



**FIRST ANNUAL
FOREIGN DIRECT INVESTMENT INTERNATIONAL
MOOT COMPETITION (FDI MOOT)**

PROBLEM

Boston, Massachusetts, USA

1-2 November 2008

organized by:

The Center for International Legal Studies, Salzburg, Austria

Suffolk University Law School, Boston, Massachusetts

Pepperdine University Law School, Malibu, California

Centre for Energy, Petroleum and Mineral Law, University of Dundee, Dundee, Scotland

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Introduction to the Problem

The FDI Moot Competition Problem is framed by:

1. an abstract from the Claimant’s request for arbitration;
2. an abstract from the Respondent’s letter reply to that request;
3. a table of stipulated facts;
4. the minutes of the first session of the arbitral tribunal; and
5. two investment treaties.

The abstract from the Claimant’s request is the type of information that *might* be included in a request and sets out - in broad terms - the Claimant’s position. Other information that *must* be included in a request for ICSID arbitration is not reproduced here.

A reply by the prospective Respondent to the request for arbitration is not contemplated by the ICSID Institution Rules before the request is registered (or registration is refused), but we are utilising this device to set out - again, in broad terms – the Respondent’s position. Of course, for our purposes, the Secretary General has not deemed the request *manifestly* outside the jurisdiction of the Centre and has registered it.

The table of stipulated facts is also only a device necessary for a competition such as the FDI Moot. The “evidence” set out there is exhaustive and conclusive for the purposes of the competition. Teams may seek clarifications (see Schedule on www.fdimoot.org); the organisers may not answer every query or may answer several similar queries in aggregate. All responses will be posted on the website according to the Schedule.

The minutes seek to give a somewhat realistic look at how ICSID arbitration proceedings would be organised in a case like the present one. For the purposes of the FDI Moot competition, much will not be relevant; in a real arbitration, additional organisational and procedural issues might well be regulated in the minutes of the first session. Pay particular attention to the explanations in footnotes. The rules of the competition, the competition schedule, and the instructions of the organisers take precedence over the minutes.

The two bilateral investment treaties are actual treaties taken from the UNCTAD database. The names of the States and the dates have been changed, and in the Flatland-Calpurnia BIT the waiting period in Article 7 has been shortened to two months and Article 4 on Management, Directors and Entry of Personnel (from the 1999 Canada-El Salvador BIT) has replaced a second (!!!) provision on expropriation (in addition to Article 5), but otherwise all the odd language and typos are to be found in the originals’ authentic English language texts!

Abstract from Claimant’s Request for Arbitration

5. ... the jurisdiction of this Arbitral Tribunal is established according to the bilateral investment treaties between Calpurnia and Gaul and between

Calpurnia and Flatland. Respondent Calpurnia is a Contracting State of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) as are the Federated States of Gaul, where Claimant is incorporated and has its headquarters.

6. Respondent has

- discriminated against the Claimant,
- unlawfully interfered in the Claimant's investment,
- obstructed the transfer of returns from the Claimant's investment, and
- failed to provide the Claimant and its investment full protection and security

contrary to the treaties referred to above and international law, and through these acts and omissions has expropriated Claimant's investment.

7. Claimant, Vanguard International (Vanguard), with its headquarters in Nova Parigi, the capital city of Gaul, is a leading mobile telecommunications company with GSM operations in seven emerging markets in Latin America, the Middle East, Africa and South Asia, having a total population under license of approximately 360 million.
8. In early 1997, Claimant participated in the establishment of a joint venture company, VanCal, incorporated and with its headquarters in San Inocente de Irkoutsk, the capital of Calpurnia. VanCal provides GSM/UMTS (3GPP) services in Calpurnia under the "VANGUARD INTERNATIONAL" trademark.
9. Claimant initially owned a 50% equity interest in VanCal. By separate agreements, it provided technical assistance and trademark licensing. The equity interest held by Claimant varied subsequently, rising at one point to 86%, but then declining as the result of a number of share sales. At the end of 2004, Claimant held 30% directly; an additional 1% registered in the name of Francesca Pescara was held in trust for the Claimant.
10. The State Fund for Commerce and Development in Calpurnia (SFCDC) owns 30% of VanCal's stock directly. The SFCDC is an entity 100% owned by the State of Calpurnia. The SFCDC holds on deposit and votes a further 22% of VanCal stock registered in the names of several hundred individual shareholders. Other Calpurnian nationals directly hold the remaining 17% of VanCal's stock.
11. Between 1997 and 2004, Claimant played a major role in the management of VanCal, having provided management skills and personnel, including participation on the board of directors.
12. In November 2003, the Conservative Conscience of Calpurnia (CCC) won an absolute majority in both chambers of the Calpurnian Parliament. The CCC's agenda advocates a "return to the traditional Calpurnian values of hard work, family, modesty, thrift and self-sufficiency". The ruling party's rhetoric is markedly more hostile than its predecessor's towards liberal, individualist, consumption- and leisure-oriented societies: Calpurnia's diplomatic relations with several States that the CCC characterizes in those terms, including Gaul, have deteriorated. This deterioration has been marked by mutual, hitherto unsubstantiated allegations of political and industrial espionage and destabilization.
13. The Claimant contends that starting in late 2003, SFCDC implemented a series of decisions that effectively deprived the Claimant of the use and benefit of its 31% interest in VanCal, in violation of general international law and treaty obligations incumbent on the Respondent, and amounting to an expropriation without compensation.
14. In particular, although VanCal declared cash dividends in 2004, 2005, 2006 and 2007, in each case based on profits earned in the prior year, and paid those dividends to Calpurnian stockholders, it refused to pay them to

Claimant pursuant to a March 2005 decision by the VanCal board of directors not to pay any money for any reason to foreign shareholders.

