ARBITRATION INSTITUTE
OF THE STOCKHOLM CHAMBER OF COMMERCE

CALRISSIAN & CO., INC
(CLAIMANT)

V.
FEDERAL REPUBLIC OF DAGOBAH
(RESPONDENT)

CASE NO. 00/2013

MEMORIAL FOR THE CLAIMANT

Team Schwebel
Seventh Annual Foreign Direct Investment
International Moot Competition
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**Oil Platforms**  *Oil Platforms* (Islamic Republic of Iran v. United States), ICJ (2003).


**Upper Silesia** Rights of Minorities in Upper Silesia (Minority Schools), (Germany v. Poland) Judgment No. 12, 1928, PCIJ, Series A, No. 15.

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STATEMENT OF FACTS

1. Claimant is a hedge fund incorporated in, and in accordance with the laws of, the Corellian Republic.¹ In 2005, Claimant acquired a number of sovereign bonds issued by Respondent.² These bonds could not be amended without the agreement of all bondholders.³ Claimant’s bonds represent approximately 10% of the aggregate nominal value of all outstanding bonds.⁴

2. On 28 May 2012, Respondent enacted the Sovereign Restructuring Act (SRA), legislation that applied to all bonds governed by Dagobah law and provided that a qualified majority of 75% of the aggregate nominal value of all bonds governed by domestic law could modify the terms of the bonds.⁵ This modification would then bind all bondholders.⁶ Bondholders were not invited to participate in the drafting of the SRA.⁷ Though Claimant expressed interest in participating in the restructuring process, it was not included in the consultative committee.⁸

3. On 29 November 2012, Respondent offered bondholders the option to exchange the original bonds for new ones worth approximately 70% of the value of the original bonds.⁹ Claimant refused to participate in the exchange offer.¹⁰ However, bondholders representing more than the requisite 75% of the aggregate nominal value agreed to participate in the exchange offer.¹¹ On 12 February 2013, all bonds were exchanged for new bonds in terms provided by the exchange offer.¹²

5. Unlike the original bonds, the new bonds were governed by the law of the Kingdom of Yavin and include collective action clauses (CACs), which require bondholders to gather at least

¹ Request for Arbitration ¶2.
² Id., Procedural Order ¶11.
³ Facts ¶17.
⁴ Id. ¶24.
⁵ Id. ¶18.
⁶ Id.
⁷ Procedural Order ¶21.
⁸ Procedural Order ¶35.
⁹ Facts ¶18.
¹⁰ Request for Arbitration ¶5.
¹¹ Id. ¶5.
¹² Facts ¶19.
20% of the nominal value of the issue in order to initiate any legal action.\textsuperscript{13}

6. In response to Respondent’s 2001 financial crisis, the State of Corellia initiated arbitral proceedings before the Permanent Court of Arbitration (PCA) to ensure that the BIT signed between Corellia and Dagobah protected holders of sovereign bonds issued by Dagobah.\textsuperscript{14} The PCA Arbitral Tribunal decided that sovereign bonds were investments within the meaning of the BIT and that bondholders were entitled to its standards of protection and to use its investor-State dispute settlement provision.\textsuperscript{15}

\textsuperscript{13} Id. ¶21.
\textsuperscript{14} Id. ¶8-9.
\textsuperscript{15} Id. ¶11.
SUMMARY OF ARGUMENT

7. **JURISDICTION:** The Tribunal has jurisdiction over the dispute concerning the sovereign bonds owned by Claimant. This tribunal has jurisdiction *ratione voluntatis* because both parties have agreed to arbitrate. The Tribunal has jurisdiction *ratione personae* because the dispute involves a state party, Dagobah, and an investor of a State party to the BIT. This tribunal also has jurisdiction *ratione materiae* because the disputed bonds constitute an investment under the BIT made in the territory of Dagobah.

8. Additionally, the tribunal must consider the effect of the PCA decision in its jurisdictional analysis because the PCA is a binding interpretation of the BIT. Moreover, even if this tribunal finds the PCA non-binding, the PCA is at the very least a highly persuasive interpretation of the BIT.

9. Finally, this Tribunal has jurisdiction over the dispute notwithstanding the forum selection clause in the sovereign bonds because the dispute involves a treaty claim. Additionally, even if the dispute is purely contractual, the dispute resolution clause in the BIT is broad enough to confer jurisdiction over the dispute.

10. **MERITS:** Respondent failed to provide claimant with fair and equitable treatment and Article 2 of the BIT mandates refrain from unreasonable measures. The SRA failed to provide fair and equitable treatment because its enactment violated Claimant’s due process rights. Moreover, the restructuring of the bonds disproportionately affected foreign bondholders. Finally, the restricting violated the investor's legitimate expectations. This is because the essential security clause in the BIT is not self-judging, and even if it were, the security interests of Respondent were not sufficiently threatened to invoke the essential security clause.
ARGUMENT

PART ONE: JURISDICTION OF THE TRIBUNAL

I. THE TRIBUNAL HAS JURISDICTION OVER THE DISPUTE CONCERNING THE SOVEREIGN BONDS OWNED BY CLAIMANT.

11. The Tribunal derives its jurisdiction from the jurisdictional clause in Article 8(2) of the Corellia-Dagobah Bilateral Investment Treaty (BIT).

12. According to the generally accepted principle of “Kompetenz-Kompetenz”, also incorporated in Section 2 of the Swedish Arbitration Act, which is applicable in the present case because the arbitration is seated in Stockholm, arbitrators have the inherent authority to decide on their own jurisdiction. The parties have further agreed that the procedure will be administrated under the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC Rules), which also provide for the same principle.

13. According to Article 8(3) of the BIT, “the tribunal shall decide the issues in dispute in accordance with this Agreement, any other applicable agreements between the Parties, any relevant rules of international law and, where applicable, any relevant domestic law of the Party.” Moreover, the Tribunal shall apply the BIT’s provisions in light of the interpretation rules set by the VCLT.

14. Respondent has wrongly asserted that this Tribunal lacks jurisdiction to hear the claim because the underlying transaction - the acquisition of Respondent’s sovereign bonds - is not within the meaning of investment under the BIT. Respondent has further erroneously alleged that because the acquired bonds lack a territorial link with the host-state, they could not be considered an investment protected under the BIT\(^\text{16}\).

15. However, the Tribunal has jurisdiction under the BIT under three theories: *ratione voluntatis* (A); *ratione personae* (B); and *ratione materiae* over the dispute concerning the sovereign bonds owned by Claimant because Article 1 of the BIT provides for a broad definition of the term investment that encompasses sovereign bonds (C).

\(^{16}\) Respondent’s Answer ¶5.
A. The Tribunal has jurisdiction ratione voluntatis.

16. Both parties have expressed their agreement to arbitrate, which has been perfected with the institution of the arbitral proceedings.\(^{17}\) This is a sufficient basis for the jurisdiction over an investment arbitration.\(^{18}\) Accordingly, the Tribunal has jurisdiction \textit{ratione voluntatis} to hear Claimant’s claims.

B. The Tribunal has jurisdiction ratione personae.

17. Under Article 8(2) of the BIT, the Tribunal has jurisdiction over disputes “\textit{between an investor of one Party and the other Party}.”\(^{19}\) In order to determine that Claimant is a Corellian “investor,” the Tribunal should consider the definition of investor under Article 1 of the BIT. According to that Article, “investor of a Party means a Party or a national of a Party that attempts to make, is making or has made an investment within the territory of the other Party.”\(^{20}\) Claimant is a legally recognized Corellian hedge fund, so the nationality requirements for legal persons in Article 1 have been met.\(^{21}\)

18. Claimant, a Corellian investor, submitted a Request for Arbitration against the Federal Republic of Dagobah, a Party to the BIT. Thus, the Tribunal has jurisdiction \textit{ratione personae} over Claimant’s claims.

C. The Tribunal has jurisdiction ratione materiae.

19. Pursuant to Article 8(2) of the BIT, the Tribunal has jurisdiction over disputes between an investor of one Party and the other Party “\textit{in connection with an investment}.”\(^{22}\)

20. The BIT alone provides the criteria to be applied for determining whether sovereign bonds constitute an investment.\(^{23}\) The will of the Parties as evidenced exclusively by the text of their agreement,\(^{24}\) should guide the Tribunal’s assessment, rather than an abstract inherent

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\(^{17}\) Paulsson.

\(^{18}\) Bogdanov; Phoenix.

\(^{19}\) BIT Art. 8(2).

\(^{20}\) Id. Art. 1.

\(^{21}\) Request for Arbitration §2.

\(^{22}\) BIT Art. 8(2).

\(^{23}\) Dolzer & Schreuer, 62.

\(^{24}\) Yala, 2.
meaning of investment.25

1. Sovereign bonds constitute an “investment” in the sense of Article 1 of the BIT.

21. Article 1 of the BIT defines the term investment as “every asset that an investor owns or controls, directly or indirectly.” The BIT provides a non-cumulative and non-exhaustive list of characteristics of an “investment” and provides an illustrative and non-exhaustive list of examples of what qualifies as an “investment” under the treaty.

a. Sovereign bonds fall within the meaning of “every asset” under the BIT

22. The broad definition of the term investment “means every asset that an investor controls directly or indirectly.” To determine whether the investment made by Claimant is admissible, the Tribunal should be guided by the rules of interpretation of the VCLT, to which both Dagobah and Corellia are parties. Under the VCLT, the Tribunal should interpret the BIT applying the principle of good faith, in accordance with the ordinary meaning given to a term, taking into consideration its context and in light of the object and purpose of the BIT.

