**IN THE MATTER OF AN ARBITRATION UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT**

**-and-**

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

**-between-**

**ODYSSEY MARINE EXPLORATION, INC. (USA)**

**("Claimant")**

**and**

**THE UNITED MEXICAN STATES**

**("Respondent")**

**ICSID Case No. UNCT/20/1**

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# DECISION ON RESPONDENT'S REQUEST FOR INTERPRETATION OF THE AWARD

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***Members of the Tribunal***
Mr. Felipe Bulnes Serrano, Presiding Arbitrator
Dr. Stanimir Alexandrov, Arbitrator
Prof. Philippe Sands, KC, Arbitrator

***Secretary of the Tribunal***
Ms. Anna Toubiana, ICSID

*Date of dispatch to the parties:* 16 December 2024

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## I. PROCEDURAL HISTORY

1. On 17 September 2024, an Arbitral Tribunal consisting of Mr. Felipe Bulnes Serrano, Dr. Stanimir Alexandrov, and Prof. Philippe Sands rendered an award in the case *Odyssey Marine Exploration, Inc. v. The United Mexican States* (ICSID Case No. UNCT/20/1) (the "**Award**"). A dissenting opinion by Prof. Philippe Sands was attached to the Award.[1]

2. On 16 October 2024, the United Mexican States ("**Mexico**" or "**Respondent**") filed a Request for Interpretation of the Award rendered by the Tribunal on 17 September 2024 ("**Request**"), in accordance with Article 35 of the 1976 UNCITRAL Arbitration Rules (the "**UNCITRAL Rules**"). On 17 October 2024, the Secretary of the Tribunal acknowledged receipt of Respondent's Request.

3. On 17 October 2024, Odyssey Marine Exploration, Inc. ("**Claimant**" or "**Odyssey**") requested the Tribunal for the opportunity to submit its response to the Request under Article 35 of the UNCITRAL Rules. On that same date, the Tribunal granted Claimant's request and invited it to submit its response by 21 October 2024.

4. On 21 October 2024, Claimant filed its Opposition to the Request, together with legal authorities CL-0265 through CL-0272 ("**Claimant's Opposition**").

5. On 25 October 2024, the Tribunal informed the parties that: (i) Respondent was invited to submit any additional comments it may have on the Claimant's Response by 30 October 2024, and Claimant will subsequently have the opportunity to submit any additional observations if it wishes to do so; (ii) unless proposed otherwise, the Tribunal intended to apply the procedural rules agreed in Procedural Order No. 1, dated 23 April 2020 ("**PO 1**"), "*particularly under Section 5 of PO 1 regarding the Fees and Expenses of Tribunal Members, notwithstanding the provision set forth under Art. 40(4) of the UNCITRAL Rules*"; and (iii) the Tribunal intended to use the funds that remain in the account that was established by ICSID for the case to cover the costs of this phase of the proceedings. The

[1] All terms defined herein shall be understood and interpreted in a manner consistent with the Award and in accordance with the definitions provided therein.

parties were invited to confirm their agreement or submit any observations on the Tribunal's proposals by 29 October 2024.

6. On 29 October 2024, Mexico requested clarification on whether the Tribunal's 25 October communication signified an intent to waive the application of Article 40(4) of the UNCITRAL Rules, which prevents additional fees from being charged by a tribunal for interpretation of its award.

7. On 30 October 2024, the Tribunal informed the parties that, in response to Respondent's letter of 29 October 2024, and as noted in the Centre's letter of 25 October 2024, the parties had agreed during the First Session, as recorded in PO 1, to apply ICSID's financial regulations (*inter alia*, Schedule of Fees and Regulation 14 of the ICSID Administrative and Financial Regulations) to this proceeding. In the Tribunal's view, this agreement also extends to this Request. The Tribunal further noted that this interpretation is aligned with the approach of other ICSID tribunals applying the UNCITRAL Rules.

