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Procedural Management in International Arbitration: The Necessity of Bifurcation in Oil & Gas Disputes

Seyed Mohammad Hassan Razavi[1*] and Saman Mohammadian[2]

[1] Assistant Professor, Department of Public Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran

[2] MA Student in International Commercial and Economic Law, Faculty of Law and Political Sciences, University of Tehran, Tehran, Iran

Highlights

- Introduces bifurcation as a procedural tool to streamline complex arbitral proceedings by separating preliminary issues from the merits.
- Compares tribunal practices under ICSID, UNCITRAL, and ICC regimes regarding bifurcation, citing real-world procedural orders and awards.
- Emphasizes three legal thresholds for bifurcation: the seriousness of the objection, its separability from the merits, and its potential to resolve or narrow the case.
- Enhances procedural efficiency and fairness by demonstrating how early rulings on jurisdiction or the applicable law reduce time, costs, and evidentiary burdens.

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Abstract

Bifurcation constitutes a procedural mechanism in arbitration whereby complex disputes are segmented into separate and distinct issues to be addressed individually during the proceedings. This stratification enables a more organized and methodical approach, typically by isolating jurisdictional questions from the substantive merits of the case. By dividing the dispute into discrete phases, bifurcation enhances procedural efficiency, allowing the parties to concentrate on pivotal matters while avoiding unnecessary expenditure of time and resources on ancillary issues. Consequently, this mechanism often contributes to significant reductions in both the duration and overall cost of the arbitral process.

In determining whether to bifurcate proceedings, arbitral tribunals assess key criteria: the preliminary objection must demonstrate substantive merit, be capable of adjudication independently of the merits, and have the potential to resolve the dispute conclusively. The tribunal's decision to implement this procedural tool ultimately depends on the specific facts and prevailing circumstances of the case.

Keywords: Award, Bifurcation, Efficiency, ICSID, International arbitration

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1. Introduction

Arbitration is a private adjudicative process in which parties resolve disputes extrajudicially. It serves as an efficient, cost-effective, and expert-led alternative to litigation, delivering binding decisions

* Corresponding author:
Email: hassan.razavi@ut.ac.ir

through impartial proceedings (Carbonneau, 2012:1). Significant efforts have been made to establish fair mechanisms for resolving disputes among individuals, governments, and states, particularly in international law (Zarafshan, 2024:795).

In the resolution of disputes in international arbitration, particularly when the subject matter is complex, multifaceted, and technical, arbitrators often elect to bifurcate the proceedings to manage the adjudicative process more effectively. This approach allows arbitrators to focus on specific aspects of the dispute at each stage and to avoid confronting an overwhelming and dispersed volume of information and evidence simultaneously.

Bifurcation in arbitration facilitates the management of complex cases by separating key issues for early resolution, thereby reducing workload, saving time and costs, and enhancing procedural efficiency and fairness. Adopting a bifurcated approach in complex international disputes reflects arbitrators' awareness of the sensitivity of the case and their commitment to arbitration's core objectives. It underscores arbitration's efficiency as an alternative to traditional courts.

Understanding the types of arbitral awards—final, partial, and interim—and their respective roles is crucial in international arbitration. Each type serves a distinct purpose, particularly in the context of bifurcation, making it essential to examine their structure to appreciate their impact on the proceedings.

This article provides a general and concise overview of the concept of bifurcation in international arbitration and addresses several key research questions: How do arbitral tribunals approach bifurcation? Under what circumstances do tribunals decide to bifurcate proceedings, and when is its use considered reasonable and timely? Additionally, the article examines the various types of arbitral awards and their roles in the bifurcation process.

The objective of this study is to offer a general and conceptual perspective on bifurcation, thereby laying the groundwork for more specialized and practical research in this field. Given the growing importance of international arbitration and the increasing complexity of arbitral cases, a thorough understanding of procedural tools such as bifurcation can significantly enhance the quality and efficiency of the arbitration process.

