PCA Case No. 2020-21

In the matter of an arbitration under the Arbitration Rules of the United Nations Commission on International Trade 1976

and

The Agreement between the Government of the Republic of India and the Republic of Mozambique for the Reciprocal Promotion and Protection of Investment dated 19 February 2009

between

PATEL ENGINEERING LIMITED
(INDIA)

Claimant

v.

THE REPUBLIC OF MOZAMBIQUE

Respondent

DECISION ON THE REQUEST FOR CORRECTION OF THE FINAL AWARD

ARBITRAL TRIBUNAL

Juan Fernández-Armesto (Presiding Arbitrator)
Guido Santiago Tawil
Hugo Perezcano Díaz

ADMINISTRATIVE SECRETARY

Sofia de Sampaio Jalles

REGISTRY

Permanent Court of Arbitration
Túlio Di Giacomo Toledo

25 June 2024

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GLOSSARY OF TERMS AND ABBREVIATIONS

Terms defined in the Final Award shall have the same meaning in this decision, unless otherwise indicated.

April 2013 Council of Ministers' Decision	Decision of the Council of Ministers communicated by the MTC to PEL in a letter dated 18 April 2013
Art(s).	Article(s)
Award	Final Award, dated 7 February 2024
BIT or Treaty	Agreement between the Government of the Republic of India and the Republic of Mozambique for the Reciprocal Promotion and Protection of Investments, dated 19 February 2009
CFM	Mozambican Directorate of Ports and Railways (*Portos e Caminhos de Ferro de Moçambique*)
Claimant or **PEL**	Patel Engineering Limited (India)
Dissenting Opinion	Dissenting opinion of Professor Guido Santiago Tawil, dated 7 February 2024
Doc.	Document
ICC Arbitration	The pending ICC arbitration between the Parties
MOI	Memorandum of Interest dated 6 May 2011
MTC	Mozambican Ministry of Transport and Communications
P(p).	Page(s)
Para(s).	Paragraph(s)
Parties	Claimant and Respondent
PCA	Permanent Court of Arbitration
Project	Proposed rail and port corridor between Macuse and Moatize
Request for Correction	PEL's Correction Letter seeking the correction of alleged errors in the Award and Dissenting Opinion, dated 15 March 2024
Respondent, **Mozambique** or the **Republic**	Republic of Mozambique
Response	Mozambique's Response to the Request for Correction, dated 22 April 2024
UNCITRAL Rules	Arbitration Rules of the United Nations Commission on International Trade Law of 1976

I. INTRODUCTION

1. On 7 February 2024, the Tribunal, by majority, issued the final award in these proceedings [the "**Award**"], in which it ruled as follows[1]:

> "424. In light of the above, the Tribunal, by majority:
>
> 1. Declares that it lacks jurisdiction to adjudicate the claims submitted by Patel Engineering Limited;
>
> 2. Orders that each Party shall bear its own Legal Costs;
>
> 3. Orders that the Administrative Costs shall be split equally between the Parties, with the consequence that the Republic of Mozambique shall reimburse Patel Engineering Limited in the amount of USD 241,202.62; the Republic shall pay this amount within one month from the date of this award, and from that date any unpaid amount shall accrue interest at the United States prime rate plus 2%;
>
> 4. Orders that the unexpended balance of the deposit held by the PCA shall be returned to Patel Engineering Limited in the amount of USD 218,434.36; and
>
> 5. Dismisses all other prayers for relief.
>
> 425. The Tribunal has taken these decisions by majority, Arbitrator Mr. Hugo Perezcano Díaz and Presiding Arbitrator Professor Juan Fernández-Armesto voting in favour. The dissenting Arbitrator, Professor Guido Santiago Tawil, explains his position in a dissenting separate opinion, which is attached."

2. In his dissenting opinion of that same day, Professor Guido Santiago Tawil disagreed with the Tribunal's decision that it lacked jurisdiction *ratione materiae* to adjudicate the claims submitted by Claimant in this case [the "**Dissenting Opinion**"].

