ARBITRATION INSTITUTE
OF THE STOCKHOLM CHAMBER OF COMMERCE

CALRISSIAN & CO., INC.

v.

THE FEDERAL REPUBLIC OF DAGOBAH

COUNTER MEMORIAL
20 SEPTEMBER 2014
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<td>App.</td>
<td>Appendix</td>
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<td>BIT</td>
<td>Bilateral Investment Treaty</td>
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<td>CAC</td>
<td>Collective Action Clause</td>
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<tr>
<td>Corellia</td>
<td>The Corellian Republic</td>
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<tr>
<td>Dagobah</td>
<td>The Federal Republic of Dagobah</td>
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<tr>
<td>FET</td>
<td>Fair and equitable treatment</td>
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<tr>
<td>force majeure</td>
<td>Unavoidable accident</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>International Centre for Settlement of Investment Disputes</td>
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<td>ILA</td>
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<td>ILC</td>
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<td>ILC Articles</td>
<td>International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts</td>
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<td>MFN</td>
<td>Most Favoured Nation</td>
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<td>PCA</td>
<td>The Permanent Court of Arbitration</td>
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Procedural Order

On its first encounter

a matter judged

Stockholm Chamber of Commerce

The Sovereign Restructuring Act

Uncontested facts

United Nations Commission on International Trade Law

Versus

Paragraph
STATEMENT OF FACTS

Time | Fact
--- | ---
1992 | Dagobah and Corellia entered into the DC-BIT
2001-2003 | Economic crisis in Dagobah
7 May 2001 | Dagobah launched the exchange offer with respect to Dagobah’s sovereign bonds
2001 | The IMF issued recommendations for Dagobah on implementation of sovereign debt restructuring process
Second half of 2001 | Diplomatic negotiations between Dagobah and Corellia on interpretation of the DC-BIT (whether the sovereign bonds are covered)
29 April 2003 | A majority decision of the PCA Arbitral Tribunal finding that sovereign bonds qualify as investments under the DC-BIT
19 May 2003 | Dissenting opinion by Prof. Andreas Jeger finding that sovereign bonds do not constitute an investment under the DC-BIT
August 2003 | Issue of the Bonds
2005 | Calrissian purchased the Bonds
Beginning of 2010 | Start of the new recession in Dagobah
14 September 2011 | The IMF issued recommendations to Dagobah, suggesting several measures that would enable Dagobah to reduce its debt-to-GDP ratio, including implementation of a new sovereign debt restructuring. The IMF also stated that it would facilitate a US$150 million bailout, if Dagobah would make an exchange offer of its sovereign bonds.
28 May 2012 | Dagobah, with consultation and involvement of the IMF, enacted the SRA applying to all Dagobahian law governed
bonds.

<table>
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<td>Consultations with the committee of the holders of the Bonds with respect to the future exchange offer.</td>
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<tr>
<td>29 November 2012</td>
<td>Dagobah launched the exchange offer with respect to the Bonds</td>
</tr>
<tr>
<td>12 February 2013</td>
<td>All Dagobahian law governed bonds are exchanged under the SRA to the bonds governed by the law of the Kingdom of Yavin.</td>
</tr>
<tr>
<td>After 12 February 2013</td>
<td>The IMF, with support of several states, facilitated a US$150 million bailout of Dagobahian debt.</td>
</tr>
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<td>30 August 2013</td>
<td>Filing of Request for Arbitration with SCC by Calrissian pursuant to article 8 of the DC-BIT</td>
</tr>
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<td>4 October 2013</td>
<td>Answer to the Request for Arbitration</td>
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<tr>
<td>8 January 2014</td>
<td>This case is referred to the Tribunal</td>
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ARGUMENTS

PART ONE: JURISDICTION

I THIS TRIBUNAL HAS NO JURISDICTION OVER THE DISPUTE CONCERNING THE BONDS OWNED BY CLAIMANT UNDER THE CD-BIT

1. In order for this Tribunal to have jurisdiction ratione materiae in the present case, Claimant has to prove that it made an investment in the territory of Dagobah. Respondent submits that no such protected investment has ever been made by Claimant as the Bonds lack territorial connection with Dagobah (1). Further, the Bonds are not covered by the definition of “investment” set out in Article 1 of the CD-BIT (2).

A No investment was made in the territory of Dagobah

2. The holding of the Bonds by Claimant does not constitute an investment for the purposes of the CD-BIT as it is not an investment made in Dagobahian territory.

3. The CD-BIT grants protection to the investments made by the Corellian Republic’s nationals in the territory of Dagobah. If we read the CD-BIT article by article, it may be clearly seen that all obligations of the Parties under treaty standards enshrined in the CD-BIT extend only to their respective territories. What is of the most importance in this case, the fair and equitable standard violation of which is alleged by Claimant is subjected to the territoriality requirement (see Article 2(2) of the CD-BIT which states that fair and equitable treatment will be accorded to investors “in the territory of the other Party”). Likewise, other treaty standards such as full protection and security (Article 2(2) of the CD-BIT), national treatment (Article 2(3) of the CD-BIT) and an undertaking to compensate for losses (Article 3 of the CD-BIT) have their effect “in the territory of the other Party”.