15. In November 2005, government representatives ousted Ms. Pescara, one of Claimant's two representatives, from the VanCal board of directors. At the same time, by improperly rejecting the two shareholder proxies held by Mr. Rindler, on behalf of Claimant, Calpurnian government representatives also prevented Claimant from electing a replacement to Ms. Pescara, thus depriving Claimant of the representation to which the cumulative voting provision of the Calpurnian Commercial Code entitled it.
16. As of 1 December 2005, Dr. Jonathan Swift, the government-employed chairman of VanCal's board of directors, instructed Mr. Korchnoi, Ms. Pescara's replacement as managing director, to cease sending accounts, financial statements or other information to Gaulois citizens or translating such material into Gaulois as had been the practice.
17. Moreover, the climate of hostility toward Gaulois nationals in Calpurnia forced its expatriate personnel, including Ms. Pescara, VanCal's managing director until November 2004, and Mr. Kolowenko, the chief technical officer, to leave the country at the end of 2003. The prevailing circumstances prevented Mr. Kolowenko's return altogether, while Ms. Pescara, who visited Calpurnia three times during 2004, found it impossible safely to return there after 1 November 2004. The forced absence of Claimant's personnel severely hampered its ability to preserve the value of its investment and amounted to a failure by the Respondent to afford the Claimant's investment full protection and security as required by Article 2(2) of the Gaul-Calpurnia bilateral investment treaty (see Schedule 2). More particularly
 - There were three police searches of the private homes of Ms. Pescara and Mr. Kolowenko, on 7 December 2003 and on 3 June 2004 and 15 July 2004, prompted by "anonymous tips" that VanCal was engaged in illegal data collection for Gaulois Security Services. No charges were ever filed against Ms. Pescara, Mr. Kolowenko, VanCal or Vanguard. Vanguard's applications to have the December 2003, April 2004 and July 2004 searches declared unlawful and seek compensation were dismissed by the Calpurnian Constitutional Court.
 - The press releases issued by the Calpurnian Security Directorate in connection with the searches agitated public sentiment against Vanguard, Ms. Pescara and Mr. Kolowenko.
 - Ms. Pescara's home was picketed on 1-2 January, 15-17 March, 5-7 June, 17-19 July, and 25-28 October 2004. This picketing was led, *inter alia*, by members of the CCC Women's League brandishing signs reading "A woman's place is in the home - go home!" or "Spy in your own backyard!" The police declined Ms. Pescara's demands to remove the protesters.
18. In September 2004, Ms. Pescara's application for renewal of a "three-year business visa" was denied. She was advised orally that when her current business visa expired, it would suffice for her enter the country under Calpurnia's visa waiver program for tourists.
19. Finally, VanCal's failure to pay license fees for the use of the VANGUARD INTERNATIONAL trade mark and other sums due under the technical assistance agreement together with the acts already described rose to the level of expropriation on 27 May 2005, the date on which Mr. Korchnoi sent an email to the Claimant informing it of the decision of the board of directors to make no payments to foreign shareholders.
20. ...

Abstract from Respondent's Reply to Request for Arbitration

5. ... an ICSID Arbitral Tribunal would manifestly lack jurisdiction for the following reasons:

- The Claimant has not pursued amicable settlement for the 18 months as required by Article 11(2) of the Gaul-Calpurnia BIT.
 - The Claimant has pursued its claims before the domestic courts of Calpurnia and according to Article 11 (3) of the Gaul-Calpurnia BIT, the Claimant may therefore no longer elect an arbitral remedy.
 - Article 4 of the Gaul-Calpurnia BIT does not extend to dispute resolution mechanisms, such as those referred to in the Calpurnia-Flatland BIT Article 7.
 - Even if Article 7 of the Calpurnia-Flatland BIT were applicable, Flatland has not been a Contracting State at the times relevant for the jurisdiction of this Arbitral Tribunal.¹
6. The Claimant's investment has not been expropriated, nor has the Respondent failed to treat the Claimant's investment in accordance with international law.
 7. VanCal was not government controlled, and SF CDC did not exercise its rights as shareholder or depositary as a means to implement government policy.
 8. At least one-half of the VanCal shares which the Claimant counts as the SF CDC's are in fact registered in the names of individual farmers and workers. While the SF CDC votes these VanCal shares, it does so only pursuant to a purchase/agency agreement which places ownership in the hands of the individuals, but leaves voting rights in the hands of the SF CDC while the purchase price of the shares remains unpaid.
 9. In the years ending December 2004 and December 2005, Calpurnian firms, banks and companies held 41%, foreign companies held 30% and natural persons, including farmers and workers, held 29% of VanCal's issued shares.
 10. There has been no interference with the rights of Claimant as a shareholder, or any expropriation of its interest. A finding of expropriation would require a specific decree or legislative act, neither of which is present.
 11. Majority share ownership by individual government entities does not essentially alter the private character of the company and must be distinguished from expropriation. VanCal remains an independent private corporation and the current dispute arises solely from minority shareholders' dissatisfaction with the majority shareholders' exercise of their legitimate management rights. Such grievances should be brought before the courts of Calpurnia.
 12. More particularly, Claimant's personnel were not expelled from management. Ms. Pescara remained in contact with VanCal after her departure in November 2004.
 13. There were no irregularities in the conduct of board meetings, and the form of proxy held by Mr. Rindler was correctly ruled unacceptable for the shareholders' meeting of 16 November 2005 as it had not been properly certified and had been given only in relation to a meeting scheduled for 11 October 2005.
 14. Claimant's participation on the Board ended only when it withdrew its representatives by email on 23 October 2006 and declined to replace them.
 15. All shareholders were treated alike in the dissemination of corporate reports and notices, and Claimant was not entitled to any special privileges in this regard. Information was being made available to Claimant as late as September 2006.
 16. VanCal was obliged to pay dividends in Calpurnian Libras, but there was no requirement to convert the dividend payments into Gaul Dollars. The email sent by Mr. Korchnoi on 27 May 2005, stating that no further payments could be made to foreign shareholders, was unauthorized and had been superseded by statements by VanCal of its willingness to make any license fee and dividend payments it owed. Similarly, VanCal declared stock dividends in 2004, 2005, 2006 and 2007, which were distributed to all shareholders, including Claimant.

¹ Note: Flatland signed the ICSID Convention on 3 May 1992 and deposited its notice ratification with ICSID on 23 August 1997; the Convention entered into force for Flatland on 23 September 1997; ICSID received Flatland's denunciation of the Convention on 2 May 2003.

17. The police searches of the homes of Ms. Pescara and Mr. Kolowenko were conducted routinely and lawfully, in support of national security requirements. Only Ms. Pescara and Mr. Kolowenko respectively had standing to challenge the lawfulness of the searches of their private residences. The press releases issued by the Calpurnian Security Directorate in connection with the searches were factually accurate, and the Respondent bears no responsibility for any misinterpretation by isolated members of the public. The protesters near Ms Pescara's home were private citizens lawfully exercising their freedom of speech on public property in a non-violent manner, and there was no basis for the police to intervene on the occasions when they were requested to do so by Ms. Pescara.
18. The immigration authorities enjoy wide discretion in issuing visas. Since she was no longer managing director of VanCal, Ms. Pescara's continuous presence was not necessary. She could adequately perform her reduced VanCal board functions and pursue the interests of Claimant through occasional visits under the Calpurnian visa waiver program or even via teleconference.
19. ...