23. Under Article 1, “‘investment’ means every asset (…).” According to the ordinary meaning of “every asset,” “any asset belonging to an investor could potentially qualify as an investment under the typical” asset-based, broad and open-ended definition of investment.26 In Plama v. Bulgaria, the first decision rendered under the auspices of ICSID on a question of jurisdiction under the Energy Charter Treaty, the tribunal held that “every kind of asset” encompasses “virtually any right, property or interest in money or money’s worth.”27

24. Non-ICSID Tribunals have found similarly. Using Fedax as a starting point for its analysis, the Tribunal in Petrobart LTD v. The Kyrgyz Republic, an arbitration administered under the SCC Rules, found that a broad formulation such as “every asset” “was evidence of wide definition of investment” and justified no further limitations.28 The Romak Tribunal, in determining the plain and ordinary meaning of “every asset,” applied a definition of asset

25 See, e.g., Biwater ¶¶308–318; Fraport ¶305; Generation Ukraine ¶163; Salvors ¶72.
26 Malik, 3.
27 Plama (Jurisdiction).
28 Petrobart.
found in the Black’s Law Dictionary. Namely, it stated that: “The term ‘asset’ means property of any kind.” In recent investment arbitration, the tribunal in *Saipem S.p.A v. Bangladesh* also relied on the general definition of asset as “any kind of property.”

According to the “Scope and definition” UNCTAD Series on Issues in International Investment Agreements II, the expression “every asset” “embraces everything of economic value, virtually without limitation.” As previously repeatedly found, “every asset” undoubtedly is meant to cover a broad range of assets, which can include the securities instruments such as the bonds underlying the claim.

25. In fostering the analysis of the meaning of “every asset”, the Tribunal should look at the object and purpose of the BIT, which are stated in the Preamble. Namely, those assets should “promote greater economic cooperation between [the parties]”. It appears obvious that the Parties did not intend to create any textual obstacle to the application of the BIT to different forms of investment, including bonds.

26. Moreover, the broad scope of the definition of investment under the BIT is further expanded by the fact that anything an investor “owns or controls, directly or indirectly” is an asset. The purpose of such a provision, especially in an agreement that does not expressly define the notion of “control”, is to extend the application of the BIT to operations that may take place in third countries but are directly or indirectly controlled by the investor. The condition that the investor may have either direct or indirect ownership or control does not limit the scope of the definition of investment under the BIT in any way. Instead, it “opens up the ability for investors (…) to take advantage of as many different treaty protections as possible.”

27. Thus, pursuant to the object and purpose of the BIT, the Tribunal should find that Claimant indirectly controlled sovereign bonds that have been virtually traded in Dagobah, Corellia or a third country. Consequently, the sovereign bonds acquired by Claimant from Respondent meet the control and ownership requirement stated in the BIT.

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29 *Saipem*.
30 UNCTAD, *Scope & Definition*.
31 *Fedax*; Loftis & Beeley. Multilateral Investment treaties that have adopted the same approach include the Energy Charter Treaty (ECT) in its Article 1(6) and the Protocol of Colonia for the promotion and Reciprocal Protection of Investments in MERCOSUR in its Article 1(1).
28. This conclusion is consistent with the decision in *Abaclat* that bonds are investments within the meaning of an investment treaty. The *Abaclat* tribunal defined the term “bond” as “a debt, in which an interested party loans money to an entity (corporate or governmental) that borrows the funds for a defined period of time at certain interest rates.” Concerning “international sovereign bonds”, the tribunal further considered that they “have the same characteristics as the normal bonds described above, with the specificity that they are issued by governments and are usually denominated in a foreign currency…in foreign markets.” Hence, international sovereign bonds clearly fall within a broad definition of investment referring to “every asset” because of their inherent economic value as a tradable debt security and because of the ownership interest that the transaction (acquisition of the bonds) confers to the bondholder (Claimant).

29. International institutions such as the World Bank and the OECD also consider sovereign bonds as a type of investment. The Secretariat of the World Bank has explained: “The term ‘investment’ means… financial obligations of a public or private entity other than obligations arising out of a short-term banking or credit facilities.” According to Article II(1)(iii) of a OECD draft Multilateral Agreement on Investment (MAI), “bonds, debentures, loans and other forms of debt, and rights derived therefrom” are considered investment.

30. Pursuant to the plain and ordinary meaning of “every asset”, Claimant’s sovereign bonds should be considered an investment under a broad, open-ended and asset-based definition of investment under Article 1 of the BIT.

   \[ b. \textit{Sovereign bonds have the characteristics of an investment} \]

31. Article 1 also sets out, in the second part of its first paragraph, the general characteristics of what may be considered as an investment. Those characteristics “include:” “the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.” These criteria are merely indicative, as the word “including” suggests. Nonetheless, the

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32 *Abaclat*.
33 *Id.* ¶11.
34 *Id.* ¶14.
35 Waibel, 725.
36 Bishop, 1653.
37 MAI Negotiating Text.
bonds satisfy each of these examples because they require capital, are purchased with the expectation of profit, and include risk. The conjunction “or” further demonstrates that the characteristics are non-cumulative, and satisfying only one suffices for an asset to have the characteristics of an investment protected under the treaty.

32. In *RSM v. Grenada*, the tribunal determined that these criteria incorporated “certain objective elements” that could only serve as a flexible benchmark and certainly should not create a limit on the type of transactions that may constitute an investment. That bonds fulfill all of these characteristics is strong evidence that they are investments.

33. Dagobah’s own conduct in restructuring the bonds confirms that bonds carry the characteristics of investment. The SRA defined the term “investor” as the “bondholder” or “one who has a claim on or under the title” to a bond. If Respondent itself defines bondholders as investors, it must also consider the bonds to constitute an investment. Respondent has effectively conceded that bonds are investments through its legislation.

34. Although “bonds” are not expressly included in the list of examples provided in Article 1 of the BIT, the list is a mere illustration of the forms an investment “may take.” The use of the word “may” - rather than “must” - renders such list non-exhaustive.

35. Regardless of the list of examples, shares and stocks qualify as “investment” under the BIT. The OECD Benchmark Definition of Foreign Direct Investment of 2008 stated that “the main financial instrument components of FDI are equity and debt instruments. Equity includes common and preferred shares, … Debt instruments include marketable securities such as bonds, debentures, commercial paper, promissory notes.” Article 1 makes an express reference to financial instruments as forms investment may take. Thus, listing “shares, stocks and other forms of equity participation in an enterprise” as examples of investment protected

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38 *RSM.*
39 *Abacacl* ¶346.
40 SRA Art. 1.1(a).
41 OECD Benchmark.
under the BIT makes it possible for other kinds of financial instruments – such as bonds, debentures and promissory notes – to be considered as investments under Article 1, as these forms of debt constitute securities.

36. If the Parties intended to limit the application of the definition clause, they would have provided a closed list of forms an investment protected under the BIT might take. Where parties wished to limit the breadth of the term investment, they have done so. The Parties have not done so here and have consequently not excluded bonds from the protected investments.

2. **Sovereign bonds constitute an investment “made in the territory” of Dagobah**

37. In its objection to the present arbitral proceedings, Respondent claims that the bonds lack a “truly territorial link” with the State of Dagobah and cannot therefore be qualified as investment protected under the BIT.

38. In determining a territorial link, the Tribunal should consider that “a transfer of funds or value … made into the territory of the house country … does not necessarily happen in a number of types of investment, particularly those of a financial nature.” The Tribunal in *Fedax* underlined that “it is a standard feature of many international financial transactions that the funds involved are not physically transferred to the territory of the beneficiary,” but are nonetheless investments. However, what tribunals should look at whether the investor’s funds “are put in … disposal elsewhere,” namely in Respondent state.

39. Also, in *Abaclat*, the tribunal found that the relevant criteria for a security could not be the same as those applying to an investment consisting of business operations or involving manpower or property. Rather the tribunal looked not to where the funds were paid out or transferred, but *where or for the benefit of whom* the funds were ultimately made available to the host state. The bonds in the present case may have been collected interest for foreign

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42 Malik, 14.
43 Id., 17.
44 *Fedax*, footnote 11.
45 Id.
46 Id.
47 *Abaclat*, ¶374 footnote 22.
investors, but they were issued by and for Respondent.

40. In *Ambiente*, the majority held that bonds were investments. The tribunal found that “looking at the investment operation at stake as a whole and in terms of its economic realities, it is really hard to imagine the investment’s situs to be elsewhere than in Argentina.”\(^{48}\) The tribunal in *Ambiente* further held that “since the decisive elements, notably the fact that the funds involved were destined to contribute to Argentina’s economic development and were actually made available to it for that purpose, qualify the investments pertinent to the present case as having been made in Argentina.”\(^{49}\)

41. Moreover, the PCA Tribunal’s decision on the jurisdiction of the Tribunal in the present case, which amends the BIT and is therefore binding on the Parties, supports this argument by clearly indicating that “the fact that the transaction in itself may take place in a State other than the issuing state or that the bonds may have been paid with reference to a currency different from that of the host state does not prevent a commitment of funds to the host state … (considering) the place in which the funds deriving from the acquisition will be used.”\(^{50}\)

42. Finally, Respondent’s formalistic emphasis on the territorial link between the investment and the host state as required by the Preamble of the BIT contradicts and undermines the objective and purpose of the BIT which is to “promote greater economic cooperation” between the Parties by promoting and protecting foreign investment, especially when it contributes to the economic development of the host state. The Tribunal should therefore find that the bonds represent a commitment by the investor to Dagobah’s economy and that their acquisition does not lack a territorial link with the host-state.