4. A mere observation that the word “territory” is not included in the definition of “investment” in Article 1 of the CD-BIT may not be interpreted as extending application of the CD-BIT to activities conducted outside Dagobahian territory, as the territory is a necessary element of the investment. Moreover, the territoriality requirement is explicitly provided for in the same very Article 1 in the definition of an “investor”, defined as a “national of a Party… making… an investment in the territory of the other Party”.

5. Article 1 should be construed in light of the object and purpose of the CD-BIT and should be limited to the subject matter of the CD-BIT, which purpose is “to promote greater economic cooperation between [the Parties] with respect to investment by nationals of one Party made in the territory of the other Party”. Such mode of interpretation of investment treaty instruments with respect to securities was confirmed in Gruslin.
6. Hence, even though the definition of “investment” does not stipulate that an investment covered by the CD-BIT shall be made in the territory of the Party, it follows from the rest of the CD-BIT’s provisions and its subject matter that the protection under the CD-BIT will only be granted to those investments that are made in the Party’s territory.

7. Moreover, apart from any specific wording of the CD-BIT, the territorial link is anyway an inherent requisite of an “investment” (inherent in the concept of “investment”). This view is upheld in jurisprudence of the investment tribunals and in scholarly writings. For instance, the tribunal in Canadian Cattlemen stated that mere cross-border trade activities would not be covered under an investment treaty and a commitment of capital or other resources to the economic activities in the territory of the host state is a requisite. Similarly in Bayview the tribunal found that investments made in the territory of the investor’s state of origin could not qualify as investments. Notably, the circumstances in Bayview are quite similar to the circumstances of this case: the Bonds in this case were purchased by Calrissian, resident in Corellia, at a secondary market in Corellia and were held in Corellia ever since, same as in Bayview investor made the investment in the territory of its native state.

8. Respondent does not argue that taking into consideration a rather broad definition of “investment” in Article 1 of the CD-BIT certain debt instruments (though not specifically referred to in Article 1), when made in Dagobahian territory, could be regarded investments. However, the requisite territorial connection must be direct “rather than indirect or consequential”. This would be the case when the Bonds would be linked to a certain economic project in Dagobah or issued within a larger economic operation at least a part of which should have been conducted in Dagobahian territory, which is not true for the Bonds.

9. In their core modern sovereign bonds are free-standing debt instruments that are issued using standard commercial techniques and are not combined to a certain “bundle of rights” to form a business undertaking. The Bonds were not used to attract financing for a particular economic protect (which, for example, would be true for the project bonds that are sometimes issued within large concession projects), but rather were utilised for general budgetary purposes.

10. If we further compare this proposition to a long line of cases of investment tribunals, it becomes clear that due to the lack of attachment of the Bonds to a specific venture or operation they are not investments. For instance, the promissory notes referred to in Fedax were not free-standing, as they were issued as a payment instrument for services provided in Venezuela. A promissory note scrutinised in ADC v Hungary as well was considered to form a part of an investment covered under the BIT. Likewise, in CSOB the consolidation agreement was part of a larger privatisation exercise, and the loan was considered to be an integral part of the transaction which in turn amounted to an investment in Slovakian territory.
11. By the same token, tribunal in Mytilineos recognized a loan being a part of a larger transaction pack establishing a “long-term business relationship”, a “combined effect” of which was that of an investment. Also in OKO v Estonia the tribunal considered the loan being a part of an “overall operation” i.e. a fish-processing factory in Estonia and hence came to a conclusion that in total there was an investment covered under the BIT. In Sempra the inter-company loan was considered a part of an investment, as was extended, in given circumstances, as the only mean of keeping the financed company in Argentina’s territory out of default.

12. Differently from the cases referred to above, Claimant in the present case is, and has always been, only a party to a secondary market purchase and not to any particular economic project in Dagobah. The issue of the Bonds may not be treated as an “economic operation” for the purposes of defining whether at least a part of it could be conducted in Dagobahian territory. The Bonds are not linked to an economic project in Dagobah’s territory in the first place. Secondly, the Bonds that were restructured under the SRA (and those Bonds held by Claimant) were issued in various issues at various points in time and hence could not be seen as a part of a single operation. For these reasons a mere fact that Claimant has gathered quite a significant stake of Dagobah’s sovereign debt does not lead to a conclusion that it could ever make a contribution in Dagobah’s territory. Since there is no commercial undertaking in Dagobah’s territory to which the Bonds would be linked they fail the CD-BIT’s territorial requirement.

13. Furthermore, while it is true that a contribution or assets outside the host state’s territory may be protected under an investment treaty, it is crucial that a significant part of a larger contribution (of which they form a part only) occurs in the territory of the host state.

