

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
COMMERCIAL COURT (KBD)

HHJ Pelling KC [2025] EWHC 2874 (Comm)

(1) OPERAFUND ECO-INVEST SICAV PLC
(2) SCHWAB HOLDING AG

Claimants

- and -

BLASKET RENEWABLE INVESTMENTS LLC

Appellant/Applicant

- and -

THE KINGDOM OF SPAIN

Respondent/Defendant

RESPONDENT’S REPLACEMENT SKELETON ARGUMENT

Unless otherwise stated or made clear from the context:

- references to the Appellant’s Appeal Skeleton Argument are in the form “¶ x”
- references to the Judgment are in the form “[x]”
- references to the Core Bundle for Appeal are in the form “[CB/Tab/Page]”
- references to the Supplementary Bundle for Appeal are in the form “[SB/Tab/Page]”

1. The appeal concerns the assignability of treaty rights arising from an award of damages against Spain (the “**Award**”) issued on 6 September 2019, and rectified on 28 October 2019, by an investor-state arbitration tribunal. The tribunal was constituted under the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”) and the 1994 Energy Charter Treaty (the “**ECT**”).
2. The factual background is set out in the Judgment at [1], [7]–[11]. In brief:
 - a. The only parties to the dispute, arbitration and the Award are Spain and the Claimants.
 - b. The Claimants are companies incorporated under the laws of Malta and Switzerland. Both of those States are Contracting Parties to the ICSID Convention and the ECT.
 - c. Blasket is a company incorporated under the laws of Delaware in the USA as a vehicle specifically created to acquire awards. The USA is a Contracting State to the ICSID Convention. The USA is not a Contracting Party to the ECT.
 - d. On 14 September 2021, by an Order of Cockerill J, the Award was registered under s.1(2) of the Arbitration (International Investment Disputes) Act 1996 (“**AA 1966**”).¹
 - e. By an Agreement dated 31 January 2024 (the “**Agreement**”), the Claimants purported to assign to the Appellant (“**Blasket**”) “*all of the rights, interests and benefits of [the Claimants] under or in respect of the Award*”.
 - f. On 25 July 2024, relying solely on the Agreement, Blasket applied under CPR 17.3(3) and 19.2(4) to be substituted as the sole claimant in the proceedings (the “**Application**”).
3. Ground 1 concerns public international law (“**PIL**”). It asks whether the Judgment “*erred in law by concluding that the ICSID Convention and/or the ECT preclude the assignment of ICSID awards*”. Ground 2 concerns the interpretation and effect of s.2(1) AA 1966. It asks whether the Judgment “*erred in law in finding that the registration [of ICSID awards] does not create nor was it intended to create new substantive rights pursuant to s.2(1) [AA 1966] which are capable of assignment as a matter of English law*”.
4. Before the learned Judge, it was common ground that the analysis logically starts with Ground 1: see [35]. That was correct. Section 2(1) AA 1966 gives effect to, and must be interpreted consistently with, Art 54 of the ICSID Convention. The parties disagree over whether Art 54

¹ Spain applied to set aside the Registration Order on grounds of state immunity. By a consent order dated 16 October 2025, Spain’s application was adjourned pending judgment in *Infrastructure Services Luxembourg SÀRL & Anor v Kingdom of Spain* (UKSC No 2024/0115): see [11].

permits assignment. Thus, application of s.2(1) AA 1966 depends on the interpretation of the ICSID Convention.² Spain therefore addresses Ground 1 first.

5. Before the learned Judge, Blasket's primary argument concerned Ground 1. Ground 2 was an "*alternative*" argument: see [35].³ However, Blasket now wishes to focus on Ground 2 and to downplay Ground 1. This is because there has been a significant change in its case on Ground 1.
 - a. Before the learned Judge, Blasket placed great reliance on the argument that because the assignability of pending ICSID claims is well-established, the same result should follow with respect to ICSID awards.⁴ This was wrong. ICSID tribunals have held that ICSID claims are personal to their claimants and cannot be assigned: see ¶¶ 59–63 below.
 - b. Realising this, Blasket has reversed its position. It now asserts, at ¶ 66.3, that the assignability of ICSID claims and ICSID awards are "*conceptually distinct*". This is a new argument on appeal. It too is wrong: see ¶ 59 below. There is no material distinction with respect to assignability. Both ICSID claims and ICSID awards are treaty rights under the ICSID Convention. Additionally, both represent a continuation of the original investment.
 - c. In support of Ground 1, Blasket also relies on five new arguments, all of which could have been (but were not) advanced before the learned Judge: see ¶ 8 below.
6. This is not a promising start for an appeal.
7. In summary, Spain's position is as follows.
 - a. Ground 1 should be dismissed. The assignability of the treaty rights under the ICSID Convention and ECT (including all rights arising from the Award) is governed by PIL (i.e., the two treaties and general PIL). Under that governing law, treaty rights granted to the Claimants are assignable to Blasket only with Spain's consent. Spain has not consented to the purported assignment, and it is under no obligation to do so.
 - b. Ground 2 should also be dismissed. No new substantive assignable English law rights are created pursuant to s.2(1) AA 1966.

² Blasket also contends (incorrectly), at ¶ 23.5, that "*the court's power under AA 1966 is limited only insofar as those powers would conflict with the object and purpose of the ICSID Convention*".

³ In Blasket's proposed Grounds of Appeal before the learned Judge, Ground 2 was initially presented to the learned Judge as the last proposed ground (Ground 8). [SB/8]

⁴ Transcript, Day 1 at 121, lines 13–18 (Harris KC): "*if the claims themselves are assignable, it is impossible to think [...] why the fruits of those claims, the awards themselves, would not be assignable*". [SB/5/83]. See also *ibid* at 122, lines 13–18 (Harris KC). [SB/5/83]

8. As noted, Blasket’s case on Ground 1 relies on five new arguments. None of these has any merit.
- a. First, Blasket repeatedly asserts that Art 54(2)–(3) ICSID Convention “*devolves*” the question of the assignability of enforcement rights to domestic jurisdictions. This is wrong: see ¶¶ 22–27 below. National law has no role to play with respect to assignability.
 - b. Second, Blasket (wrongly) asserts that a party “*seeking*” recognition and enforcement in Art 54(2) refers specifically to the person who first initiates enforcement proceedings: see ¶ 44 below. It also (wrongly) argues that its position is supported by an “*evolutionary interpretation*” of Art 54(2): see ¶¶ 65–70 below.
 - c. Third, Blasket has reversed its (incorrect) assertion that the ECT “*doesn’t really matter*”.⁵ It now argues that there is an express right to assign under the ECT. Blasket asserts that an ECT award constitutes a protected “*investment*” and, as such, the Claimants enjoy ECT rights to sell/dispose and transfer that investment to/from Spain’s territory.⁶ This too is incorrect: see ¶¶ 39–40 below. The Award was never in Spain’s territory. Further, any substantive ECT rights are subject to Art 15 as the controlling provision on assignment.
 - d. Fourth, Blasket no longer asserts the existence of a customary law right to assign (because no such right exists). Instead, at ¶ 7.1, it contends – by reference to the so-called ‘*Lotus* principle’ in PIL – that there is a “*lacuna in [PIL which] must be interpreted permissively*”. Blasket argues that, because PIL does not prohibit the assignment, PIL necessarily permits the assignment. This is incorrect: see ¶¶ 79–82 below. There is no lacuna. In any event, the principle relied on specifically concerns the rights of sovereign States, not individuals. Further, even where the *Lotus* principle applies, the conclusion is merely that there is no breach of PIL, not that PIL recognises and accords legal effects to the relevant state conduct.
 - e. Fifth, at ¶ 24.3, Blasket warns that dismissing the appeal may expose the UK to a claim under Article 1 of Protocol 1 to the European Convention on Human Rights (“**A1P1**”). This adds nothing. It assumes that there is a right to assign under the governing law: see ¶ 98 below.
9. As to Blasket’s “*impressionistic*” arguments at ¶¶ 4 and 7.4.3, Spain makes three points.

⁵ Transcript, Day 1 at 145, lines 11–14 (Harris KC): “*we say that the ECT per se doesn’t really matter for these purposes because what we are concerned with is assignment of rights under an ICSID award and that is about ICSID*”. [SB/5/89]

⁶ ¶¶ 7.4.1, 43–49.

10. *First*, the Judgment does not preclude the Claimants from monetising the Award. The Claimants have done just that by selling to Blasket their legal right to any Award proceeds.⁷ As the Judgment explained at [49]:

“[T]he claimants remain entitled as between them and Spain to enforce the Award by registration under the [AA 1966] and Blasket can control the process and recover any sums recovered by the claimants by enforcement as is already expressly provided for by clause 7 of the Assignment Agreement”.

11. *Second*, if an investor were permitted freely to assign an ICSID/ECT award and related treaty rights (i.e., without the respondent State’s consent), this would have real consequences. For any respondent State, the identity of its award creditor matters.

- a. The respondent State might well have a political/material interest in refusing to agree to the assignment and substitution of its award creditor.⁸ For example, the assignee might be a company/national of a third state with whom the debtor State has (deliberately) not concluded an investment treaty, or perhaps even established diplomatic relations, or an entity which has been designated under a sanctions regime.
- b. Reciprocity is a key feature of the ECT. Contracting Parties owe obligations to investors of other Contracting Parties only. As a national of a non-Contracting Party, Blasket enjoys no ECT rights.⁹ It is not an investor, it has made no investment in Spain, and it has assumed no risk. Allowing the Application would transform reciprocal ECT obligations, including under Art 26(8), into treaty obligations owed to the national of a third State.