Accordingly, the article first addresses bifurcation in arbitral proceedings, then examines the different types of arbitral awards, and finally analyzes existing practices related to bifurcation. This study adopts a descriptive-analytical methodology, employing a case study approach to examine the procedural tool of bifurcation within the framework of international arbitration.

2. Bifurcation in international arbitration

2.1. Strategic function and practical evolution of bifurcation

Legal commentators and arbitration experts have offered varying definitions of bifurcation, describing it as "a procedural technique in which the arbitration process is divided into separate phases to allow for the timely resolution of specific issues" (Benedettelli, 2013:493). In the terminology of the international arbitration community, bifurcation refers to "the division of the arbitral process into distinct stages, each involving dedicated written submissions, potentially separate hearings, and ultimately a decision on a specific and isolated matter" (Benedettelli, 2013:493).

Despite textual differences among the applicable arbitration rules, decisions rendered reflect a general convergence regarding the factors an arbitral tribunal should consider when deciding on bifurcation. Therefore, although it may have been accurate in the past to assert that arbitral practice lacked a clear consensus on the relevant factors for deciding on bifurcation, this is no longer the case. Nevertheless, the decision to bifurcate in any given case depends on the interplay between the unique legal and factual issues involved in that specific dispute (Calamita and Sardinha, 2017:57).

According to Meg Kinnear, Secretary-General of the International Centre for Settlement of Investment Disputes:

> In complex arbitrations, bifurcation allows the disputing parties and the arbitral tribunal to first focus on the merits of the case, save time and costs, and potentially reach agreement on the amount of damages or other limited issues. This approach is particularly useful for addressing jurisdiction or applicable law at a preliminary stage, provided that these matters can be resolved without the need for fact-finding by the tribunal or on the basis of agreed facts (Greenwood, 2019:422).

In the vast majority of cases, requests for bifurcation of jurisdictional issues are submitted by respondents, although in less common instances, claimants or both parties by mutual agreement may also make such a request. Additionally, the arbitral tribunal may independently decide to bifurcate. In such cases, the tribunal may include an appropriate provision in the procedural timetable that anticipates scenarios both with and without bifurcation (Gurdova, 2024, para. 3).

Regarding proceedings before the International Centre for Settlement of Investment Disputes between 2000 and 2017, a total of 115 arbitral decisions on requests for bifurcation were issued. In proceedings under the UNCITRAL Rules, due to the absence of a unified registry system, comprehensive statistics on decisions regarding bifurcation requests are not available, except in limited instances where such decisions have been made publicly accessible (Gurdova, 2024, para. 5).

It is argued that the advantages and disadvantages of bifurcation cannot be assessed in the abstract but must instead be evaluated in light of the specific characteristics of each case. In particular, three factors should be taken into account:

1. The subject matter for which an early arbitral decision is requested (such as a claim, a specific issue, a provisional measure, or a procedural matter);
2. The type of decision to be rendered (partial award, interim award, or order);
3. The interests that bifurcation may benefit or harm (including the interests of the disputing parties, the arbitral tribunal, or the states whose laws are involved) (Benedettelli, 2013:493).

In fact, most rules, treaties, or institutional arbitration regulations do not provide a clear definition of an arbitral award, nor do they specify when a decision should be issued in the form of a procedural order or what distinctions exist among different types of awards. Therefore, the distinction between an award and a procedural order in international arbitration is significant not only in form but also in terms of legal and practical consequences. On this basis, the following section examines arbitral awards and their differences (Benedettelli, 2013:496).

In international arbitration, the traditional approach to bifurcation has involved dividing the proceedings into two phases:

1. The liability phase
2. The damages or compensation phase

However, in recent years, bifurcation in commercial arbitrations has become more complex than a simple two-phase division. Today, bifurcation may include elements such as:

1. The separation of preliminary issues for distinct adjudication
2. A bifurcated approach to address specific aspects of liability

Addressing jurisdiction before examining the merits and adopting creative approaches to bifurcating liability and damages are among other forms of bifurcation observed in modern commercial arbitration. In investment treaty arbitration, however, bifurcation has remained relatively straightforward and is primarily invoked in cases involving jurisdictional objections (Greenwood, 2019:421).