3. On 8 March 2024, Claimant requested a one-week extension of the deadline of 30 days to submit corrections to the Award and the Dissenting Opinion. Respondent agreed to this extension, while reserving the right to respond if Claimant's submission exceeded the scope and bounds of post-award corrections. On that same day, the Tribunal confirmed the agreed extension.

4. On 15 March 2024, Claimant submitted a letter to the Tribunal requesting the correction of alleged errors in the Award and the Dissenting Opinion[2] [the "**Request for Correction**"].

5. On 18 March 2024, the Tribunal granted Respondent the opportunity to respond to Claimant's Request for Correction by 22 April 2024[3].

[1] Award, paras. 424-425.
[2] Communication C 94.
[3] Communication A 64.

6. On 22 April 2024, Mozambique filed its response to Claimant's Request for Correction [the "**Response**"].

7. The Tribunal will first establish the standard for correction of an award under the applicable rules (**II.**). It will then analyze each of Claimant's proposed corrections (**III.**) and make its decision (**IV.**).

II. APPLICABLE STANDARD

8. Claimant requests the correction of alleged errors in the Award and in the Dissenting Opinion, pursuant to Art. 36 of the 1976 UNCITRAL Arbitration Rules ["**UNCITRAL Rules**"][4].

9. Respondent, in turn, argues that Claimant is in fact seeking several substantive revisions to the Award and Dissenting Opinion, with the aim of editorializing and challenging the Tribunal's reasoning[5]. From Mozambique's point of view, Claimant's Request for Correction constitutes an inappropriate and improper use of Art. 36 of the UNCITRAL Rules and should be denied. Indeed, this provision only authorizes the correction of errors that are computational, clerical, typographical or of a similar nature: it does not encompass corrections of alleged mistakes of law, or of factual determinations or discretionary assessments made by the Tribunal[6]. Respondent submits that the strict narrow scope of corrections permitted under Art. 36 has been repeatedly affirmed by tribunals and doctrine[7].

Discussion

10. Once a final award has been issued, the arbitral tribunal is *functus officio*[8]. From the moment it is received by the parties, the arbitral award becomes final and binding, and the parties are obliged to comply without delay[9]. The tribunal may no longer change the terms of its decision.

11. Notwithstanding this general principle, in certain situations arbitral regulations and national arbitration laws allow a departure from the above principles. An example is the possibility of requesting the correction of an arbitral award under Art. 36 of the UNCITRAL Rules, which establishes that:

> "1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
>
> 2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply."

12. Pursuant to this provision, within 30 days of receipt of the award, a party may request the tribunal to correct a computational, clerical or typographical error, or "any errors of similar nature"; the Tribunal may also do so *sua sponte*. The idea

[4] Request for Correction, paras. 1 and 26.
[5] Response, p. 1.
[6] Response, p. 1.
[7] Response, p. 2.
[8] Doc. RLA-162, p. 5 of the PDF.
[9] Art. 32(2) of the UNCITRAL Rules: "2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay".

behind Art. 36 is to avoid a distortion of the intended outcome of an arbitral dispute or the undermining of the award's validity[10].

13. Beyond this very limited scope[11], the general rule is that the award is final and cannot be modified. Indeed[12]:

> "[…] the correction process is not a means for revisiting the substance of the award or for reconsidering the arbitral tribunal's reasoning."

14. In the following section, the Tribunal will examine each of Claimant's requests for correction, to determine whether any corrections are warranted.

[10] Doc. RLA-163, D. Caron and L. Caplan, *The UNCITRAL Arbitration Rules – A Commentary (With an Integrated and Comparative Discussion of the 2010 and 1976 UNCITRAL Arbitration Rules)*, Oxford University Press, Second Edition, p. 811.
[11] Doc. RLA-160, *Mr. Joshua Dean Nelson v. The United Mexican States*, ICSID Case No. UNCT/17/1, Corrections to the Final Award of 5 June 2020, para. 18.
[12] D. Caron and L. Caplan, *The UNCITRAL Arbitration Rules – A Commentary (With an Integrated and Comparative Discussion of the 2010 and 1976 UNCITRAL Arbitration Rules)*, Oxford University Press, Second Edition, p. 813.