12. *Third*, there is no reason of principle why the Judgment should follow the conclusion of two first instance foreign courts that have concluded that ICSID awards are assignable.¹⁰

- a. As to Ground 1, questions of treaty interpretation are for this Court, applying Arts 31–32 of the Vienna Convention on the Law of Treaties (“**VCLT**”). The value of a foreign court’s interpretation depends on the quality of the reasoning. There is no rule that a multilateral treaty must be interpreted unanimously by the domestic courts of each Contracting State. Nor is any special weight to be accorded to the court that first considers the matter. It is

⁷ See Agreement, cl 7.1 [SB/3/31]. This right is severable from the assignment provision: see cl. 11 [SB/3/34].

⁸ Spain’s position also protects ICSID/ECT award creditors from having their debts assigned, by the respondent State, to a third State (or other entity) without the creditor’s consent.

⁹ See *Czech Republic v Diag Human SE & Anor* [2025] EWCA Civ 588, [2025] 1 Lloyd’s Rep 458 at [158].

¹⁰ *Blue Ridge Investments LLC v Republic of Argentina*, 902 F. Supp 2d (SDNY 2010) (“**Blue Ridge**”); *Blasket Renewable Investments LLC v Kingdom of Spain* [2025] FCA 1028 (the “**FCA Proceedings**”).

unavoidable that there may be good faith disagreements.¹¹ Whereas the New York court in *Blue Ridge* did not apply the VCLT at all, the interpretation in the FCA Proceedings should not be followed for the reasons given by the learned Judge: see ¶ 70 below.

- b. As regards Ground 2, the two foreign domestic courts were applying foreign domestic law. They were not applying s.2(1) AA 1966 (or an identical provision) and were also not applying the interpretation of s.2(1) binding on this Court: see ¶ 99 below.

13. The remainder of this Skeleton Argument is structured as follows:

- a. **Section A** sets out the test for substitution and the law governing the assignability of the Award and related treaty rights (i.e., the ECT, ICSID Convention and PIL).
- b. **Section B** explains that an ICSID award is a pure creature of PIL. Its assignability is governed by PIL alone.
- c. **Section C** explains that Art 15 ECT provides for a unique and limited right to assign a right to payment under an ECT award. The terms of the ECT, including any arbitration agreement deriving from its terms, are subject to Art 15.
- d. **Section D** summarises the Judgment.
- e. **Section E** explains that Ground 1 should be dismissed because (i) the Judge correctly interpreted the ECT (i.e., the terms of any arbitration agreement) and ICSID Convention (i.e., the *lex arbitri*) as not permitting the purported assignment (respectively, **subsections 1 and 2**); and (ii) PIL does not recognise any further and general right of assignment of treaty rights and does not accord any legal effect to the purported assignment (**subsection 3**).
- f. **Section F** addresses Ground 2 and explains that the Judge was correct to conclude that registration of an ICSID award under the AA 1966 does not create new substantive English law rights that are capable of assignment.

¹¹ See e.g. *R (Adan) v Secretary of State for the Home Department* [2001] 2 AC 477 (“**Adan**”) at 518D–E (Lord Steyn).

A. THE TEST FOR SUBSTITUTION AND THE LAW GOVERNING ASSIGNABILITY

14. Under CPR 19.2(4)(a), the Court may order substitution if “*the existing party’s interest or liability has passed to the new party*”. Blasket “*must demonstrate on the balance of probabilities*” that a valid assignment of the relevant rights has occurred: see [12].¹² Blasket ignores this.
15. The Agreement purports to assign an Award and related treaty rights created pursuant to the ECT and the ICSID Convention. Of particular relevance:¹³
 - a. Art 26(8) ECT confers the right to a “*final and binding*” award and to performance by the unsuccessful party, i.e. a right to payment (“*shall carry out without delay*”).¹⁴
 - b. Art 53(1) ICSID Convention also confers upon “*the parties*” a right to a final and “*binding*” award and to compliance.
 - c. Art 54(2) ICSID Convention confers upon a “*party*” an ICSID award a right to have the award “*recogni[sed] and enforce[d]*”.
16. Before the learned Judge, Blasket correctly conceded that the “*assignability of these [treaty] rights is therefore governed by PIL in general, and the ICSID Convention and ECT in particular*”.¹⁵
17. The two treaties must be interpreted in accordance with Arts 31–32 VCLT. As a separate matter, save to the extent that the ECT and/or ICSID Convention derogate from otherwise applicable rules of customary PIL, such rules continue to apply in parallel.¹⁶ This includes PIL with respect to the assignability of treaty rights and with respect to the grant of rights to individuals.
18. Tying the above together, Blasket must prove the existence of a positive right to assign the treaty rights under PIL as the agreed governing law¹⁷ – i.e., the PIL equivalent of s.136 of the Law of Property Act 1925 (“**LPA 1925**”) or of a right to assign in equity in this jurisdiction. Blasket

¹² *Tactus Holdings Ltd (in administration) v Jordan & Ors* [2025] EWHC 133 (Comm), [2025] 1 WLR 1602 (“**Tactus**”) at [29–30], [38–41] (Peter McDonald Eggers KC).

¹³ The purported assignment also necessarily includes post-arbitration rights under Arts 49(2), 50, 51 and 52 of the ICSID Convention.

¹⁴ Art 26(8) ECT provides: “*The awards of arbitration [...] shall be final and binding upon the parties to the dispute. [...] Each Contracting Party shall carry out without delay any such award and shall make provision for the effective enforcement in its Area of such awards.*”

¹⁵ Claimants’/Applicants’ Skeleton Argument for the hearing on 28/29 October 2025 at [40] [SB/4/63].

¹⁶ See J Crawford, *Brownlie’s Principles of Public International Law* (9th edn, OUP 2019) at 30–31.

¹⁷ See further *Dicey, Morris and Collins on the Conflict of Laws* (supplemented 16th edn, Sweet & Maxwell 2025) at 1414, [25R-057].

contends that there is an express right to assign under the ECT, an implied permission under Arts 53–54 ICSID Convention and a permission under general PIL.

19. Before going further, some essential background is required with respect to the ICSID Convention and ECT, and the awards that these treaties produce. Spain addresses each in turn.

B. THE ICSID CONVENTION: KEY POINTS

a. ICSID arbitration and awards are governed by PIL alone

20. ICSID arbitration is very unusual in that it does not have its seat in any domestic legal system. An ICSID arbitration takes place exclusively on the international plane. The ICSID Convention and Arbitration Rules supply the *lex arbitri*. This means that the “*ICSID arbitration is a dispute resolution mechanism governed exclusively by international law*”.¹⁸ In treaty cases such as the present, the resulting ICSID award is a pure creature of PIL. This is well-established.

- a. The ICSID *ad hoc* committee in *Fraport v Philippines (I)* (presided over by Judge Tomka of the International Court of Justice) stated that the ICSID Convention “*creates a self-contained system [...], which is not subject to national law [but rather] international law.*”¹⁹
- b. As explained in *International Investment Law: Substantive Principles*, 2nd edn (OUP 2017) at [3.71] (emphasis added):

“The *lex arbitri* of ICSID arbitration is the ICSID Convention itself. Thus the rules of law pursuant to which the arbitration is conducted are supplied by the [ICSID] Convention as interpreted under rules of public international law. The laws of the physical place of arbitration have no bearing whatsoever on the arbitration procedure.”²⁰

21. Two points arise from this:

- a. First, under the ICSID Convention (i.e., the *lex arbitri* and part of the governing law), the question of whether an ICSID award is capable of assignment is governed by the ICSID Convention alone, which establishes the legal existence and attributes of an ICSID award. There is no role for domestic law. As the Judgment correctly recognised at [68]:

¹⁸ See e.g. *Electrabel SA v Republic of Hungary*, ICSID Case No ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012 at [4.112].

¹⁹ *Fraport AG Frankfurt Airport Services Worldwide v Republic of the Philippines (I)*, ICSID Case No. ARB/03/25, Decision on Application for Disqualification of Counsel, 18 September 2008 at [36].

²⁰ See also *Itisaluna Iraq LLC & Ors v Republic of Iraq*, ICSID Case No ARB/17/10, Award, 3 April 2020 at [41]: “*the ICSID Convention and ICSID Arbitration Rules establish a self-contained and sui generis arbitration regime for the arbitration of investment disputes between Contracting States and the nationals of other Contracting States*”.

“[I]t is implausible that the authors of the ICSID Convention could have intended that the assignability of an award made pursuant to it would be left to the random effects of local law with the result that whether an award was assignable would depend on which state the award was being enforced in with the very real possibility that assignment may be permitted in some jurisdictions where enforcement was sought but not others.”

- b. Second, Blasket is therefore wrong at ¶ 24.2 to assert that there is no “*substantive reason to depart*” from the English law approach to the assignability of non-ICSID awards.

b. Art 54 does not “devolve” questions of assignability to domestic jurisdictions

22. Blasket’s case on both Grounds depends on the bald assertion that “*matters related to the enforcement of ICSID awards (including, by necessary implication, questions of assignability) are devolved to domestic jurisdictions by Articles 54(2) and 54(3)*”.²¹ This is wrong. Leaving aside Art 55, the ICSID Convention does not foresee different enforcement regimes in each Contracting State.
23. Article 54 provides (emphasis added):
- “(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. [...]
- (2) “A party seeking recognition and enforcement in the territories of a Contracting State shall furnish to a competent court [...] a copy of the award certified by the Secretary-General. [...].
- (3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.”
24. In *Micula & Ors v Romania*, the Supreme Court stated that the principle that the ICSID Convention is self-contained (and thus not subject to domestic law) “*also extends to the stage of recognition and enforcement*” under Art 54.²²
25. The interpretation of Arts 54(2) and (3) was also specifically considered by the Court of Appeal in *Infrastructure Services & Anor v Spain* (“*ISL*”), Philips LJ endorsed the following analysis of the High Court of Australia (“*HCA*”), which he recognised “*stressed that the Convention used the term ‘recognize’ ‘enforce’ and ‘execute’ to denote three distinct processes*”:

“The further distinction between ‘recognition’ and ‘enforcement’, on the one hand, and ‘execution’, on the other hand, is then drawn out in articles 53–54 and article 55. This is seen in the provision by article 54(3) that execution is a matter to be governed by the domestic law of the contracting state, and by article 55 that none of the international obligations

²¹ In relation to Ground 1 see ¶¶ 7.4.2, 31, 50, 52.3, 63. In relation to Ground 2 see ¶¶ 6.2, 25.3. Cf. ¶ 4 suggesting that there should not be “*disjuncture*” between domestic jurisdictions.