Evidence/Calendar of Events

Ex #	Date	Type	Content
	8 December 2003	Calpurnian Security Directorate Press Release	Yesterday, Calpurnian Security Forces searched the homes of two Gaulois nationals and Vanguard International employees, Francesca Pescara and David Kolowenko, under suspicion of unlawful data collection and espionage. Two laptops and several storage media were seized along with unlicensed telecommunications devices.
	4 June 2004	Calpurnian Security Directorate Press Release	Yesterday, as part of their continuing counter-espionage operations, Calpurnian Security Forces searched the residences of Francesca Pescara and David Kolowenko. Both are the subjects of an ongoing investigation of unlawful data collection and espionage. Prosecutors expect to file charges shortly.
	17 July 2004	Calpurnian Security Directorate Press Release	Two days ago, Calpurnian Security Forces were called to seize stolen data hidden at the homes of Vanguard International employees Francesca Pescara and David Kolowenko. The seized items are being evaluated and prosecutors are considering charges against Mr. Kolowenko, Ms. Pescara and any Gaulois agents who may be apprehended in connection with espionage activities.
	14 October 2004	VanCal shareholders meeting minutes	SFCDC began to exercise a leading role in VanCal's affairs. Its two representatives, Dr. Swift and Mr. Shelly, elected to the board of directors
	15 November 2004	VanCal board meeting minutes	Accepted Ms. Pescara's resignation as managing director "after thanking her for her efforts during several years in office." Claimant maintained its two places on the board in the person of Ms. Pescara, who appointed a proxy, and Mr. Neil Shepherd. Dr. Swift observed that the SFCDC did not "regard VanCal as really being a private company." An affidavit dated 22 April 2007 (see below) recounts how Dr. Swift walked out of a discussion of Claimant's representation on VanCal's board of directors, declaring that he would not stay at a meeting with "Gaulois spies."
	17 February 2005	VanCal board meeting at offices of SFCDC Mr. Poe of SFCDC	The object of the meeting was to discuss the year's accounts and decide on the distribution of the company's profits. On behalf of the SFCDC, Dr. Swift proposed that "the minimum amount of the legal dividend be paid to the shareholders and the balance be appropriated for the purpose of creating a reserve fund for

		presided at the meeting	severance pay” for the company’s workers. The proposal as to severance pay was based on the recommendation of VanCal’s auditor, and it was extensively debated at the meeting. Mr. Rindler, who by now was serving as proxy for both Claimant directors, was absent from the meeting.
10 March 2005	VanCal board meeting held at Dr. Swift’s SFCDC office; Mr. Poe presided.		<p>Mr. Rindler present. The meeting was dominated by the chairman of the board, Dr. Jonathan Swift, who was also on the board of SFCDC.</p> <p>Decision taken to set up the severance pay reserve fund. In the ensuing discussion about dividends, the minutes state “the representatives of the SFCDC . . . expressed their opinion that the minimum dividend should be divided among the shareholders; that the balance of the profit be credited to the company’s reserve fund and that no stock dividend be issued. Mr. Poe said, “By this action, we can hold the amount paid to the foreigners to the minimum.” Dr. Swift noted “the profits made by the company under current laws and regulations belong to the company and, the shareholders have a right thereto in proportion to their capital investment, therefore, whether there is a distribution in cash, or a stock dividend, or a reservation of a portion as undivided profit, it will not in principle change the rights of the shareholders to the profits earned; especially because due to the existing dispute between the governments of Calpurnia and Gaul, the payment of profits to the foreign shareholders has been suspended for the time being.”</p> <p>The minutes also describe the “extensive discussion” that followed. Accordingly, the board decided that “[i]n order to preserve the rights of the Calpurnian shareholders, it seems essential that a reasonable percentage of the company’s profits be divided in the form of a cash or a stock dividend. . . .”</p> <p>The board noted that “due to the existing dispute between the governments of Calpurnia and Gaul, the payment of profits to the foreign shareholders has been suspended for the time being,”</p>
15 April 2005	Dividend declared		18% of the profit in cash and 10% in stock
21 May 2005	Claimant wrote a letter to Mr. Korchnoi		requesting that the amount of the dividend payable be placed in a separate bank account to be opened in the name of Claimant.
27 May 2005	Email from Korchnoi to Claimant		“I have to inform you that due to decision and instruction of the board of directors, VanCal cannot pay any sums of money for any reason to foreign shareholders. So I cannot take any action regarding your request.”
5 June 2005	Claimant’s email to VanCal (Korchnoi, Swift)		“requesting that the board of directors communicate to us directly their decision in this matter and express to us the legal basis for this denial. We are not aware of any Calpurnian regulation or decree which permits the unequal treatment of the shareholders of a Calpurnian company”.
5 October 2005	Issuance of Proxies for 11 October 2005 Meeting		Proxies in the same form as had been accepted at earlier meetings.
16 November 2005	Shareholders meeting		<p>The two proxies held by Mr. Rindler were found not to be formally valid for the purpose of that meeting.</p> <p>At the suggestion of Mr. Shelly, Ms. Pescara was voted off the</p>

			<p>board of directors by “the majority vote of the shareholders present at the meeting.” The general meeting then expressed its gratitude for the services of Ms. Pescara</p> <p>Mr. Poe and Mr. Korchnoi also resigned.</p> <p>These two were replaced by two directors representing the SFCDC. The election was “by the unanimous vote of the shareholders present at the meeting.” The minutes of the meeting confirm that Claimant still held one seat on the board, occupied by Mr. Rindler on a proxy from Neil Shepherd.</p> <p>At that meeting Dr. Swift stated that “the main objective [of the company] is . . . to protect the interests of the country as well as to preserve the industry and the interests of all shareholders including the minor ones within the framework of the general interests of the country; and the Board of Directors has done all in its power to achieve this end.”</p>
	15 April 2006		Mr. Shepherd resigns from VanCal Board
	7 June 2006	Shareholders meeting minutes	<p>Two new Claimant board representatives, Mr. Hunter and Mr. Fowler elected (replacing Mr. Shepherd and Ms. Pescara). Hunter and Fowler remained until their resignation 23 October 2006.</p> <p>Mr. Hunter, prepared the minutes of subsequent meetings in the capacity of secretary.</p>
	14 June 2006	Commercial Court of San Inocente de Irkoutsk	Summarily dismisses application by Ms Pescara to order VanCal to transfer to her account in Gaul dividends on 1% shareholding. The courts says, “Ms. Pescara, as mere nominee, has no beneficial interest in the shareholding and therefore lacks standing to bring this action.”
	28 September 2006	VanCal Board (Swift) email to Claimant	stated for the first time that the dividends had been “credited on VanCal’s books to Claimant’s account.” <u>NOTE:</u> VanCal’s Articles of Association contain no provision authorizing the company to credit dividends to a shareholder’s account on the company’s books instead of paying them
	23 October 2006	Email from Claimant to VanCal	Claimant’s participation on the Board ended completely when it withdrew its representatives by email and declined to replace them. NOTE: Having finally concluded that the presence of its representatives at meetings was a “futility,” Claimant informed VanCal by this email that it “no longer sees a reason to continue its presence at board of directors and shareholder meetings of VanCal.” Accordingly, Claimant’s two representatives on the board resigned.
	11 November 2006	VanCal (Swift) email to Claimant	suggesting that the resignation be withdrawn and new directors designated.
	5 February 2007	Claimant letter to Poe (Chair SFCDC)	Claiming de facto expropriation by Calpurnian state entities – in violation of its international obligations - and demanding compensation, and that Poe transmits this to his superiors including the appropriate Ministers.
	21 February 2007	Poe letter to Claimant	<p>Declining to involve government in what is merely an internal shareholder dispute and stating Government has no authority in any event.</p> <p>Informed Claimant that the “company ha[d] in no way been in a worse condition in the two or three recent fiscal periods” than during the period when Claimant had controlled the</p>