8. On 30 October 2024, the Respondent filed its Additional Comments to the Request ("**Respondent's Additional Comments**").

9. On 31 October 2024, the Tribunal invited Claimant to submit any additional observations it may have on the Respondent's Additional Comments by 8 November 2024.

10. On 8 November 2024, Claimant submitted its Further Comments on the Request together with legal authority CL-0273 ("**Claimant's Further Comments**").

11. The present Decision constitutes an integral part of the Award in accordance with Article 32 and 35 of the UNCITRAL Rules.

## II. THE PARTIES' POSITIONS

12. To the extent that the parties' arguments are not expressly referenced in the summary of the parties' positions below, they have nonetheless been fully considered and incorporated by the Tribunal into its analysis.

### A. RESPONDENT'S POSITION

#### (1) Request pursuant to Article 35 of the UNCITRAL Rules

13. Pursuant to Article 35 of the UNCITRAL Rules, Respondent requests the Tribunal to "clarify what rate should apply for the purposes of calculating pre and post-award interest on the Award. In particular, whether the rate indicated in the Award should be interpreted as a U.S. dollar-denominated interest rate."[2]

14. In its Request, Respondent explains that the Tribunal, when turning to the issue of pre- and post-award interest in its Award, noted that NAFTA Article 1110(4) is "*the only reference in the Treaty to the rate of interest to be awarded*," before concluding that:[3]

> [a]*lthough this norm refers to compensation arising from an expropriation, the Tribunal considers that it may serve as guidance in the present case because it is the most explicit reference in NAFTA on the matter, and because the Tribunal sees no reasons to exclude the application of this criterion when the compensation arises from the breach of the FET standard rather than from an expropriation. In addition, Respondent argues for the application of this concept from the time of its first submission, and Claimant did not dispute it as such during the proceeding*.[4]

15. Mexico alleges that using the criterion established in Article 1110(4), the Tribunal determined that (i) "the applicable rate should be equivalent to what Mexico pays when it borrows money by issuing sovereign debt bonds;" and (ii) "'applying the one-year Mexico Treasury bond rate' was appropriate."[5] However, Respondent contends that the Tribunal

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[2] Respondent's Request for Interpretation of the Award dated 16 October 2024 (the "**Request**"), ¶¶ 1-3.

[3] *Id.*, ¶ 4.

[4] Award, ¶ 792; Request, ¶ 4.

[5] Request, ¶ 5.

did not clarify whether this refers to the rate for U.S. dollar-denominated sovereign bonds or for bonds denominated in Mexican pesos.[6]

16. Respondent argues that it is "*reasonable to conclude*" that the Tribunal was referring to a dollar-denominated bond rate, as the Award is payable in U.S. dollars, and NAFTA Article 1110(4) specifies that compensation in a G7 currency should include interest at a commercially reasonable rate for that currency.[7]

17. Moreover, Mexico argues that applying a Mexican peso-denominated rate to a U.S. dollar-denominated Award would unjustly overcompensate Claimant by including currency risk that Claimant neither assumed nor will face.[8]

18. In response to Claimant's Opposition to the Request, Mexico argues that Claimant's position—that there is no ambiguity regarding the interest rate specified in the Award—would be valid only if it were based on the assumption that the Tribunal was aware that Mexico does not issue one-year Treasury bonds in U.S. dollars, yet still intended to apply a peso-denominated rate to a dollar-denominated Award.[9] However, Respondent asserts that there is no indication in the Award that this was the Tribunal's intention.[10]

19. Respondent further rejects Claimant's argument that the Tribunal cited NAFTA Article 1110(4) solely to establish the need for a "*commercially reasonable rate*" when evaluating whether Claimant's proposed WACC rate, typical of a pre-operational mining investor in Mexico, is appropriate.[11] According to Mexico, Claimant's position is incorrect because (i) paragraph 792 of the Award establishes that NAFTA Article 1110(4) served as the primary guide for determining interest rates and was not used solely to assess the appropriateness of the rate advocated by Claimant;[12] and (ii) NAFTA Article 1110(4) specifies a "*commercially reasonable rate for that currency*," implying that the interest

