision expressly states, an objection under Rule 41 may relate to both the jurisdiction of the tribunal and the substantive merit of the claim.[25] It is true that, under Article 36(3) of the ICSID Convention, the ICSID Secretary General has the power to refuse the registration of a request where "the dispute is manifestly outside the jurisdiction of the Centre". However, the introduction of the Rule 41 procedure shows that such power alone, which is exercised solely "on the basis of the information contained in the request",[26] was not deemed sufficient to guard States from patently unmeritorious claims, including

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[20] The Parties agree that the test is identical and that the case law under Rule 41(5) of the 2006 ICSID Arbitration Rules thus remains relevant; Rule 41 Objection, para. 9; Response, para. 7.

[21] *Elsamex, S.A. v. Republic of Honduras*, ICSID Case No. ARB/09/4, Decision on Elsamex SA's Preliminary Objection, 7 January 2014, para. 98 (Respondent's translation) **(R-09)** [hereinafter: *Elsamex v. Honduras*].

[22] *Global Trading Resource Corp. and Globex International, Inc. v Ukraine*, ICSID Case No ARB/09/11, Award, 1 December 2010, para. 34.

[23] This is common ground between the Parties, see: Rule 41 Objection, para. 9; Response, para. 7.

[24] *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea*, ICSID Case No. ARB/13/33, Decision on the Respondent's Objections Under Rule 41(5) of the ICSID Arbitration Rules, 28 October 2014, para. 88 (**CL-0002-ENG**) [hereinafter: *PNG v. Papua New Guinea*].

[25] ("*The objection may relate to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal*."); See also, *Accession Mezzanine Capital L.P. and Danubius Kereskedöház Vagyonkezelö Zrt. v. Hungary*, ICSID Case No. ARB/12/3, Decision on Respondent's Objection under Rule 41(5), 16 January 2013, para. 55 (**R-04**).

[26] ICSID Convention, Article 36(3).

for lack of jurisdiction.[27] Thus, the Secretary General's decision to register the arbitration request, which is administrative in nature, is without prejudice to the Tribunal's determination under Rule 41 on whether the claim is manifestly without merit on jurisdictional grounds.[28]

63. Second, as expressed in the title and text of Rule 41,[29] an objection under this provision must raise a *legal* impediment to a claim.[30] Since the early dismissal procedure provided by Rule 41 does not allow for full-fledged evidentiary proceedings, as a rule, a dismissal should not be based on the lack of substantiation of the facts pleaded by the claimant. As the Parties acknowledge, for the purposes of resolving the Rule 41 Objection, the Tribunal must in principle assume that the facts alleged by the Claimants are proven, and assess whether the claim is manifestly unmeritorious on the basis of this assumption.[31] If the lack of merit of a claim could possibly be remedied by the submission of further evidence, that claim is not prone to an early dismissal under Rule 41, as a dismissal may breach the claimant's right to present its case.

64. Third, as the language of Rule 41 makes clear the lack of legal merit of a claim must be "manifest".[32] The Parties agree that this requirement sets a high threshold for dismissal.[33] Accepting a Rule 41 objection requires a "high level of conviction" of the tribunal in the lack of legal merit of the claim.[34] As a general matter, the Rule 41 procedure would therefore not be suited to resolve "complicated, difficult or unsettled issues of law".[35] At the same time, the mere fact that a claim is based on a novel legal theory that has not yet

[27] Antonietti, A., *The 2006 Amendments to the ICSID Arbitration Rules and Regulations and the Additional Facility Rules*, ICSID Review - Foreign Investment Law Journal, Vol. 21, Issue 2, 2006, p. 439 (**R-16**), highlighting that the Secretary General does not have access to the arguments of the respondent when conducting the limited screening under Article 36(3) of the ICSID Convention.

[28] *Ansung Housing Co., Ltd. v. People's Republic of China*, ICSID Case No. ARB/14/25, Award, 9 March 2017, para. 72 (**R-10**).

[29] "Manifest lack of *legal* merit" (emphasis added); "A party may object that a claim is manifestly without *legal* merit" (emphasis added).

[30] *RSM Production Corporation and others v. Grenada*, ICSID No. ARB/10/6, Award, 10 December 2010, para. 6.1.1 (**R-03**).