14. For instance, in SGS v Philippines a reasonable part of services was provided within Philippines and, moreover, the “focal point” of pre-shipment services outside the host state’s territory was to provide inspection certificates in its territory which were considered to be “central to SGS’s operation”. In SGS v Pakistan the tribunal based its finding that investment was made “in the territory” of Pakistan on the facts that SGS had its liaison office in Pakistan and incurred certain expenditures necessary for its pre-shipment services in Pakistan. In SGS v Paraguay the tribunal on similar factual background observed that operations outside Paraguay’s territory were “indispensable… for the issuance of final certifications in Paraguay”.

15. In the above cases the question before the tribunals was whether (i) a debt instrument within a larger economic project could be treated as a part of the investment, or (ii) a fact that some part of the contribution was made outside the host state’s territory has severed the link with the rest of investment project in the host state’s territory. These were the reasons which drove the tribunals to conclude that some out-of-territory investments may be covered. Contrary to these cases the question before this Tribunal is whether holding of sovereign bonds as such, absent any connection to a bigger part of the project
in the territory of Dagobah, may be treated as a covered investment. There is thus no fact in this case which may allow this Tribunal to follow the reasoning of the cases discussed above.

16. It should thus be noted that the Bonds held by Claimant have been issued for the sole purpose to attract financing in international financial markets, hence their very nature presupposes that no operations to which the Bonds could be connected would ever be conducted in Dagobahian territory. The place of performance under the Bonds was always in Yavin. Likewise, the mechanism employed for modern sovereign bonds i.e. the use of fiscal agents or trustees and multiple tiers of intermediaries inevitably moves the Bonds away from Dagobah’s territory. As explained above, this flaw theoretically could be cured should the funds collected through the Bonds had been used for the project in Dagobah, which has not even been foreseen under the terms of the Bonds.

17. Hence, the only territorial nexus between the Claimant’s holding of the Bonds and Dagobah’s territory was always the place of the Bonds’ issuer (i.e. Dagobah) which is not sufficient to create a direct territorial connection.

18. This lack of territorial nexus is even more aggravated with the remoteness of the secondary markets, where the Bonds were purchased by Claimant, from the primary market where they were initially issued.

19. In this respect attention should be drawn to the purpose of the modern investment treaties (and the CD-BIT is just one of them) which is, “to address the typical risks of a long-term investment project, and thereby to provide for stability and predictability in the sense of an investment-friendly climate”.

20. When entering into a BIT, the host state “deliberately renounces an element of its sovereignty” in its territory with respect to foreign nationals and their property in return for the new ways to attract foreign investments. In contrast to a one-time trade transaction, the decision of an investor originating from one state to invest in a foreign country initiates a long-term relationship between such investor and the host state.

21. Let us then in principle apply this rationale to holding of sovereign bonds. Unlike other debt instruments, sovereign bonds are not issued “to a given lender or lenders”. The main characteristics of the bonds include high velocity of circulation and remoteness from the issuer. Different from privately negotiated loan transactions, bonds are public, meaning that identity of the lender is not controlled by the issuer which essentially affects the nature of relationships between the parties, normally regulated by the standard set of terms and conditions applicable throughout the bonds’ issue. Strictly speaking, a legal relationship arises between the issuer and whoever is the bondholder at a given moment, while the identity of such bondholder may change almost indefinite number of times prior to the bond’s maturity.
22. Purchase of sovereign bonds at secondary markets is “not automatic nor certain” and for all purposes outside any control of the host state. Even with adherence to the “continuous credit benefit” theory, as it was first introduced in Fedax and then repeated in Abaclat and Ambiente, a secondary market purchase does not satisfy a personal link requirement between the bondholder and the issuer, as is necessary in light of the rationale of investment treaty protection described above. By no means issue on the primary market and purchases on the secondary markets may be regarded as a single economic operation.

23. Since the secondary market purchases of the Bonds are outside of control or sovereign reach of the state issuing such bonds, they may not in principle be a covered investment under the CD-BIT.

24. For the above reason and since the holding of the Bonds is not an investment in Dagobah’s territory, it is not protected by provisions of the CD-BIT and this Tribunal lacks jurisdiction ratione materiae to hear the case.

B Holding of the Bonds does not fulfill criteria listed in Article 1 of the CD-BIT

25. In order for the holding of the Bonds to be covered by the CD-BIT, it should be an “investment” and not a plain commercial transaction, i.e. it should “ha[ve] the characteristics of investment”. By way of indication, Article 1 lists (i) commitment of capital and other resources; (ii) expectation of gain and profit; and (iii) assumption of risk as criteria which should be satisfied in order to consider an activity or asset as an investment.

26. Respondent does not argue, that since the Bonds contemplate certain payments of interest during the life of the issue, they should satisfy the criterion of “expectation of gain and profit”. As to the other criteria, Respondent notes as follows.

27. Assumption of risk: An investment risk implies that, firstly, the investor should exercise certain control over the success of the operation, and, secondly, such risk should be shared between an investor and the host state.

28. On the first point, a bondholder cannot influence the payment of principal and interest anyhow. The repayment of the bonds is fixed (both in terms of the time periods and rates) and does not depend on success of a certain project or undertaking.

