

Niko Resources (Bangladesh) Ltd.
v.
People's Republic of Bangladesh,
Bangladesh Petroleum Exploration & Production Company Limited ("Bapex"), and
Bangladesh Oil Gas and Mineral Corporation ("Petrobangla")
(ICSID Case Nos. ARB/10/11 and ARB/10/18)

At the Preliminary Procedural Consultation on 14 February 2011 the Respondents had reserved the possibility of presenting a counter-claim for damage compensation. In view of this possibility, the Respondents were not required to present in the Counter-Memorial on Jurisdiction for the Payment Claim (produced on 16 May 2011) any objections to jurisdiction with respect to the Claimant's Compensation Declaration. The Respondents did not avail themselves of the possibility of making such a counter-claim. The Claimant therefore specified in its Second Memorial on Jurisdiction of 30 June 2011, as required under the Preliminary Procedural Consultation and Procedural Order No. 1, that it continued to seek the Compensation Declaration and presented its position in respect to the corresponding request (pp. 53-70).

Since the Claimant had confirmed its request for the Compensation Declaration in its Second Memorial on Jurisdiction, there was no longer any justification for the Respondents to defer presenting in their next submission their objections to jurisdiction concerning the request for the Compensation Declaration. This submission, described in Procedural Order No. 1 as the Respondents' Second Counter-Memorial on Jurisdiction, was submitted on 30 August 2011. The Respondents did not justify any objections to jurisdiction with respect to the Compensation Declaration and merely reserved their rights.

In the Procedural Consultation of 15 September 2011, the Respondents requested authorisation to file a submission setting out their objections to jurisdiction concerning the Compensation Declaration. The Respondents explained that their objections concerning the request for a Compensation Declaration coincide only partly with the objections to jurisdiction concerning the Payment Claim. In a communication immediately after the Procedural Consultation, they undertook that, if they were authorised to file such submission, they would do so as soon as possible and by 6 October 2011 at the latest.

Having considered the Respondents' request and circumstances and arguments in this context, the Tribunals now make

Procedural Order No. 2
(PROCEDURAL CALENDAR II – JURISDICTION)

1. In a desire to have a full briefing on the jurisdiction issues, the Tribunals accept that the Respondents may file a Supplemental Counter-Memorial on Jurisdiction, limited to the

Respondents' jurisdictional objections concerning the Claimant's request for a Compensation Declaration.

2. The Claimant must be given the opportunity to respond to this Supplemental Counter-Memorial, in particular to any new objections by the Respondents.
3. 6 October 2011, the date by which the Respondents proposed to submit at the latest their Supplemental Counter-Memorial on Jurisdiction, would not leave the Claimant reasonable time to respond in writing to the Respondents' Supplemental Counter-Memorial on Jurisdiction before the Hearing starting on 13 October 2011.
4. In the interest of giving both Parties a fair hearing on this issue raised late by the Respondents, the Tribunals are prepared to accept receiving the Claimant's response as the last written submission on this issue only two days before the Hearing, requiring special efforts of the Tribunals' availability for studying the submission.
5. The Tribunals divide the time between 15 September 2011, when the Respondents first raised the issue, and 11 October 2011, when the Claimant's response must be submitted, in two periods of equal duration of 13 days each.
6. The Tribunals therefore require that the Supplemental Counter-Memorial, containing any objections which the Respondents wish to develop against the request for the Compensation Declaration, must be submitted at the latest by Wednesday 28 September 2011.
7. The Claimant is given until Tuesday 11 October 2011 to respond in writing to the Respondents' Supplemental Counter-Memorial.

[Signed]

On behalf of the two Arbitral Tribunals
Michael E. Schneider
President

19 September 2011