[31] Rule 41 Objection, para. 41; Response, para. 10. At the same time, the Tribunal should not simply admit the Claimants' legal characterization of the facts. It must undertake an independent legal analysis.

[32] "A party may object that a claim is *manifestly* without legal merit" (emphasis added).

[33] Rule 41 Objection, para. 21 ("the Respondent is aware that the claim must be clearly and obviously without legal merit as a matter of law and that the application of the standard requires a high degree of clarity"); Response, para. 7 ("The parties agree that Rule 41 of the ICSID Arbitration Rules (2022) imposes a high burden through the 'manifest lack of legal merit' test".).

[34] *Elsamex v. Honduras*, para. 109; *PNG v. Papua New Guinea*, para. 90.

[35] *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Decision on Respondent's Application under Rule 41(5), 20 March 2017, para. 41 (**CL-0004-ENG**).

been tested does not immunize it from early dismissal under Rule 41. Indeed, novelty and manifest lack of legal merit are not mutually exclusive. In the Tribunal's view, the proper test to be applied to assess whether a claim manifestly lacks merits is whether the claimant party has advanced a tenable legal basis – assuming the facts proven – supporting it. This does not require the Tribunal to assess whether such legal argument is correct, but only whether there is a possible reasonable basis for it to succeed.

65. Based on these considerations, the Tribunal will now analyze the Rule 41 Objection. It will start by addressing the Respondent's argument that the Claimants' allegations are manifestly incapable of establishing the existence of an investment under the BIT.

2. Whether the absence of an investment under the BIT is manifest

66. Before setting out its analysis, the Tribunal will summarize the main elements of the Parties' positions ((a) and (b)). In the analysis that follows, it may expand on some of these arguments and address other considerations put forward by the Parties (c).

(a) The Respondent's Position

67. Spain argues that the Claimants have manifestly failed to demonstrate the existence of an investment within the meaning of Article 1(1) of the BIT.

68. It recalls that the RfA contained no specific reference to any investment, but merely stated that "Claimants petitioned to the Tribunal Superior de Justicia de Madrid (TSJM) to select an arbitrator in January 2018".[36] It was only upon request of the ICSID Secretary General that the Claimants submitted that (i) the monies which they spent on legal fees in the Spanish court proceedings to appoint an arbitrator, and (ii) their monetary interest in the Final Award, qualify as investments under Article 1(1)(c) of the BIT, that is as "claims to money utilised for creating economic value or to any performance having economic value".

69. According to the Respondent, the two items cited by the Claimants manifestly fall outside the scope of Article 1(1)(c) of the BIT:

- Monies disbursed for legal fees do not constitute "claims to money" or "performance having economic value" under the ordinary meaning of these terms. Legal fees are expenses, not claims; they are not "utilised for the purpose of creating an economic value" but rather serve to enable participation in judicial proceedings. Such proceedings do not create economic value by themselves, and the BIT's object

[36] Rule 41 Objection, para. 49.

and purpose, which is to promote economic cooperation and prosperity, does not warrant treating legal fees as protected investments;[37]

- The Claimants' asserted monetary interest in the Final Award amounts to no more than a claim to payment under a commercial contract. This does not constitute an "investment" in Spain, as required by the BIT, because the underlying rights concern territory in and around North Borneo, not Spain. Spain was neither a party to the 1878 Agreement nor to the underlying arbitration; thus, any related claims cannot be deemed investments in Spanish territory.[38]

70. For these reasons, the Respondent concludes that the Claimants have manifestly failed to establish the existence of a protected investment under the BIT. Accordingly, the Tribunal should find that it lacks jurisdiction over the dispute and uphold the Respondent's objection under Rule 41 of the ICSID Arbitration Rules.

(b) The Claimants' Position

71. The Claimants submit that they have made an "investment" within the meaning of Article 1(1) of the BIT. They emphasize that the term "investment" in the BIT is broadly defined to include *inter alia* "claims to money utilized for the purpose of creating an economic value" and "any performance having an economic value".[39] The Respondent adopts an unduly narrow interpretation that is contrary to the text, object and purpose of the BIT, and international jurisprudence.