29. On second point, no risk is shared between the host state and the bondholder, since the bonds are merely “tied to the general macroeconomic conditions of the issuing country” and they simply finance general budgetary needs of the treasury.
30. It may be concluded that no risk above a regular commercial risk arising under a commercial contract i.e. a risk of non-payment of the debtor was ever assumed by Claimant with respect to the Bonds. Risk of non-payment, as was analyses in MHS v Malaysia would not qualify as an investment risk. Mere default risk cannot be a meaningful standard.

31. Even more, sovereign bonds are traditionally seen (or at least have been seen at the times when Claimant acquired the Bonds) as bearing less risk as compared to any other financial instruments. In other words, market participants purchase sovereign bonds when they wish to assume the least risk possible.

32. For the above reasons Respondent submits that the holding of the Bonds by Claimant does not satisfy the “risk” criteria of an investment.

33. Commitment of capital and other resources: In order for the capital injection to satisfy this criteria, it should have been made in the territory of the host country. Unless the person who sold the Bonds to Claimant was resident in Dagobah at the time of the purchase, no capital flow occurred when Claimant purchased the Bonds at the secondary market.

34. No doubt that the Bonds bear certain value, but creation of value and contribution made in the host state are not the same thing. Even assuming that there was a benefit when the Bonds were issued, it does not mean that the original benefit extends to all subsequent purchases, especially taking into account that Dagobah has to return the funds it has borrowed on the Bonds’ maturity. Even if there are certain economic benefits of borrowing monies from public through issuance of bonds (such as lower cost of borrowing), such benefits are too remote and may not amount to a contribution to the economic development of the state.

35. For the above reasons the holding of Bonds does not satisfy criterion of “commitment of capital”.

36. It may be further argued by Claimant that certain elements of investment are only meaningful for ICSID jurisprudence, however, as was found by PCA tribunal acting under UNCITRAL Rules in Romak v Uzbekistan the term “investment” has a meaning in itself and incorporates at least three “benchmark” criteria, which are a contribution, a certain period of time and an element of risk.

37. The above criteria are typical for investments and if any one of them is missing it should be seen as a prima facie evidence of lack of investment overall.

38. Now, turning to the “duration” criterion. Claimant has acquired the Bonds at a rising market. When the market of Respondent’s sovereign debt went down, Claimant ended up holding the Bonds for several years for lack of liquidity. By their nature the Bonds are negotiable and easily transferrable and as such
are designed for short holding. The mere fact that Claimant happened to hold them for a longer time does not make the Bonds an investment.

39. As the holding of the Bonds does not satisfy criteria of investment listed in Article 1 of the CD-BIT, namely since Claimant made no commitment of capital in the territory of Dagobah and has not assumed investment risk, as well as since it has not contributed to the economic development of Dagobah and since the Bonds may not satisfy the “duration” criteria, the holding of the Bonds does not amount to an investment covered by the CD-BIT’s protection.

II DECISION OF THE PCA ARBITRAL TRIBUNAL IS NOT BINDING ON THIS TRIBUNAL

40. In 2003 the PCA Tribunal interpreted Article 1 of the CD-BIT on request of the Corellian Republic. However, the Tribunal is not required to follow the PCA Award. First of all, the PCA Award does not result in res judicata in this case (A).Secondly, the Award does not reflect a binding interpretation of the BIT (B).

A The Award does not create res judicata for this case

41. The principle of res judicata is not applicable because conditions for its application are not fulfilled in the present case. Awards of previous international tribunals may have an effect in subsequent proceedings according to the principle of res judicata provided that following three conditions are satisfied. Namely, prior proceedings must have been conducted before an international court or tribunal (1), between the same parties (2), concerning the same issues (3).\(^1\)

42. Respondent concedes that the first criterion is satisfied in this case as an international tribunal rendered the PCA Award. However, the key preconditions of res judicata’s application are not satisfied. Firstly, parties participated in the PCA dispute are not identical to the parties of the present dispute. Secondly, subject matter of the proceedings is not the same. It is Respondent’s submission that in such case the doctrine of res judicata may not be applied.

1. The parties to the disputes are not identical

43. It is generally accepted that for an earlier decision to have res judicata effect in the latter proceedings, the parties to both sets of proceedings must be

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\(^1\)Legal Opinion. p.8; Pious Fund; Amco v. Indonesia.
identical. This rule is based on the idea that legal acts between specific parties should be neither to the detriment nor to the benefit of others.\(^3\)

44. In this case Claimant did not participate in the PCA arbitration. Corellia commenced arbitral proceedings against Dagobah, administered by the PCA.\(^4\) Accordingly, the PCA Award does not create res judicata for this proceedings.

45. Claimant cannot rely on the decision of the PCA Tribunal as a third party. The PCA Award is binding only for the parties to the PCA arbitration. It clearly follows from Article 7 of the Treaty as well as Article 34 of UNCITRAL Arbitration rules which governed the arbitration and provide that:

“All awards shall be made in writing and shall be final and binding on the parties.”

46. Therefore, the PCA Award does not have binding force for Claimant. Interpretation issued by the PCA Tribunal is obligatory only for Dagobah and Corellia.