			management. “There is nothing we can do.”
	22 April 2007	Korchnoi Affidavit	recounts how Dr. Swift walked out of a board meeting on 15 November 2004 discussing Claimant’s representation on VanCal’s board of directors, declaring that he would not stay at a meeting with “Gaulois spies.” On 23 May 2005, Dr. Swift told me, “As far as Vanguard's demand for dividends is concerned, don't do anything until the board determines the best way to handle this.” On 30 November 2005, Dr. Swift said to me, “Henceforth, information will be provided to shareholders and board members strictly in accordance with the requirements of Calpurnian law. As you know, this means originals available for inspection at the head office.”
	31 July 2007	Claimant Requests Arbitration	Claimant requests institution of arbitration proceedings in accordance with ICSID’s Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (Institution Rules) Notifies State of Calpurnia
	31 January 2008 18 March 2008 28 March 2008	ICSID SG Notice of Constitution of Arbitral Tribunal First Session Minutes of First Session Circulated	ICSID Secretary-General notifies the parties that all arbitrators have accepted their appointments (Arbitration Rules, Rule 6). Forwards Standard Draft Agenda for First Session

Minutes of the First Session of the Arbitral Tribunal

VANGUARD INTERNATIONAL [Claimant]

v.

THE GOVERNMENT OF THE REPUBLIC OF CALPURNIA [Respondent]

(ICSID Case No. ARB/X/X)

Boston, 18 March 2008

The first session of the Arbitral Tribunal was held on 18 March 2008 from 9:00 a.m. to 01:00 p.m. at the Boston offices of Rumpole, Olde & Bailey, 120 Tremont Street, MA, 02108-4977, USA.

Present at the session were:

The Members of the Tribunal

XXX, President

YYY, Arbitrator

ZZZ, Arbitrator

ICSID Secretariat

XYZ, Secretary of the Tribunal

Representing the Claimant

Broches & Partners

Representing the Respondent

Shihata e Associati

The President of the Tribunal opened the session and welcomed the participants. It was agreed to consider the matters listed on the Provisional Agenda, which is attached to these Minutes as Attachment 1.

1. Constitution of the Tribunal and the Tribunal Members' Declarations

It was noted that the Tribunal had been properly constituted in accordance with Article 37(2)(b) of the ICSID Convention and the ICSID Arbitration Rules. The parties expressed their agreement that the Tribunal had been properly constituted. Copies of the Declarations signed by the members of the Tribunal pursuant to ICSID Arbitration Rule 6(2) were distributed prior to the first session.

2. Representation of the Parties

It was noted that the Claimant is represented by:

Broches & Partners

and that the Respondent is represented by:

Shihata e Associati

3. Apportionment of Costs and Advance Payments to the Centre

The parties agreed that, in accordance with Article 61 of the ICSID Convention and Rule 14 of the ICSID Administrative and Financial Rules, the parties would defray the expenses of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to costs.

It was recalled that the Centre had requested in Case No. ARB/x/x each party to pay an amount of US\$25,000 to defray the costs of the proceeding during its first three to six months. The Claimant made the payment requested on 15 March 2008 and the Respondent on 17 March 2008.

4. Fees and Expenses of Tribunal Members

The parties agreed that in addition to receiving reimbursement for any direct expenses reasonably incurred, each member of the Tribunal would receive:

- a fee of US\$3,000 (three thousand United States dollars), or such other fee as may be set forth from time to time in the Centre's Schedule of Fees, for each day of meetings or each eight hours of other work performed in connection with the proceeding; and
- subsistence allowances and reimbursement of travel and other expenses within limits set forth in Rule 14 of the ICSID Administrative and Financial Rules and the Memorandum on the Fees and Expenses of ICSID Arbitrators.

5. Applicable Arbitration Rules

It was noted that, pursuant to Article 44 of the ICSID Convention, the proceedings would be conducted in accordance with the ICSID Arbitration Rules in force since 10 April 2006.

6. Place of Proceedings

It was confirmed that seat of arbitration shall be Boston, Massachusetts, USA, in accordance with the agreement of the Parties and following upon the Arbitral Tribunal's consultation with the Secretary General of ICSID in accordance with Article 62 and 63 of the ICSID Convention, and Arbitration Rule 13(3). This is without prejudice to holding sessions with the parties at any other place, with the agreement of the parties and after consulting the Secretary-General of the Centre if appropriate. In addition, it was agreed that the Tribunal may meet without the parties at any other place as convenient.

7. Procedural Languages

At the election of the parties, the language of the proceedings shall be English. It was agreed that all memorials, witness statements, expert reports, observations, and the like filed by the Claimant or by the Respondent shall be in English. Consequently, it was agreed that neither the Claimant nor the Respondent shall be required to provide the other Party with Calpurnian or Gaulois translations and the English version of the originally filed instrument shall be the sole authoritative version.

It was also agreed that the Tribunal will render its decisions in English only. The every day communications from the Secretariat to the parties shall be made in English. In the case of communications from the Secretariat conveying instructions from the Tribunal, these will be made in English only.

8. Records of Hearings

The parties agreed that the records of the hearings shall be kept, and that there will be transcripts of each hearing. It was agreed that complete sound recordings would be made of this session and subsequent sessions.