72. The Claimants identify two distinct qualifying assets under BIT Article 1(1)(c) as follows:

- The monies spent on legal representation and proceedings in Spain related to the *ad hoc* Arbitration are "claims to money" and "to any performance having an economic value" because they were deployed to secure the appointment of an arbitrator under the 1878 Agreement, a necessary step to realise their rights under that agreement. These legal fees and expenditures were not mere costs; they were part of a process to create and preserve economic value by pursuing a valuable legal claim. They therefore constituted an investment in the Spanish legal industry which is protected under the BIT;[40]

[37] *Ibid*, paras. 57-64.

[38] *Ibid*, paras. 65-66.

[39] Response, para. 16; BIT, Art. 1(1)(c) (**RfA Exh. C**; **R-01**).

[40] *Ibid*, paras. 24-28.

- The interest in the Final Award is itself a protected asset under Article 1(1)(c), representing "a claim to money". The Final Award recognized the Claimants' entitlement to substantial monetary relief from Malaysia under the 1878 Agreement, and its value is independent of its current enforceability status. The Final Award has a connection to Spain, as it was rendered by a tribunal which had first its seat in Madrid, in proceedings that initially benefitted from the assistance of the Spanish courts. In any event, the characterization of arbitral awards as investments raises issues that cannot be resolved in summary proceedings such as the present ones.[41]

73. The Claimants further contend that Article 1(1) of the BIT does not require that the investment be physically located in Spain. It only demands that it be "accepted in accordance with" the laws and regulations of the host State. In their view, the Final Award and the associated legal expenditures meet this condition because they originated from, and were closely connected to proceedings conducted by the Spanish judiciary.[42]

74. They add that the Respondent's restrictive reading of "investment" would undermine the protective purpose of the BIT and exclude legitimate forms of economic interests, in a manner that does not conform to the principles of treaty interpretation.

75. The Claimants conclude that the Final Award and related legal expenditures qualify as protected investments under Article 1(1)(c) and that in any event the Respondent's objections fall far beyond the limited scope of Rule 41. Therefore, they request that the Tribunal dismiss the Rule 41 Objection.

(c) Analysis

76. Article 9 of the BIT provides the Treaty Parties' consent to ICSID arbitration with respect to disputes "between one Party and an investor of the other Party concerning an **investment** or income from investment **of that investor** in the **territory** of the other".[43] It is undisputed that the existence of an investment of an investor in the territory of the respondent State is a condition to the consent to arbitration and thus to the jurisdiction of the Tribunal.[44]

77. Article 1(1) of the BIT contains the definition of the term "investment", which reads as

[41] *Ibid*, paras. 29-33.

[42] *Ibid*, paras. 27, 31.

[43] BIT, Article 9 (**RfA Exh. C**; **R-01**) (emphasis added).

[44] Consent being one of the principal jurisdictional requirements under Article 25 of the ICSID Convention.

follows:

> The term "investment" shall mean any kind of **asset** accepted in accordance with the respective laws and regulations of either Party, and more particularly, though not exclusively:
>
> a. movable or immovable property as well as other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;
>
> b. shares of stocks and debentures of companies or interest in the property of such companies.
>
> c. claims to money utilized for the purpose of creating an economic value or to any performance having an economic value;
>
> d. copyrights, intellectual and industrial property rights, patents, technical processes, know-how, trademarks, trade names and goodwill; and
>
> e. business concessions conferred by law, including concessions to search for, extract or exploit natural resources.
>
> Any admitted alteration of the form in which assets are invested shall not affect their classification as an investment.[45]

78. The definition is broad as it encompasses "any kind of asset" and refers to a non-exhaustive list of eligible categories of assets. It is uncontroversial that for something to qualify as an investment it must at the very least constitute an "asset". Furthermore, from the combined reading of the arbitration clause in Article 9 and the definition of "investment" in Article 1(1) of the BIT, it becomes clear that consent to jurisdiction is only given if, at a minimum, the claimant holds an asset in the territory of Spain to which the dispute relates.

79. The Claimants argue that their investment in Spain is composed of "legal fees to instruct Spanish counsel in the petition to appoint before the Spanish court to select an arbitrator", and a "monetary interest in the award that the Claimants asked Dr. Stampa to issue in Spain".[46] In particular, they allege that they "invested substantial sums of money to instruct Spanish counsel (B. Cremades y Asociados) to prepare the petition to select an arbitrator before the relevant Spanish court".[47] Elsewhere they state that they "invested millions of dollars" in Spanish legal counsel.[48] They further assert that "the legal expenses are the original investment and the award is a crystallisation of such investment".[49] As for the territorial nexus with Spain, the Claimants put forward that they "invested in Spanish law

[45] BIT, Article 1(1) (**RfA Exh. C**; **R-01**) (emphasis added).