2.2. Tribunal discretion, tactical use, and legal implications

The decision to bifurcate proceedings in investment arbitration is often formalistic, relying largely on the tribunal's discretion rather than on the specific procedural rules applicable to the case (Trapl, 2013:271). However, the justification for bifurcation differs significantly between investment and commercial arbitration, largely due to the nature of the jurisdictional issues involved.

In commercial arbitration, jurisdictional objections can be especially intricate. For example, disputes often arise when arbitration clauses are signed by one corporate entity, but claims are later brought against an affiliate not named in the contract. Similarly, reliance on the controversial "group of companies" doctrine or the consolidation of claims from multiple contracts without consent can generate procedural complexity. These challenges are compounded by cross-border disputes involving parallel proceedings or informal agreements to arbitrate, such as email exchanges or letters. Each of these scenarios raises legitimate questions about consent, scope, and enforceability—issues that, if not addressed early, can undermine the legitimacy of the proceedings and result in substantial wasted time and costs.

In treaty-based investment arbitration, jurisdictional questions tend to revolve around threshold eligibility criteria, such as the investor's nationality, whether an investment exists under the treaty definition, or whether the investor has fulfilled pre-arbitral conditions, including amicable negotiations or exhaustion of local remedies (Trapl, 2013:273). These issues lend themselves to early resolution precisely because they can dispose of the case entirely.

From a strategic perspective, bifurcation offers both advantages and risks. If preliminary issues, such as jurisdiction or admissibility, can be resolved efficiently and conclusively, bifurcation may save the parties significant time and costs. Conversely, if such issues are deeply entangled with the merits or require extensive factual inquiry, bifurcation may only delay the inevitable and fragment the proceedings. Therefore, arbitral tribunals must carefully evaluate whether bifurcation serves the interests of procedural economy or merely introduces inefficiency.

Tribunals are expected to strike a balance between procedural efficiency and fairness. However, no uniform standard exists to guide tribunals in measuring "efficiency," a concept that varies depending on the complexity, stakes, and procedural history of each case (Pentsov, 2024:6). Some parties attempt to manage this uncertainty by selecting arbitrators whose past decisions suggest a favorable view on bifurcation. Yet this strategy is more feasible in investment arbitration, where awards are often published, than in commercial arbitration, where procedural decisions are rarely disclosed (Pentsov, 2024:18).

One alternative to bifurcation is the preliminary determination of discrete issues without formally splitting the proceedings. This approach may be particularly useful in high-stakes cases, where isolating certain legal questions early can streamline the remainder of the arbitration (Maria, 2023:89).

Moreover, in multi-party arbitrations, bifurcation may be used to determine whether a particular party is even bound by the arbitration agreement. This is critical not only for ensuring due process but also for protecting confidentiality, since the participation of an unrelated party could grant access to sensitive information and prejudice the outcome (Benedettelli, 2013:503).

Bifurcation also carries tactical implications. A party may seek early resolution of weak claims through partial awards, aiming to secure a favorable result before the opposing side presents stronger evidence. This tactic is not merely procedural but strategic, potentially influencing the tribunal's perception of the broader case and affecting settlement dynamics (Benedettelli, 2013:503).

Nevertheless, tribunals must resist the temptation to prejudge the merits when considering bifurcation. At an early stage, when facts are still emerging, tribunals typically apply a threshold test: whether the respondent's objections are "reasonably arguable" assuming the claimant's case is true (Calamita and Sardinha, 2017:59). This pragmatic standard preserves fairness while enabling early filtering of frivolous or speculative claims.