47. Claimant may claim that some commentators have favored the idea of extending the principle of res judicata to situations where the parties involved in subsequent proceedings are not strictly identical, as long as “the ultimate party in interest is the same”.\(^5\) However, the tribunals have universally rejected such an extension beyond formally identical parties. CSOB v Slovakia\(^6\), CME v Czech Republic\(^7\) tribunals did not follow awards of the previous tribunals since the parties in previous arbitrations were different, even though it had been argued before them that the “ultimate party” was the same.

48. Liberal application of the same party requirement would risk affecting the interests of third parties. Finding that the PCA Award is binding would meant that it had an effect on every Corellian investor. In case the PCA Tribunal had found that sovereign bonds were not investment under Article 1 of the BIT Corellian bondholders would not be able to protect their rights under CD-BIT. Such an effect of the PCA Award would be unfair with respect to investors. Prevention of protection of investors’ legal rights and infringement of their interests should not be permitted. Therefore, the PCA Award affects only parties of the arbitration.

\(^2\) *Guiana Boundary*;

\(^3\) *Continental Shelf*.

\(^4\) UF, p.3

\(^5\) Legal opinion; Douglas, p.309

\(^6\) CSOB [31]

\(^7\) CME [432]
2. **Subject matter of the disputes is not the same**

49. The other identity requirement for the application of res judicata relates to the subject matter of the dispute. It means that same petitum and same causa petendi are considered in both cases. Petitum refers to the object of the dispute. While causa petendi requires request for relief be asserted in a later action on the same set of facts and should be written in the same words.8

50. Res judicata applies only if the same “object” is sought in different proceedings.9 When the same issue is under the dispute has been decided by the previous tribunal it will be unnecessary to decide it in the subsequent arbitration once again. However, any differences in object lead to new consideration of issue. In order to respect interest of the third parties it is necessary to look at each case specifically.

51. The PCA Award addressed the Bonds which were subject of 2001 restructuring. Corellia commenced arbitration against Dagobah in the PCA concerned “with the effects that Dagobah’s restructuring might have on its own economy”.10 Finding whether or not sovereign bonds could be considered as investment under the BIT the PCA Tribunal considered the Bonds existing at that time. However, bonds which are object of the present dispute are completely different. On 12 February 2013 the Bonds were exchanged for the new ones according to the SRA. The new bonds had different net present value, were not governed by Dagobah’s law, contained new forum selection clause and included CACs.11 Such bonds are not identical to the previous one. Therefore, the question whether or not such bonds are investment must to be assessed.

52. Factual basis of the relief claimed, or in other words, cause of action in the earlier proceedings should be the same as that of the relief claimed in the subsequent proceedings. Events taking place after the first decision has been rendered constitute a new cause of action, and claims based on such events cannot be precluded by the principle of res judicata.12 Identical facts play an important role in practice to find identity of issues.

53. In this case the first arbitration request for interpretation was based on the economic crisis occurred in 2001. Present arbitration based on restructuring declared in 2012. Moreover, requests for relief are absolutely different literally. In the PCA proceeding Claimant argued that “the purchase of

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8 Wehland, p.187
9 Oxford Handbook, p.1019
10 UF [6]
11 UF [20-21]
12 Desert Line [134], [136]
sovereign bonds issued by Dagobah constituted an investment.”13 However, in this case Claimant requests the Tribunal to find that “sovereign bonds [themselves] fell within the meaning of “investment” provided for by the BIT according to the PCA Award.”14

B The PCA Award does not affect interpretation of the treaty

54. Claimant may submit that decision of the PCA Tribunal may have an effect on this dispute from the treaty interpretive perspective. However, there is no stare decisis in investment arbitration. Each tribunal exercises its competence on the basis of applicable rules. A single decision will not have a binding effect for other tribunals. As it was noted by SGS v. Philippines tribunal which declined to follow the SGS v. Pakistan tribunal’s interpretation of an umbrella clause:

“There is no hierarchy of international tribunals, and even if there were, there is no good reason for allowing the first tribunal in time to resolve issues for all later tribunals.”15

55. Each case should be considered specifically. Treaty should be interpreted in light of its object and purpose according to the Article 31 of the VCLT.

56. Interpreting the treaty it follows that parties did not have an intention to make the PCA Award final. Concluding the BIT the parties had an intention to provide the investors of each other with effective protection of their rights. As it is stated in the preamble of CD-BIT Corellia and Dagobah concluded agreement “recognizing the importance of providing effective means of asserting claims and enforcing rights”. 16 It leads to conclusion that investors should be able to protect their rights if investment disputes arise. Therefore, decisions of the previous arbitrations where the investor did not take part cannot have binding force. Each case should be considered separately for providing effective protection of investors` rights under the treaty.

57. Moreover, the PCA Award may not amend the treaty and invoke meanings the parties did not agree on. Dagobah has never agreed with the PCA Award. Conversely after the PCA Award was rendered Dagobah’s representatives publicly voiced their disagreement with the PCA Tribunal majority`s decision17.