[46] Response, para. 15 (see also structure of the submission, Section III.B, discussing "Monies spent on legal fees" and "Monetary interest in the award" as the two categories of the alleged investment); Claimants' Letter of 10 September 2024 to the ICSID Secretary General.

[47] Response, para. 2.

[48] RfA, para. 55-57; Response, para. 12.

[49] Response, para. 33.

firms", and that "the award is the result of arbitral proceedings in Spain from a Spanish arbitrator judicially appointed by the courts of Spain."[50]

80. Even if one assumes that the facts pleaded by the Claimants are proven, it is manifest that none of the Claimants' alleged investments meet the relevant requirements.

i. ***"Monies spent on legal fees"***

81. There is no need for long explanations to understand that money spent on fees to pay for legal services cannot possibly be deemed an asset of the Claimants. The definition of the word "asset" used in Article 1(1) of the BIT is "an item of property owned"[51] or "something valuable belonging to a person or organization that can be used for the payment of debts".[52] Monies disbursed for legal fees are an expenditure, not an asset.

82. The legal fees might potentially qualify as a monetary contribution through which the Claimants obtained an asset, i.e. the right to the performance of legal services. The Claimants do not argue, however, that their alleged right to the performance of legal services by Spanish counsel is an investment, much less the investment out of which the dispute in this arbitration arises. If such an argument were raised, it could only be dismissed out of hand. The Claimants' complaints against Spain do not arise out of conduct that interfered with their right to obtain legal services under their contract with Spanish counsel. Leaving aside whether an *in personam* right to legal services under a services agreement could qualify at all as an *asset* constituting an investment, that right is manifestly not the asset to which the dispute relates, as prescribed by Article 9 of the BIT. Here, on their own allegations, the Claimants paid for legal services and received such services. Consequently, the right to legal services could not possibly provide a basis for the Tribunal's jurisdiction.

83. Since "monies spent on legal fees" do not constitute an asset, the Tribunal can dispense with examining whether such monies may fall within one of the categories of assets listed in Article 1(1) of the BIT. It nevertheless notes that such monies manifestly do not represent "claims to money utilized for the purpose of creating an economic value or to any performance having an economic value" under Article 1(1)(c) of the BIT.[53] It is beyond doubt that the legal fees paid to counsel are not "claims to money". While they may have given rise to "claims to performance" of legal services, as noted above, the Claimants do not contend that the right to performance of legal services is an investment, and in any

[50] Response, para. 33.

[51] Webster dictionary (https://www.merriam-webster.com/dictionary/asset).

[52] Cambridge dictionary (https://dictionary.cambridge.org/dictionary/english/asset).

[53] Response, para. 26.

event the present dispute does not concern such right.

84. It follows that the "monies spent on legal fees" are manifestly incapable of constituting an asset of the Claimants within the meaning of Article 1(1) of the BIT, much less an asset constituting an investment. In other words, the condition to consent consisting in the existence of an investment can manifestly not be met in reliance on the monies spent on legal fees.

85. For the same reasons, any other fees and expenses that the Claimants have incurred for the payment of services of the arbitrator, Dr. Stampa, or of Spanish court fees do not constitute an asset and cannot thus fall under the definition of "investment" under Article 1(1) of the BIT.

ii. "Monetary interest in the award"

86. The Claimants' second alleged investment is their monetary interest in the Final Award. There are two self-standing reasons why that interest is not susceptible of qualifying as an investment "in the territory of the other Party", as required by Article 9(1) of the BIT, that is, Spain.

87. First, some tribunals have considered arbitral awards as part of an investment. However, they have done so where the underlying economic transaction to which that award related itself constituted an investment in the territory of the host State.[54] Under this "theory of crystallization", as the Claimants themselves call it,[55] the award "represents a continuation or transformation of the original investment."[56] This is manifestly inapplicable to the facts alleged here.