9. Means of Communication and Copies of Instruments

It was agreed that ICSID Administrative and Financial Regulation 24 shall govern communications between the parties. It was agreed that all communications and written instruments in these proceedings were to be addressed to the Centre. It was further agreed that written instruments were to be submitted to the Centre in an original and five copies, except that brief communications that were not substantive applications or submissions could be transmitted by facsimile and e-mail. The Centre would arrange for the appropriate distribution of copies.

It was noted that, except as otherwise required by the Arbitration Rules, decisions of the Tribunal could be communicated to the parties through instructions to the Secretariat.

It was agreed that the date of filing of an instrument shall be the date of its dispatch by international courier, and that the parties will send a note, by fax, on the day of dispatch to the Secretary of the Tribunal informing him or her of such dispatch. It was also agreed that an electronic version of the text of the instrument shall simultaneously be sent to the Secretary of the Tribunal via e-mail. The *dies a quo* for the commencement of periods of time will be the day at which a written pleading with its translation and all its enclosures is received by the other party, a fact that will be certified by the Secretary of the Tribunal.²

10. Quorum

The parties agreed that all three members of the Tribunal shall be present at its sittings.

² **IMPORTANT** – For the purposes of the FDI Moot Competition, submissions shall be by email only to office_cils@fdimoot.org.

11. Decisions of the Tribunal by Correspondence or Telephone Conference

In accordance with ICSID Arbitration Rule 16(2), the Tribunal may take decisions by correspondence among its members, or by any other appropriate means of communication, provided that all members are consulted.

12. Delegation of Power to Fix Time-Limits and to Sign Procedural Orders on Behalf of the Tribunal

In accordance with ICSID Arbitration Rule 26(1), the President of the Tribunal will have the power to fix time-limits for the completion of the various steps of the proceedings and to sign procedural orders on behalf of the Tribunal, after consultation with the other members of the Tribunal as far as possible.

13. Pre-Hearing Conference

It was agreed that ICSID Arbitration Rule 21 shall govern with respect to pre-hearing conferences.

14. Written and Oral Procedures

It was agreed that the proceedings herein shall be comprised of both written and oral procedures. The Parties and the Tribunal have agreed on a bifurcated procedure to the effect that, in a first stage of the procedure, the Tribunal shall only deal with jurisdictional issues and the merits of the claim. If the Arbitral Tribunal confirms its jurisdiction and finds the Respondent liable, a separate second stage on damages and valuation will follow.³

15. Pleadings: Number, Sequence, Time Limits

It was agreed that contrary to the usual practice of four consecutive written pleadings (a memorial by the Claimant, a counter-memorial by the Respondent, a reply and a rejoinder) there would only be two consecutive written pleadings: a memorial by the Claimant, a counter-memorial by the Respondent.⁴

After consultation with the parties and due deliberation by the Tribunal, the President announced that the pleadings are to be submitted within the following time-limits:

- The Claimant shall file its memorial by Friday, 12 September 2008.
- The Respondent shall file its counter-memorial within 28 days from the filing of the Claimant's memorial, that is, by 10 October 2008.

16. Dates of Subsequent Sessions

It was decided that Arbitration Rule 43 and ICSID Arbitration Rule 13(2) shall govern with respect to the scheduling of sessions of the Tribunal subsequent to the first session.

It was agreed that the hearing on 1 November will be tentatively scheduled for 8:30 a.m.

17. Production of Evidence

Without prejudice to the power of the Tribunal to request the parties to produce any further evidence at any stage of the proceeding, it was agreed that each pleading is to be accompanied by the documentation on which it relies, and by signed statements of the witnesses

³ **IMPORTANT** – The FDI Moot Competition will deal only with this first stage.

⁴ This limitation is a concession to the strictures of the competition.

and experts on which it relies.

The Tribunal may allow a party to submit documentation at another time due to extraordinary circumstances.⁵

18. Publication of the Decisions Relating to the Proceedings and of the Award

In accordance with Article 48(5) of the Convention the president invited the parties to consider whether they would consent to publish the award or any decisions rendered by the Tribunal.

19. The Award

It was agreed that in accordance with ICSID Arbitration Rule 46 the preparation of the Award would be drawn up and signed within 120 days after the closure of the proceeding. The Tribunal may, however, extend this period by a further 60 days if it would otherwise be unable to draw up the award.

II. Other Matters

There being no further business, the President adjourned the meeting at 01:00 p.m. Sound recordings were made of the session and deposited in the archives of the Centre.

Secretary of the Tribunal
Boston, 18 March 2008

President of the Tribunal
Boston 18 March 2008

ATTACHMENT 1 TO THE MINUTES OF THE FIRST SESSION
PROVISIONAL AGENDA - FIRST SESSION OF THE ARBITRAL TRIBUNAL
VANGUARD INTERNATIONAL [Claimant]

v.

THE GOVERNMENT OF THE REPUBLIC OF CALPURNIA [Respondent]
(ICSID Case No. ARB/X/X)
[18 March 2008, Boston]

I. Procedural Matters

1. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6).
2. Representation of the Parties (Arbitration Rule 18).
3. Apportionment of Costs and Advance Payments to the Centre (Convention Article 61; Administrative and Financial Regulation 14; Arbitration Rule 28).
4. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees).

⁵ **IMPORTANT** – The FDI Moot Competition will be based exclusively on the facts and evidence provided by the organizers. Pleadings should not be accompanied by the documentation or by signed statements of the witnesses and experts; references to the evidence provided by the organizers will suffice.

5. Applicable Arbitration Rules (Convention Article 44).
6. Place of Proceedings (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)).
7. Procedural Language (Arbitration Rules 20(1)(b) and 22).
8. Records of Hearings (Arbitration Rule 20(1)(g)).
9. Means of Communications and Copies of Instruments (Arbitration Rules 20(1)(d) and 23; Administrative and Financial Regulations 24 and 30).
10. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a)).
11. Decisions of the Tribunal by Correspondence or by any Other Appropriate Means of Communication (Arbitration Rule 16(2)).
12. Delegation of Power to Fix Time Limits (Arbitration Rule 26(1)).
13. Pre-Hearing Conference (Arbitration Rule 21).
14. Written and Oral Procedures (Arbitration Rules 20(1)(e) and 29).
15. Number and Sequence of Pleadings, Time Limits (Arbitration Rules 20(1)(c) and 31).
16. Dates of Subsequent Sessions (Arbitration Rule 13(2)).
17. Production of Evidence (Convention Article 43; Administrative and Financial Regulation 30; Arbitration Rules 24 and 33-37).
18. Publication of the Decisions Relating to the Proceedings and of the Award (Article 48(5) of the Convention).
19. Time Limit for the Preparation of the Award (Arbitration Rule 46).