III. REQUEST FOR CORRECTION

15. Claimant requests that the Tribunal make the following corrections, pursuant to Art. 36(1) of the UNCITRAL Rules[13]:

    i) Correct paras. 269, 346, 348, 349, 350, 351, 352, 367, 388, and 391 of the Award;

    ii) Consider whether additional corrections are necessary for paras. 354 to 383 of the Award, in light of the proposed corrections to Claimant's representation of its case; and

    iii) Correct paras. 4 and 14 of the Dissenting Opinion.

1. THE APRIL 2013 COUNCIL OF MINISTERS' DECISION AS PART OF CLAIMANT'S INVESTMENT AND "UNDISPUTED" OBSERVATIONS

A. Claimant's position

16. First, PEL contends that the summary of Claimant's description of "*investment*" in paras. 351 and 352 of the Award is inaccurate and incomplete[14]. Claimant notes that the Tribunal appears to have relied upon descriptions of Claimant's investment from earlier pleadings; however, as is common in arbitration, the parties' positions evolved over the course of the proceedings[15]. According to Claimant, the most accurate description of its position on the content of its investment is reflected in its post-hearing brief[16], where PEL submitted that[17]:

> "PEL's investment in Mozambique included: (i) contractual rights under the MOI that had financial value, including the right to a direct award of the concession and the right of first refusal to implement the project; (ii) the direct award of the concession granted by the Council of Ministers; (iii) valuable know-how transferred to Mozambique with PEL's concept and the proprietary knowledge in the PFS; and (iv) funds contributed for the Preliminary Study and the PFS."

17. PEL argues that when discussing whether PEL made an investment falling within the BIT's protective ambit, the Tribunal, by majority, only addressed certain aspects of PEL's investment in isolation: while the Tribunal discusses PEL's contractual "right" to a direct award in the MOI, it does not address the actual direct award granted to PEL by the April 2013 Council of Ministers' Decision – which, according to Claimant, is the most critical piece of evidence in its entire case[18]. It is Claimant's position that under Mozambican law, the April 2013 Council of Ministers' Decision in and of itself vested PEL with rights having economic value

[13] Request for Correction, para. 26.
[14] Request for Correction, para. 3.
[15] Request for Correction, para. 3.
[16] Request for Correction, para.3, referring to CPHB, para. 7.
[17] CPHB, para. 7.
[18] Request for Correction, paras. 4-5.

which could not be taken away without compensation – independent of and in addition to any contractual rights that PEL received through the MOI[19].

18. Therefore, Claimant argues that the Tribunal should correct paras. **346**, **351** and **352** of the Award to amend the description of the investment[20]. According to Claimant, the omission of the April 2013 Council of Ministers' Decision from the description of the investments appears to have impacted other aspects of the Tribunal's reasoning[21]:

    - The April 2013 Council of Ministers' Decision granted PEL a non-contractual right that exists independently of the MOI and does not fall within the ICC Tribunal's jurisdiction; this arbitration was the only arbitral forum available to Claimant to address the violations of the rights it gained through the Council of Ministers' Decision[22];

    - The Tribunal's reasoning, by majority, analyses Claimant's investment in isolated parts; it is unclear if the *ratio* would remain the same if the direct award granted by the April 2013 Council of Ministers' Decision had been considered[23]; the Tribunal failed to address Claimant's argument that it should view the totality of PEL's activities holistically and avoid separating the protected assets – again leading Claimant to query whether the Tribunal should correct its ratio[24].

19. Second, PEL argues that the Tribunal incorrectly states that it is "*undisputed*" that "*Mozambique never awarded the concession for the Project to PEL*". Claimant has repeatedly disputed this. While it is undisputed that the Parties never signed the finalized concession contract, this is an entirely separate matter from awarding the concession as a matter of Mozambican procurement law[25].

20. Claimant says that it has demonstrated that Mozambique awarded the concession to PEL in the April 2013 Council of Ministers' Decision: this was the "*adjudicação*" phase of the procurement procedure set forth in the "PPP Law and Regulations" and, once that direct award was granted, it could not be arbitrarily revoked. After said Decision, Mozambique was legally obligated to proceed to the next phase of the procedure – the "*negociação*"; and Mozambique started this phase, only to reverse course abruptly, purport to revoke the direct award, and then grant the same concession to another party[26].