II. THE TRIBUNAL MUST CONSIDER THE EFFECT OF THE PCA DECISION IN ITS JURISDICTIONAL ANALYSIS.

43. The Tribunal must consider the PCA decision in assessing whether it has jurisdiction to hear the claim. First, the Tribunal should regard the PCA decision as a binding interpretation of Article 1 (A). Therefore, the Tribunal has jurisdiction since the PCA decision established that sovereign bonds qualify as investments under the terms of the BIT. If the Tribunal finds the

\(^{48}\) *Ambiente* ¶508.
\(^{49}\) Id.
\(^{50}\) PCA Decision.
PCA nonbinding, it should nonetheless treat it as a persuasive interpretation of Article 1 and exercise jurisdiction over the claim (B).

A. The PCA decision is a binding interpretation of Article 1 of the BIT.

44. The Tribunal should regard the PCA decision as a binding interpretation of Article 1 for the following reasons: the States expressly consented in Article 7 to have an ad hoc tribunal issue a “binding decision” on “any dispute” concerning the “interpretation or application” of the BIT (1). In 2001, the States obtained an interpretation of the BIT capable of binding future investor-state tribunals. The PCA decision is binding because it reflects a mutual agreement between the State parties to reach an “authentic interpretation” on the text of the treaty (2). As a result, the interpretation of Article 1 confirmed in the PCA decision “must be read into the treaty for purposes of its interpretation.”

1. The decision is binding on the Tribunal under a textual interpretation of Article 7.

45. The state-to-state dispute resolution provision contained Article 7 allows that a State can submit “any dispute” concerning the “interpretation or application” of the BIT to an ad hoc tribunal for “binding decision.” The expansive language used in this provision indicates that the Parties intended to establish a mechanism to obtain a binding decision on a wide array disputes via state-to-state arbitration. This is supported by the use of the unrestricted phrase “any dispute,” which must be interpreted as applying to any “disagreement on a point of law or fact, a conflict of legal views or interests.” This is also supported by use of the disjunctive phrase “interpretation or application,” which is deliberately written “as comprehensive as possible” and encompasses virtually any conceivable dispute in relation to the treaty. This broad terminology indicates an intent for tribunals to issue binding decisions on abstract disputes regarding the proper interpretation of the BIT.

46. A contrary interpretation of Article 7 would run afoul of not only the ordinary meaning of Article 7, but also the principle of effectiveness. Under this principle, provisions “are to be

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51 BIT Art. 7(1)-(2).
52 Weeramantry §3.104.
53 BIT Art. 7(1)-(2).
54 Mavrommatis.
55 Id.
interpreted so as to render them effective rather than ineffective.” This principle is common in public international law and tribunals have frequently cited it to avoid interpretations that “constrain [a provision] to a quite marginal application” or deprive a provision of “practical applicability.”\textsuperscript{56} Reading Article 7 so as to not apply to investor-state tribunals would run afoul of this principle given that the alternative interpretation would drastically limit the scope of this provision’s application. Specifically, the effects of the PCA decision under the state-to-state dispute resolution mechanism contained in Article 7 would be restricted to concrete disputes between the contracting parties. This would lead to conflicting claims in subsequent disputes on same issue decided before the PCA tribunal. Such an interpretation deprives Article 8 of any practical effect. The contracting parties could not have intended this interpretation and such considerations must be taken into account by the Tribunal in assessing the effect of the decision in the current dispute.

2. The decision is binding as an “authentic interpretation” of Article 1 of the BIT

47. Under Article 31(3)(a) of the VCLT, tribunals must interpret treaties in light of “[a]ny subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.” When a subsequent agreement concerns “the interpretation of a provision reached after the conclusion of the treaty” it becomes “an authentic interpretation by the parties which must be read into the treaty for purposes of its interpretation.”\textsuperscript{58} As recognized in Methanex, “the subsequent agreement [does not] need to be concluded with the same formal requirements as a treaty” and “may be tacit and result from the concordant practice of States when they apply the treaty.”\textsuperscript{59} Thus, even though an act between the parties may not have the formal appearance of an “agreement” in the strictest sense of the word, it can nonetheless serve as an agreement, and as authentic interpretation of a treaty, under Article 31(3)(a) of the VCLT.

48. The most useful example of how such a process takes place can be seen in the NAFTA context and the role of the Free Trade Commission (“FTC”). Under Article 1132 of NAFTA, the parties consent to give matters of interpretation to the commission for binding resolution.

\textsuperscript{56} Occidental Exploration.
\textsuperscript{57} Nobel Ventures.
\textsuperscript{58} Kasikili/Sedudu Island.
\textsuperscript{59} Methanex (Final Award), Part IIB.
Although interpretations of the commission lack many of the characteristics of a formal agreement (e.g. the agreement is made by independent commission members acting as agents of the Parties and not the Parties themselves), the Methanex tribunal had “no difficulty in deciding that [an FTC Interpretation] is properly characterised as a ‘subsequent agreement’ on interpretation falling within the scope of Article 31(3)(a) of the Vienna Convention.”

49. In this regard, Article 7 of the BIT provides a comparable mechanism for the parties to reach a subsequent agreement on the “interpretation or application” of the BIT. After disputing the definition of investment in Article 1, the parties chose to submit their dispute to the PCA tribunal for binding resolution. The PCA tribunal, proceeding as an agent of the parties, issued a binding interpretation of the treaty. Since neither party contested the outcome, this decision reflects a mutual agreement between the treaty parties to reach an “authentic interpretation” and “must be read into the treaty.” Treatment of the PCA decision in this manner accords with previous decisions in which arbitrators have taken informal meeting minutes between States resulting in “common positions” as “binding statements on the meaning and application of the treaty.” It also accords with Aron Broches’s conclusion that investor-state tribunals could be bound “by the interpretation of the bilateral treaty arrived at by the Contracting States, whether as a result of agreement or of arbitration.”

B. If the tribunal finds the PCA decision nonbinding, it should come to the same conclusion by applying it as a highly persuasive interpretation of Article 1.

50. Claimant urges the Tribunal to follow established doctrine by recognizing the persuasive effect of the PCA tribunal’s decision in its current analysis of the definition of investment in Article 1. Despite the absence of precedent in international investment law, it goes without question that tribunals have within their discretion to refer to past decisions in resolving investor-state disputes. Indeed, prominent scholars on the subject agree that the practice is commonplace and has created a de facto doctrine of precedent where the persuasive effect of prior decision is “measured by how close each award is to the legal principle at issue and

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60 Methanex.
61 Kasikili/Sedudu Island ¶14.
62 CME ¶ 89.
63 Roberts.
64 See Gill.
65 Muchlinksi, et. al.
the similarity of the relevant factual background.”

Given the presence of substantially similar issues and facts in both disputes (1); the character of the PCA Arbitral decision as a product of state-to-state arbitration (2), and; the need to promote consistency in arbitral awards, this Tribunal should consider the PCA decision as persuasive authority (3).

3. The decision is highly persuasive given substantial similarities between the current dispute and the previous dispute before the PCA tribunal.

51. The Tribunal should grant substantial weight to the PCA tribunal’s decision given that the previous dispute shares “a high level of similarity or . . . an identity with those met in the present case.”

In prior investor-state disputes, tribunals have found a “real interest” to resort to prior cases dealing with similar legal issues and facts in order to shed light on reasoning and “to compare its own position with those already adopted by its predecessors.”

In Azurix, for example, the tribunal relied on “decisions of tribunals that interpreted the same provision in the same BIT” in establishing the meaning of investment.

In AES, the tribunal relied heavily on the decisions of the CMS, Azurix, and ENRON tribunals in its assessment of jurisdiction given the common factual circumstances rooted in Argentina’s national policies and their impact on foreign investments.

52. Claimant urges the Tribunal to take a similar approach in this case given the substantial legal and factual similarities between the present dispute and the prior PCA dispute. For example, in the current dispute, the central jurisdictional issue concerns whether “sovereign bonds” fall within the scope of the definition of investment in the BIT. This issue is substantially similar to the interpretive question presented to the PCA tribunal in 2001, which ultimately decided that sovereign bonds were investments within the definition of the BIT. Additionally, the factual circumstances in the present dispute are also substantially similar to those previously litigated by the PCA tribunal. Specifically, the dispute concerns the same provision of the BIT, involves the same respondent, and is linked to Dagobah’s national policies, particularly

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66 Reed.
67 See AES ¶ 28.
68 Id. ¶ 29.
69 Azurix ¶ 73 (emphasis added); see also LG&E ¶ 74; Lanco ¶ 43.
70 AES.
policies governing sovereign debt restructuring. Thus, the Tribunal should give substantial weight to the PCA decision in its analysis of the scope of Article 1 in light of substantial similarities.