88. Indeed, the Claimants do not contend that the transaction which is the subject matter of the 1878 Agreement and underlies the Final Award, constitutes an investment in Spain. Any such allegation would, in any event, be manifestly unfounded. According to the Claimants, the 1878 Agreement provided them with the right "to receive compensation [from

[54] *White Industries Australia Limited v. The Republic of India*, UNCITRAL, Final Award, 30 November 2011, para. 7.6.8 (**CL-0016-ENG**) [hereinafter: *White Industries v. India*]; *Saipem S.p.A. v. People's Republic of Bangladesh*, ICSID Case No. ARB/05/7, Decision on Jurisdiction and Recommendation on Provisional Measures, 21 March 2007, paras. 125–128 (**CL-0015-ENG**); *Frontier Petroleum Services Ltd. v. The Czech Republic*, UNCITRAL, Final Award, 12 November 2010, para. 231 (**CL-0017-ENG**); *ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/08/2, Award, 18 May 2010, para. 117 (**CL-0014-ENG**) [hereinafter: *ATA v. Jordan*].

[55] Response, para. 30.

[56] *White Industries v. India*, para. 7.6.8.

Malaysia] for leasing territory on and around North Borneo".[57] While the Claimants point to the fact that the 1878 Agreement was executed on what was then part of the Spanish Empire,[58] they do not argue that the notion of "territory" under the BIT includes historical colonial territories. In any event, any such argument would be manifestly unfounded. The term "territory" is defined in the BIT as follows:

> The term "territory" means […] [w]ith respect to the Kingdom of Spain, the land territory and territorial waters of Spain as well as the exclusive economic zone and the continental shelf that extends outside the limits of its territorial waters over which it has or may have jurisdiction and sovereign rights for the purpose of prospecting, exploration and conservation of natural resources, pursuant to international law.[59]

89. The Preamble of the BIT provides that the treaty aims "to create favourable conditions for investments by investors of one Party in the territory of the other Party, and to increase prosperity in their respective territories". It is evidently far-fetched to suggest that, when the Contracting States concluded the BIT in 1993, they intended to "increase prosperity" and "create favourable conditions for investments" in their historical colonial territories. The 1878 Agreement cannot thus be considered as an investment in the territory of Spain within the meaning of the BIT, with the result that the Final Award cannot possibly be a crystallization of an investment in Spain.

90. To fit their case to the "theory of crystallization", the Claimants argue that "the legal expenses are the original investment and the award is a crystallisation of such investment".[60] However, as the Tribunal explained in the preceding section, the legal expenses at hand are manifestly not an investment under the BIT and, hence, there can be no crystallization of a non-existing investment. In addition, and as was also said above, the legal dispute leading to the Final Award at the basis of this investment claim is unrelated to the legal fees paid to Spanish counsel for the appointment of Dr. Stampa or for the conduct of the arbitration. If the mere fact that the Claimants incurred legal expenses in connection with an arbitration were sufficient to establish the underlying investment, any arbitral award would be an investment, since the payment of legal fees is a necessary feature of any arbitral proceeding. The costs that the Claimants spent on the arbitration were not incurred with the expectation of profit, as would be typical for an investment. The purpose of the arbitration to which the legal expenses were contributed was merely to

[57] RfA, para. 4 (According to the Claimants "[w]hen the counterparty to that agreement - the Government of Malaysia - ceased making payments in 2013, the Claimants sought legal redress").

[58] RfA, paras. 5 and 6.

[59] BIT, Article 1(2)(a) (**RfA Exh. C**; **R-01**).

[60] Response, para. 33.

enforce alleged rights under the 1878 Agreement, i.e. to compensate for a loss, not to create new value. Hence, unless these rights themselves qualify as an investment, their enforcement through arbitration cannot in and of itself give rise to a separate investment. For the same reason, any entitlements that the Claimants may have acquired in an attempt to enforce their rights through arbitration, such as claims for performance of legal services by counsel or of arbitrator services by Dr. Stampa cannot be deemed investments.

91. In support of its argument that the Final Award is an investment, the Claimants invoke *ATA v. Jordan*.[61] The case concerned the annulment by local courts of a final award arising out of a contract between an investor and a Jordanian State-controlled company for construction of a dam in Jordan.[62] Addressing whether the final award could qualify as an investment, the tribunal noted that "the Final Award at issue in the present arbitration would be part of an 'entire operation' that qualifies as an investment." As the court decision annulling the award predated the entry into force of the applicable BIT, the tribunal declined jurisdiction *ratione temporis* over the annulment of the award.[63] It then proceeded to examine whether the contractual right to arbitrate could qualify as distinct investment and concluded affirmatively.[64]

92. Reliance on *ATA* is of no assistance to the Claimants. The latter do not allege that the "right to arbitrate" under the 1878 Agreement, as opposed to the Final Award, constitutes the investment out of which the dispute arises. Unlike in *ATA*, where the State legislated to extinguish the arbitration clause in the contract,[65] the Claimants' right to arbitrate under the 1878 Agreement remains intact.