21. Therefore, PEL asks the Tribunal to amend paras. **269**, **348**, **350** and **351** of the Award[27].

[19] Request for Correction, para. 6.
[20] Request for Correction, para. 7.
[21] Request for Correction, paras. 8 *et seq*.
[22] Request for Correction, para. 9.
[23] Request for Correction, para. 10.
[24] Request for Correction, para. 11.
[25] Request for Correction, para. 12.
[26] Request for Correction, paras. 13-14.
[27] Request for Correction, para. 15.

B. Respondent's position

22. Mozambique, in turn, argues that the purported corrections sought by PEL fall outside the scope of errors contemplated under Art. 36 of the UNCITRAL Rules. PEL seeks to rewrite the Tribunal's recitation of facts and of the Parties' positions, nitpicking at the ways in which the Tribunal, by majority, has summarized Claimant's position and the facts at issue. PEL seeks to compel the Tribunal to add significant substantive arguments into the Award[28].

23. Respondent submits that the Tribunal is not required to recite every argument of Claimant. Furthermore, the fact that the Tribunal has not recounted the Parties' position in the exact manner Claimant wishes is far from the type of errors that can be corrected under Art. 36. PEL attempts to insert its preferred recitation of its position into the Award; this is an improper substantive revision of the Award[29].

24. As the Request for Correction confirms, the issues that Claimant seeks to inject into the Award were contested before the Tribunal and were ultimately rejected. There is no indication that the Tribunal failed to consider, or misunderstood, any arguments of the Parties. The fact that the Tribunal does not ascribe the same significance or effect to the April 2013 Council of Ministers' Decision as PEL, does not render the Award infirm, incomplete, or inaccurate, and does not entitle PEL to reargue its case under the guise of "corrections"[30].

C. Decision of the Tribunal

25. PEL seeks to make the following corrections to the Award (mark-up by Claimant):

- Para. 269:

> **3. THE TRIBUNAL'S DECISION**
>
> 269. There is no dispute regarding the fact that Mozambique never ~~awarded PEL a concession to develop the Project~~*signed a finalized concession agreement with PEL*. What the Parties discuss is whether Claimant's rights enshrined in the MOI, together with its expenditures and activities (prior to Mozambique's decision to award a concession to ITD/TML, and not to Claimant) *and the direct award and ensuing rights the Council of Ministers granted PEL in April 2013* are covered investments under the BIT.

[28] Response, p. 3.
[29] Response, p. 3.
[30] Response, p. 3.

- Para. 346:

346. Claimant says that it holds a protected investment in the form of

~~- a right to the direct award of a concession, created by a contract – the MOI and certain Government decisions, plus~~

- *- contractual rights under the MOI that had financial value, including the right to a direct award of the concession and the right of first refusal to implement the project,*

- *- the direct award of the concession ("adjudicação") granted by the Council of Ministers in April 2013 – via a decision that gave PEL a vested right under Mozambican law that could not be withdrawn unilaterally without compensation,*

- valuable know-how *transferred to Mozambique with PEL's concept and the proprietary knowledge* contained in the Pre-Feasibility Study[196]~~.~~ *, plus*

- *- funds contributed for the Preliminary Study and the PFS.*

- Para. 348:

348. There are two preliminary ~~(and undisputed)~~ observations concerning certain key features of the Project:

- Para. 350:

350. Second, ~~Mozambique never awarded the concession for the Project to PEL;~~ *although Claimant asserts that Mozambique's Council of Ministers granted PEL a direct award of the concession,* there was no law passed or contract signed between PEL and Mozambique pursuant to which PEL was actually conferred a business concession[198]. Therefore, Claimant never obtained (for the purposes of Art. 1(b) of the BIT) a "business concession […] conferred by law or under contract".

- Para. 351:

351. Claimant *disagrees*~~does not disagree with these observations~~. ~~Its argument is different.~~ It avers that:

- It had a contractual right, enshrined in the MOI, to be awarded the concession of the Project, that became vested once Respondent approved the Pre-Feasibility Study and PEL exercised its right of first refusal by agreeing to proceed with the Project on 18 June 2012[199]; ~~and~~

- ~~The content of the Pre-Feasibility Study constituted valuable intellectual property.[200]~~.