[6] *Idem*.
[7] *Id.*, ¶ 6.
[8] *Idem*.
[9] Respondent's Additional Comments, ¶ 2; Claimant's Opposition, ¶ 1.
[10] Respondent's Additional Comments, ¶ 3.
[11] *Id.*, ¶ 6.
[12] *Id.*, ¶ 7.

rate should correspond to a G7 currency, thereby reinforcing the Respondent's view on the proper interest rate alignment.[13]

20. Regarding Claimant's claim that Respondent has not presented evidence of issuing U.S. dollar-denominated one-year Treasury bonds, Mexico notes that this issue was not raised in the arbitration.[14] Claimant sought interest based on its U.S. dollar WACC, and Respondent suggested the one-year U.S. Treasury bond, also in U.S. dollars, thereby eliminating the need to prove that Mexico issues one-year U.S. dollar bonds.[15]

21. Respondent argues that Claimant's suggestion—that the Award used a peso-denominated rate to incentivize payment—is baseless, as this rate applies to pre-award interest, unrelated to the payment date.[16] Therefore, Respondent asserts that applying a peso rate to a dollar-denominated Award would unjustly "*benefit*" Claimant by compensating for non-existent exchange risk [Translation of the Tribunal].[17]

22. Mexico further maintains that the Tribunal intended the interest rate to mirror what Mexico pays when borrowing in U.S. dollars, consistent with Article 1110(4) and the Tribunal's statement that a comparable rate would be what Mexico pays on its sovereign debt, aligning with common practices in developing nations like Mexico.[18]

23. Respondent contends that the Request will not create an ambiguity, as Claimant suggests, by tying the interest calculation to a non-existent rate. Rather, Respondent argues that a USD rate can be readily determined by adding a suitable country risk premium for Mexico to the one-year U.S. T-Bill rate.[19]

[13] *Id.*, ¶ 8.
[14] *Id.*, ¶ 9.
[15] *Idem*.
[16] *Id.*, ¶ 10.
[17] *Idem*.
[18] *Id.*, ¶ 11.
[19] *Id.*, ¶ 12.

### (2) Request pursuant to Article 36 of the UNCITRAL Rules

24. Mexico also submits a subsidiary request to the Tribunal based on Article 36 of the UNCITRAL Rules.

25. Turning to this point, Respondent agrees with Claimant that Article 36 is intended solely for correcting clerical, computational, or typographical errors, or any similar type of error and clarifies that it is not challenging the Tribunal's decision on the applicable interest rate nor seeking a reconsideration.[20] Rather, Respondent simply seeks clarification on the exact interest rate to be used for pre- and post-award interest calculations.[21]

26. Respondent argues that omitting the interest rate currency is an "*error of a similar nature*" to an administrative oversight, which could fall under Article 36 of the UNCITRAL Rules [Translation of the Tribunal].[22]

27. Based on the above, Respondent requests the Tribunal to: (i) issue an interpretation of the Award under Article 35 of the UNCITRAL Rules; and (ii) if the Tribunal deems the Request to be within the scope of Article 36 of the UNCITRAL Rules (Correction of the Award), amend paragraph 802 of the Award to read as "*one-year dollar-denominated Mexico Treasury bond rate*."[23]

## B. CLAIMANT'S POSITION

### (1) Request pursuant to Article 35 of the UNCITRAL Rules

28. In response to the Request, Claimant contends that the Tribunal should deny the Request under Article 35 of UNCITRAL Rules since "*there is no ambiguity regarding the interest rate indicated in the Award*."[24]

[20] *Id.*, ¶ 14.
[21] *Idem*.
[22] *Id.*, ¶ 15.
[23] Request, ¶ 7; Respondent's Additional Comments, ¶ 16.
[24] Claimant's Opposition, ¶ 1.