Ultimately, an arbitral decision on liability in favor of the respondent may dispose of the entire dispute, thereby eliminating the need for further examination of the amount of damages. Even if the dispute is not fully resolved, the tribunal's determination on certain aspects of liability may encourage the parties to reach a settlement on damages, given that engaging the tribunal in the complex process of quantifying damages would entail significant costs. Similarly, where the parties disagree on the governing law, resolving this issue may eliminate a substantial portion—or even the entirety—of the dispute. For instance, if the tribunal selects a governing law under which the claimant's claim is time-barred, the entire case may be dismissed without the need for further proceedings (Pentsov, 2024:30).

To illustrate, consider the following hypothetical example: Company A enters into a contract with Company B for the construction of a highway bridge. After completion, the employer initiates arbitration, alleging that the delivered bridge has serious technical defects that caused the collapse of part of the structure, resulting in financial and reputational damages amounting to USD 5 million.

In response, the contractor raises several key defenses:

1. Responsibility for the design and drawings lies with the project consultant, while the contractor merely followed the approved plans.
2. A specific clause in the contract limits the contractor's liability to a maximum of USD 1 million.
3. Many of the claimed costs are not compensable damages, as they represent indirect and unforeseeable losses.
4. The basis for calculating damages lacks valid expert documentation.

In such circumstances, the arbitral tribunal may decide to address, in the first phase, only the issue of the contractor's liability—namely, whether the contractor is at fault and whether the contractual liability cap is enforceable. If the tribunal determines that the contractor is not liable or that liability is limited to USD 1 million, there would be no need for a detailed review of the precise quantum of damages or involvement of experts. The arbitration process would then conclude more swiftly, cost-effectively, and efficiently.

Ultimately, if the parties' arbitration agreement expressly requires a single, non-bifurcated proceeding, yet the arbitral tribunal proceeds with a bifurcated process, the resulting award may be subject to non-recognition under Article V(1)(d) of the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958).

3. Types of arbitral awards

In the absence of an agreement regarding the form of awards, such as the non-issuance of a partial award, the default rule is the issuance of a single final award. Arbitrators must carefully consider factors such as saving time and costs, enhancing the efficiency of the arbitration process, and ensuring the enforceability of the award. Practical considerations, including the need to issue an award to allow for potential challenges before local courts, must also be taken into account. In such awards, the arbitrator must provide the reasoning that justifies the decision (ICC, 1990:30).

The time limit for challenging an arbitral award begins from the date the award is issued. Once the final award has been rendered, if no objection was raised to earlier awards, such as partial awards, it is generally no longer possible to challenge those portions of the final award that are based on the earlier decisions. Moreover, only decisions formally classified as "awards" are eligible for recognition and enforcement under international conventions, such as the New York Convention. Therefore, if a decision by the arbitrators is designated as an "award," it carries significant implications for both enforceability and legal effect (Redfern and Hunter, 2015:514).

A partial award differs from an interim award in that an interim award addresses an issue related to the conduct of the proceedings—such as determining the applicable law or liability—but does not resolve it definitively, whereas a partial award renders a final decision on a specific issue, such as the payment of damages for a particular breach of contract (Born, 2020:4973). Provisional awards, in turn, pertain to matters such as jurisdiction or the applicable law (Spahiu, 2019:62).

In recent years, the number of interim and partial awards submitted for consideration by ICC arbitral tribunals has noticeably increased. The reasons behind this trend can only be speculated upon; however, one significant factor appears to be the increasingly adversarial nature of arbitration, which has led to greater emphasis on disputes concerning jurisdiction, applicable law, and similar issues. Additionally, the growing complexity of international commercial transactions may prompt parties and tribunals to prefer resolving issues of jurisdiction and liability before engaging in the costly and time-consuming process of determining damages, which may require expert involvement. Furthermore, deciding on the applicable law can, in some cases, relieve the parties from presenting arguments under multiple legal systems. Consequently, it is now accepted that, under appropriate circumstances, an interim award can contribute to saving both time and costs (ICC, 1990:29).