> *- It was granted a direct award through the Council of Ministers' Decision of April 2013, i.e., a right to implement the Project via a concession agreement that was to be negotiated in good faith with the Government;*
>
> *- It had valuable know-how in the form of PEL's Project concept and proprietary knowledge contained in the Pre-Feasibility Study, which PEL transferred to Mozambique and Mozambique appropriated to launch its public tender; and*
>
> *- It had contributed funds for the Preliminary Study and the Pre-Feasibility Study.*

- Para. 352:

> 352. In Claimant's view, these "assets", would be protected under:
>
> - Art. 1(b)(iii) of the BIT, which extends protection to "rights to money or to any performance under contract having a financial value"; ~~and~~
> - Art. 1(b)(iv) of the BIT, which includes "intellectual property rights, in accordance with the relevant laws of the respective Contracting Party"; *and/or*
> - *Art. 1(b)(v) of the BIT, which includes a "business concession [...] conferred by law or under contract".*

26. Furthermore, Claimant argues that the Tribunal should consider whether further corrections are required to paras. 354 to 383 of the Award, in light of Claimant's representation of its case.

27. The Tribunal notes that none of Claimant's proposed corrections consist of computational, clerical, typographical or "of similar nature" errors. Rather, Claimant takes issue with the Tribunal's findings and how it recounted PEL's position, as well as the Tribunal's reasoning in the Award.

28. For that reason, Claimant's proposed corrections extrapolate the scope of Art. 36 of the UNCITRAL Rules and are inadmissible.

29. The Tribunal confirms that it fully considered Claimant's position. Claimant has not suggested any corrections to section V.2 of the Award, which is entitled "*The Parties' positions*" and contains a specific sub-section 2.1 dedicated to "*Claimant's position*"; that section clearly reflects that PEL's position was that it held a protected investment in the form of, *inter alia*, a "right to a direct award of the concession to implement the Project, by virtue of […] the April 2013 Council of Ministers' Decision" (see, e.g., paras. 245 and 249 of the Award).

30. This is further made clear in paras. 228 and 270, where the Tribunal notes that Claimant's position is that:

> "228. […] the Council of Ministers offered again a direct award to PEL, only to reverse its decision a few weeks later on the basis of unfounded reasons."

> and
>
> "270. Essentially, PEL avers that it held the following "assets" that are protected under the BIT:
>
> - Under the MOI and pursuant to the Government's decision to approve the Pre-Feasibility Study, Claimant had the right to obtain a direct award of the concession contract to implement the Project; Claimant's right to a direct award is confirmed by the April 2013 Council of Ministers' Decision; and, as an ancillary right, Claimant had a first right of refusal under the MOI, that consisted in Claimant's prerogative to accept developing the Project and to sign the concession agreement, or to refuse, in which case the Government could offer the Project to third parties; and
>
> - The valuable know-how transferred to the State with its Project concept, contained in the Preliminary Study and the Pre-Feasibility Study." [Emphasis added]

31. These paragraphs accurately reflect Claimant's position that the April 2013 Council of Ministers' Decision granted PEL a direct award of the concession. The Tribunal duly considered the Claimant's position that the Council of Ministers had awarded it a concession, subject to negotiation and execution of the precise terms and conditions of such concession, as shown in paras. 245, 249 and 270 of the Award.

32. The paragraphs that Claimant seeks the Tribunal to modify all fall under the umbrella of section V.3.4, entitled "*The Tribunal's decision*". Claimant is asking the Tribunal to revise its findings and reasoning (not the Claimant's position). In para. 269 the Tribunal determined that there was "no dispute regarding the fact that Mozambique never awarded PEL a concession to develop the Project", even if the Parties disagreed as to whether certain rights were conferred to PEL or not.