4. The decision is highly persuasive given the character of the decision as a product of state-to-state arbitration.

53. The Tribunal should find the PCA decision highly persuasive given the character of the decision as a product of a state-to-state dispute. As scholars have argued, state-to-state disputes, particularly those addressing the “interpretation or application” of a treaty provision, are of a fundamentally different character than investor-state disputes. In these disputes the contracting parties delegate jurisdiction to a tribunal to resolve an interpretive issue and agree to be bound by that decision. Because the tribunal has a specific mandate (resolving interpretive issues between states rather than adjudicating investment disputes), it is likely “more sensitive to reaching decisions in accordance with the intentions of the treaty parties” and must be treated as “highly persuasive with respect to future conduct and tribunals.”71 In this case, the contracting parties to the BIT specifically delegated jurisdiction to the PCA tribunal to resolve an interpretive dispute and agreed to be bound by this decision under Article 7 of the BIT.72 Accordingly, the PCA decision finding that sovereign bonds fall under the definition of investment should thus be deemed as “highly persuasive” by the current Tribunal in its analysis of the scope of Article 1 of the BIT.

5. The decision is highly persuasive due to the importance of ensuring consistency between arbitral awards to protect the legitimate expectations of states and investors.

54. The Tribunal should consider the PCA decision as highly persuasive authority due to the importance of ensuring consistency in arbitral awards. Recognizing the importance of prior decision, the tribunal in Saipem stated that “it must pay due consideration to earlier decisions of international tribunals.”73 By doing so, the tribunal is capable of promoting “the harmonious development of investment law” to “meet the legitimate expectations of the

71 Roberts, 62-63.
72 Article 7.
73 Saipem ¶67 (emphasis added); Mitchell ¶23; see also AES ¶28.
community of states and investors toward the certainty of the rule of law.”\textsuperscript{74} The ADC tribunal expressed a similar sentiment, highlighting that “cautious reliance on certain principles developed in a number of those cases, as persuasive authority, may advance the body of law, which in turn may serve predictability in the interest of both investors and host States.”\textsuperscript{75}

55. The Tribunal must take these factors into consideration in its analysis of the definition of investment contained in Article 1 of the BIT. Specifically, it should not give Respondent a second bite at the apple and allow it to re-litigate a dispute concerning the interpretation of Article 1. This dispute was already settled by the PCA tribunal, which fostered the legitimate expectations of states and investors that sovereign bonds qualified as an investment under the BIT. By granting substantial weight to the PCA decision, the Tribunal acts to protect these expectations, in light of the principle of good faith,\textsuperscript{76} and with a view toward furthering “party autonomy, uniformity, transparency of standard, efficiency, and finality” in international investment law.\textsuperscript{77}

III. THIS TRIBUNAL HAS JURISDICTION UNDER THE CLAIMS UNDER THE BIT NOTWITHSTANDING THE FORUM SELECTION CLAUSE IN THE BONDS

56. The Tribunal should find that it has jurisdiction over this dispute because Claimant’s claims arise out of violations of the BIT(A.). Should the Tribunal find that Claimant’s claims arise solely from the sovereign bonds, the dispute resolution clause in Article 8 of the BIT is sufficiently broad to provide this Tribunal with jurisdiction (B.).

A. The disputed claims arise out of violations of the BIT, and therefore are within the jurisdiction of this Tribunal.

57. Article 8 of the BIT provides that “any legal dispute…in connection with an investment” should be submitted to this Tribunal.\textsuperscript{78} This dispute resolution clause gives this Tribunal jurisdiction over the present dispute, notwithstanding the forum selection clause in the bonds. Respondent’s have argued in the Answer to the Request for Arbitration that this Tribunal

\textsuperscript{74} Saipem; see also Duke Energy ¶117.
\textsuperscript{75} ADC (Award) ¶ 293.
\textsuperscript{76} Tecmed ¶ 154.
\textsuperscript{77} Martinez-Fraga.
\textsuperscript{78} BIT Art. 8(1).
lacks jurisdiction because of the forum selection clause directs this dispute to the domestic courts of Dagobah. However, forum selection clauses can only supersede a dispute resolution clause in a BIT when the dispute is purely contractual, and even then forum selection clauses are not always given deference.\textsuperscript{79}

58. Regardless, the dispute arises out of a violation of the BIT. Here, Claimant’s claims arise from Respondent’s failure to provide the fair and equitable treatment that it is obliged to give under Article II of the BIT. While the claims \textit{relate} to the disputed bonds, the allegations are of violations of the BIT.

59. In determining whether a dispute arises out of a contract or treaty, the tribunals must determine whether the BIT offers a standard independent from the contract to judge the conduct of the parties to the dispute.\textsuperscript{80} Therefore, Claimant must prove, \textit{prima facie}, that the dispute constitutes independent breaches of the BIT.\textsuperscript{81} In other words, in order for this Tribunal to have jurisdiction over the dispute, it must merely find the allegations of the Claimant are \textit{capable} of constituting a breach of the BIT. Beyond that inquiry, the Tribunal’s scrutiny over whether Claimant’s allegations are actually violations of the BIT in the jurisdictional phase should be “limited.”\textsuperscript{82}

60. Moreover, treaty and contract claims are not mutually exclusive.\textsuperscript{83} In fact, “it is well established under international law” contractual breaches can amount to violations of international law. For example, in \textit{Impregilo v. Pakistan}, the tribunal came to the conclusion that “the taking of contractual rights could potentially constitute an expropriation.”\textsuperscript{84} Likewise, many tribunals have ruled that the destruction of contractual rights amounted to a violation of fair an equitable treatment.\textsuperscript{85} Therefore, even if this Tribunal finds the claims stem from both the contract and the BIT, the forum selection clause does bar this Tribunal’s jurisdiction.

\textsuperscript{79} See e.g. Brownlie.
\textsuperscript{80} See e.g. \textit{Vivendi II} ¶101.
\textsuperscript{81} Abaclat.
\textsuperscript{82} Alexandrov, 343.
\textsuperscript{83} Schreuer.
\textsuperscript{84} \textit{Impregilo} ¶ 274.
\textsuperscript{85} See e.g. \textit{Vivendi II}, Eureko, Siemens.
61. For example, in *Bayindir*, the tribunal explained, an investor has a “self-standing right” to pursue BIT claims independent from contract claims.\(^{86}\) The tribunal dismissed the notion that it did not have jurisdiction because the BIT claim arose from the same set of facts as the potential contractual claim.\(^{8788}\)

62. Likewise, in *Eureko* the tribunal determined that it had jurisdiction to consider whether actions taken by the government related to a contract could amount to violations of treaty provisions.\(^{89}\) The tribunal determined that, despite the fact that the dispute related to underlying contracts between the investor and Poland, acts taken by Poland relating to the contracts also violated its obligations under the BIT.\(^{90}\) Despite the mixed nature of the claim, the tribunal found that it had jurisdiction under the treaty.

63. Here, any factual similarities between a contractual claim that Claimants might have and the treaty claims brought before this Tribunal do not act to deprive the Tribunal of its jurisdiction over the treaty claims. Respondent defaulted on its obligations under bonds it issued when it used its sovereign power unilaterally to restructure the bonds by enacting the SRA.\(^{91}\) Claimant, an investor of a party to the BIT, was part of the hold minority subject to the SRA and was negatively impacted by the restructuring.\(^{92}\) Moreover, given Claimant was party of the minority holdout affected by the SRA, it was disproportionately affected from other bondholders. These measures were an expression of Dagobah’s sovereign authority, which obviously did not derive from mere contractual mechanisms as maintained by Respondent.

64. The facts of this case are similar to *Abaclat*, wherein the dispute related to Argentina’s restructuring of bonds that it had issued. As here, the disputed bonds in *Abaclat* contained a forum selection clause directing any disputes related to the bonds to domestic courts. While the *Abaclat* tribunal acknowledged that the claimants had a contractual claim against Argentina for its failure to perform obligations under the bonds, it also concluded that

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\(^{86}\) *Bayindir* ¶167.
\(^{87}\) *Id.*
\(^{88}\) As an aside, when the claimant has the right to choose between two forums the Claimant has its choice amongst the alternative fora. *Siemens*.
\(^{89}\) *Eureko*. *See also AES*.
\(^{90}\) *Id.*
\(^{91}\) *Id.*
\(^{92}\) See generally, *Abaclat*.

Facts.
Argentina had acted in potential violation of the BIT. The tribunal emphasized that the dispute arose not because Argentina had merely defaulted on its obligations under the bond, but because it had acted as a sovereign in unilaterally restructuring the bonds.

65. This Tribunal likewise has jurisdiction over the present dispute because Claimant is seeking relief from Respondent’s wrongful, unilateral, sovereign acts, from which the treaty, rather than the bonds, provides protection. As these are treaty claims, the Tribunal has jurisdiction over this dispute under Article II of the BIT.

B. Even if the claims are contractual claims, Article 8 of the BIT’s broad language gives this tribunal jurisdiction

66. Even if the Tribunal determines that Claimants are seeking relief for contract claims rather than treaty claims, the broad language of Article 8 of the BIT still grants the Tribunal jurisdiction over this dispute. Article 8 of the BIT provides this Tribunal with jurisdiction to hear the disputed claims. Article 8 provides that any dispute “in connection with an investment” should be settled amicably or submitted to binding arbitration with this Tribunal. This broad language covers the present dispute as it is in “connection with an investment,” the bonds.

67. Article 8.1 provides:

“Any legal dispute between an investor of one Party and the other Party in connection with an investment shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.” BIT, Article 8.1 (emphasis added)

68. The language of Article 8.1 broadly gives the tribunal jurisdiction over “any” legal dispute “in connection with an investment.” “Any” legal dispute “in connection with an investment” may involve claims, which involve investment contracts, regardless of whether the claims arise from the contract or the treaty. Notably, Article 8.1 is significantly broader than other BITs and model BITs, which frequently include restrictive language to limit a tribunal’s jurisdiction to strictly treaty claims. For example, the UK Model BIT’s correlating provision states any dispute “concerning the interpretation or application [of the BIT]” shall be

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93 Abaclat.
94 Id.
submitted to binding arbitration. The Canada-Costa Rica BIT likewise limits a tribunal’s jurisdiction to disputes “concerning an obligation of the [host State] under this Agreement.” The absence of language that specifically restricts the tribunal’s jurisdiction to treaty claims in the BIT “provide[s] sufficient basis for a BIT tribunal to decide any disputes with respect to investments, including disputes arising solely out of an investment contract.”