58. For the reasons stated above, Respondent submits that the PCA Award does not have a binding force for this Tribunal. The doctrine of res judicata may not

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13 UF [9]
14 App. 6 [9]
15 SGS v. Philippines [97]
16 App.1, p.7
17 PO2, p.49
be applicable in the present case since requirements for its application are not met. Besides, interpreting the treaty leads to the conclusion that the PCA Award will not have an effect on the present dispute. This Tribunal should rule on its own on whether the Bonds fall within the protection of the BIT as investments and the answer should be negative, as explained above.

III CLAIMS OF CLAIMANT ARE INADMISSIBLE DUE TO THE FORUM SELECTION CLAUSE CONTAINED IN THE BONDS

59. Respondent firstly submits that since the Bonds provide for an exclusive jurisdiction of Dagobahian courts, which reads,

“Any dispute arising from or relating to this contract will be exclusively resolved before the Courts of Dagobah”, 18

this dispute is brought to the forum that has no jurisdiction over the claims under the Bonds.

60. This dispute resolution clause provides for an exclusive jurisdiction of state courts of Dagobah for any matters “arising from or relating to” the Bonds, which formula is rather broad and does not limit jurisdiction of Dagobahian courts to specific groups of disputes. Since the jurisdiction of Dagobahian courts is exclusive, this should not leave any space for interpretation. 19 An exclusive jurisdiction clause in the Bonds constitutes rejection of the offer to arbitrate in the CD-BIT. 20

61. Further, while the CD-BIT is a framework agreement applying generally to any investments in the territories of the Parties, the Bonds constitute a contract between (i) Dabobah as the issuer and (ii) each of the bondholders holding the bonds of one issue. The dispute resolution clause in the Bonds is hence a lex specialis with respect to any disputes arising from relations among Dagobah and the bondholders. 21 As was stated by the tribunal in SGS v Philippines “general provisions of the BIT should not override specific and exclusive dispute settlement arrangements” set out in a contract. 22

62. There is no evidence on the record that Claimant was “somehow induced” not to bring its claims to the courts of Dagobah. 23 The Parkerings tribunal stated that where claims are based on a contract breach and the forum determined

18 PO2 [16]
19 Weibel p.262
20 Weibel p.272
21 SGS v Philippines [141]
22 SGS v Philippines [134]
23 BIVAC [277]
thereunder is available the parties should go to that forum as a prerequisite in order to determine that there was a violation of the contract.  

63. Furthermore, Claimant by bringing its claims arising from a breach of the Bonds in this forum itself violates a dispute resolution clause of the same very contract. Not only does such behavior dissolves the unity of contractual bargain negotiated between the issuer and the bondholders, but also in general undermines legal certainty in international financial markets.  

64. Secondly, Calrissian’s claims are based on an alleged violation of the contract. Where fundamental basis of a claim is a contract, in order to escalate such claim to the level of treaty protection Claimant has to demonstrate that by breaching a contract Dagobah has performed “activity beyond that of an ordinary contracting party”.  

65. Now, applying this test to a given situation. A failure to perform payment obligations under contract does not amount to a sovereign act of a state, since non-payment may be expected from any contracting party.  

66. As to the SRA, Respondent does not argue that the SRA was adopted by Dagobahian Congress having governmental authority, however such authority was not used with respect to the Bonds, since the Bond’s conditions were not amended by the SRA. It follows from the substance of the SRA’s provisions that they may not be construed as a sovereign intervention to the contract.  

67. Article 2(1) of the SRA contains a procedure for invitation to the bondholders to participate in exchange of the Bonds. The Bonds themselves were amended by the bondholders’ committee and not by Dagobah.  

68. As to Article 3 of the SRA providing for possibility of amending the Bonds by a majority decision it could be hypothetically treated as a bad faith or negligible mode of negotiation at best (which it was not). Yet, it would not go over what may be expected from any party breaching a contract.  

69. Moreover, economic crisis was a force majeure event, which exempts a debtor from fulfilling its obligations under the contract. Dagobah would certainly advance a force majeure defence in relation to the adoption of SRA should this dispute be brought to a competent state court. Thus, the actions of Respondent  

24 Parkerings [316-317]  
25 Weibel pp.261-262; Douglas pp.366-370  
26 Weibel p.262  
27 BIVAC [211], Impregilo [260]  
28 See BIVAC, SGS v Philippines  
29 Article 2(1) SRA  
30 PO2 [21]  
31 BIVAC [246]
did not go beyond what could be expected from an ordinary contracting party. For that reason the only forum that has jurisdiction with respect to Claimant's claims are state courts of Dagobah.

PART TWO: MERITS

IV RESPONDENT’S DEBT RESTRUCTURING MEASURES DO NOT AMOUNT TO A BREACH OF THE FAIR AND EQUITABLE TREATMENT STANDARD UNDER THE CD-BIT

70. Respondent submits that it had accorded Claimant’s investment fair and equitable treatment. Firstly, Respondent did not violate Claimant’s legitimate expectations (A); secondly, Respondent acted in accordance with transparency and due process (B); and finally, that restructuring measures were not coercive (C).