33. Para. 346 clearly states that, according to PEL, it holds a protected investment in the form of a "right to the direct award of a concession, created by […] certain Government decisions" (including the April 2013 Council of Ministers´ Decision):

> "346. Claimant says that it holds a protected investment in the form of
>
> - a right to the direct award of a concession, created by a contract – the MOI – and certain Government decisions, plus
>
> - valuable know-how contained in the Pre-Feasibility Study." [Emphasis added]

34. Claimant's proposed corrections to paras. 348 to 352 seek as well to revise the Tribunal's findings and reasoning. In para. 347 the Tribunal, by majority, found that PEL never held an asset that qualifies as an investment for the purposes of the specific BIT between India and Mozambique. In paras. 348 to 350, the Tribunal made two preliminary observations that it determined to have been undisputed:

> "348. There are two preliminary (and undisputed) observations concerning certain key features of the Project:

> 349. First, PEL never created an enterprise (either in the form of a branch or a subsidiary) located or incorporated in Mozambique, with the purpose of developing the Project (or, for that matter, with any other purpose). Claimant was asked by the Government to create a joint venture company in Mozambique, in which the CFM (the Mozambican rail operator) would participate as a junior partner; but after a few rounds of negotiations, the initiative stalled and the plans never materialized – there was pre-investment activity (e.g., discussions on whether to create a local corporation), but no investment.
>
> 350. Second, Mozambique never awarded the concession for the Project to PEL; there was no law passed or contract signed between PEL and Mozambique pursuant to which PEL was actually conferred a business concession[198]. Therefore, Claimant never obtained (for the purposes of Art. 1(b) of the BIT) a "business concession […] conferred by law or under contract"."

35. In paras. 348 to 350 of the Award the Tribunal determined that there was no "concession" as defined under the BIT. In footnote 198 to para. 350, the Tribunal notes that "PEL recognizes this in its submissions (C II, para. 518; C III, para. 244)" and that it was "common ground that PEL was not physically granted a concession agreement"[31].

36. The Tribunal found that Claimant's argument was different as established in paras. 351 and 352.

37. In view of the above, Claimant's request for corrections of paras. 269, 346, 348, 350, 351 and 352 of the Award is rejected.

2. THE MOI

A. Claimant's position

38. PEL further argues that the Tribunal incorrectly summarizes Claimant's main argument concerning the MOI. While Claimant does contend that the MTC granted PEL valuable rights in the MOI, PEL's argument in this regard is that, once the conditions precedent contained in the MOI were satisfied by June 2012 (*i.e.*, the approval of the PFS by Mozambique and PEL's exercise of its right of first refusal), PEL's rights under the MOI vested. Those vested rights, in conjunction with the

[31] These submissions state the following:
C II: "518 While PEL may not have physically signed a concession agreement (that failing being part and parcel of Respondent's breach of the Treaty), it acquired an immediate and direct right to a concession that became vested in PEL once Respondent approved the PFS and PEL exercised its right of first refusal by agreeing to proceed with the Project."
C III: "244 First, while it is common ground that PEL was not physically granted a concession agreement, this is part and parcel of Mozambique's delict. Respondent cannot be heard to use the fact that PEL never received the actual concession as a defence when it was Respondent's breach of the Treaty that resulted in PEL not receiving the concession in the first place. Besides, whether PEL did or did not receive the physical concession is irrelevant here for jurisdictional purposes." [Emphasis added]

other components of PEL's investment in Mozambique, were protected under the BIT. Therefore, para. **367** of the Award should be amended as follows[32]:

> **B. The MOI**
>
> 367. Art. 1(b)(iii) of the BIT extends protection to "rights to money or to any performance under contract having a financial value"[211]. Claimant submits that the MOI was a contract entered into with Mozambique *granting rights* which, *once vested,* had a financial value, ~~and that, as such, it~~ *Those vested rights, along with the direct award of the concession granted by the Council of Ministers, valuable know-how transferred to Mozambique with PEL's concept and the proprietary knowledge in the PFS, and funds contributed for the Preliminary Study and the PFS,* represented a protected investment under the BIT[212].

B. Respondent's position

39. For the reasons explained in paras. 22-24 *supra*, Mozambique objects to the purported "correction": the Tribunal is not required or permitted to make substantive changes to the Award because PEL believes its arguments could have been recounted or repeated in a manner more favorable to Claimant[33].

C. Decision of the Tribunal

40. Once again, Claimant's proposed correction goes beyond the scope of Art. 36 of the UNCITRAL Rules and is therefore inadmissible.