From the perspective of efficiency and expediency, a partial award renders a final decision on the issues it addresses. As a result, a partial award has a preclusive effect, preventing the parties from re-litigating the decided matters and the arbitral tribunal from revisiting them. This functions as though the tribunal's mandate concerning the issues decided in the partial award has concluded. A more precise description, however, is that the tribunal remains constituted but is, like other courts and tribunals, bound to observe the principles of res judicata and other rules of preclusion (Born, 2020:4975).

Arbitral orders are typically issued to resolve procedural matters necessary for the continuation of the arbitration process, such as the manner of submitting documents and evidence. In contrast, the final arbitral award addresses the substantive rights of the parties and determines them with finality (Spahiu, 2019:61).

In Paris Court of Appeal proceedings, Braspetro Oil Services Company (Brasoil) v The Management and Implementation Authority of the Great Man-Made River Project, it was emphasized that only arbitral awards may be set aside. Arbitral awards are all decisions by the arbitrators that finally dispose of all or part of the dispute submitted to them—whether on the merits, on jurisdiction, or on a procedural objection that ends the proceedings. The characterization of a decision as an "award" does not depend on the terminology chosen by the arbitrators or the parties (Van Den Berg, 1999:296–304).

What appears to matter is not the label given to a decision but its substantive content and legal effects. If a decision definitively resolves a fundamental dispute, then—even if it is called an order—it is, from a legal standpoint, considered an award and is subject to the rules governing the challenge or annulment of arbitral awards.

4. Bifurcation practices in international oil and gas arbitration

In the case of TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, which was heard before the ICSID arbitral tribunal under the 2006 ICSID Arbitration Rules, the issue of bifurcation was addressed in Procedural Order No. 2 (2023) as follows:

The Respondent argued that the Tribunal should base its decision on procedural fairness and efficiency, applying three key criteria: (i) whether the objection is serious or merely frivolous; (ii) whether upholding the objection would significantly reduce time and costs; and (iii) whether the jurisdictional issues are so closely linked to the merits that bifurcation would be impractical (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:3).

In this arbitration, bifurcation was considered appropriate because the United States challenged the tribunal's jurisdiction on the basis that NAFTA was no longer in force when the alleged breach occurred. The Respondent maintained that President Biden's revocation of the KXL Pipeline permit took place after NAFTA had already been replaced by the USMCA. According to international law and Article 70 of the Vienna Convention, treaty obligations generally terminate upon the treaty's cessation unless otherwise stipulated. Annex 14-C of the USMCA allows for arbitration only with respect to breaches that occurred while NAFTA was still in effect.

The Respondent further argued that:

- Neither NAFTA nor the USMCA includes a survival clause extending NAFTA's obligations beyond its termination.
- The footnotes in Annex 14-C confirm that only breaches occurring before NAFTA's expiration can give rise to arbitration claims.
- References by the Claimants to good governance or public statements by officials cannot establish rights that survive the treaty's termination.

Accordingly, the Tribunal was invited to resolve the jurisdictional objection as a preliminary matter, in line with principles of procedural efficiency and legal certainty (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:4).

The Respondent contended that the jurisdictional objection was significant and could be resolved without examining factual evidence related to the Claimants' alleged breaches. Therefore, bifurcation would notably save time and costs for both the parties and the Tribunal by eliminating the need to address the merits or rule on liability and damages (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:5).

The Tribunal clarified that its decision on bifurcation was strictly procedural and did not imply any conclusion regarding its jurisdiction over the case (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:13).

The Tribunal indicated that it would first discuss the applicable legal standards for bifurcation, followed by an evaluation of whether bifurcation was appropriate in this case (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:15).