69. The Vivendi Annulment Committee came to the same conclusion when interpreting a similar dispute resolution clause. In Vivendi, the tribunal ruled that because of broad language in the BIT, it was not necessary for the Claimant to allege a breach of the BIT itself. The language, “relating to investments under the Agreement”, was broad enough to encompass disputes relating to investment contracts. The tribunal found that the dispute resolution clause “read literally, the requirements for arbitral jurisdiction in [the BIT] do not necessitate that the Claimant allege of the BIT itself: it is sufficient that the dispute relate to an investment under the BIT.”

70. Likewise, for the Tribunal to have jurisdiction under the BIT here, it is sufficient that the dispute only be “in connection with an investment,” as is required by the BIT. As in Vivendi, the language of the BIT contains no requirement that a claim strictly arise for the treaty. Limiting this Tribunal’s jurisdiction strictly to treaty claims, asks this Tribunal to impose jurisdictional limitations under the BIT that the State parties never agreed to. As a result, this tribunal has jurisdiction over the disputes relating to the investment bonds, even if the claims are contractual.

**PART TWO: MERITS**

I. **RESPONDENT FAILED TO PROVIDE CLAIMANT WITH FAIR AND EQUITABLE TREATMENT AND REFRAIN FROM UNREASONABLE MEASURES AS IS MANDATED BY ARTICLE 2 OF THE CORELLIAN-DAGOBAH BIT.**

71. Article 2 creates an autonomous standard of protection that (1) affords investors fair and equitable treatment (“FET”) “at all times,” and (2) prohibits a host state from taking

95 UK Model BIT, Art. 8(1).
96 Canada-Costa Rica BIT, Art. 7(1).
97 OECD Benchmark.
98 Vivendi II ¶55.
“unreasonable measures” that impairs an investor’s use or enjoyment of his investment. Specifically, Article 2, Sec. 2 mandates:

Investments of each Party or of nationals of each Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party. Neither Party shall in any way impair by unreasonable or discriminatory measures the [...] enjoyment or disposal of investment in its territory of nationals of the other Party. (emphasis added)

72. In accordance with the interpretation principles in Article 31 of VCLT, the ordinary meaning of the text “in the light of [the treaty’s] object and purpose” must govern. 99 Recourse to materials other than the text of the treaty itself is only allowed where the text is ambiguous or absurd. 100 The purpose and ordinary meaning of the treaty are therefore the central inquiries.

73. The purpose of the Agreement is to promote investment. The preamble states as much, “[r]ecognizing that agreement on the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties.” 101 The chapeaux of an Article can provide further evidence of purpose. 102 The chapeaux of Article 2 directs both Parties to “encourage and create favourable conditions for investors of the other Party to invest capital in its territory.” 103 The Agreement embraces a well-established fact: foreign investment flows where investors are given a stable and favorable regulatory environment. 104

74. In light of this purpose, the ordinary meaning Article 2 is straightforward. Investors enjoy a broad right to equitable, fair, and reasonable treatment. This right corresponds with a state duty to avoid inequitable, unfair, and unreasonable actions (or inactions) that impair investments. 105 Equity has long been understood to require due process and freedom from coercion. 106 Tribunals have repeatedly held that abuses of due process infringe equity rights

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99 VCLT Art. 31(1).
100 VCLT Art. 32.
101 BIT Preamble.
103 BIT Art. 2.
under FET treaty language. Likewise, fairness has been measured against the expectations states created to induce investment in the first place. There is also consensus that reasonable state action requires proportionality and that discrimination violates FET protections.

75. Respondent may argue that “fair and equitable treatment” is a shorthand for the minimum standard of treatment (“MST”) guaranteed by customary international law. Claimant offers two responses. (1) Nothing in the language of the treaty suggests that investor protections are limited by the MST. (2) The MST itself offers investors robust protections regarding due process, coercion, legitimate expectations, and proportional treatment, rendering a distinction between an autonomous standard and the MST irrelevant.

76. Article 2 is not a placeholder for a pre-existing standard of international law. In the words of Dozer and Stevens, the Parties decided to “stipulate this standard as an express obligation rather than rely on a reference to international law” which is evidence that they meant to create an autonomous or “self-contained standard.” There is no reference to the MST in Article 2 or anywhere in the Agreement. According to Schreuer: “[a]s a matter of textual interpretation, it is inherently implausible that a treaty would use an expression such as “fair equitable treatment” to denote a well-known concept such as the “minimum standard of treatment in customary international law.” Put simply, if the parties had intended to invoke the MST, they would have said so.

77. As the ordinary meaning of Article 2 in no way invokes the MST, Respondent will need to establish that FET language is really a euphemism, what the VCLT calls a “special meaning.” Article 31 of the VCLT dictates that a treaty’s language be interpreted has having a special meaning only when it is established both parties so intended. Nothing in the headers or body of the Agreement suggests the Parties intended anything but an

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107 Scheurer, 374; Loewen ¶132; UNCTAD, 80.
108 Scheurer, 373; UNCTAD, 62.
109 MTD ¶109; Scheurer, 373; UNCTAD, 62.
110 Dozer and Stevens, Bilateral Investment Treaties, pg. 60.
111 Scheurer, 360; see also Stephen Vasciannie, The Fair and Equitable Treatment Standard in International Investment Law and Practice, 70 British Year Book of International Law 99 (1999), 104-105.
112 Compare NAFTA Art. 11 with BIT Art. 2.
113 VCLT Art. 31(4).
114 Id.
autonomous treaty standard. The UNCTAD refers to this kind of FET as “unqualified” and contrasts it with the trade agreements that expressly link the FET clause to either the MST or international law generally.115 Because the Agreement is unqualified there is no evidence to establish that either Party intended a special meaning. That the parties omitted any language linking the FET clause to the MST speaks against an intention to do so.

78. Where tribunals have found that FET language was limited by the MST, there has been compelling evidence of both parties intent to that effect. The NAFTA FET clause, for example, comes under the header “Minimum Standard of Treatment.”116 Still, tribunals found that the FET language naturally suggested protections in excess of the MST, requiring a clarification from the FTC. The US Model BIT establishes explicitly that the parties intended the protections offered to mirror those offered by the MST and not to exceed them.117

79. Regardless, the MST provides all of the protections relevant to this dispute that would be offered by an autonomous treaty standard.118 The misconception that the MST is impotent in protecting investors may stem from Neer, the 1926 decision of the US-Mexico Claims Court. Neer established a state-friendly standard that was difficult to trigger, but customary international law has moved passed Neer as states have recognized the benefit of reducing investor risk by ceding some sovereignty.119 The MST is now more easily triggered. In the words of the Mondev tribunal, “[t]o the modern eye, what is unfair and inequitable need not equate with the outrageous or the egregious.”120 The MST as it existed in 1927 has been replaced by a shield of specific protections enjoyed by investors.121

80. A wide range of tribunals have in the years since Neer found that the MST protects investors from coercion,122 abuses of due process,123 reversal on state commitments,124 and

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115 UNCTAD, 7-10.
116 NAFTA §1105.
117 US Model BIT, note regarding fair and equitable treatment.
118 See e.g. Mondev ¶125; ADF ¶179; RDC ¶218.
120 Mondev ¶ 116.
121 See RDS 29; Mondev ¶ 117.
122 E.g. Saluka ¶308.
123 E.g. Loewen ¶132
discrimination.125 These protections are the basis of the present claim and they are to be found in both the autonomous treaty standard created by Article 2 and in the MST provided by customary international law.

A. The SRA failed to accord fair and equitable treatment because it contravened Claimant’s due process rights and was coercive.

81. Article 2(2) of the BIT requires that investments be accorded fair and equitable treatment. The SRA failed to accord fair and equitable treatment because it violated due process by denying investors notice and opportunity to be heard (1) and coerced investors into accepting a unilateral change in the terms of the sovereign bonds (2).

1. The SRA and resultant restructuring contravened Claimant’s due process rights by failing to give it notice and an opportunity to be heard.

82. Customary international law126 and numerous tribunals127 have recognized that fair and equitable treatment incorporates the obligation to provide administrative and judicial due process, including notice and opportunity to be heard.128 Respondent’s passage of the SRA and execution of the debt restructuring violated its obligation to provide due process because it failed to provide notice and an opportunity to be heard and was motivated by improper purposes.

83. Respondent did not provide sufficient notice of either the SRA or the restructuring process. The tribunal in Middle East Cement found that publication of notice in a newspaper, combined with notice applied directly to the property at issue, failed to provide sufficient notice.129 During the SRA drafting process, Respondent posted versions of text on relevant government agency websites.130 These postings, along with Respondent’s invitation through the same websites to participate in the restructuring process, did not constitute notice. Notice should have been given through direct communication to investors.