²² *Micula & Ors v Romania* [2020] UKSC 5, [2020] 1 WLR 1033 (“*Micula (SC)*”) at [68].

imposed by article 54 extend so far as to derogate from the domestic law of the contracting state concerning state immunity or foreign state immunity from execution.”²³

26. The HCA also explained that the word “*execution*” is used in Arts 54–55 as meaning “*the means by which a judgment enforcing an international arbitral award is given effect*” and that “[t]he execution process commonly involves measures taken against the property of the judgment debtor by a law-enforcement official [...] acting pursuant to a writ of execution”.²⁴ The ICSID Convention *travaux* further confirms that the “*the term ‘execution’ was used to describe ‘seizing [the foreign State’s] property and selling it in forced execution*”.²⁵
27. Blasket’s position at ¶ 25.3 depends on reading the words “*enforcement*” and “*execution*” in Art 53(2)–(3) interchangeably. But under Art 54(2), only “*execution*” is governed by domestic law. The assignability of the treaty rights is not a matter of “*execution*” of the Award. Domestic law is therefore irrelevant to Ground 1.

C. THE ECT: KEY POINTS

28. Through the dispute settlement mechanism in Art 26 ECT, Contracting Parties consented to ICSID arbitration (except for EU Member States, who made no offer to arbitrate intra-EU disputes) and conferred jurisdiction on ICSID pursuant to the jurisdictional provisions in Arts 25–26 ICSID Convention.²⁶ In principle, an agreement to arbitration under the ECT may be formed when an investor accepts a host State’s offer of ICSID arbitration in Art 26(2)(c) ECT.
29. Any treaty right under the ECT, including any arbitration agreement and any resulting ECT award, is subject to the terms of the ECT. Art 15 is of particular relevance:

“(1) If a Contracting Party or its designated agency (hereinafter referred to as the ‘Indemnifying Party’) makes a payment under an indemnity or guarantee given in respect of an Investment of an Investor (hereinafter referred to as the ‘Party Indemnified’) in the Area of another Contracting Party (hereinafter referred to as the ‘Host Party’), the Host Party shall recognise:

(a) the assignment to the Indemnifying Party of all the rights and claims in respect of such Investment; and

²³ *Infrastructure Services Luxembourg SÀRL & Anor v Kingdom of Spain* [2024] EWCA Civ 1257, [2025] KB 611 at [74] (Philips LJ), emphasis added.

²⁴ *Kingdom of Spain v Infrastructure Services Luxembourg SARL* [2023] HCA 11, (2023) 275 CLR 292 at [45].

²⁵ *ISL* at [74].

²⁶ See generally *Republic of Ecuador v Occidental Exploration and Production Co* [2005] EWCA Civ 1116, [2006] QB 432 at [33]; *Mustill and Boyd: Commercial and Investor State Arbitration* (3rd edn, LexisNexis 2025) at [18.24]. Note that “*the ICSID Convention does not contain the relevant arbitration agreement*”: *ISL* at [105].

(b) the right of the Indemnifying Party to exercise all such rights and enforce such claims by virtue of subrogation.

(2) The Indemnifying Party shall be entitled in all circumstances to:

(a) the same treatment in respect of the rights and claims acquired by it by virtue of the assignment referred to in paragraph (1); and

(b) the same payments due pursuant to those rights and claims,

as the Party Indemnified was entitled to receive by virtue of this Treaty in respect of the Investment concerned.” (emphasis added)

30. Art 15 ECT provides for a unique and limited right to assign rights and claims, including an express entitlement to “*payments due pursuant to those rights and claims*”, i.e. payments under the Award.²⁷ This highlights the absence of any other or more general right to assign: see ¶¶ 37–38 below. Any assignment outside Art 15 therefore requires the host State’s specific consent.

D. THE JUDGMENT

31. Ground 1: The Judgment (correctly) identified the key issue in the Application as whether, under the ICSID Convention and ECT, “*an assignment of an [ICSID/ECT] award is permitted*”: [36]. The learned Judge correctly applied the VCLT and concluded that ICSID/ECT awards are “*not assignable*”: [79].
32. The Judgment (correctly) held that the ICSID Convention does not permit assignment of Convention rights. It rejected Blasket’s submission that the ICSID Convention contains, or impliedly acknowledges, such a right because the terms “*the parties*” and “*party*” in Arts 53(1) and 54(2) encompass any private third party such as an assignee: [42]. After recognising that the ICSID Convention contains no express provision either permitting or prohibiting the assignment of an award, the learned Judge made four key findings: [36], [40]–[51].
- a. First, the phrases “*the parties*” and “*each party*” in Art 53(1) “*plainly refer to the parties or a party to the arbitration in which the award referred to in Article 53(1) has been rendered*”: [43]–[45].
- b. Second, likewise, read in its context (including the immediately preceding Art 53(1)), “*the phrase ‘a party’ in Article 54(2) of the ICSID Convention refers to [no-]one other than a party to the arbitration in issue and in consequence only a party to the underlying arbitration can seek recognition or enforcement of a ICSID Convention award*”: [51]. Leading commentaries on the ICSID Convention agree: [45], [46], [48].

²⁷ Consistent with the absence of a general right to assign, many BITs contain express consent to subrogation. However, the examples cited at ¶ 41.4 are not identically worded to Art 15 ECT.

- c. Third, “*there is no obvious reason why the meaning of ‘a party’ in Article 54(2) should mean anything other than one of ‘the parties’ referred to in Article 53(1) or why if that was what the authors of the ICSID Convention intended, they could not have made that clear*”: [44]. Viewed in this specific context, “[t]he absence of a clearly expressed provision permitting assignment and/or recognition and enforcement by parties other than the parties to the dispute is much more consistent with [Spain’s interpretation] [...] being the correct approach applying the Vienna Convention principles”.
- d. Fourth, the broader context shows that “*the phrases ‘the parties’ or ‘a party’ [are] used predominantly throughout Chapter IV and section 6 within that chapter of the ICSID Convention to mean the parties to the arbitration in issue*”: [51]. Looking at the Convention as a whole, further “*significant textual context*” is that:

“[T]he authors [of the ICSID Convention] used the phrases ‘the parties’ or ‘a party’ [in Chapter IV in Arts 37(2)(b), 38, 39, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53(1), as well as in Arts 25, 32, 35, 64] interchangeably with the longer form ‘party [or parties] to the dispute...’ [e.g., in Art 41] where the context in which the phrases ‘the parties’ or ‘a party’ are used show that they relate back or otherwise clearly refer to or mean the parties or a party to the arbitration in issue.” ([43] read with [40]–[41], [51])

33. As regards the ECT, at [53]–[54], the Judgment (correctly) held that “*claims and awards concerning claims under the ECT are not assignable*” because:

- a. There is “*significant force*” in Spain’s submission that:

“the requirement [under Art 15 ECT] that Host State recognise the assignment to the Indemnifying Party would be entirely unnecessary if the authors of the ECT had intended rights acquired under or by reference to the ECT to be assignable generally or had intended any of the provisions of the ECT to have such an effect or [...] if such rights were understood by the authors to be assignable as a matter of customary international law.”

- b. The “*correct analysis*” of Art 15 ECT, applying Arts 31–32 VCLT, is reflected in commentary that:

“Since the indemnity or guarantee agreement will typically already provide for the transfer of the investor’s rights in the event of payment, the function of these clauses [such as Art 15 ECT] can arguably not be seen as limited to the subrogation itself. Rather, it would appear that these provisions are really meant to provide for an exception to what is the rule in the mind of the signatories – namely that an investor’s claims and other treaty rights under the treaty cannot be assigned without the host State’s consent.”²⁸

²⁸ [53] quoting H Wehland, ‘The Transfer of Investments and Rights of Investors under International Investment Agreements – Some Unresolved Issues’ (2014) 30(3) *Arbitration International* 565 at 575 (expressly referring, at footnote 53, to Art 15 ECT).

34. The Judgment also held that “*there is no rule of customary international law that provides [...] that [ICSID] awards are either assignable or not assignable*”: [71].
35. Ground 2: The Judgment also (correctly) held that s.2(1) AA 1966 “*does not create [...] new substantive [English law] rights*”.²⁹ Thus, there is nothing to assign.

E. GROUND 1

36. Ground 1 challenges the learned Judge’s conclusion that ECT and/or ICSID Convention do not permit the purported assignment. Blasket must show that the Judge was wrong on both points. As explained in turn below, the Judgment correctly interpreted the ECT and ICSID Convention and correctly concluded that the purported assignment is not permitted under either treaty.