It was uncontested that under Article 41 of the ICSID Convention and Rule 41(4) of the ICSID Arbitration Rules, the Tribunal had the authority to bifurcate proceedings and rule on jurisdictional objections in a separate phase (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:17). Both parties agreed that the applicable standards were those established in Glamis Gold, which include: whether the jurisdictional objection is prima facie substantial, whether it is too closely connected to the merits to allow bifurcation, and whether bifurcation would enhance procedural efficiency (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:18).

Under new Rule 44(2), bifurcation is appropriate when the jurisdictional objection could resolve all or most of the dispute. In this case, the parties agreed that if the objection were upheld, the entire case would be dismissed (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:20).

The purpose of ensuring that the jurisdictional objection is not entangled with the merits is to avoid repeating factual arguments and evidence in both the jurisdictional and merits phases. Thus, bifurcation should only be discouraged if the objection requires factual determinations that would also arise in the merits phase, potentially necessitating the same evidence (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:28).

The Tribunal concluded that bifurcation was unlikely to cause significant repetition of arguments or evidence and, therefore, did not present a substantial risk of procedural inefficiency (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:30).

Finally, the Tribunal evaluated whether bifurcation would lead to greater efficiency by saving time or reducing costs. This assessment involved comparing the time and cost savings if the Tribunal lacked jurisdiction with the potential extra time and costs incurred if jurisdiction were upheld. These outcomes were also weighed against the existing procedural timeline without bifurcation (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:31).

If the Tribunal lacked jurisdiction, bifurcation would save approximately one year in time and costs. Conversely, if jurisdiction were upheld, the case would be delayed by about one year. In effect, the time gained in one scenario equaled the time lost in the other, and cost differences were minimal. Accordingly, bifurcation offered no clear efficiency advantage (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:33).

Nevertheless, the Tribunal approved the Respondent's request for bifurcation (TC Energy Corporation and TransCanada Pipelines Limited v. United States of America, 2023:36). The Tribunal's reasoning in TC Energy/TransCanada v. United States provides a compelling illustration of how bifurcation operates not merely as a procedural tool, but as a safeguard for procedural integrity and legal clarity in complex treaty-based arbitrations. Despite acknowledging that bifurcation would produce no definitive gain in time or cost, the Tribunal granted the Respondent's request—a decision reflecting a functional shift in arbitral priorities toward early resolution of jurisdictional objections that may be dispositive of the entire case. Rather than relying solely on numerical efficiency, the Tribunal invoked considerations of legal certainty, coherence, and procedural economy in a broader sense.

The case further demonstrates the nuanced balancing act tribunals perform under Rule 44(2) of the ICSID Arbitration Rules. The possibility of dismissing the claim at a preliminary stage, even where procedural benefits are marginal, can justify bifurcation if the objection is legally serious and factually self-contained. This is particularly relevant when the jurisdictional objection—such as the temporal applicability of NAFTA—can be resolved without examining the merits, thereby avoiding duplication of evidentiary work and preserving the integrity of the arbitration process.

In this context, bifurcation served not only to streamline the process but also to reinforce the Tribunal's procedural autonomy and to protect the enforceability of any eventual award. The Tribunal's approach reflects a growing recognition that bifurcation decisions must weigh legal determinacy and fairness alongside procedural metrics, particularly in cases involving treaty succession or temporal jurisdiction. This ruling signals that, in future proceedings, tribunals may favor bifurcation even where efficiency gains are ambiguous, provided it promotes procedural discipline and clarifies threshold issues at an early stage.

In the case of Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India, conducted under the 1976 UNCITRAL Arbitration Rules, the issue of bifurcation was addressed in Procedural Order No. 4 issued in 2017. The Tribunal noted that reviewing the Respondent's bifurcation request had already been delayed, and since both parties had filed their main submissions, a bifurcated process would take just as long as proceeding with the full case. Accordingly, bifurcation would not improve efficiency or produce meaningful savings, even if it resulted in dismissal. On the contrary, it could add time and costs (Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India, 2017:84).