A Respondent did not violate Claimant’s legitimate expectations

71. Respondent submits that it did not violate Claimant’s legitimate expectations since there is no absolute obligation of maintaining stability of legal and economic framework exist in the FET standard (1); Claimant’s expectations were not legitimate (2); Claimant’s expectations were not reasonable (3).

1. No absolute obligation of maintaining stability of legal and economic framework exist in the FET standard

72. Investor cannot legitimately expect that the legal framework that existed at the time investment was made will not be changed in future. A State has a sovereign right to regulate its internal affairs and adopt and change laws. Thus, responsibility of a State for changes of regulatory framework may arise only in case a State made a representation to the contrary, for example in the form of stabilization clause.

73. In EDF v. Romania the tribunal stated in this respect:

Except where specific promises or representations are made by the State to the investor, the latter may not rely on the BIT as a kind of insurance policy against the risk of any changes in the host State’s legal and economic framework. Such expectations would be neither legitimate nor reasonable.
74. Claimant may refer here to the Preamble of the CD-BIT, which states that “a stable and predictable framework for investment will maximize effective utilization of economic resources and improve living standards”. However, this provision does not constitute a legal obligation as such. The tribunal in Continental Casualty analyzing a similar provision stated that to promise not to change its legislation would be unconscionable for a country and that reliance on such provision would be unreasonable to investor.35

75. As the ICSID tribunal stated in Micula v. Romania, for a state to violate the FET standard by changing the regulatory framework, the investor must have received a legitimate assurance that the relevant laws and regulations would not be changed in his or her respect.

76. Protection of investor’s expectations is not of absolute nature and has certain limitation threshold. In accordance with the test, established in the investment arbitral jurisprudence, in order for the expectations to be protected they must be legitimate and reasonable at the time investment was made.36 However, as it will be shown below, Claimant’s expectation in the present case were neither legitimate nor reasonable.

2. **Claimant’s expectations were not legitimate**

77. As established in Micula v. Romania, to determine legitimacy of expectation “the crucial point is whether a State through statements or conduct, has contributed to the creation of a reasonable expectation.”

78. In Parkerings case the ICSID tribunal stated that investor’s expectation may be considered as legitimate in case there existed explicit promise or guaranty was granted to the investor by the host State or implicit host State assurances or representations that were taken into account by the investor while making the investment. In case of absence of those, the circumstances surrounding the investment are determinative.37

79. In the present case there are no grounds for considering Claimant’s expectations as legitimate. At the time the bonds were acquired by Claimant, Dagobah did not give any explicit or implicit assurance to Claimant that the legislation governing the bonds will not change in future. Neither did Dagobah promise that another restructuring of its sovereign debt will not happen.38

80. Terms of the Bonds also may not be considered as creating legitimate expectations. In Parkerings the tribunal made a distinction between contractual expectations and those protected by international law, stating that “contracts involve contractual expectations from each party that do not amount to expectations as understood in international law.” Expectations of Claimant

35 Continental Casualty, para.285.
36 Micula, para.669-671; Duke Energy, para.340; Bayindir, para.179; Saluka, para.304
37 Parkerings, para.331
38 PO2, para.18
arising from the Bonds are of contractual nature and therefore are not protected by the CD-BIT.

81. The only representation Dagobah made was to its commitment to a more stable economy and financial statement. Apart from the vagueness of this representation, it in all circumstances did not relate to the legal framework and could not be a basis for expectation of its absolute stability. In Continental Casualty the tribunal stated that in order to evaluate the expectations the specificity of the undertaking should be taken into account and also noted that political statements have the least legal value.

3. Claimant’s expectations were not reasonable

82. While assessing legitimacy of the expectations this Tribunal should also consider other circumstances that should have been taken into account by the investor, including political and socioeconomic situation in the host state at the time investment was made. For instance, in Parkerings case the tribunal noted that since Lithuania was a state in transition at the time of investment, investor could not legitimately expect that the legislation will remain unchanged. The same approach was applied in Paushok v. Mongolia.

83. In the case at hand Dagobah has already structured its sovereign debt through the bond exchange, and Claimant acquired bonds in 2005, only two years after the first restructuring. Although Dagobah’s economy seemed stable at that period, it was still not reasonable for investor to expect that no restructuring will appear in future, particularly in the light of absence of such guarantee from Dagobah’s side.

B Dagobah’s restructuring measures were adopted transparently and in due process

84. In the context of FET standard transparency requires that the regulations governing the investment “should be capable of being readily known” to the investor. In the present case Respondent’s restructuring measures were adopted in transparent manner. The bondholders were notified about existing draft of the SRA beforehand and moreover, different versions of it were continuously published on the relevant websites. Therefore Claimant knew in advance that the SRA was planned to be adopted.

39 Ibid, para.18
40 Continental Casualty, para.261
41 Duke Energy, para.340; Potesta, p.112
42 Parkerings, para.335
43 Paushok, paras.302,305.
44 PO2, para.18; Waibel, p.295.
45 Metalclad Corporation v Mexico, Award, ICSID Case No ARB(AF)/97/1, (2001) [76]
46 PO2, para.21.
85. It is very questionable whether FET standard implies State’s obligation to consult with an investor on legislative changes before they adopted and the majority view is that it does not.47 Therefore Claimant may not argue that Dagobah should have invited the bondholders to participate in the drafting of the SRA.