(1) The Judgment correctly interpreted Art 15 ECT

37. The Judgment correctly held that, save as expressly provided for in Art 15, the ECT does not permit the assignment of ECT awards without the specific consent of the debtor State.
- a. Art 15 provides for a unique and limited right to assign rights and claims, including with respect to an ECT award. This highlights the absence of any more general right to assign: ¶¶ 28–30 above. As the Judgment recognised, interpreting Art 15 to allow for such a general right beyond its plain terms would render Art 15 redundant (see ¶ 33 above).
 - b. Both the arbitration agreement in Art 26(2)(c) ECT, and the ECT rights under Art 26(8), are subject to Art 15 (see ¶ 28 above), the terms of which must be respected.³⁰ The Assignment falls outside Art 15 ECT and is therefore, absent Spain’s specific consent, *ex facie* invalid.
38. Spain’s interpretation of Art 15 is confirmed by the ECT’s *travaux préparatoires*. The drafters deliberately considered and delimited the investor’s right to assign ECT rights and claims, including with respect to an ECT award. A specific decision was duly made to exclude situations involving assignment to a company incorporated in a Contracting Party that acquires the rights and claims (let alone to a company, like Blasket, which is not incorporated in a Contracting Party).
- a. The original draft of Art 15 was titled “*Assignment of Rights*”, rather than “*Subrogation*”. It reflects the final text, except in one critical respect. It would have applied:³¹

²⁹ [76]–[78] applying *Micula & Ors v Romania* [2018] EWCA Civ 1801, [2019] Bus LR 1394 (“**Micula (CA)**”) at [257], [259] (Leggatt LJ), [105], [117] (Arden LJ).

³⁰ See, by analogy, the effect of the contractual prohibition in *Tactus* at [44–64]; *Don King Productions Inc v Warren & Ors* [2000] Ch 291 (“**Don King**”) at 319B (Lightman J).

³¹ ‘Draft Treaty’, 20 August 1991 at 17 (draft Art 24).

“If a Contracting Party, its designated agency, or a company or enterprise incorporated in a Contracting Party other than the Investor (the ‘Indemnifying Party’) makes a payment under an indemnity given in respect of an Investment in the Territory of another Contracting Party (the ‘Host Party’) or otherwise acquires the rights and claims to such an investment.” (emphasis added)

- b. In April 1993, the underlined words above were deleted from the draft text.³² This was because the drafters agreed that the obligation to recognise assignment and subrogation rights “*should be limited to cover only political risk insurance*” provided by a State.
- c. Had the drafters nevertheless considered that the amendment left untouched more general assignment rights under the ECT or general PIL, no doubt this would have been mentioned.³³ It was not. The commentary Blasket cites at ¶ 41.3 does not refer to the *travaux*.
- d. Blasket is therefore wrong to suggest, at ¶ 41, that Art 15 sheds no light on whether other forms of assignment are permitted because the *travaux* shows that Art 15 was only included for the specific purpose of addressing concerns that a political risk insurer would not be considered a qualifying investor. This ignores the key point.

39. Blasket argues, at ¶ 43, that the ECT grants a right to assign an ECT award and related treaty rights. Even if an ECT award is viewed the crystallisation of an underlying investment, no such substantive right exists. Blasket asserts at ¶ 49 that Art 14(1) ECT “*expressly protects an investor’s right to*” assign an ECT award. No authority is cited. Blasket is wrong.

- a. Art 14(1) ECT guarantees, “*with respect to Investments in its Area [...] the freedom of transfer into and out of its Area*”.³⁴ Art 14 “*in essence creates a right for Investors to repatriate capital and earnings*”.³⁵
- b. Blasket’s interpretation strains the text of Art 14(1), whilst also reading out the critical limiting words “*into and out of its Area*”. It presents Art 14(1) as an absolute right of free transfer, including in respect of ECT awards. No authority is cited in support of that interpretation.

³² ‘Draft Energy Charter 3’, 1 June 1993 at 43–45. See also Charter Conference Secretariat (“CCS”), ‘Report from WG II Meeting on 22 April 1993’, Brussels, 26 April 1993; CCS, ‘Note by Chairman of Sub-Group’, Brussels, 29 April 1993.

³³ See e.g. *Indus Waters Western Rivers Arbitration (Pakistan v India)*, PCA Case No 2023-01, Award on Issues of General Interpretation of the Indus Waters Treaty, 8 August 2025 (“**Western Rivers Arbitration**”) at [735].

³⁴ Art 1(10) ECT defines “Area” as meaning “*with respect to a State that is a Contracting Party: (a) the territory under its sovereignty [...]*”.

³⁵ K Hobér, *The Energy Charter Treaty: A Commentary* (OUP 2020) at 313.

- c. On its face, Art 14(1) does not apply to the transfer of ECT awards or treaty rights under Art 26(8). The Award was never located in Spain, and the Claimants are not now seeking to transfer it into/out of Spain. An ICSID/ECT award is a pure creature of PIL, existing on the international plane: see ¶¶ 20–21 above.
 - d. In any event, Art 14(1) must be read together with Art 15. Art 15 is the controlling provision on assignment of ECT rights and claims, including assignment of a right to payment under an ECT award. Given the limited terms of Art 15, and the deliberate exclusion of a more general right to assignment, clear and unambiguous language would be needed in Art 14(1) to conclude that the Contracting Parties nevertheless intended to guarantee a right to assign ECT awards. Moreover, Blasket’s interpretation would render Art 15 redundant.
 - e. Blasket’s interpretation of Art 14(1) also ignores the key feature of reciprocity, reflected in the ECT’s purpose of promoting long-term cooperation between Contracting Parties: Art 2 ECT. On Blasket’s position, Art 14(1) impliedly allows investors to transform reciprocal treaty rights under Art 26(8) into treaty obligations owed to nationals of a third state who could not otherwise enjoy any rights under the ECT.
40. Relatedly, Blasket impliedly warns, at ¶¶ 43–49, that refusing the Application would expose the UK to a claim for breach of the ECT. This is not a serious point.
- a. ICSID tribunals have held that “*for there to have been an expropriation of an investment or return (in a situation involving legal rights or claims as distinct from the seizure of physical assets) the rights affected must exist under the law which creates them*”.³⁶ The same is true for an FET claim. If, under its governing law, the legal right or claim is subject to a restriction on transfer/assignment, refusing the transfer/assignment in accordance with the governing law cannot amount to a taking of, or an unfair interference with, that legal right or claim.
 - b. The governing law of the ECT award and rights is PIL. Art 15 ECT does not permit the assignment and general PIL does not recognise or accord legal effect to it.
 - c. There can be no argument that the Claimants have been deprived of the benefit of the Award. Indeed, they have already been paid for it in return for the right *inter alia* to any recovered proceeds: see Agreement, cl. 7.1.

(2) The *lex arbitri*: the Judgment correctly interpreted the ICSID Convention

³⁶ See e.g. *EnCana Corporation v Republic of Ecuador*, LCIA, Award, 3 February 2006 at [184].

41. The learned Judge correctly interpreted Arts 53–54 of the ICSID Convention: see ¶ 32 above. The ICSID Convention does not permit assignment of the relevant treaty rights.
42. Blasket disagrees and invites this Court to adopt the broadest possible interpretation of the phrases “*the parties*” and “*party*” as encompassing any private third party, such as an assignee. However, it does not engage with the learned Judge’s reasoning.
43. As explained in turn in the subsections below:
- a. The Judgment is supported by: **(a)** the ordinary meaning of the words of Art 54(2); **(b)** the immediate context in Art 53(1); **(c)** the broader context and the application of Art 31(4) VCLT; and **(d)** the non-assignability of ICSID claims.
 - b. Additionally, **(e)** Blasket’s reliance on object and purpose and “*evolutionary interpretation*” is misconceived.
 - c. The Judgment should also be upheld because **(f)** PIL does not recognise, or accord legal effects to, the assignment of treaty rights between States; **(g)** Blasket cannot show the specific grant of a right to assign, as required by PIL; and **(h)** there is no reason why the assignability of treaty rights in an ICSID/ECT award should be treated differently.
 - d. Finally, **(i)** the Judgment is confirmed by the *travaux préparatoires* to the ICSID Convention.

a. Ordinary meaning of Art 54(2)

44. Art 54(2) refers to “*a party seeking recognition and enforcement*”. The ordinary meaning of the words refers to a party to the dispute who is attempting to obtain recognition and enforcement.
- a. The word “*party*” refers to “*a person or group of people forming one side in a contract, dispute, law case etc*”.³⁷ Blasket ignores this and asserts at ¶ 52.1 that the ordinary meaning is “*the person concerned or in question*”.
 - b. “*Seek*” means “*try or want to obtain or gain*” or “*try or attempt to do*”.³⁸ Contrary to Blasket’s unsupported assertion, at ¶¶ 64–65, it does not refer only to the person who first attempts to obtain something (excluding anyone who later attempts to obtain the same thing).
45. As the Judgment observed, leading commentaries on the ICSID Convention agree ([46], [48]):

³⁷ *Shorter Oxford English Dictionary* (5th edn: OUP 2002), “*party*”, sense III.10 (Blasket refers to sense III.12 only). See also *Black’s Law Dictionary* (11th edn: Reuters 2019), “*party*” sense 2.

³⁸ *Shorter Oxford English Dictionary*, “*seek*”, senses I.3 and I.5.

a. *Schreuer's Commentary on the ICSID Convention* states at 1511, that “[o]nly a party to the original ICSID arbitration proceeding may initiate the procedure under Art 54(2). This would exclude action by an interested third party”.

b. Likewise, *The ICSID Convention, Regulations and Rules: A Practical Commentary* states:

“Recognition and enforcement proceedings can only be initiated by a ‘party’ to the Award, as the terms of Art 54(2) state. This excludes the ability for third parties to commence such proceedings, which would include the investor’s home State acting on a diplomatic protection basis and the State of origin of any constituent subdivision or agency that was the respondent to an Award.” ([4.1363], emphasis added)

46. Relying on its artificially narrow reading of the word “seek”, at ¶ 66, Blasket contends these commentaries do not assist because they do not expressly state that Art 54(2) does not permit an assignee to continue enforcement proceedings initiated by the investor. It also asserts that the authors of *Schreuer's Commentary* “implicitly recognise” the possibility of assignment when they refer to the “original parties”. This is unpersuasive. If the authors had intended to express the opinion that ICSID awards are assignable, they could and would have done so expressly.

b. Immediate context: Art 53(1) ICSID Convention

47. Blasket agrees at ¶¶ 55–56 that “party” is to be given the same meaning in Arts 53(1) and 54(2), i.e. adjacent provisions. The parties disagree on the meaning of the term in Art 53(1).