29. Claimant argues that the Request under Article 35 of the UNCITRAL Rules is baseless for the following reasons.

30. Claimant maintains that the Award explicitly orders that the interest shall be paid "*at a rate equal to the one-year Mexico Treasury bond rate, compounded annually*" and when adopting that rate, the Award describes that it is reasonable for the applicable interest rate to align with the rate Mexico pays when it issues sovereign debt bonds.[25] Therefore, in Claimant's view, the "*language is clear: the applicable interest rate is the rate that applies to one-year Treasury bonds issued by Mexico*."[26]

31. Claimant further argues that, in the absence of evidence showing that Respondent has issued U.S. dollar-denominated one-year Treasury bonds, the Award must refer exclusively to peso-denominated one-year Mexico Treasury bonds.[27] For Odyssey, there is thus no ambiguity in the Award that would allow the Tribunal to interpret it under Article 35 of the UNCITRAL Rules.[28]

32. Odyssey alleges that Respondent is attempting to create an "*inconsistency*" in the Award by referencing NAFTA Article 1110(4) as a guiding principle.[29] Claimant contends that the Award references Article 1110(4) solely to establish that the applicable interest rate must be a "*commercially reasonable rate*," specifically in assessing whether Claimant's proposed WACC is appropriate.[30] Claimant notes that the Award never explicitly cites NAFTA Article 1110(4) to suggest that the interest rate must be one applicable to investments denominated in the same currency as the Award.[31]

33. Claimant argues that Respondent is attempting to create an artificial ambiguity under Article 35 by speculating that the Tribunal mistakenly assumed Mexico issues U.S. dollar-

[25] Award ¶ 821(c); Claimant's Opposition, ¶ 3.
[26] Claimant's Opposition, ¶ 3.
[27] *Id.*, ¶ 4.
[28] Claimant's Opposition, ¶ 4; Claimant's Further Comments, ¶ 2.
[29] Claimant's Opposition, ¶ 5.
[30] *Idem*.
[31] Claimant's Opposition, ¶ 5.

denominated one-year bonds and might have chosen a similar rate if it had known otherwise.[32]

34. In Claimant's view, Respondent ignores the Award's language specifying that the interest rate should reflect what Mexico pays "*when it borrows money by issuing sovereign debt bonds*," meaning real peso-denominated bonds, not hypothetical U.S. dollar-denominated bonds.[33] The one-year bond rate was chosen as a concrete, objective index for annual compound interest calculations.[34] For Odyssey, even if Respondent's speculation about the Tribunal's intentions were correct, this would not create ambiguity under Article 35 since such provision permits clarification of genuine ambiguities, not modifications to align with unstated intentions.[35] In addition, the relief that Respondent requests is allegedly inconsistent with the substance of its argument as Respondent's own acknowledgment that such bonds do not exist and that the "*rate it believes the Tribunal subjectively intended to award must be estimated in some fashion.*"[36]

35. Claimant further contends that Mexico's requested relief would require specifying that the interest rate in paragraph 802 be derived through an estimation process, rather than referencing actual rates on bonds issued by Mexico. Claimant contends that this cannot fall under mere interpretation, as the Award provides no guidance on any estimation process.[37] This approach would also be exceeding Article 35's narrow scope for interpretation.[38]

36. Additionally, Claimant cites to paragraphs 797 through 801 of the Award to assert that the Award rejects Respondent's position that interest should be based on a one-year U.S. Treasury bond rate, "*because it is also commercially unreasonable, does not adequately reflect counterparty risk, and creates poor incentives for payment of the Award*."[39] For Odyssey, the Award specifies the rate of one-year Mexico Treasury bonds, presumed peso-