41. Claimant does not seek a correction of section V.2.1 of the Award, which contains the summary of its position and clearly reflects the same argument that Claimant would like to insert in para. 367[34]. Rather, Claimant seeks to correct the Tribunal's findings and reasoning. The fact that, when making its decision, the Tribunal does not recount or restate the Parties' positions in the exact manner that Claimant now proposes does not render the Tribunal's reasoning improper or incorrect.

42. Therefore, Claimant's request for correction of para. 367 of the Award is rejected.

3. NEGOTIATIONS WITH THE CFM

A. Claimant's position

43. Claimant argues that the Tribunal's description of PEL's purported negotiations with the CFM is inaccurate. PEL argues that nothing in the record suggests that PEL and CFM had any negotiations, let alone "rounds of them". Rather, the "undisputed evidence demonstrates that PEL never had a chance to engage in any negotiations with the CFM"[35]. Under Claimant's vision of the facts, there were no "negotiations" between PEL and the CFM to implement the Project at any time[36].

[32] Request for Correction, para. 16.
[33] Response, pp. 3-4.
[34] See Award, paras. 248 to 251.
[35] Request for Correction, para. 17.
[36] Request for Correction, paras. 18-19.

Therefore, the Tribunal should correct paras. **349** and **388** to say that the "CFM refused to negotiate"[37] with PEL, as follows:

- Para. 349:

> 349. First, PEL never created an enterprise (either in the form of a branch or a subsidiary) located or incorporated in Mozambique, with the purpose of developing the Project (or, for that matter, with any other purpose). Claimant was asked by the Government to create a joint venture company in Mozambique, in which the CFM (the Mozambican rail operator) would participate as a junior partner; but *CFM refused to negotiate and* ~~after a few rounds of negotiations,~~ the initiative stalled and the plans never materialized – there was pre-investment activity (*e.g.*, discussions on whether to create a local corporation), but no investment.

- Para. 388:

> 388. Upon signature of the MOI, PEL then prepared at its own expense a Pre-Feasibility Study to determine – albeit preliminarily – the viability of the Project. The Pre-Feasibility Study was approved by Mozambique and PEL *approached* ~~sat down with~~ the CFM to negotiate a joint venture – but ~~no agreement was reached~~ *the CFM refused to negotiate with PEL.* ~~-~~ Thereafter, Mozambique decided to launch a public tender to award a concession for the Project. Albeit under protest, PEL decided to participate in this tender.

B. Respondent's position

44. For the reasons explained in paras. 22-24 *supra*, Mozambique objects to the purported "correction": the Tribunal is not required or permitted to make substantive changes to the Award because PEL believes its arguments could have been recounted or repeated in a manner more favorable to Claimant[38].

C. Decision of the Tribunal

45. Once again, the amendments requested by Claimant fall outside the scope of Art. 36 of the UNCITRAL Rules: these are not computational, clerical, typographical or "similar nature" errors. Instead, Claimant seeks to redraft the Tribunal's findings of the facts of the case; paras. 349 and 388 both fall under the section of the "*The Tribunal's decision*". Claimant's proposed corrections are an attempt to have the Tribunal reconsider its findings of the facts and are therefore rejected.

4. ICC PROCEEDINGS

A. Claimant's position

46. Finally, Claimant argues that the Tribunal, by majority, and Professor Tawil, in para. 14 of his Dissenting Opinion, incorrectly state that Claimant has a "full opportunity" to solve its "contractual" dispute in the ICC Arbitration. This is untrue, according to Claimant, because[39]:

[37] Request for Correction, para. 19.
[38] Response, pp. 3-4.
[39] Request for Correction, para. 20.

> "[…] the most critical components of PEL's claim are not contractual in nature, and are therefore outside the ICC Tribunal's jurisdiction, and further because PEL no longer has the ability to raise new contractual claims in the ICC arbitration."