48. The learned Judge correctly interpreted the term “party” in Art 53(1): see ¶ 32 above. Leading commentaries on the ICSID Convention support that interpretation.³⁹ For example:

a. *Schreuer's Commentary on the ICSID Convention* states, at 1447: “Art 53 only addresses the award’s effect on the parties to the arbitration proceeding”.⁴⁰

b. Similarly, *The ICSID Convention, Regulations and Rules: A Practical Commentary* states, at [4.1299] and citing various ICSID cases, that:

“The obligation in Art 53(1), first sentence, is addressed to the disputing parties, i.e. the parties named on the award. The same applies in respect of the term ‘party’ in Art 53(1), second sentence. Therefore, the *ratione personae* scope of Art 53 is limited to ‘a party to an award’”

³⁹ The views of the most highly regarded jurists, including academic writers, are a subsidiary source of PIL: see [54]; Statute of the ICJ, Art 38(1)(d). Cf. ¶ 67.

⁴⁰ See also M Bungenberg et al ‘Recognition and Enforcement of ICSID Convention Awards’ in KF Gómez (ed), *The Award in International Investment Arbitration* (OUP 2024) at 469: “Art 53 of the ICSID Convention imposes the obligation to comply with an award only on the disputing parties” (original emphasis).

49. Blasket does not engage with any of this. Instead, at ¶ 55, it asserts that the learned Judge’s interpretation is “*contrary to authority*”, referring to *Micula (SC)* at [105]. This is hopeless. That passage supports Spain’s case.

a. Whilst no issue of assignment arose in that case, the Supreme Court interpreted Art 53(1) as meaning that “*a Contracting State that has obligations under the Convention in relation to an award owes those obligations to all other States party to the Convention as well as to any party to the award*”. Thus, the Supreme Court interpreted the word “*party*” in Art 53(1) as meaning “*any party to the award*”. Blasket quotes selectively from this passage at ¶ 55, omitting these key words.

b. In the same paragraph, the Supreme Court also stated that the respondent State’s obligation of compliance under Art 53(1) is also owed to all other Contracting Parties. Contrary to Blasket’s assertion, this in no way suggests that the award is binding on anyone other than the parties to it (including the other Contracting Parties).

c. Broader context

50. The learned Judge correctly analysed the use of the different relevant phrases in the Convention: see ¶ 32 above. There are four key points, all of which Blasket overlooks at ¶¶ 50–52.

51. *First*, the drafters commonly used the following short form phrases to refer specifically to a party or the parties to the dispute/arbitration proceeding: “*a party*”,⁴¹ “*the parties*”,⁴² “*either party*”,⁴³ “*each party*”,⁴⁴ “*other party*”,⁴⁵ and “*the party*”.⁴⁶ None of these provisions use a short form phrase to encompass any private third party (i.e., an entity who is not a party to the dispute/award or another Contracting Party).

52. Even leaving aside Arts 53–54, Blasket cannot show the contrary. Its attempt at ¶ 52.6 fails:

a. An assertion that Art 49 (dealing with rectification of an award once rendered) may encompass an assignee is wrong. No authority is cited. *Schreuer’s Commentary* states, at 1165, that “[t]he procedure for supplementation or rectification is contingent upon a request by a party to the case”. It makes no reference to assignees.

⁴¹ ICSID Convention, Arts 45, 46, 49, 54(2) (all in Chapter IV), as well as Art 56.

⁴² *Ibid*, Arts 36, 37, 38, 39, 42, 43, 44, 46, 47, 48, 49, 50(1), 53(1) (all in Chapter IV), as well as in Arts 25(1), 26, 28, 61(2). See also, in relation to conciliation proceedings specifically, Arts 33, 34(1)–(2).

⁴³ *Ibid*, Chapter IV, Arts 38, 47, 50(1), 51(1), 52(1), 52(6).

⁴⁴ *Ibid*, Chapter IV, Arts 37(2)(b), 53(1).

⁴⁵ *Ibid*, Chapter IV, Arts 36(1), 45, 49.

⁴⁶ *Ibid*, Chapter IV, Art 45(2).

- b. A further assertion that Arts 45–46 (dealing with party non-appearance and the raising of incidental claims) encompasses interveners is similarly unpersuasive.⁴⁷ Again, no authority is cited. Again, *Schreuer’s Commentary*, at 1027, understands Art 46 to refer to “*the parties to a dispute*”. It makes no reference to interveners. The ICSID Convention does not even contain provisions permitting intervention.⁴⁸
53. *Second*, by contrast, the long-form phrase party/parties “*to the dispute*” is used in only a small number of provisions.
- a. These provisions all concern the early pre-award stages of the arbitration (i.e., prior to the determination of the dispute and prior even to confirmation of the tribunal’s jurisdiction).⁴⁹
 - b. It is logical that this phrase was not used when referring to the parties to the arbitration in Sections 4-6 of Chapter IV. These provisions deal with the award and post-award stages of the arbitration (i.e., after the dispute has been resolved), including Arts 53–54 concerning “*recognition and enforcement of the award*”. The only exception was when referring to a new dispute between the parties to the arbitration which arises from the award itself: see Art 52(3) on annulment.⁵⁰
54. *Third*, the authors did not use other long-form phrases such as a party or parties “*to the proceeding*” or “*to the arbitration*”. Thus, one would not expect to see such a phrase in Arts 53–54. The only provision that uses such a phrase in connection with arbitration does so in order to specify that the reference is to “*a party to arbitration proceedings*”, as opposed to conciliation proceedings which are also referred to earlier in the same provision: see Art 57.⁵¹
55. *Fourth*, the drafters used express language to refer to anyone other than a party to the dispute/arbitration or a Contracting Party: see e.g. Art 67, referring to “*a party to the Statute of the International Court of Justice*”.

⁴⁷ Blasket’s suggestion that Arts 45–46 may apply to “*potential additional claimants not yet party to a dispute*” is not understood.

⁴⁸ Cf. e.g. Statute of the International Court of Justice, Arts 62–63.

⁴⁹ See ICSID Convention, Art 25(1) on jurisdiction, Arts 38–39 on constitution of the tribunal, Art 41(2) on objections to jurisdiction/competence.

⁵⁰ An equivalent long-form phrase is also used to refer to the parties to a dispute which has been submitted to conciliation proceedings (see Arts 32(2), 35) and disputes between Contracting States concerning the interpretation or application of the ICSID Convention (see the state-state dispute settlement provision in Art 64). The learned Judge correctly held that these provisions, which deal with matters distinct from ICSID arbitration, shed no light on the interpretation of Art 54(2): **[41]**.

⁵¹ In Art 35, after referring to “*the parties to the dispute*”, the drafters used the long-form phrases party “*to a conciliation proceeding*” and “*in the conciliation proceedings*”.

56. In sum, the words “*the parties*” or “*party*” are used throughout the ICSID Convention, including in Art 53(1), to refer specifically to the parties to the dispute/arbitration/award. Yet Blasket contends that the same terms are to be given a different, far broader, meaning in Arts 53–54.⁵²
57. Under Art 31(4) VCLT, the same terms are presumed to have the same meaning throughout the treaty⁵³ unless it is established by the party asserting a special meaning that the states parties intended for that term to be given that special meaning.⁵⁴ Blasket cannot show this. Indeed, at ¶ 52.7, it accepts that there is “*no special meaning*” of “*party*” in Art 54(2).
58. Given the contextual points referred to above, the learned Judge correctly placed weight on the absence of a clearly expressed provision in the ICSID Convention permitting assignment to and/or recognition and enforcement by anyone other than the parties to the dispute: [44].

d. No right to assign ICSID claims

59. The assignability of ICSID claims is of obvious relevance to the present issue of assignability. Both concern the assignability of treaty rights under the ICSID Convention. Blasket accepts, at ¶ 43, that an ICSID award is the crystallisation of underlying investment. The authority on which it relies held that an investment treaty claim could “*similarly be construed as an investment that had continued or been transformed from the original investment*”.⁵⁵ Yet, at ¶ 66.3, Blasket asserts that the assignability of ICSID claims and ICSID awards are “*conceptually distinct*” questions. This is wrong.⁵⁶
60. Blasket was refused permission to appeal on the ground that the learned Judge erred by failing to hold that ICSID claims are assignable. Moreover, it has reversed its position. The reason for this is tolerably clear. In the only two cases in which this issue has arisen, both the host States (whose position constitutes directly relevant state practice and *opinio juris*⁵⁷) and the ICSID tribunal have rejected the argument that investors have a right to assign ICSID claims.

⁵² Blasket does not argue that the learned Judge’s interpretation is contrary to the principle of effectiveness: see [50], [65] citing *ISL* at [76–77] (Phillips LJ).

⁵³ See e.g. *Adan* at 305 (Lord Lloyd).

⁵⁴ *R (Roma Rights Centre) v Immigration Officer at Prague Airport* [2004] UKHL 55, [2005] 2 AC 1 at [18] (Lord Bingham); *Land, Island and Maritime Frontier Dispute (El Salvador v Honduras: Nicaragua intervening)* [1992] ICJ Reports 351, 585.