II. Other Matters

Two Investment Treaties Concluded by Calpurnia

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF CALPURNIA AND
THE GOVERNMENT OF THE STATE OF FLATLAND
ON THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Calpurnia and the Government of the State of Flatland, hereinafter referred to as "the Contracting parties", desiring to develop the relations of economic cooperation existing between the two countries and to create favorable conditions for investors of one Contracting party in the territory of the other Contracting Party, Recognizing the need to protect investments of the two Contracting Parties and to stimulate the flow of capital and individual initiatives in business with view to the economic prosperity of both states.

Have agreed as follows:

Article 1

Definitions

For the purpose of this agreement:

- 1- The term "Investment" means every kind of assets and more particularly though not exclusively:
 - A Movable and immovable property rights as well as any other rights in rem; such as mortgages, lines and pledges and guarantees.
 - B Shares, stocks and debentures and other kinds of interests in companies.
 - C Titles to money or to any performance having an economic value.
 - D Intellectual and industrial property rights, including rights with respect to copy rights patents, trademarks, trade names, industrial designs, trade secrets, technological processes, know-how and goodwill;
 - E Business concessions conferred by law or by virtue of a contract, including concessions to search for, develop, extract or exploit natural resources.
Any alteration of the form in which assets are invested or reinvested or shall not affect their character as investment. Provided that such alteration shall be in accordance with the effective laws in the territory of the party in which the investments established.
- 2- The term "returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, dividends, capital gains, royalties and fees.

3- The term "Investor" means

any physical person holding nationality or permanent residency of Contracting Party according to the laws of that party; or any company with legal personality or partnership firms, joint ventures, organization, association or enterprise established or incorporated under the laws of a Contracting Party.

4- The term "territory" means.

A In respect of The Republic of Calpurnia : all territories of The Republic of Calpurnia in which Calpurnia has authority is underneath the ground what surface in which it has sovereign rights and jurisdiction according to the international law.

B In respect of the State of Flatland : the State of Flatland soil, territorial waters and along the sea and the seabed of the waters adjacent to the shores of the State of Flatland available beyond the territorial water and the special economic zone on which Flatland has sovereign rights according to its law and the international law for the purpose of exploring and exploiting natural resources (The Continental Shelf)

Article 2

Promotion and Protection of Investments

- 1- Each Contracting Party shall encourage and create favorable conditions for investments made in its territory by investors of the other Contracting party, and accepts such investment according to its laws and national policies.
- 2- Investments of investors from any of the two Contracting Parties shall be treated at all times with fair equitable treatment and enjoy complete and adequate protection and security in the territory of the other Contracting Party.
- 3- The investments returns which re-invested in accordance with laws and regulations of the host contracting party enjoy the same protection and concessions granted to the original investments.

Article 3

Most Favoured Nation Treatment

- 1- Each Contracting Party shall accord to the investments made in its territory by investors of the other Contracting Party a treatment not less favourable than that which in accords in like situation to investments of investors of any third State .
- 2- Each Contracting Party shall accord to the investors of the other Contracting

Party , as regard management , maintenance , use or disposal of their investments , a treatment not less favourable than that which it accords to investors of any third State .

3- The provisions of this Agreement relating to the granting of the most favoured nation treatment , shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the advantages Party the advantages resulting from :

A any economic or custom union , a free trade area or region economic organization , to which either of the Contracting Party is or may become a Party.

B any international or regional agreement or other arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation .

Article 4

Management, Directors and Entry of Personnel

A Contracting Party may not require that an enterprise of that Contracting Party that is an investment under this Agreement, appoint to senior management positions individuals of any particular nationality.

A Contracting Party may require that a majority of the board of directors, or any committee thereof, of an enterprise that is an investment under this Agreement be of a particular nationality, or resident in the territory of the

Contracting Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Subject to its laws, regulations and policies relating to the entry of aliens each Contracting Party shall grant temporary entry to citizens of the other Contracting Party

employed by an enterprise who seeks to render services to that enterprise or a subsidiary

or affiliate thereof, in a capacity that is managerial or executive or requires specialized knowledge.

Article 5

Expropriation

1- Investments made by investors of one contracting party in the territory of the other contracting party shall not be expropriated, nationalized or subjected to

other measures having similar effect (hereinafter referred to as "expropriation"), unless such measure is adopted in the public & interest and on non-discriminatory basis and for fair and effective compensation paid immediately provided that such compensation shall cover the true value of the investments immediately prior to nationalization or before the announcement of nationalization (whichever is first) and that compensation includes interests determined at the ordinary commercial interest rate from the date of nationalization until the payment date.

Such compensation shall be paid without delay and to grant the beneficiary investor the right to freely transfer it.

And the investors who suffered as a result to such action have the right to refer it to the national courts or any other independent authority of the contracting party in the territory in which the nationalization has been made to consider the nationalization issue and to assess the effected investments according to the principles mentioned in this paragraph.

- 2- Where a contracting party nationalize assets of a company incorporated in accordance with the laws applicable in any party of his territory, and the investors of the other contracting party have shares in that company, then the contracting party who conducted the nationalization shall undertake to apply the provisions of paragraph (1) of this article to the extent required to guarantee granting immediate and fair compensation for the investors of the other contracting party who own the mentioned shares.

Article 6

Free Transfer

- 1- Each Contracting party shall allow in accordance with its laws, regulations and national policies without undue delay the free transfer in any freely convertible currency:
 - A Net profits, dividends, returns, technical assistance, technical fees and interest and other current income resulted form the investments of the investors of the other Contracting Party.
 - B The proceeds accruing from total or partial sale or liquidation of an investment of the investors of the other Contracting Party.
 - C Funds allocated for settlement of debts and loans provided by investors of one Contracting Party to the investors of the other Contracting Party of what the two parties consider investment.
 - D Income and earnings of employees of either Contracting Party allowed to work in connection of investment in the territory of the other Contracting Party.
- 2- The rates of exchange applied on transfers mentioned in paragraph (1) of this

article are the same rates of exchange in force at the date of the transfer and in accordance with the rates of exchange in the host state.

- 3- The Contracting Party which the investment are invested in its territories undertakes to accord the transfers mentioned in paragraph (1) of this article a treatment not less favorable than that which it accords to investors of any third party.

Article 7

Settlement of dispute between the Investor and the Host State.