93. In any event, *ATA* held that the right to arbitrate was an investment based on Article I(2)(a)(ii) of the Turkey-Jordan BIT, which refers to "rights to legitimate performance having financial value **related to an investment**" (emphasis added). Thus, absent the underlying investment, i.e. the construction contract, to which the right to arbitrate related, the right to arbitrate would not have been an investment under the treaty.

94. Second, even if the Claimants' interest in the Final Award could somehow qualify as an investment, it would manifestly not be an investment in the territory of Spain. The offer to arbitrate contained in Article 9 of the BIT extends to "investments … in the territory of"

[61] Response, para. 29, citing *ATA v. Jordan*, para. 117.

[62] *ATA v. Jordan*, paras. 31-34.

[63] *Ibid*, para. 115.

[64] *Ibid*, para. 117.

[65] *Ibid*, para. 116 ("in 2001, the Jordanian Arbitration Law (Law No. 31 of 2001) came into effect, including Article 51, last sentence, which provides for the extinguishment of the right to arbitration if an arbitral award is annulled.")

the respondent State. This entails that the alleged investment in question, i.e., the Final Award, must have a sufficient connection with the territory of Spain such that it would qualify as an investment in Spain. It is undisputed that Spain was not a party to the 1878 Agreement or to the *ad hoc* Arbitration arising under that agreement. In addition, under the facts pleaded by the Claimants, Dr. Stampa issued the Final Award in France.[66]

95. In an attempt to overcome this obstacle, the Claimants argue that "the award is the result of arbitral proceedings in Spain from a Spanish arbitrator judicially appointed by the courts of Spain."[67] However, assuming that the Final Award or the Claimants' interest in it is an investment, *quod non*, these purported connecting factors are insufficient to locate the award in Spain. While the arbitration was initially seated in Spain, based on a decision taken by the arbitrator, Dr. Stampa, when the Final Award was issued, the tribunal's seat had been moved to France. In international arbitration law, the choice of a seat is generally considered to create a link with the state in which the seat is located, in the sense that it triggers the application of the local law governing international arbitration and confers jurisdiction to the local courts over annulment requests. The seat is also the place where the award is deemed to have been rendered.

96. The tenuous connection derived from the assistance granted by the Spanish courts in the constitution of the arbitral tribunal due to Spain's historical link with the Philippines is insufficient to transform the arbitration proceedings into an investment in Spain until the seat was moved and unable to trump the weight of the circumstance that the underlying dispute was in relation to a transaction about land in what is now the territory of Malaysia. As for the nationality of the arbitrators, it in no way indicates any connection. It is often unrelated to the seat and to the underlying economic operation.

97. If the Claimants' suggested connections could determine the location of the monetary interest in an arbitral award, this would render the territorial limitation regularly present in investment treaties that an investment must be made in the host state meaningless. Any State, however remotely related to arbitral proceedings, could face investment treaty claims. This could include the State of nationality of the arbitrators, the State where the claimants' counsel practice and legal fees are paid, and the State whose courts are seized with a request to assist arbitral proceedings or to recognize and enforce arbitral awards.

[66] Response, para. 4; RfA, Exhibit D, Claimants' 7 December 2023 Letter to Spain informing the Government of a Dispute under the BIT ("*Dr Stampa issued the Final Award out of France in February 2022.*").

[67] Response, para. 33.

98. Moreover, the Claimants advance that the theory of crystallization is based on complex legal doctrines. According to them, "the novelty, transcendence and complexity of these doctrines" make the issue unsuitable for Rule 41 procedure.[68] While it is true that tribunals and scholars have disagreed on multiple aspects of the so-called crystallization theory, the dismissal of the claims in this arbitration does not hinge on these debates. Even assuming that the crystallization theory applies, the case as pleaded by the Claimants manifestly fails to fulfill the requirement that the transaction underlying the arbitral award itself constitute an investment in the host State.