[32] Claimant's Further Comments, ¶ 3.
[33] *Id.*, ¶ 4.
[34] *Idem*.
[35] Claimant's Further Comments, ¶ 5.
[36] *Id.*, ¶ 6.
[37] *Id.*, ¶ 7.
[38] *Id.*, ¶ 9.
[39] Claimant's Opposition, ¶ 6.

denominated, to reflect counterparty risk, incentivize payment, and compensate for lost investment opportunities.[40]

37. Further, Claimant asserts that the Request does not address any real ambiguity but instead challenges the Tribunal's choice of interest rate, effectively seeking to "*correct*" an alleged error.[41] Claimant contends that Respondent's submission under Article 36 improperly seeks reconsideration of the Tribunal's decision, which the UNCITRAL Rules do not allow.[42]

38. Claimant contends that Respondent's argument incorrectly assumes the Tribunal adopted an interest rate based on Mexico Treasury bonds solely to reflect the risks faced by Claimant due to Mexico's nonpayment.[43] Claimant argues that this was only part of the Tribunal's reasoning; the Award also intended the rate to incentivize timely payment and compensate for Claimant's lost investment opportunities in higher-return assets.[44]

39. Claimant argues that if the Tribunal's intent had been solely to account for counterparty risk, it could have adopted Compass Lexecon's "*coerced loan*" approach, which suggests using the one-year U.S. Treasury bond rate plus a Mexican country risk premium to reflect Mexico's borrowing costs.[45] Claimant's expert proposed this alternative as a way to account strictly for counterparty risk.[46] However, Claimant contends that the Tribunal's rejection of this approach, along with its stated reasoning, confirms that the chosen rate was intended to address not only counterparty risk but also to compensate for Claimant's opportunity cost and to incentivize payment.[47]

40. Relatedly, Claimant asserts that Mexico's suggestion of applying a "*standard financial practice*" overlooks the complexity involved in estimating country risk [Translation of the

[40] *Id.*, ¶ 7.
[41] *Id.*, ¶ 8.
[42] *Id.*, ¶ 8.
[43] *Id.*, ¶ 9.
[44] *Idem*.
[45] *Id.*, ¶ 10; Second Compass Lexecon Report, ¶ 171.
[46] Claimant's Opposition, ¶ 11.
[47] *Idem*.

Tribunal].[48] Claimant notes there are various methods to incorporate Mexico's counterparty risk, such as using ratings by agencies like Moody's, spreads between U.S. and Mexican bonds, or credit default swaps.[49]

41. Moreover, Claimant asserts that even if, hypothetically, an error existed in the Award, Article 35 of the UNCITRAL Rules does not allow for challenging the Tribunal's decision on its merits since only empowers the Tribunal to "*give an interpretation of the award*."[50] Claimant emphasizes that Article 35 is a "*limited exception*," designed solely to clarify ambiguities or obscurities in the Award.[51]

42. On this point, Odyssey further highlights the U.S.-Iran Claims Tribunal's explanation that the term "*interpretation of the award*" under Article 35, paragraph 1 refers to "*clarification of the award*."[52] The U.S.-Iran Claims Tribunal has consistently denied requests under Article 35 when no ambiguity exists in the Award's language, including regarding the application of interest.[53]

43. Based on the above, Claimant asks that the Tribunal rejects Respondent's request pursuant to Article 35 of the UNCITRAL rules to interpret the interest rate in paragraph 802 of the Award as an interest "*rate of a Mexican Treasury bond denominated in dollars*."

[48] Claimant's Further Comments, ¶ 8.

[49] *Id.*, ¶ 7 citing **CL-0273**, Aswath Damodaran, *Country Risk: Determinants, Measures and Implications – The 2022 Edition*, 5 July 2022, pp. 32-55.

[50] Claimant's Opposition, ¶ 12.

[51] *Id.*, ¶ 12, citing **CL-0265**, Paulsson, Jan and Petrochilos Georgios, UNCITRAL Arbitration Rules, Section IV, Article 37 [Interpretation of the award], pp. 337 – 340.