All disputes related to investments between any of the two contracting parties and an investor from the other contracting party concerning his investment, if the dispute can not be settled friendly within two months of the dispute notification date by either party it may submitted by the investor request either to:

- A Either according to arbitration rules of the U.N commission for arbitration of the international trade law (UNCITRAL) for 1976 and its amendment or any other arbitration rules established by the committee.
- B Or according to the provisions of the chapter related to disputes settlement of the consolidated agreement for agrarian capital investment in semi-arid countries for 1983.
- C The international center for the settlement of investment dispute according to procedure provided for in the convention on settlement of investment disputes between states and nationals of other states, opened for signature at Washington on 18 March 1965.
- D Or to the local judicial authorities for of the other contracting party hosting the investment.

Article 8

- 1- Disputes as to interpretation or application of provisions of this agreement shall be settled through diplomatic channels.
- 2- If such a dispute cannot thus be settled in accordance with item (1) above within six months after the commencement of the negotiations, it shall, upon the request of either Contracting Party, be submitted to a special arbitral tribunal.
- 3- The arbitral tribunal formed for each case as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall nominate a chairman

who shall be a national of a third state. The chairman to be appointed within 2 months maximum from the date of receiving the arbitration notification.

- 4- If which any of the periods specified in paragraph (3) the necessary appointments of the arbitral tribunal members have not been made, either contracting party may invite the president of the international court of justice to make any necessary appointments, unless he is a national of either contracting party or if he is otherwise prevented from discharging this function, the Vice-president of the international court of justice shall be invited to make the necessary appointments, if he is not national of either contracting party, or if he is otherwise prevented from discharging this function, the most senior member of the international court of justice, who is not a member of either contracting party, shall be invited to make the appointments.
- 5- The arbitral tribunal takes its decision by majority votes and its decision shall be binding. Each contracting party shall bear the cost of the arbitrator it has appointed and of its representation. The cost of the chairman and the remaining costs shall be borne equally by the contracting parties, and the arbitral tribunal determines its procedures.

Article 9

Principle of subrogation

- 1- Where one Contracting Party has granted any financial security against non-commercial risks in respect of an investment in the territory of the other Contracting Party, the other contracting party shall recognize the rights of the first Contracting Party legal assignee by virtue of a legal document and it includes all rights and claims of the party who received the compensation and recognizes the right of the first party or its assignee to practice such right principle of subrogation to the rights of its nationals to the extent and limits practiced by the party guaranteed or compensated.
- 2- Any payments received by the first contracting party or its assignee in non-convertible currency according to gained rights and claims, shall be available for free disposal by the first contracting party for the purpose to cover any expenses that occur in the territory of the other contracting party.

Article 10

Application of other Provisions

If the provisions of the applicable laws in the territory of either contracting party, or the liabilities according to the international law applied at the time being or will come into force at a later date after signing of this agreement in addition to the provisions of this agreement that include general or specific provisions authorize the investment of the investors of the other contracting party to be granted more favorable treatment than the one provided by the

present agreement, such provisions shall over ride the provisions of the present agreement to the extent of its more favorable treatment.

Article 11

Application scope on Investments

This Agreement apply to investments established prior and after the effective date of this Agreement shall have no effect on disputes occurred prior to the date of its entry into force.

Article 12

This Agreement shall enter into force thirty days after the receipt of the later of notifications showing the completion of both parties the constitutional requirements required for the entry into force of this Agreement.

Article 13

Entry into Force , Duration and Termination

The Agreement shall remain in force for a period of ten years and thereafter shall remain in force except the case of denunciation in writing by one of the Contracting Parties one year before the expiry date . After the expiry of the initial period , the Agreement may denounced any time with not less than one year written notice .

In respect of investments made whilst the Agreement is in force , its provisions shall continue to be effective for a further period of ten years from the date of termination according to the provisions of the general international law.

In witness thereof, the undersigned duly authorized y their governments signed this agreement.

Done at Llano, Flatland on Feb. 8th, 1992 in two original copies, in the Esperanto and English languages .

**FOR THE GOVERNMENT OF THE
REPUBLIC OF CALPURNIA**

**FOR THE GOVERNMENT
OF FLATLAND**

Note: This is based on an actual BIT from the UNCTAD website. Typos, strange formulations, etc. are found in the ORIGINAL

Agreement between
the Government of the Republic of Calpurnia
and
the Government of the Federated States of Gaul
on the Promotion and Protection of Investments

The Government of the Republic of Calpurnia and the Government of the Federated States of Gaul, hereinafter referred to as the “Contracting Parties”,

DESIRING to intensify economic co-operation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNISING that the promotion and protection of investments on the basis of this Agreement will stimulate business initiatives,

HAVE AGREED AS FOLLOWS:

Article 1
Definitions

For the purpose of this Agreement:

1. The term “Investment” means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party including, in particular, though not exclusively:
 - (a) movable and immovable property or any property rights such as mortgages, liens, pledges, leases, usufruct and similar rights;
 - (b) shares, stocks, debentures or other form of participation in a company;
 - (c) titles or claims to money or rights to performance having an economic value;

- (d) intellectual property rights, such as patents, copyrights, technical processes, trade marks, industrial designs, business names, know-how and goodwill; and
- (e) concessions conferred by law, by administrative act or under a contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Any alteration of the form in which assets are invested or reinvested does not affect their character as investments.

2. The term "Returns" means the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interest, royalties, capital gains or any payments in kind related to an investment.

Returns shall enjoy the same treatment as the original investment.

3. The term "Investor" means:

- (a) any natural person who is a national of either Contracting Party in accordance with its laws; or
- (b) any legal person such as company, corporation, firm, business association, institution or other entity constituted in accordance with the laws and regulations of the Contracting Party and having its seat within the territory of that Contracting Party.

4. The term "Territory" means in respect to:

- (a) the Republic of Calpurnia, the territory of the Republic of Calpurnia, including the respective Calpurnian Gulf sector, over which the Republic of Calpurnia exercises, in accordance with its national law and international law, sovereign rights or jurisdiction,
- (b) Federated States of Gaul, the territory, internal waters and territorial sea over which the Federated States of Gaul exercise, in accordance with its national law and international law, sovereign rights or jurisdiction.

Article 2

Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions in its territory for investments by investors of the other Contracting Party and in exercise of powers conferred by its laws shall admit such investments.
2. Each Contracting Party shall at all times accord in its territory to investments of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

3. Each Contracting Party shall not impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment, acquisition or disposal of investments in its territory of investors of the other Contracting Party.
4. Each Contracting Party shall not impose mandatory measures on investments by investors of the other Contracting Party concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having unreasonable or discriminatory effects.
5. Each Contracting Party shall, within the framework of its legislation, give a sympathetic consideration to applications for necessary permits in connection with the investments in its territory, including authorisations for engaging executives, managers, specialists and technical personnel of the investor's choice.