⁵⁵ *Swissbourgh Diamond Mines (Pty) Limited & Ors v Kingdom of Lesotho* [2018] SGCA 81, [2019] 1 SLR 263 (“*Swissbourgh*”) at [171].

⁵⁶ The academic articles Blasket cites contain no consideration of its supposed conceptual distinction.

⁵⁷ These States were also “*specialty affected*”: see *R (Freedom and Justice Party) v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWCA Civ 1719, [2019] QB 1075 at [20], [82–83].

61. In *Neustar v Colombia*, the tribunal held that the assignment of an ICSID claim to a wholly-owned subsidiary was not “*valid and effective under [PIL] given the absence of the Respondent’s consent*”.⁵⁸ The tribunal agreed with Professor (later Judge) Crawford that “*BIT claims are essentially claims intuitu personae [by virtue of the person concerned] under international law, and this imposes limits to their assignability*”. It also recognised that “*the general practice is that a respondent state must agree to a different claimant being substituted by another entity*”.⁵⁹
62. In *Wintershall v Argentina* (relied on by Blasket before the learned Judge) the tribunal rejected the assignment of an ICSID claim to a subsidiary successor and the substitution of that entity as claimant.⁶⁰ It stated that an objection to substitution “*may be well taken – for lack of empowerment of a Tribunal to do so, absent consent*”. The subsidiary was joined, but only because the respondent State consented to this.⁶¹
63. These findings are consistent with other previous ICSID decisions.⁶² As the Judgment recognised, the non-assignability of ICSID claims has also received academic support [47]:

“[I]t would be surprising if States had intended to allow investors to freely transfer rights in an area that is still being perceived as particularly sensitive and closely linked to issues of sovereignty. In particular, the possibility of an assignment of treaty rights to a national of a non-signatory would seem to be an implausible assumption. But even if transfers were limited to an investor’s co-nationals, States would still lose control over who could assert treaty breaches and bring arbitral proceedings against them. In the absence of clear treaty language to such an effect it must be concluded that this could not have been the intention of the signatories.”

e. Blasket’s reliance on object and purpose and “evolutionary interpretation”

64. Blasket’s reliance on the object and purpose of the ICSID Convention is misconceived for two reasons.
 - a. Blasket’s position is premised on a misunderstanding of Art 31(1) VCLT. It wrongly asserts, at ¶ 60, that Art 54(2) “*must be interpreted consistently with [the] object and purpose*” of the

⁵⁸ *Neustar, Inc and Anor v Republic of Colombia*, ICSID Case No ARB/20/7, Award, 20 September 2024 at [518].

⁵⁹ *Ibid*, at [502–503], [507]. See also at [446].

⁶⁰ *Wintershall Aktiengesellschaft v Argentine Republic*, ICSID Case No. ARB/04/14, Award, 8 December 2008.

⁶¹ *Ibid* at [59–60].

⁶² See *Mihaly International Corporation v Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2, Award, 15 March 2022 at [24]; *Daimler Financial Services AG v Argentine Republic*, ICSID Case No. ARB/05/1, Award, 22 August 2012 at [144–145]. See also *Westmoreland Mining Holdings LLC v Government of Canada*, ICSID Case No UNCT/20/3, Final Award, 31 January 2022 at [85], [88–92], [208], [210].

ICSID Convention. That is wrong. The written text must be interpreted in its context and “in light of the object and purpose”.⁶³ This does not mean that the interpretation which would best achieve a treaty’s object must be adopted.⁶⁴ Nor is it “*a warrant to give effect to what they might, or in an ideal world would, have agreed*”.⁶⁵

- b. In any event, the ICSID Convention’s broadly framed object and purpose sheds no light on the specific question of whether the Convention permits the assignment of ICSID awards and related treaty rights. There is no indication in the preamble (to which Blasket does not refer) that the drafters intended to create or facilitate a secondary market in ICSID awards.⁶⁶

65. Blasket’s argument that the term “*party*” in Art 54(2) is to be given an “*evolutionary interpretation*” is also misconceived. An evolutionary interpretation may be appropriate when the words used are general or vague and refer to concepts which are fluid and may naturally be expected to alter over time.⁶⁷

66. As explained, read in context, the word “*party*” in Art 54(2) is not general or vague. Like the same term in Art 53(1), it refers specifically to a party to the award. Further, there is nothing to suggest that the drafters of the ICSID Convention regarded the term “*party*” in Art 54(2) as fluid and expected to change over time.

67. Nor is there any reason to think that the meaning of the term has in fact changed. Blasket refers to three “*prevailing circumstances*” at ¶ 61. Each is pure assertion.

68. First, Blasket asserts that “*it has become common for award creditors to monetise their award by selling or assigning their rights under it to third parties*”.⁶⁸ As to this:

- a. The sale of the monetary value of ICSID awards is irrelevant: see ¶ 10 above. Further, Blasket did not adduce any evidence on the assignment of ICSID awards in practice.

⁶³ See *Czech Republic v European Media Ventures SA* [2007] EWHC 2851 (Comm), [2007] 2 CLC 908 at [16], [22–23] (Simon J).

⁶⁴ *R v Reeves-Taylor* [2019] UKSC 51, [2021] AC 349 at [26] (Lord Lloyd-Jones); *HM Treasury v Global Feedback Limited* [2025] EWCA Civ 624, [2025] 4 All ER 187 at [90] (Holgate LJ).

⁶⁵ *R (Eritrea) v Secretary of State* [2012] UKSC 12, [2012] 2 AC 135 at [30–31] (Lord Hope).

⁶⁶ Blasket relies solely on the Report of the Executive Directors. This, too, does not assist its case.

⁶⁷ *Basfar v Wong* [2022] UKSC 20, [2023] AC 33 at [64] (Lord Leggatt and Lord Briggs); *Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua)* [2009] ICJ Rep 213 at [66].

⁶⁸ This assertion is premised on the unevicenced proposition that a “*significant proportion of ICISD awards [...] go[] unpaid by states*”. Even if this were correct, the relevance is not explained. Cf. also N Strain et al, ‘Compliance politics and international investment disputes: a new dataset’ (2024) 27 *Journal of International Economic Law* 70 at 88, figs. 8–9.

- b. The academic article Blasket cites does not concern ICSID awards specifically, much less their assignability. It contains a passing suggestion that investors “*may also seek to sell or assign*” the right to compensation. No view is expressed as to whether there is a right to assign ICSID awards. The ICSID Background Paper likewise contains no data and merely cites to the first document, whilst referring to *Blue Ridge* without expressing a view on whether that case was correctly decided.

69. *Second*, Blasket asserts that “*many [...] decisions of national courts and international tribunals [...] refer to an assignment having taken place (generally without questioning its legality)*”. Whereas there are now hundreds of ICSID awards, Blasket has evidently found just two cases. This hardly suggests that the assignment of ICSID awards is common practice. Moreover:

- a. One of these cases is irrelevant because it concerned the assignment of a Dutch-seated non-ICSID award under a contract (i.e. an ordinary contractual arbitration that happened to involve a state).⁶⁹
- b. The second is a 2024 decision of the US District Court for the District of Colombia in which it was recorded that Argentina (which had already lost the US law argument in *Blue Ridge*) did not oppose an application for summary judgment to enforce an ICSID award filed by an assignee. This adds nothing. The case did not consider the question of assignability.

70. *Third*, Blasket relies on the first instance decisions of two foreign courts. In both cases, a foreign State was arguing that ICSID awards are not assignable without its consent. Whether these courts adopted the correct interpretation of the ICSID Convention is a matter for this Court.

- a. The decision in *Blue Ridge* “*focuses exclusively on United States law relating to the interpretation of statutes*” and contains no mention of the VCLT: [64], [66]. The US court also did not consider the meaning of the term “*party*” in Art 53(1). The reasoning focused on a canon of US statutory interpretation (i.e., a strict need to avoid surplusage) that conflicts with Art 31 VCLT: [50], [65].
- b. As to the FCA Proceedings, Stewart J:
 - i. Did not consider whether assignment was permitted under the governing law but rather whether PIL “*prohibit[s] the assignment of an [ICSID] award*”: [310].

⁶⁹ *Balkan Energy Limited, et al v Ghana (Memorandum Opinion & Order)*, Case No. 17-cv-00584 (APM), dated 22 March 2018.

- ii. Correctly found that the rights purportedly assigned arose from the ECT and ICSID Convention. However, he erred by concluding that the ECT is irrelevant and by failing to consider the effect of Art 15 ECT: [304], [306], [311].
- iii. Relied on the incorrect interpretation of Art 54(2) in *Blue Ridge*.⁷⁰ He overlooked the contextual arguments set out at ¶¶ 47–58 above and, given the many other issues in that case, did not have the benefit of the submissions at ¶¶ 59–63 above and 71–87 below.

f. PIL does not recognise, or accord legal effects to, the assignment of treaty rights between States

71. The learned Judge rightly accepted as correct (and “*consistent with*” the correct interpretation of the ICSID Convention) the following analysis of Lord McNair (a former President of the ICJ and the European Court of Human Rights), writing shortly before the conclusion of the ICSID Convention ([55]–[56], [61]):⁷¹

“We are not aware of any existing rule of international law permitting a State to assign to C rights which it holds under a treaty made with B, and can find no basis in principle for the validity of such an assignment. States differ so much in the manner in which they conduct their external relations and enforce their rights that in our view the debtor State [...] is entitled to refuse to recognize a change of creditor to which it has not assented [...]. The analogy of assignments permitted by English law is attractive but in our submission does not apply. [...] [It follows that] rights and duties arising under treaties are not transferrable to other States except with the consent of all States concerned, in fact, a novation.”⁷² (emphasis added)

72. Before the learned Judge, Blasket did not dispute that analysis. Indeed, it accepted that “[o]f course one can see immediately the difficulties”, including “*diplomatic issues*”, that would arise if assignment without the state’s consent were permitted/recognised.⁷³ This appeal does not seek to challenge the learned Judge’s findings in this respect.
73. In any event, the learned Judge was correct. After the conclusion of the ICSID Convention, in 1974, the International Law Commission (“ILC”) explained (in a passage referred to and endorsed by States) that:

“The [1969] Vienna Convention contains no provisions regarding the assignment either of treaty rights or of treaty obligations. The reason is that the institution of ‘assignment’ found in some national systems of law by which, under certain conditions, contract rights may be transferred without the consent of the other party to the contract does not appear to be an

⁷⁰ [69]–[70] citing FCA Proceedings at [307], [309].