124 E.g. Metalclad ¶176
125 E.g. Saluka, ¶408-416.
126 Kingsbury at 13.
127 E.g., Metalclad ¶91; Waste Management ¶98; Middle East Cement ¶143.
128 Metalclad ¶91.
129 Middle East Cement ¶143.
130 Procedural Order ¶21.
84. Respondent’s failure to provide adequate notice deprived Claimant of an opportunity to be heard. In both *Metalclad* and *Tecmed*, the respondent failed to notify the claimant of its intention to hold hearings related to its permit or license, thus robbing claimant of its opportunity to express its position.\(^{131}\) Here, Respondent did not invite bondholders to participate in the drafting of the SRA,\(^{132}\) nor did it directly invite Claimant to participate in the restructuring process. Though it did not receive direct notice of any of these proceedings, Claimant responded to the invitation to participate within one week.\(^{133}\) However, Claimant was ultimately excluded from the consultative committee, and therefore deprived of its opportunity to be heard, because Respondent only gave investors three days to respond after its invitation was posted online.\(^{134}\) By failing to notify Claimant directly and requiring response in such a short time frame, Respondent purposely created conditions that made it virtually impossible for Claimant to participate in the restructuring process. This constitutes a “willful disregard of due process.”\(^{135}\)

85. Respondent failed to properly provide Claimant with notice of the SRA and the proposed restructuring. Its unreasonable requirement of a three-day response time as a condition of inclusion on the consultative committee deprived Claimant of a true opportunity to be heard. Thus, Respondent’s actions in passing the SRA and executing the debt restructuring clearly flouted Claimant’s due process rights.

2. **The SRA was coercive because it unilaterally changed the terms of the bonds.**

86. Fair and equitable treatment also entitles investors to freedom from coercion.\(^{136}\) Coercion exists when state conduct takes away an investor’s legitimate rights.\(^{137}\) The tribunal in *Vivendi II* suggested that governments could change policies that affect investors, but that such changes must be enacted through a transparent and non-coercive renegotiation.\(^{138}\) In *Tecmed*, an investor’s unlimited license for operation of a landfill was replaced by a limited

\(^{131}\) *Metalclad*, *Tecmed* ¶162.
\(^{132}\) Procedural Order ¶21.
\(^{133}\) Procedural Order ¶35.
\(^{134}\) Procedural Order ¶35.
\(^{135}\) *Elettronica Sicula*, 1.
\(^{136}\) *Saluka* ¶304-308; Schreuer, 7, 373.
\(^{137}\) *PSEG* ¶245, *GAMI* ¶97.
\(^{138}\) *Vivendi II*, ¶7.4.31.
term license, forcing the investor to bear the costs and risks of relocating to another site.\textsuperscript{139} This pressure was seen as a form of coercion that violated the fair and equitable treatment provision of the Mexico-Spain BIT.\textsuperscript{140} Here, Respondent did not conduct a transparent, non-coercive renegotiation with Claimant. In fact, Respondent passed the SRA without consulting Claimant or any of the other investors at all. Then, Respondent’s online invitation to investors to participate in the restructuring process, which expired after three days, did not constitute a genuine attempt to renegotiate with Claimant. The SRA allowed Respondent to bind all bondholders to new terms if the owners of only 75% of the aggregate nominal value of all outstanding bonds governed by domestic law agreed to modify the terms.\textsuperscript{141} Claimant did not agree to modify the terms of the bond, nor did it agree to be bound by the decision of a 75% majority.\textsuperscript{142} Claimant is forced to bear the costs and risks of the modified terms. This pressure and forced debt restructuring amounts to coercion by Respondent.

\textbf{B. The restructuring disproportionately burdened bondholders, and targeted foreign investors.}

87. Foreign bondholders paid the full price of Respondent’s fiscal irresponsibility. In the years leading up to 2011, Respondent was criticized for over-borrowing.\textsuperscript{143} Long unaddressed tax evasion challenged revenue collection.\textsuperscript{144} These problems spelled disaster unless policies changed. The IMF recommended a package of reforms.

88. Respondent could have clamped down on tax evaders. It could have raised revenues by raising rates or selling state assets. It could have engaged in a more extensive austerity program like the one seen in 2001-2003. Respondent could have negotiated more favorable terms with the IMF and other state-creditors, instead of agreeing to first force a restructuring with private creditors.

89. Respondent ignored all of the IMF’s proposals. Instead of spreading the pain of insolvency across tax-payers, state programs, and other creditors, Respondent selected foreign bond

\begin{itemize}
\item [\textsuperscript{139}] \textit{Tecmed}.
\item [\textsuperscript{140}] \textit{Id.} ¶163.
\item [\textsuperscript{141}] Facts ¶17.
\item [\textsuperscript{142}] Facts ¶22.
\item [\textsuperscript{143}] Brock, 1.
\item [\textsuperscript{144}] Brock, 2; Facts ¶3.
\end{itemize}
holders to feel the full impact of the countries fiscal instability. Disproportionality in state action is inconsistent with FET.\textsuperscript{145} The Asuriz tribunal found that when an investor “bears an individual and excessive burden” that investor’s FET rights have been violated.\textsuperscript{146}

90. The decision to saddle bond holders with the full weight of Respondent’s fiscal irresponsibility was disproportionate and additionally unreasonable. Coercing bond holders into an unfair restructuring scares away investors from future bond issuances.\textsuperscript{147} Respondent will now have to pay a premium to access capital markets, as its bonds have been downgraded.\textsuperscript{148} Raising taxes or ending tax evasion would have offered a path to solvency that strengthened rather than eroded future fiscal stability.

C. The restructuring was unfair because it infringed investors’ legitimate expectations.

91. Claimant purchased Respondent’s bonds in 2005, when Respondent was encouraging foreign investment. At the time, Respondent was experiencing growth and its economy seemed stable.\textsuperscript{149} Poor’s Standard gave Respondent’s sovereign bonds a B+ and Respondent made public commitments to create a more stable financial sector.\textsuperscript{150}

92. For a state to attract capital by creating a favorable investment environment, but then to undermine that environment once the capital is committed, is manifestly unfair.\textsuperscript{151} The protection of legitimate investor expectations has become a center-piece of the FET guarantee.\textsuperscript{152} This means states cannot (1) reverse on specific commitments made to induce investment\textsuperscript{153} or (2) fail to provide consistent and stable conditions for investment.\textsuperscript{154}

1. Respondent failed to live up to specific commitments it had made to bond holders.

93. In the post-2001 restructuring, Respondent honored the forum and choice of law contract

\textsuperscript{145} Asuriz ¶311; see also EDF ¶293.
\textsuperscript{146} Azurix ¶311; See also Legal Opinion of Claimant’s Expert, Professor Schreuer, of June 4, 2007, ¶505.
\textsuperscript{147} Tomz and Wright, 71-73.
\textsuperscript{148} Procedural Order ¶31.
\textsuperscript{149} Procedural Order ¶11
\textsuperscript{150} Procedural Order ¶31; Procedural Order ¶18.
\textsuperscript{151} See e.g. Occidential ¶191.
\textsuperscript{152} UNCTAD, 63.
\textsuperscript{153} Shreuer, 374.
\textsuperscript{154} See Enron ¶260; CMS ¶274.
provisions in the bonds it had issued.\textsuperscript{155} The restructured bonds were sold only to willing creditors, and holdouts were not coerced. The post-2001 restructuring created expectations in investors that Respondent would honor basic provisions of the bonds it issued and would act reasonably in the face of a crisis.

94. Claimant acknowledges that states have a right to change laws and regulations, but where states have “dispensed with altogether [a legal framework] when specific commitments to the contrary have been made,” states act unfairly.\textsuperscript{156} Respondent made specific commitments in the bond contracts it issued. As found in \textit{CME} and \textit{Mondev}, contracts between states and investors can give rise to legitimate expectations that contract commitments will be respected.\textsuperscript{157} If a state signed a contract in good faith, it is legitimate to expect that the contract’s guarantees will not be repudiated.\textsuperscript{158}

95. Yet, Respondent repudiated almost all of the guarantees it had made in its bonds. The Sovereign Restructuring Act swept aside the contractual commitments Respondent had made. During the 2001 restructuring, Respondent maintained consistent laws governing the process. This enhanced investor expectations that even if Respondent faced financial difficulty, it would negotiate in good faith and not rewrite the laws to walk away from its debts. The Sovereign Restructuring Act frustrated those expectations and amounts to little more than an arbitrary cancelation of Respondent’s commitments.

96. The Sovereign Restructuring Act effectively reissued outstanding bonds with Yavin’s laws and forums controlling, ignoring the pre-existing bond’s forum and choice of law selection clauses.\textsuperscript{159} The SRA also wrote into the bonds a collective action mechanism - an amendment in no way allowed by the bond-contract or pre-existing law.\textsuperscript{160} The collective action mechanism had the effect of coercing bond-holders into folding in negotiations surrounding a restructuring, compromising the pari passu protections built into the bonds. Investors no longer had control of the process as even holdouts could be compelled to accept a

\textsuperscript{155} Facts ¶4-7.
\textsuperscript{156} CMS ¶277.
\textsuperscript{157} CME ¶120-127; Mondev ¶134.
\textsuperscript{158} Mondev ¶134.
\textsuperscript{159} Facts ¶ 20.
\textsuperscript{160} Id. ¶20.
restructuring no matter how unfair the terms.\textsuperscript{161}

2. Respondent failed in its duty to provide a stable legal and business environment.

97. In addition to the contravening the commitments made in the bonds themselves, Respondents policies were inconsistent with its duty to provide a stable investment environment. The FET standard guarantees a “stable framework for the investment.”\textsuperscript{162} The CMS tribunal found that “[t]here can be no doubt, therefore, that a stable legal and business environment is an essential element of fair and equitable treatment.” This is particularly so when the investment is made over a long period of time.\textsuperscript{163} Investors enjoyed no such stability as the basic legal framework governing the bonds was shredded by the Sovereign Restructuring Act.