[52] Claimant's Opposition, ¶ 13, citing **CL-0266**, *Paul Donin de Rosiere v. Islamic Republic of Iran*, Dec. No. DEC 57-498-1, (10 February 1987) reprinted in 14 Iran-US CTR 100, 101-2 (1987-I).

[53] Claimant's Opposition, ¶ 13, citing **CL-0266**, *Paul Donin de Rosiere v. Islamic Republic of Iran*, Dec. No. DEC 57-498-1, (10 February 1987) reprinted in 14 Iran-US CTR 100, 101-2 (1987-I); **CL-0267**, *Pepsico, Inc. v. Iran*, 13 Iran–U.S. Cl. Trib. Rep. 328, 329 (1986); **CL-0268**, *Ford Aerospace & Communications Corporation v. Air Force of Iran*, Dec. No. DEC 47-159-3 (2 October 1986) reprinted in 12 Iran-US CTR Rep. 304, 305 (1986-III).

### (2) Request pursuant to Article 36 of the UNCITRAL Rules

44. Claimant contends that the alternative request for correction under Article 36 of the UNCITRAL Rules is baseless because the "*alleged error is not of a computational, clerical, typographical, or similar nature*."[54]

45. For Odyssey, Mexico's alternative request is improper, as this Article only addresses computational or clerical errors, not substantive judgment.[55] In Claimant's view, Article 36's correction scope is limited to technical mistakes, not to the "*reasoning or substance*"[56] of a tribunal's award. In that sense, addressing Respondent's alleged error under Article 36 of UNCITRAL Rules would require a new analysis to derive an equivalent rate that incorporates Mexico's counterparty risk, creating ambiguity rather than resolving it.

46. Claimant further argues that the alleged error that Mexico is seeking to correct is rather an attempt to challenge the Tribunal's decision on interest rate application.[57] Even if an error existed, Claimant maintains that Article 36 does not permit altering the Award's substantive conclusions, only fixing clear mechanical errors.[58]

47. Based on the above, Claimant requests the Tribunal reject Respondent's request under Article 36 of the UNCITRAL Rules to correct paragraph 802 by replacing "*rate equal to the one-year Mexico Treasury bond rate*" with "*rate equal to the one-year Mexico Treasury bond rate denominated in dollars*."[59]

## III. THE TRIBUNAL'S ANALYSIS

48. As outlined above, Respondent has filed a Request for Interpretation under Article 35 of the UNCITRAL Rules, requesting the Tribunal to "*clarify what rate should apply for the*

[54] Claimant's Opposition, § III.

[55] *Id.*, ¶ 16.

[56] *Id.*, ¶ 17 citing **CL-0271**, *British Caribbean Bank Ltd. v. The Government of Belize*, Decision on Respondent's Motion Pursuant to 1976 UNCITRAL Arbitration Rules, Articles 36 and 37, 21 January 2015, ¶ (T); **CL-0265**, Paulsson, Jan and Petrochilos Georgios, UNCITRAL Arbitration Rules, Section IV, Article 37 [Interpretation of the award], pp. 337-340; Claimant's Further Comments, ¶ 10.

[57] Claimant's Opposition, ¶ 18.

[58] *Idem*.

[59] *Id.*, ¶ 19; Claimant's Further Comments, ¶ 11.

*purposes of calculating pre and post-award interest on the Award*",[60] and stating that it is "*reasonable to conclude*" that the Tribunal was referring in paragraph 802 of the Award to a dollar-denominated bond rate [Translation of the Tribunal].[61]

49. To the extent that the Tribunal considers the Request to be within the scope of Article 36 of the UNCITRAL Rules (correction of the Award), the Respondent requests the Tribunal amend paragraph 802 of the Award to read as "*one-year dollar-denominated Mexico Treasury bond rate*."[62]

50. For its part, Claimant opposes Respondent's Request, arguing that there is no ambiguity to be clarified, and that Respondent's petition does not seek to clarify a doubt but rather to modify the reasoning contained in the Award. For Claimant, there are several reasons to support the view that the Tribunal was referring to peso-denominated one-year Mexican Treasury bonds when defining the interest rate.