⁷¹ See generally *Basfar v Wong* [2022] UKSC 20, [2023] AC 33 at [17], [67] (Lord Leggatt & Lord Briggs; *Revenue and Customs Commissioners v Anson* [2015] UKSC 44, [2015] 4 All ER 288 at [58–60] (Lord Reed).

⁷² A McNair, *The Law of Treaties* (Clarendon Press 1961) at 340–341.

⁷³ Transcript, Day 1 at 109, lines 14–22 (Harris KC) [SB/5/80].

institution recognized in international law. In international law the rule seems clear that an agreement by a party to a treaty to assign either its obligations or its rights under a treaty cannot bind any other party to the treaty without the latter's consent."⁷⁴

g. Basket must show the specific grant of a right to assign ICSID/ECT awards

74. It is a fundamental principle of PIL that any grant of treaty rights to individuals is dependent on, and strictly limited to the extent of, the specific consent of the states parties. Professor (later Judge) Cassese explained that "*states are still the overlords*" because they are the ultimate source of any rights and "*individuals' international procedural rights [are] limited on many scores*".⁷⁵ Another commentator explains that for individuals:

"[T]he exercise of rights is dependent on a pre-existing grant (which like any treaty is revocable in certain circumstances) [...] states have remained central and in control of the extent to which individuals may engage in the international legal system: the extent to which individuals are given rights, obligations and capacities is dependent on a specific grant from the primary actors in the international legal system, dominated by states"⁷⁶

75. Under the ICSID Convention and the ECT, Contracting Parties have specifically granted to qualifying investors a series of valuable treaty rights, including the rights with respect to an award which have purportedly been assigned. Basket must establish that the Contracting Parties went even further and specifically granted a right to assign all treaty rights arising under the Award, including the right to payment.⁷⁷

76. A commentary addressing the assignment of financial claims under investment treaties explains:

"Given that other than by virtue of customary international law a State or other international person cannot incur obligations towards a party without its consent, it would be difficult to accept the proposition that a creditor under a [...] award may assign its judgement/award benefits to a third party who would be able to exercise the same enforcement rights as the assignor. These benefits hail from international law and thus cannot be treated as if they have been emancipated from the very legal order that gives rights to them and that regulates

⁷⁴ ILC *Yearbook* 1974/II(1) at 184, commentary ¶ (6); UN Conference on Succession of States in Respect of Treaties, First session, Vienna, 4 April–6 May 1977, Official Records, Vol I, at 91, [23], 95 [58], 97 [1]. See also A Proelss, 'Art 36—Treaties providing for rights of third states', in O Dörr & K Schmalenbach (eds), *The Vienna Convention on the Law of Treaties: A Commentary* (2nd edn, Springer 2018), 711 at [16].

⁷⁵ A Cassese, *International Law*, (2nd ed, OUP 2005) at 149. This passage is retained in P Gaeta et al, *Cassese's International Law* (3rd ed, OUP 2020) at 164.

⁷⁶ K Parlett, *The Individual in the International Legal System* (CUP 2011) at 353. See also, e.g., G Hafner, 'The Emancipation of the Individual from the State under International Law' (2013) 358 *Hague Recueil* 263 at 437–438: "[Individuals] *derive their status only from the will of the States [...] and cannot influence it.* [...] [Their] *standing under international law [...] is dependent on the explicit consent of the State to it*".

⁷⁷ This is a further reason why the learned Judge was correct to characterise the key issue as being whether the assignment is permitted: see ¶ 31 above.

their validity as well as their extinction. Hence, no conclusion can be drawn one way or the other the fact that under domestic law award/judgment creditors may assign their benefits. Under international law, it remains a truth that no debtor-creditor relations may be imposed on [a State] unless a governing international legal instrument so permits.⁷⁸

77. As the learned Judge recognised, this commentary is consistent with the correct interpretation of the ICSID Convention (as supported by leading commentaries): [59].
78. Implicitly recognising this, at ¶ 7.4.1, Blasket advances the new argument that the ECT “*expressly guarantee[s] the Claimant’s right to assign an ICSID award rendered under it*”. Blasket is wrong. No such specific grant exists in the ICSID Convention or in the ECT.
79. Because it cannot show a specific grant, at ¶¶ 7.1 and 37, Blasket seeks to fall back on the so-called *Lotus* principle in PIL. There are two steps to this new argument.
80. As a first step, Blasket asserts that, on the question of the assignability of ICSID/ECT awards and the treaty rights, there is “*a lacuna in international law*”. The argument would be available only if Blasket establishes that the ICSID Convention, the ECT and general PIL are entirely silent on this question. This is wrong. There is no lacuna. Spain has shown that:
- a. The purported assignment is not permitted under the ECT given Art 15 (see ¶¶ 37–40 above) or the ICSID Convention (see ¶¶ 41–70 above, 86–87 below).
 - b. PIL does not permit/recognise the free assignment of treaty rights, including debts owed by States to States and private creditors (see ¶¶ 71–73 above, 83–85 below). Further, individuals enjoy only those treaty rights that are specifically granted to them by States (see ¶¶ 74–75 above).
81. Contrary to Blasket’s assertion at ¶ 7.2, it is not necessary for Spain to establish the existence of a positive rule of international law specifically prohibiting the free assignment by juridical persons of treaty rights in relation to arbitration awards against States.
82. The second step in the argument is an assertion that any lacuna “*must be interpreted permissively*”. The argument is that, because PIL does not prohibit the assignment, PIL necessarily permits the assignment. The argument fails for two main reasons.
- a. By its terms, the *Lotus* principle concerns the rights of sovereign States only, not individuals.
 - b. Even if the *Lotus* principle applied, this would not mean that the Claimants, as juridical persons, have a right to assign. As Blasket recognises, at ¶ 7.1, the only conclusion would

⁷⁸ RSJ Martha, *The Financial Obligation in International Law* (OUP 2015) at 557.

be that “sovereign States generally have broad discretion to act in the manner they see fit” in this regard. Thus, the absence of prohibition on assignment would mean only that States may decide whether to grant investors a right to assign ICSID/ECT awards. Further, even where a State’s act is not prohibited (in the sense that it does not breach PIL), it does not follow that PIL accords legal effect to that act (e.g. Kosovo’s unilateral declaration of independence): cf. ¶ 37.

h. No reason why assignability of an ICSID/ECT award should be treated differently

83. The learned Judge was, with great respect, mistaken to suggest that the non-recognition of the assignability of treaty rights under PIL is “*confined to*” assignment between sovereign States and does not extend to the assignment of treaty rights of juridical persons in relation to arbitration awards against States arising “*in the context of a commercial relationship*”: [50].⁷⁹
84. The ILC has explained that the non-recognition of the assignment of treaty rights also extends to the assignment of debts owed by States, whether to States or to private creditors. This is because:
 - a. Under PIL, *the concept of debt falls within the category of personal obligations*”.⁸⁰
 - b. There are “*considerations relating to creditor third states [that] are equally valid in cases where the creditors are not States*”. Such considerations include that:⁸¹

“[T]he creditor third State might have a political or material interest in refusing to agree to the substitution of the debtor or to assignment of the debt. Moreover, under most national systems of law, the assignment of debts is, of course, generally impossible. The creditor State has a subjective right, which involves a large measure of *intuitus personae*.” (emphasis added)
 - c. States accepted the ILC’s position and confirmed that non-recognition of a state’s assignment of debt “*safeguard[s] all possible creditors [...] under international law or private law*”.⁸²
 - d. No significance was attached to the context in which a debt owed to a private creditor arose.
85. It follows that PIL does not permit private creditors to assign debts owed by States under treaties. It cannot be correct that general PIL affords individuals greater assignment rights than States.

i. The interpretation is confirmed by the *travaux préparatoires*

⁷⁹ In any event, the Award arose from Spain’s exercise of sovereign regulatory authority over investments in its territory. See more generally e.g. *Swissbourgh* at [102], [143].

⁸⁰ ILC *Yearbook* 1981/II/(2) at 72, commentary [3].

⁸¹ *Ibid* at 83, commentary [9–10].

⁸² United Nations Conference on Succession of States in respect of State Property, Archives and Debts, Vienna, 1 March–8 April 1983, Official Records, Vol. I, A/CONF.117/16 at 243.