Article 3 Transparency

Each Contracting Party shall ensure that, its laws, regulations, procedures, administrative rulings and judicial decisions of general application, as well as international agreements after their entry into force, which may affect the investments of investors of the other Contracting Party in its territory, are promptly published, or otherwise made publicly available.

Article 4 Treatment of Investments

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or returns related thereto, shall be accorded treatment which is not less favourable than the host Contracting Party accords to the investments and returns made by its own investors or by investors of any third State, whichever is the most favourable to the investor.
2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is not less favourable than the latter Contracting Party accords its own investors or to investors of any third State, whichever is the most favourable to the investor.

Article 5 Exceptions

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

- (a) any existing or future free trade area, customs union, common market or regional labour market agreement to which one of the Contracting Parties is or may become a party,
- (b) any international agreement or arrangement relating wholly or mainly to taxation, or any domestic legislation relating to taxation, or
- (c) any multilateral convention or treaty relating to investments, of which one of the Contracting Parties is or may become a party.

Article 6 Expropriation

1. Investments by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subjected to any other measures having the effect, either directly or indirectly, equivalent to expropriation or nationalisation (hereinafter referred to as “expropriation”) except for a public interest, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.
2. Such compensation shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation was taken or became public knowledge, whichever is earlier.
3. Such fair market value shall be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency at the moment referred to in paragraph 2 of this Article. Compensation shall also include interest at a commercial rate established on a market basis for the currency in question from the date of expropriation until the date of actual payment.
4. The investor whose investments are expropriated, shall have the right to prompt review by a judicial or other competent authority of the host Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

Article 7 Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever is the most favourable to the investor. Resulting payments shall be effectively realisable, freely convertible and immediately transferable.
2. Without prejudice to paragraph 1 of this Article, an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Contracting Party resulting from:
 - (a) requisitioning of its investment or a part thereof by the latter's armed forces or authorities, or
 - (b) destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of situation,shall be accorded prompt, adequate and effective restitution or compensation.

Article 8

Free Transfer

1. Each Contracting Party shall ensure to investors of the other Contracting Party the free transfer, into and out of its territory, of payments in connection with an investment. Such payments shall include in particular, though not exclusively:
 - (a) the principal and additional amounts to maintain, develop or increase the investment;
 - (b) returns;
 - (c) proceeds obtained from the total or partial sale or disposal of an investment;
 - (d) the amounts required for payment of expenses which arise from the operation of the investment, such as payment of royalties and licence fees or other similar expenses;
 - (e) compensation payable pursuant to Articles 6 and 7;
 - (f) payments in respect of management fees;
 - (g) payments arising out of the settlement of a dispute;
 - (h) payments in connection with contracts, including loan agreements;

- (i) net earnings and other remuneration of personnel engaged from abroad working in connection with an investment.
2. Transfers referred to in paragraph 1 of this Article shall be made without any restriction or delay, in a freely convertible currency and at the prevailing market rate of exchange applicable on the date of transfer in the currency to be transferred. If a market rate is unavailable the applicable rate of exchange shall be the most recent rate of exchange for conversion of currencies into Special Drawing Rights.
3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may delay a transfer through the equitable, non-discriminatory and good faith application of measures ensuring investors' compliance with the host Contracting Party's laws and regulations relating to the payment of taxes and dues, provided that such measures and their application shall not unreasonably impair the free and undelayed transfer ensured by this Agreement.

Article 9 Subrogation

Where a Contracting Party or its designated agency (guarantor) makes a payment under a guarantee it has accorded in respect of non-commercial risks of an investment in the territory if the other Contracting Party, the host Contracting Party shall recognise the assignment to the guarantor of all the rights and claims resulting from such an investment, and shall recognise that the guarantor is entitled to exercise such rights and enforce such claims to the same extent as the original investor.

Article 10 Consultations

The Contracting Parties agree to consult promptly, on the request of either, to resolve any dispute in connection with this Agreement, or to review any matter relating to the implementation or application of this Agreement or to study any other issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties at a place and at a time agreed upon by the Contracting Parties through diplomatic channels.

Article 11 Disputes between an Investor and a Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party concerning an investment in the territory of the latter Contracting Party shall, if possible, be settled amicably.
2. If the dispute cannot be settled amicably within 18 months from the date of request for amicable settlement, the investor concerned may submit the dispute to international arbitration. The investor has the choice of submitting the case either to:
 - (a) the competent courts of the Contracting Party in whose territory the investment is made;
 - (b) The International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the “Centre”), if the Centre is available, or
 - (c) The Additional Facility of the Centre, if only one of the Contracting Parties is a signatory to the Convention set out in subparagraph (b) of this Article , or
 - (d) an ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

The Contracting Parties give their irrevocable consent in respect of the fact, that all disputes relating to investments are submitted to the above mentioned court, tribunal or alternative arbitration procedures.

3. An investor who has already submitted the dispute to the competent courts of the Contracting Party shall no more have recourse to one of the arbitral tribunals mentioned in paragraph 2 of this Article.
4. Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the opposing party of the dispute, had received an indemnification covering a part or the whole of its losses by virtue of an insurance.
5. Such award shall be final and binding for the parties to the dispute and shall be executed according to national law.

Article 12

Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and

application of this Agreement shall, as far as possible, be settled through diplomatic channels.

2. If the dispute cannot thus be settled within six (6) months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an Arbitral Tribunal.
3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within four (4) months from the date of appointment of the other two members.
4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.
5. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as other common costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

Article 13 **Application of other Rules**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.

Article 14 **Application of the Agreement**

This Agreement shall apply to investments existing at the time of entry into force of this Agreement as well as to those established or acquired thereafter, but shall not apply to disputes concerning an investment, which arose before its entry into force.

Article 15
Entry into Force, Duration and Termination

1. The Contracting Parties shall notify each other when the internal procedures necessary for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the thirtieth day following the date of receipt of the last notification.
2. This Agreement shall remain in force for a period of ten (10) years and shall thereafter remain in force on the same terms until either Contracting Party notifies the other in writing of its intention to terminate the Agreement in twelve (12) months.
3. In respect of investment made prior to the date of termination of this Agreement the provisions of Articles 1 to 14 shall remain in force for a further period of fifteen (15) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

Done at Nova Parigi, Gaul on 1 August 1995 in three originals in the Calpurnian, Gaulois and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of
the Republic of Calpurnia

For the Government of
the Federated States of Gaul

Note: This is also based on an actual BIT from the UNCTAD website. Typos, strange formulations, etc. are found in the ORIGINAL