The Tribunal further observed that delays could exacerbate the dispute and increase potential damages, particularly since the Respondent was holding and threatening to sell the Claimants' shares. Interest and penalties could further elevate the disputed amount, supporting the need for prompt resolution (Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India, 2017:85).

Although the Tribunal acknowledged that if any of the Respondent's preliminary objections succeeded, addressing the merits would lead to unnecessary costs, such costs could be recoverable through a cost award. Following the reasoning of the Apotex tribunal, the Tribunal determined that proceeding without bifurcation would cause less procedural harm to the Respondent than bifurcation would cause to the Claimants (Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India, 2017:86).

The Tribunal also noted that the Second and Third Preliminary Objections were closely connected to the merits:

a. For the Second Objection, the Respondent's claim that the share transfers were part of a tax avoidance scheme required evaluation of substantive issues.
b. For the Third Objection, determining whether the Claimants made qualifying "investments" under the BIT or received capital gains as "returns" was factually tied to the merits. The Tribunal found these matters could not be fully separated from the substantive phase (Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India, 2017:87).

Based on this reasoning, the Tribunal denied the Respondent's request for bifurcation (Cairn Energy PLC and Cairn UK Holdings Limited v. The Republic of India, 2017:88).

5. Conclusions

The findings of this study demonstrate that bifurcation of proceedings, when applied with careful discernment and within a clearly defined contractual framework, can serve as the most effective mechanism for managing the complexity and escalating costs of oil and gas disputes. Such contracts often encompass jurisdictional issues involving state sovereignty, intricate technical-engineering disagreements, and substantial financial damage claims. Recent international arbitral practice indicates that, when confronted with serious jurisdictional objections, tribunals have successfully avoided procedural delays and the risk of award annulment by isolating jurisdictional questions from the merits, whereas the entanglement of issues can undermine procedural efficiency.

In light of these considerations and the particularities of Iran's legal and commercial system, five complementary measures are recommended to operationalize bifurcation effectively. First, a clause should be incorporated into Iran's upstream petroleum contract templates, empowering the arbitral tribunal to order bifurcation in the event of serious jurisdictional objections. This mechanism reduces the risk of prolonged proceedings and the possibility that the losing party may invoke Article V(1)(d) of the New York Convention to resist enforcement. Second, a specialized protocol for oil and gas disputes should be developed by the Iran Chamber of Commerce and its Arbitration Center, outlining three criteria for bifurcation—prima facie merit of the objection, separability of the issue, and procedural efficiency—in the form of a transparent checklist, thereby enhancing legal certainty for foreign investors. Third, joint training programs should be conducted involving the judiciary, mediators, and the Energy Charter Secretariat to harmonize understanding of interim and partial awards, reducing the likelihood of conflicts with public policy during award annulment or recognition stages. Fourth, a pre-arbitral review mechanism consisting of a three-member panel—representing the employer, contractor, and an independent expert—should be established to assess procedural and jurisdictional objections within thirty days. Only unresolved cases would proceed to the arbitral tribunal, thereby minimizing the volume of objections and associated costs. Finally, the 1997 Law on International Commercial Arbitration of Iran should be amended to explicitly authorize partial rulings on jurisdiction and define their binding effects, reinforcing the enforceability of bifurcated awards both domestically and internationally.

Accordingly, Iran's legal system can, while attracting capital and technology to the oil and gas sector, benefit from bifurcation to expedite dispute resolution, preserve project cash flows, and mitigate legal risks. The success of this approach, however, depends on intelligent legislation, institutional capacity-building, and alignment with international standards of award enforcement, so that bifurcation may evolve from a "double-edged sword" into a genuine competitive advantage for the country's energy economy.

Nomenclature

ICSID	International Centre for Settlement of Investment Disputes
NAFTA	North American Free Trade Agreement
UNCITRAL	United Nations Commission on International Trade Law
USMCA	United States–Mexico–Canada Agreement

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