98. Beyond the Sovereign Restructuring Act, Respondents actions frustrated investors expectations and the expectations of the international community. Respondent over-borrowed, exposing creditors.\textsuperscript{164} Respondent failed to control tax evasion, which undermined revenues.\textsuperscript{165} Even when Respondent was in the throws of financial instability, it failed to follow the recommendations of the IMF, choosing instead to place the full burden of insolvency on bond-holders.\textsuperscript{166} These arbitrary state actions and inactions frustrated the legitimate expectations of investors that Respondent would act to prevent a default, especially given that in 2001, Respondent followed all IMF recommendations, leading the country out of crisis.\textsuperscript{167}

II. RESPONDENT CANNOT INVOKE THE ESSENTIAL SECURITY CLAUSE IN ARTICLE 6 OF THE BIT TO JUSTIFY ITS ACTIONS.

99. The Essential Security Clause in Article 6 of the BIT does not excuse Respondent’s violation of its treaty obligations. Respondent claims that, even if violating the BIT, the sovereign debt restructuring was authorized by Article 6(2). Although Article 6(2) allows States to apply measures necessary for the protection of essential security interests, this provision is

\textsuperscript{161} Id. ¶17.
\textsuperscript{162} CMS ¶277.
\textsuperscript{163} Dolzer, 104.
\textsuperscript{164} Facts ¶3.
\textsuperscript{165} Facts ¶3.
\textsuperscript{166} Procedural Order ¶36.
\textsuperscript{167} Facts ¶15.
inapplicable here.

100. First, Respondent cannot self-judge what are “necessary” measures under Article 6 (A). Second, the requisite state of necessity to invoke Article 6 does not exist under these circumstances (B). Even if the tribunal finds that Article 6 is self-judging, Respondent did not exercise its self-judgment in good faith (C). If the requisite state of necessity has been met and the article properly invoked, Respondent is not freed from the obligation to provide compensation for its actions (D).

A. Article 6(2) of the BIT is not self-judging

101. Despite the fact that the application of Article 6(2) is the responsibility of the Tribunal, Respondent unilaterally conclude that the requirements for invoking Article 6(2) have been met. This conclusion is impermissible for three reasons: first, Article 6(2) is not self-judging because it is not explicitly declared to be so (I). Second, to interpret this clause as self-judging would contravene any proper interpretation of the BIT (2). Third, treaty provisions that allow parties to act as their own judges are inherently invalid (3).

1. Art. 6(2) is not self-judging because it is not explicitly declared to be

102. The drafters of the BIT did not intend to grant one party unilateral authority to evade their responsibilities under the treaty. Article 8 of the BIT submits all disputes between the parties to binding arbitration, and it is inconceivable that Article 6(2) would implicitly diminish that grant of authority.

103. In contrast with Article 6(1), Article 6(2) is not explicitly declared to be self-judging. Article 6(1) contains the phrase “which it considers,” indicating that the BIT drafters made an explicit choice to make Article 6(1) self-judging while not making Article 6(2) self-judging. Additionally, essential security clauses in other BITs often explicitly state that the clause is self-judging. For example, Article 18 of the US Model BIT (2012) uses “that it considers.” Article 18 is identical to Article 6 expect for those three two words. Similar

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168 BIT Art. 6(1).
169 Article 31 of the Vienna Convention on the Law of Treaties provides that a treaty should be interpreted in the context of the treaty’s text, including its preamble and annexes. VCT Art. 31(2).
170 See e.g. GATT Art. XXI, US-Russia BIT Art. XX; US-Bahrain BIT Art. XX.
provisions that are explicitly self-judging include Article XXI of the GATT\textsuperscript{171} as well as provisions in the BIT concluded by the United States with Russia and with Bahrain.\textsuperscript{172}

104. An essential security clause in an investment treaty without an explicit statement that it is intended to be self-judging has never been determined to be self-judging by an arbitral tribunal.\textsuperscript{173} In CMS, the tribunal determined that “when States intend to create for themselves a right to determine unilaterally the legitimacy of extraordinary measures … they do so expressly.”\textsuperscript{174} This requirement was also the conclusion of the ICJ in the Nicaragua and the Oil Platforms case.\textsuperscript{175} Therefore, without an explicit declaration, the Tribunal should not insert a self-judging provision into this clause.

2. To interpret this clause as self-judging would violate international rules on treaty interpretation

105. The text of Article 6(2), in light of the object and purpose of the BIT, supports the conclusion that Article 6(2) was not intended to be self-judging. The primary object and purpose of BITs is to protect foreign investors. The tribunal in CMS stated that the US-Argentina BIT “is clearly designed to protect investments at a time of economic difficulties.”\textsuperscript{176} Similarly, in Enron the tribunal noted that the purpose of the BIT requires the protection of the international guaranteed rights of the beneficiaries.\textsuperscript{177} The tribunal concluded that an interpretation allowing self-judging could not be reconciled with that object and purpose.\textsuperscript{178}

106. Here, the BIT’s preamble has two key clauses that indicate a self-judging essential security clause would violate the treaty’s purpose. The preamble states that “a stable framework for investment will maximize effective utilization of economic resources” and recognizes “the importance of providing effective means of asserting claims and enforcing

\textsuperscript{171} GATT Art. XXI
\textsuperscript{172} US-Russia BIT Art. XX; US-Bahrain BIT Art. XX.
\textsuperscript{173} See, e.g., CMS, Enron, Nicaragua.
\textsuperscript{174} CMS \textsuperscript{¶}370; see also Enron \textsuperscript{¶}332 (“[T]he Treaty would be deprived of any substantive meaning.”).
\textsuperscript{175} Nicaragua; Oil Platforms. (CMS)
\textsuperscript{176} CMS \textsuperscript{¶}353
\textsuperscript{177} Enron \textsuperscript{¶}331.
\textsuperscript{178} Enron \textsuperscript{¶}331.
rights.” If a party can escape obligations at will, the BIT is illusory and allows states to escape obligations by using the “charade of citing national security.”

3. Allowing Respondent to act as its own judge would violate a fundamental principle of law

107. A fundamental principle of law is that parties may not act as judges in their own cases (nemo iudex in causa sua). This principle was affirmed as early as 1873 in The Virginius Incident. Britain utilized this principle in declining to arbitrate for settlement of a military incident upon the high seas. The Permanent Court of International Justice reaffirmed this principle in 1925 and the ICJ reaffirmed it in 1959. To interpret Article 9 of the BIT as self-judging would be to make Respondent the judge of a crucial issue in its own case and violate a one of the most basic principles of law.

B. The essential security interests of Respondent were not threatened in a manner sufficient to invoke Article 6(2)

108. Article 6(2) requires a situation threatening the “maintenance or restoration of international peace or security, or the protection of its own essential security interests.” Because Article 6(2) does not define “essential security interest”, the customary defense, as codified in Article 25 of the ILC Articles of State Responsibility, is applicable. Respondent has failed to prove that its measures were necessary to protect an essential security interest under customary law (1). Even if the tribunal reads Article 6 to include a broader array of state actions than customary law, Respondent still fails to meet the requisite standard (2).

1. Respondent has failed to prove that measures taken were necessary to protect an essential interest

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179 BIT Preamble.
180 Vandevelde, 176.
181 See Cheng, 279
182 Id.
183 Laussanne Treaty Interpretation, 26.
184 Interhandel, 56, 97.
185 BIT Art. 6(2).
186 Sloane, 450.
109. Respondent’s argument for invoking Article 6(2) fails on three accounts. Respondent failed to prove peril that is grave and imminent (a). Respondent failed to establish that its actions were the only way to respond to any perceived peril (b). Respondent contributed to its debt crisis (c).

110. State responsibility for treaty violations is governed by the ILC Articles on State Responsibility. The ICJ\(^{187}\) and many investor-state tribunals\(^{188}\) have identified Article 25 of the ILC Articles as a codification of the customary defense of necessity. Tribunals generally accept that Article 25 provides the proper standard to be applied in the context of an essential security interest clause.\(^{189}\) The tribunal in CMS equated the requirements for satisfying Article XI in the US-Argentina BIT with Article 25.\(^{190}\) Although the CMS annulment proceeding critiqued the tribunal’s lack analysis as to the relationship between the articles,\(^{191}\) the tribunals in Enron and Sempra both equated Article 25 with the BIT essential security clause.\(^{192}\)

111. Article 25 was written restrictively to prevent states from easily evading their international obligations.\(^{193}\) The commentary to Article 25 states that “necessity will only rarely be available to excuse non-performance of an obligation and that it is subject to strict limitations to safeguard against possible abuse.”\(^{194}\)

\( a. \) **Respondent has failed to prove peril that is grave and imminent**

112. The circumstances required to qualify as a state of emergency under customary international law are “very strict,”\(^{195}\) and prior to Argentina’s sovereign debt crisis in 2001 no tribunal had ever sustained a necessity argument on the basis of financial troubles.\(^{196}\) According to the ILC, the danger has to be objectively established and not merely