47. Therefore, Claimant requests the Tribunal to amend para. **391** of the Award as follows[40]:

> 391. In sum: Claimant conducted several activities in Mozambique with the goal of obtaining a concession, but such activities never surpassed the pre-activity threshold and never matured into a protected investment. Ultimately, PEL has a pre-investment dispute *vis-à-vis* Mozambique~~., and the proper forum to solve such dispute is a contractual ICC Arbitration, where the Parties should have a full opportunity to resolve their contractual claims~~.

and Professor Tawil to amend para. **14** of the Dissenting Opinion as follows[41]:

> *The ICC Arbitration is of a contractual basis and clearly differs from the dispute before us, based on the alleged violations of the Treaty.* ~~*While I expect that PEL will be granted a full opportunity to present its claims before the ICC Tribunal,*~~ *i~~-I~~t was this Treaty arbitration the natural fora in which such claims should have been discussed.*

B. Respondent's position

48. Mozambique argues that PEL, for its own reasons, declined to raise affirmative claims in the ICC Arbitration and to adhere to the jurisdictional findings of the ICC Tribunal. If PEL no longer has the ability to raise new contractual claims in the ICC Arbitration is a fact of PEL's own making and does not render inaccurate that the ICC proceedings afforded PEL a full opportunity to adjudicate its claims[42].

C. Decision of the Tribunal

49. Claimant's request does not fall within the scope of the corrections permitted under Art. 36 of the UNCITRAL Rules.

50. The Tribunal, having considered the Parties' submissions in detail and considering all arguments and evidence put before it, concluded that there was a pre-investment dispute between PEL and Mozambique. This means that this UNCITRAL Tribunal lacks jurisdiction *ratione materiae* over the dispute.

51. The MOI contains an arbitration clause in regard to any contractual rights under the MOI.

52. The proposed corrections of para. 391 of the Award and para. 14 of the Dissenting Opinion are inadmissible and Claimant's request is, therefore, rejected.

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[40] Request for Correction, paras. 23, and 26.
[41] Request for Correction, para. 25.
[42] Response, p. 4.

IV. DECISION

53. In view of the above, the Tribunal, by majority (Arbitrator Mr. Hugo Perezcano Díaz and Presiding Arbitrator Professor Juan Fernández-Armesto voting in favor), **dismisses** all the requests for correction of the Award submitted by Patel Engineering Ltd.

54. As to the requests for correction of the Dissenting Opinion, Arbitrator Professor Guido Santiago Tawil:

- **Accepts** to correct para. 4 of the Dissenting Opinion, in light of the Parties' agreement that it contains minor clerical or typographical errors[43], as follows:

> 4. PEL prepared and submitted the PFS, which was approved by the ~~MTS~~ *MTC* on 15 June 2012[3]. Although PEL informed Respondent three days later that it was exercising its right of first refusal[4], the implementation of the project was not possible due to the ~~negative~~ *refusal* of CFM (an entity of the Respondent) to invest in the Project and incorporate a company jointly with PEL as requested by the MTC when approving the PFS[5].

- **Dismisses** the request for correction of para. 14 of the Dissenting Opinion, which reflects an opinion of the Arbitrator and is not an error that falls within the scope of corrections permitted under Art. 36 of the UNCITRAL Rules.

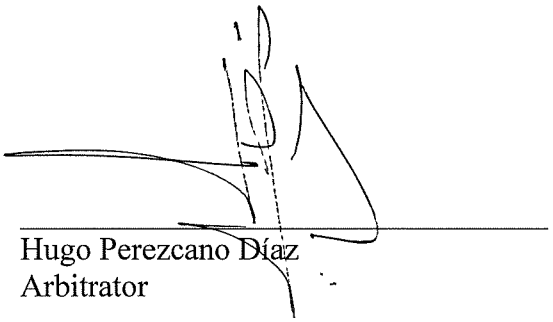
[*Signature Pages Follow*]

[43] Request for Correction, para. 24; Response, p. 4 and fn. 12.

Place of Arbitration: The Hague, the Netherlands.
Date: **25 June** 2024

Guido Santiago Tawil
Arbitrator

Place of Arbitration: The Hague, the Netherlands.
Date: 25 June 2024



Hugo Perezcano Díaz
Arbitrator

Place of Arbitration: The Hague, the Netherlands.
Date: 25 June 2024

Juan Fernández-Armesto
Presiding Arbitrator