99. While the facts brought forward by the Claimants are indeed unique and novel, novelty does not immunize a claim from early dismissal under Rule 41.

100. Finally, the Tribunal rules out that rejecting the Rule 41 Objection and conducting full-fledged proceedings would change the result reached as a matter of law. Indeed, all the facts alleged by the Claimants have been assumed to be true and the Tribunal sees no additional facts that might be pleaded and proven, and that would alter its legal assessment. Accordingly, there can be no issue of breach of the Claimants' due process right to make its case.

101. The determination that the jurisdictional requirement of the existence of an investment under the BIT is not fulfilled means that the Contracting States have not consented to arbitrate the present dispute. It also means that the jurisdictional requirement of consent by the disputing Parties set in Article 25 of the ICSID Convention as a gateway to ICSID arbitration is not satisfied. In these circumstances, the Tribunal can dispense with reviewing whether the Claimants' alleged interests also fail to qualify as an investment under the ICSID Convention.

C. COSTS

102. Each Party claims the arbitration costs, including the Tribunal's fees and expenses and ICSID administrative costs, as well as their costs of legal representation. The Respondent also claimed interest on costs at a reasonable rate to accrue from the date on which the costs were incurred until payment.

103. The breakdown of the Claimants' costs are as follows:

- ICSID Advances – [redacted].

[68] Response, para. 31.

- Costs of legal representation – [redacted].

104. The breakdown of the Respondent's costs are as follows:

- ICSID Advances – [redacted].
- Costs of legal representation – [redacted].

105. Pursuant to Article 61(2) of the ICSID Convention, the Tribunal has a wide discretion to allocate the costs of the arbitration between the Parties as it deems appropriate:

> In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

106. The costs of the arbitration, including the fees and expenses of the Tribunal and the President's Assistant, ICSID's administrative fees and direct expenses, amount to the following sum (in US dollars):

Arbitrators' fees and expenses	
Prof. Gabrielle Kaufmann-Kohler, President	[redacted]
Prof. Dr. Stephan Schill, Arbitrator	[redacted]
Prof. Alexis Mourre, Arbitrator	[redacted]
Assistant's fees and expenses	[redacted]
ICSID's administrative fees	[redacted]
Direct expenses (estimated)[69]	[redacted]
Total	[redacted]

107. The Tribunal considers that the outcome of the dispute, i.e., the full dismissal of the claims under Rule 41, warrants an award of costs in favor of the Respondent. It further notes that the conduct of the Parties and their representatives was efficient and collegial. Accordingly, the procedural conduct does not warrant altering the allocation of costs dictated by the outcome of the dispute. Furthermore, although higher than those of the Claimants, the

[69] This amount includes expenses related to meetings, stenographic and translation services. It excludes expenses related with courier services of this Award (courier, printing, among others).

Tribunal considers that the Respondent's costs are reasonable, taking in particular in consideration that the Respondent was the moving party with respect to the Rule 41 Objection.

108. Accordingly, the Tribunal considers that the Claimants shall bear their own costs and pay the Respondent the amount of [redacted] representing the Respondent's share of the fees and expenses of the Tribunal, and the latter's share of the ICSID administrative costs, as well as costs of legal representation.

109. Finally, the Tribunal notes that the Respondent did not substantiate its interest claim and, therefore, the Tribunal will not allow it.

V. OPERATIVE PART

110. For the foregoing reasons, the Tribunal decides as follows:

(i) The claims before it in this arbitration are manifestly without legal merit and are dismissed pursuant to Rule 41 of the ICSID Arbitration Rules;

(ii) The Claimants shall pay to the Respondent [redacted] for the latter's share of the fees and expenses of the Tribunal and the ICSID administrative costs;

(iii) The Claimants shall pay to the Respondent [redacted] for the Respondent's costs of legal representation;

(iv) The Respondent's claim for interest on costs is dismissed.

[signed]

Prof. Alexis Mourre
Arbitrator

Date: November 6, 2025

Prof. Stephan Schill
Arbitrator

Date:

Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal

Date:

[signed]

Prof. Alexis Mourre Arbitrator	Prof. Stephan Schill Arbitrator
Date:	Date: November 6, 2025

Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal

Date:

Prof. Alexis Mourre
Arbitrator

Date:

Prof. Stephan Schill
Arbitrator

Date:

[signed]

Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal

Date: November 6, 2025