51. Against this background, the Tribunal acknowledges that the rate of a Mexican Treasury bond may differ depending on the currency it is issued (Mexican peso or U.S. dollar). Thus, indeterminacy in this respect is relevant.

52. Furthermore, the Tribunal agrees with Respondent that the current wording of paragraph 802, insofar as it states that interest shall be calculated "*applying the one-year Mexico Treasury bond rate*," is open to ambiguity. This is because the wording does not specify whether the Mexican Treasury bonds referred to are those issued by Mexico in pesos or dollars, leaving room for different interpretations.

53. In fact, the parties posit opposed readings based on the current text of paragraph 802 of the Award, which shows that an ambiguity exists. In this respect the Tribunal's conviction is that both parties are making a good faith interpretation of said paragraph and that their

[60] Request, ¶ 3.
[61] *Id.*, ¶ 6.
[62] *Id.*, ¶ 7.

differences are not explained by the purpose of one or the other to modify the Award, but rather by the space for discussion that the current text of the Award opens.

54. Thus, while Respondent postulates that the reference to the rate of Mexican treasury bonds contained in paragraph 802 of the Award should be understood as referring to those bonds issued by Mexico in dollars, the Claimant assert that the bonds to be considered are those issued by Mexico in pesos. The preceding, in a context where the Award did not specify to which of them it was referring.

55. Having said the above, the Tribunal clarifies that the Mexican Treasury bonds to be considered for purposes of the interest rate mentioned in paragraph 802 of the Award are those Mexican Treasury bonds denominated in dollars.

56. Although the Tribunal understood that such a determination was implicit in the current text of the Award, in light of Respondent's Request and Claimant's comments on it, it has become aware that both parties needed clarification from the Tribunal.

57. The reason to state that the Mexican Treasury bonds to be considered are those denominated in dollars results from the fact that the Award imposed on Respondent an obligation to pay an amount expressed in dollars.[63] Therefore, the applicable interest rate must be calculated using a debt instrument denominated in such currency as a reference. If a Mexican Treasury bond denominated in pesos were to be used to calculate the interest rate applicable to an amount expressed and owed in dollars, there would be eventual distortions due to a mix of currencies that would lack justification or reasonableness.

58. Furthermore, the rationale stated by the Tribunal in the Award to support the interest rate chosen and now clarified, which is that with reference to the Mexican Treasury bonds denominated in dollars, imposes using this parameter. In this regard, the Tribunal expressed the view that the interest rate should reflect the cost incurred by Mexico when borrowing. Since the amount owed under the Award is a sum denominated in dollars, it is logical to

[63] Award, ¶ 821, letter (b)

use as a reference how much Mexico pays as an interest rate when borrowing in such currency.

59. Having clarified the preceding, the Tribunal notes that both Claimant and Respondent have pointed out in their submissions that Mexico does not issue one-year Treasury bonds denominated in dollars but rather that their minimum duration of Mexican Treasury bonds in that currency is 5 years.

60. Based on the above, the Tribunal deems it appropriate to comment on this matter. First, that Mexico does not issue dollar-denominated one-year Treasury bonds does not mean that the reference should be changed to a peso-denominated one-year Mexican Treasury bonds, as Claimant implies. That would entail a conceptual and substantive modification of the rate decided by the Tribunal, replacing it with the cost incurred by Mexico when it borrows in its domestic currency, which is different from the Tribunal's decision, as explained above.

61. It is not appropriate to modify the Tribunal's reasoning in this regard, which is the substance of the Tribunal's decision in this respect. Mexico must pay pre- and post-award interest at a rate equivalent to what Mexico pays when it borrows money in dollars.