86. The learned Judge’s interpretation is confirmed by the ICSID Convention’s publicly available *travaux préparatoires*.⁸³ Nothing in the *travaux* shows that the authors foresaw – let alone intended – that investors were permitted to assign ICSID claims/awards to private third parties. There was no discussion of award assignment at all. Only one specific form of assignment of ICSID claims was envisaged, discussed and ultimately rejected during the negotiations.
87. It was proposed that the State subrogee under an insurance/guarantee scheme, might be substituted as claimant. However, substitution would have been available only where the host State had (a) already separately agreed to recognise subrogation, and (b) given its specific consent to substitution.⁸⁴ Thus, the proposal was premised on the non-existence of any more general right to assign under PIL (consistent with the non-recognition of the assignment of treaty rights explained by the ILC at around the same time). Following extensive debate and sustained opposition, even this very carefully limited draft provision on substitution was abandoned. Had the drafters *nevertheless* intended to grant investors a right to assign ICSID awards, thereby also departing from the non-recognition of the assignment of treaty rights under general PIL, the negotiating record can reasonably be expected to explain or acknowledge this.⁸⁵ It does not.
- (3) As the governing law, PIL neither permits nor recognises the purported assignment**
88. The Judgment should be upheld for an additional reason. The governing law is PIL: see ¶¶ 14–18 above. As already explained, PIL neither permits the purported assignment nor recognises it as having legal effects: see ¶¶ 71–73, 83–85 above. Additionally, PIL conditions the conferral of treaty rights on individuals on a specific grant by States (see ¶¶ 74–75 above). There has been no specific grant of a right to assign ICSID/ECT awards and related treaty rights.

GROUND 2: S.2(1) AA 1966 CREATES NO NEW, ASSIGNABLE ENGLISH LAW RIGHT

89. Ground 2 challenges the learned Judge’s conclusion that registration of ICSID awards under AA 1966 does not create a new assignable statutory right pursuant to s.2(1) AA 1966. Ground 2 should be dismissed: **[78]**.
90. Section 2(1) AA 1996 (“*Effect of registration*”) provides:

⁸³ The *travaux* was not before the Judge: **[44]**.

⁸⁴ *History of the ICSID Convention*, vol II-2 at 937 (“*The provision was extensively redrafted in order to make entirely clear that if a State wished to appear before the Centre as subrogee of its national it would have to obtain the consent of the host State*”), 959 (“*Article 26(2) permits the substitution of the investor by his State in the proceeding, but only with the consent of the host State*”), 980.

⁸⁵ See e.g. *Western Rivers Arbitration* at [735].

“Subject to the provisions of this Act, an award registered under section 1 above shall as respect the pecuniary obligations which it imposes, be of the same force and effect for the purposes of execution as if it had been a judgment of the High Court given when the award was rendered pursuant to the [ICSID] Convention and entered on the date of registration under this Act, and, so far as relates to such pecuniary obligations – (a) proceedings may be taken on the award, (b) the sum for which the award is registered shall carry interest, (c) the High Court shall have the same control over the execution of the award as if the award had been such a judgment of the High Court.”

91. As the Judge held at [76], “*the guiding principle*” is found in the careful analysis of s.2(1) AA 1966 in *Micula (CA)* at [257], [259] (Leggatt LJ) and at [105], [117] (Arden LJ). Arden LJ explained, at [117], that “*Section 2(1)(c) is making it clear that the High Court controls its process applying its rules in the form in which they stood at the date of registration. It does not go further and make any change of substantive law*”. Section 2(1) is a mere “*deeming provision*”, pursuant to which “*the court may only make the assumptions which are made necessary by the statutory hypothesis and no more*”: [118–119]. Thus, “[a]ll that is required and authorised [...] is to assume that the [hypothetical] judgment was entered on a particular date”: [120].
92. At ¶¶ 22–23, Blasket disregards Arden LJ’s analysis. It does not engage with the nature and limits of s.2(1) AA 1966 as a deeming provision. Further, no authority is cited for the proposition that s.2(1) creates a new substantive English law right. Likewise, the assertion that “*s.2(1) limits the Court’s power only insofar as those powers would conflict with the object and purpose of the ICSID Convention*” is unsupported.
93. As the learned Judge also held, the interpretation of s.2(1) in *Micula (CA)* “*remained intact [...] because [Micula (SC) at [84]] did not overturn the analysis*”: [77]. Whilst the issue in *Micula (CA)* “*was different*”, the interpretation of s.2(1) applies. Blasket ignores this and, at ¶ 23, conflates the Court’s interpretation of s.2(1) with its analysis of the separate question whether it was consistent with the ICSID Convention’s objectives to grant a stay.⁸⁶
94. Blasket suggests at ¶ 23.6 that, for the “*guiding principle*”, the Judge relied on *ISL* at [74]. That is wrong. The Judge relied on this part of *ISL* for the interpretation of Art 54 only: see [76].
95. The learned Judge correctly held that s.2(1) AA 1966 cannot create new substantive rights where those rights do not already exist pursuant to, and would contradict the terms of, the ICSID Convention. This follows naturally from the analysis of Leggatt and Arden LJ in *Micula (CA)* (as effectively endorsed in *Micula (SC)*) and it is plainly correct.

⁸⁶ See *Micula (CA)* at [125] (Arden LJ), [259–261] (Leggatt LJ).

96. Contrary to Blasket’s assertion at ¶ 23, the learned Judge did not misunderstand that analysis.
- a. First, Blasket accepts at ¶ 19 that s.2(1) AA 1966 gives effect to Art 54 of the ICSID Convention.⁸⁷ Thus, s.2(1) must be interpreted, so far as possible, consistently with the ICSID Convention.⁸⁸ As explained, the Judge correctly held that the ICSID Convention does not permit the assignment of ICSID awards and related rights.
 - b. Second, the Judge correctly relied on Leggatt LJ’s finding that “[p]roperly interpreted, [in s.2(1)] *the analogy with a judgment of the High Court is limited to defining the force and effect of a registered award for the purpose of execution*”: [76]. Blasket quotes selectively from s.2(1) omitting the key words “*for the purposes of execution*” at ¶ 22.1. But at ¶ 23.2, it appears to agree with Leggatt LJ’s finding. That finding does not imply, much less require, the creation of new English law rights.
 - c. Third, assignment of the pecuniary obligations imposed by a registered ICSID award is not a measure of, or necessary for, “*execution*” under s.2(1) and is outside s.2(1)(a)–(c). Because the statutory fiction must be carried no further than necessary (see ¶ 92 above), s.2(1) does not deem the pecuniary obligations assignable by analogy with an English money judgment.
97. Blasket suggests, at ¶ 24, that s.2(1) should be interpreted “*consistent[ly] with the approach in English law to commercial (non-ICSID arbitration awards)*”. However, this is neither necessary nor desirable. There is a “*substantive reason to depart from that approach*”. An ICSID/ECT award is a pure creature of PIL, and assignability is governed by PIL alone: see ¶¶ 20–21 above. AA 1966 does not include language equivalent to s.58 of the Arbitration Act 1996.
98. Blasket’s further (new) assertion at ¶ 24.3 that, rejecting its interpretation would risk putting the UK in “*breach of [its] obligations under AIP1*” adds nothing. It assumes the existence of a right to assign under the governing law. None of the cases cited concern ICSID/ECT awards.
99. At ¶ 28, Blasket also criticises the learned Judge for not “*engag[ing] with*” Stewart J’s interpretation of s.35(4) of the International Arbitration Act 1974 (Cth) in the FCA Proceedings, and not “*explain[ing] on what basis he considered it inapposite*”. This is a non-point.
- a. Contrary to Blasket’s assertion, s.35(4) (which Blasket does not quote in full) is unlike s.2(1). Section 35(4) is not constrained by the words “*for the purposes of execution*” – a critical limitation which was at issue and interpreted in *Micula (CA)*. It states: “[a]n award may be

⁸⁷ *Ibid* at [106], [116] (Arden LJ), [257] (Leggatt LJ).

⁸⁸ *Ibid* at [257] (Leggatt LJ), [113] (Arden LJ).

enforced in the Federal Court of Australia with the leave of that court as if the award were a judgment or order of that court”.

- b. Thus, the Australian Judgment was not “*analogous to the English law context*”. Stewart J interpreted a differently worded provision in foreign legislation and did not refer to the careful analysis of s.2(1) in *Micula (CA)* – which analysis was binding on the learned Judge. There was no need for the learned Judge to engage with such reasoning.

- 100. Finally, at ¶ 29, Blasket suggests that ss.1–2 AA 1966 should be interpreted “*consistent[ly] with the approach in English law to the enforcement of foreign judgments*” under different legislation that is similarly worded. This is an irrelevance. The other legislation was not adopted to give effect to Art 54 of the ICSID Convention. It need not be interpreted consistently with the ICSID Convention. It is also not the subject of the analysis of s.2(1) in *Micula CA*.
- 101. In any event, even if the s.2(1) AA 1966 does create new substantive rights which are, in principle, capable of assignment under English law, the purported assignment is still not permitted in the present case. There are two separate reasons for this.
- 102. First, any arbitration agreement is subject to Art 15 ECT (see ¶¶ 37–38 above), as well as the non-recognition of the free assignment of treaty rights under PIL (see ¶¶ 71–73, 83–85 above).
- 103. Second, the assignment is precluded because the character of the ICSID/ECT award and related treaty rights is personal. As reiterated in *Don King* at 319D (Lightman J):

“Unless the contract expressly or impliedly otherwise provides, the character of an obligation precludes assignment [...] if the identity of the obligee is material to the obligor [...] [T]he effect of such an assignment can alter the substance of the obligation”
- 104. In the present case, to permit free assignment of an ICSID/ECT award and related treaty rights would be to alter the substance of the ECT obligations undertaken by Spain because:
 - a. The assignment would transform Spain’s reciprocal ECT obligations into obligations owed to a national of third State, who is not otherwise entitled to any benefits under the ECT.
 - b. Further, allowing free assignment by ECT/ICSID award creditors may also give rise to real diplomatic and other material problems for a respondent State: see ¶ 11 above.

SEAN AUGHEY

CAMERON MILES

saughey@essexcourt.net

cmiles@3vb.com