\(^{187}\) See Gabcikovo-Nagymaros, ¶140.
\(^{188}\) See Kurtz, 325, 334–35; see, e.g., Sempra, ¶344; CMS, ¶315.
\(^{189}\) Enron ¶303; Sempra ¶344; Continental Casualty ¶168; CMS ¶315.
\(^{190}\) CMS ¶357.
\(^{191}\) CMS (Annulment) (necessitating the Tribunal “to take a position on their relationship.”).
\(^{192}\) Enron ¶303; Sempra ¶344; Continental Casualty ¶168. C.f., LG&E.
\(^{193}\) CMS
\(^{194}\) ILC Commentary
\(^{195}\) Hoelck Thjoernelund, 425.
\(^{196}\) Sloane, 454.
apprehended as possible.\textsuperscript{197} Many tribunals have held that the situation must threaten “the very existence of the State and its independence.”\textsuperscript{198} For example, Argentina faced a severe crisis in 2001, with economic, political and social crises threatening the total collapse of the government and Argentine state. The Argentine risk premium was the highest worldwide, and unemployment, poverty, and indigency rates reached intolerable levels. Argentina faced a possible run on banks along with violent demonstrations and protests. Even given this extreme situation, “in any arbitration where Argentina has relied upon the [ILC] Articles’ definition of necessity, it has lost.”\textsuperscript{199}

113. In CMS, the tribunal found that although the crisis in Argentina was severe, similar crises did not lead to derogation of treaty obligations and Argentina could have renegotiated, adapted or postponed.\textsuperscript{200} In Enron the tribunal required a situation that “compromised the very existence of the State and its independence” and found that Argentina’s crisis did not meet this high bar.\textsuperscript{201} Additionally, the Sempra tribunal concluded that “questions of public order and social unrest could have been handled” and the events in Argentina were not “actually out of control or had become unmanageable”; therefore, Argentina was not excused under Article XI.\textsuperscript{202} One tribunal did find that the severe economic crisis in Argentina was an essential interest;\textsuperscript{203} however, this tribunal was not using the customary law standards found in Article 25 of the ILC Articles.\textsuperscript{204}

114. The situation in Dagobah was not sufficiently grave or imminent to meet the high bar required to qualify as an essential security interest. A comparison with the Argentine economic crisis of 2001 shows that the Dagobah situation was more manageable. The recession in Dagobah was connected to a world-wide financial crisis also impacting a vast number of economies throughout the world. Respondent has prevented no evidence that the situation in Dagobah was uniquely severe.\textsuperscript{205} Fear of a sovereign debt crisis certainly does

\textsuperscript{197} ILC Commentary.
\textsuperscript{198} Sempra ¶348.
\textsuperscript{199} Ziff, 369.
\textsuperscript{200} CMS
\textsuperscript{201} Enron ¶306.
\textsuperscript{202} Sempra ¶348.
\textsuperscript{203} LG&E.
\textsuperscript{204} LG&E.
\textsuperscript{205} Facts ¶14.
not present an imminent threat to “the very existence of the State and its independence.”

b. Respondent failed to prove that its actions were the only way to respond to any perceived peril

115. The commentary to ILC Article 25 states that necessity cannot be invoked “if there are other (otherwise lawful) means available, even if they may be more costly or less convenient.” It adds that the alternative options that should be considered are “not limited to unilateral action but may also comprise other forms of conduct available through cooperative action with other States.” The tribunal in CMS held that the state’s action must be the only way a state can safeguard its interests. Although one tribunal found that the state’s course of action need not strictly by the only way to protect its security interests, this approach represents the minority opinion.

116. A sovereign debt restructuring was not the only option available to Respondent. Instead of the Tribunal deciding among policy alternatives, Respondent needs to prove that the action taken was the only alternative. One main issue that existed in Dagobah for over a decade is massive tax evasion. This evasion has remained unaddressed, eroding the tax base and leading to high government budget deficits. Respondent could either restructure its tax laws or focus greater efforts on enforcement. Additionally, the IMF issued several measures that would enable Respondent to reduce its debt-to-GDP ratio. The sovereign debt restructuring was only one among such measures. Respondent could have raised revenues by raising rates or selling state assets. It could have engaged in a more extensive austerity program like the one seen in 2001-2003, or restructured pension and entitlement programs. Finally, Respondent could have negotiated more favorable terms with the IMF and other state-creditors, instead of agreeing to force a restructuring with private creditors.

117. Respondent had other available means to address its debt crisis. Even if able to prove that
the debt restructuring was the least costly approach, Respondent’s argument for invoking the essential security defense must fail.

c. Respondent contributed to the situation of necessity

118. Respondent’s expansive borrowing policy since the 2001 default with its failure to implement reforms on the revenue side substantially contributed to the economic crisis. Even if exogenous factors fueled the crisis, Respondent is not exempt because government policies significantly contributed. By failing to address the long-standing tax evasion problem, Respondent amplified the revenue crisis. Additionally, Respondent’s strict austerity measures prevented sufficient economic recovery after the 2001 crisis. Therefore, Respondent is precluded from invoking Article 6 because it substantially contributed to its sovereign debt crisis.

2. Even if not applying customary international law, the situation in Dagobah does not qualify for excuse under Article 6

119. Although the overwhelmingly dominant approach of investment tribunals has been to apply customary law as articulated in ILC Article 25, the minority approach focuses more on the text of the treaty itself. However, the text of Article 6(2) does not provide sufficient guidance for determining when a measure is necessary for the protection of an essential security interest. Therefore, customary international law aids the interpretation pursuant to VLCT Article 31.

120. Article 6(2) refers to “necessary” measures. The first Merriam-Webster’s definition provides “so important that you must do it or have it: absolutely needed.” The sovereign debt restructuring was not Respondent’s sole option for responding to the economic crisis. Therefore, these actions were not “necessary.” Article 6(2) also requires that the measures address an “essential security interest.” The word choice “security”, implicates a military

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214 See CMS.
215 Brock.
216 Brock.
217 VCLT Art. 31(2)(c).
218 BIT Art. 6(2).
interest. Further, “essential” significantly narrows the type of interests falling under Article 6(2) protection. Without further guidance in the treaty, customary law provides that an essential security interest must threaten to “the very existence of the State and its independence.” The situation in Dagobah was not sufficiently grave or imminent peril to meet the high bar required to qualify as an essential security interest.

C. Even if the tribunal finds that Art. 6 is self-judging, Respondent failed to invoke it in good faith

121. Even if the Tribunal reads a self-judging option into Article 6(2), Respondent’s actions were impermissible because it did not invoke Article 6(2) in good faith. Under a self-judging clause, Respondent still has obligations to act in good faith.

122. As addressed by the claimant in LG&E, the good faith review does not differ significantly from the substantive analysis discussed above. Most importantly, Respondent did not sufficiently consider other ways of addressing the economic crisis that could have avoided a breach of the BIT. One main alternative presented was to resolve the massive tax evasion problem that has persisted for over a decade. After contributing to the sovereign debt crisis, Respondent’s self-interest encouraged it to breach obligations to bond holders instead of addressing the more fundamental policy problems that prevented a full economic recovery after the 2001 crisis.

   d. Regardless, Respondent is not freed from the obligation to provide compensation for its actions

Even if Respondent’s actions were necessary to protect an essential interest and wrongfulness is precludes, this finding does not prejudice the question of compensation. Nothing in the text of Article 25 of the ILC Articles itself mentions the preclusion of compensation. Necessity is one of seven “circumstances precluding wrongfulness” ("CPW") that render conflict “not wrongful,” without mitigating state responsibility. ILC Article 27 provides that invocation of a CPW is without prejudice to “the question of compensation for any material loss caused

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219 Sempra ¶348.
220 See Vandevelde, 176, Burke-White, 376.
221 LG&E ¶212, 214.
222 Brock.
223 ILC Articles, Ch V.
224 Sloane, 482.
by the act in question.” Article 27 makes clear a finding of necessity under Article 25 does not affect the compensation for any material loss.

123. Article 25 is a “measures not precluded” clause, not a “denial of benefits” clause. The ILC Commentary suggests that necessity should be understood as an excuse rather than a justification, noting that it will “rarely be available to excuse non-performance of an obligation.” The sovereign does not relinquish its right to protect its essential security interests, and the tribunal from ordering specific performance to stop taking these actions. However, necessity does not impact the State’s need to provide compensation for its actions.

124. Looking specifically at Article 6(2) indicates that a finding of essential security does not preclude compensation. Nothing in Article 6 refers to compensation. Given the purpose of the BIT, the drafters would have used explicit language to exempt the parties from their responsibility to compensate.

125. Although arbitration tribunals have not answered the question of compensation consistently, many have held that a plea of necessity may preclude the wrongfulness of the act but does not exclude duty to compensate.

**PRAYER FOR RELIEF**

In light of the foregoing, Claimant respectfully requests this Tribunal to find that:

i. this Tribunal has jurisdiction over the dispute and the claims are admissible;

ii. Respondent breached its FET obligations under Article II of the BIT

iii. that Claimant is entitled to full compensation for the losses it incurred as a result of Dagobah’s violations, including interest; and

iv. that Claimant is entitled to the restitution by Respondent of all costs related to these proceedings.

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225 ILC Articles, Art. 27(2).
226 Alvarez expert opinion *Sempra*.
227 ILC Commentary, 160, cmt. 2.
228 Sloane, 499.
229 *Id*.
230 CMS.
RESPECTFULLY SUBMITTED ON SEPTEMBER 20, 2014 BY

-------/s/-------

Team Schwebel

On behalf of Claimant,

Calrissian & Co., Inc.

PRAYER FOR RELIEF