62. Second, Respondent did not ask in its Request that the reference to a one-year Mexican Treasury bond (denominated in dollar) be replaced by one of longer duration (e.g. 5 years) since the former does not exist.

63. In this context, the Tribunal will not go beyond Mexico's petition and will maintain its reference to the one-year Mexican Treasury bond rate, clarifying that the Mexican Treasury bond referred to in paragraph 802 of the Award is the one denominated in dollars, as already decided.

64. However, the above decision warrants some reflection by the Tribunal. Indeed, since the bonds established as a reference to calculate the rate to be applied to the pre- and post-award interest do not exist, it is appropriate to reflect on how it seems reasonable to conclude what is the equivalent of such a rate.

65. In this regard, the Tribunal is of the view that, as postulated by Mexico, a rate equivalent to the one-year Mexico Treasury bond rate denominated in dollars can be easily concluded by resorting to a risk-free rate (one-year U.S. Treasury Bond) and adding an appropriate country risk premium for Mexico.[64]

66. Odyssey notes that there is more than one way to incorporate Mexico's counterparty risk into the applicable interest rate and explains the three methodologies described by Professor Damodaran in this regard.[65] However, Odyssey also acknowledges that its expert, Compass Lexecon, when it sought to determine Mexico's counterparty risk for purposes of calculating a rate, followed the second methodology identified by Professor Damodaran, i.e., it used the spread between the market rates of dollar-denominated bonds issued by the subject country (Mexico) and otherwise-identical bonds issued by the United States.[66]

67. Since Mexico does have bonds issued in dollars at equivalent maturity to those issued by the United States, there is no difficulty to conclude, by comparison, and according to the methodology indicated, the counterparty risk of Mexico, and thus, a rate equivalent to the one-year Mexico Treasury bond rate denominated in dollars.

68. Finally, the Tribunal notes that in paragraphs 64 to 67 the Tribunal is only setting forth guidelines to assist the parties in agreeing on how to calculate the interest rate decided by the Tribunal, having regard to their common understanding during the proceedings as explained above.

69. Respondent's petition that the Tribunal amend paragraph 802 of the Award in case it deems its request to be within the scope of Article 36 of the UNCITRAL Rules (correction of the Award) and not within the scope of Article 35 of the UNCITRAL Rules (interpretation of the Award) is rejected. This is because the Tribunal has already determined to grant

[64] Respondent's Additional Comments, ¶ 12.

[65] Claimant's Further Comments, ¶ 8.

[66] *Id.*, footnote 12.

Respondent's principal petition as stated above, issuing the corresponding interpretation of the Award.

## IV. DECISION

70. For the reasons set forth above, the Tribunal decides as follows:

(i) The Respondent's Request for Interpretation of the Award pursuant to Article 35 of the UNCITRAL Rules is granted. Thus, the Tribunal clarifies that the interest rate specified at paragraph 802 of the Award is to be interpreted as the "one-year *dollar-denominated* Mexico Treasury bond rate."

(ii) The Respondent's Request for Rectification of the Award pursuant to Article 36 of the UNCITRAL Rules is denied.

(iii) Orders each party to bear its own fees and expenses related to this Request, and half of the arbitration costs associated with this Request, including the arbitrators' fees and expenses, and ICSID's direct expenses.

[Signed]

Dr. Stanimir Alexandrov
Arbitrator

Date: 13 December 2024

Prof. Philippe Sands, KC
Arbitrator

Date:

Felipe Bulnes Serrano
President of the Tribunal

Date:

[Signed]

Dr. Stanimir Alexandrov
Arbitrator

Date:

Prof. Philippe Sands, KC
Arbitrator

Date: 13.12.24

Felipe Bulnes Serrano
President of the Tribunal

Date:

Dr. Stanimir Alexandrov
Arbitrator

Date:

Prof. Philippe Sands, KC
Arbitrator

Date:

[Signed]

Felipe Bulnes Serrano
President of the Tribunal

Date: 16 December 2024