86. Even though Claimant was granted an opportunity to participate in the restructuring process through the committee of bondholders before the exchange have been made. Claimant was duly informed about such option, however, it itself failed to timely express its interest to participate.

C  **Restructuring measures were not coercive**

87. Coercion relates to a situation of improper use of power where the relation of the parties is such that one is under subjection to the other, and is thereby constrained to do what his free will would refuse.48

88. Bond exchanges may only be considered as being coercive when the incentives adopted by the debtor do not provide any choice to the creditors, for example when they are forced to participate in the exchange.49

89. In the present case sovereign restructuring measures do not breach the coercion threshold. The SRA did not provide mechanism to force the bondholders to accept the exchange proposed by the State. Rather, it provides for efficient mechanism that provides the bondholders with opportunity to participate in the restructuring process, on the one hand, and accommodates the urgency of measures considering the seriousness of the economic crisis, on the other.

V  **RESPONDENT SHOULD BE EXEMPT FROM LIABILITY BASED ON NECESSITY DEFENSE**

90. Even if the Tribunal finds that Respondent has not complied with fair and equitable treatment standard under the BIT, Respondent’s actions still do not constitute a wrongful act. Firstly, the restructuring measures adopted by Respondent were necessary for protection of its essential security interest and thus are justifiable under Art. 6 of the BIT. Secondly, the requirements for necessity defense are exhaustively given in the BIT and this Tribunal should not apply additional ones from customary international law. Thirdly and alternatively, even if the Tribunal applies customary rules on necessity, Respondent should still be exempt from liability.

A  **Respondent should be exempt from liability based on Art. 6 of the BIT**

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47 Newcombe/Paradell, p.291.
48 Black’s Law Dictionary.
49 Waibel, p.290.
Art. 6 of the BIT ("necessity clause") sets forth that the measures which are necessary for protection of the essential security interest of a state cannot constitute a breach of the BIT. Respondent will demonstrate that this is exactly the case at hand. The restructuring measures at issue were taken to safeguard the essential security interest of Respondent (1) and were necessary for that purpose (2).

First, it is Respondent’s submission that its economic and financial stability should qualify as the essential security interest. There is nothing in the C-D BIT or its object and purpose that would exclude major economic crises from the scope of Art. 6 of the BIT. On the contrary, as explained by the scholars and supported in case law, essential security interests include those related to “different matters such as the economy, ecology or other”, especially “a serious threat against political or economic survival”. Therefore the Respondent’s economic stability should qualify as its essential security interest.

Second, Respondent argues that the adopted measures were of necessary character. According to Art. 31 of the VCLT, a treaty shall be interpreted in accordance with the ordinary meaning of the terms. The ordinary meaning of the word “necessary” is something essential, inevitable, which is needed to be done, achieved or present. The restructuring conducted by Respondent was an inevitable measure. The 2010 global economic crisis resulted in a high level recession in Dagobah. The economy of Respondent was characterized as a genuine “meltdown” and “bust”. In this dangerous economic situation Respondent required serious financial support. However official creditors, including the IMF, made it clear that they would not provide bailout to Respondent, “unless it ensure[d] participation of private creditors through a debt restructuring”. Since no other possible way to escape the crisis and avoid recession was available to Respondent that time, it followed the creditors’ recommendations. As the result, the IMF provided Respondent with the US$150 billion, and the creditor countries agreed to write off some of the outstanding debt. This shows that restructuring measures were required for

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50 Bjorklund, p.479
51 CMS [319]; Sempra [374]; LG&E [251];
52 United Nations Report, p.174
53 Oxford dictionary
54 Ibid.
55 Ibid.
56 App.4
57 PO2, para.19
escaping from the crisis and protection of the essential security interest of Respondent.\textsuperscript{57}

94. In case the Tribunal finds that the restructuring was not inevitable and could be replaced with some other measures, Respondent submits that in assessment of the necessary character of the measures it should be given a margin of appreciation. No one in these proceedings is as close to the circumstances of the crisis as Respondent neither in place, nor in time, so “if there is to be a second-guessing of the state’s decision by a tribunal”, \textsuperscript{58} then some leeway should be given to Respondent.\textsuperscript{59} This position is supported in case law, including the practice of investment tribunals.\textsuperscript{60} According to Sempra Annulment Committee, where the treaty does not prescribe how the necessary nature of a measure should be determined, then the clause would be self-judging.\textsuperscript{61}

95. Respondent acknowledges that the margin should have limits and that a state’s actions must be proportionate to the pursued aims.\textsuperscript{62} To be proportional the adopted measure shall not be more severe than is needed to reach the pursued purposes, and should be reasonable.\textsuperscript{63} As shown above, the adopted measures were perfectly appropriate for escaping the crisis and safeguarding Respondent’s essential security interest.\textsuperscript{64} There is no doubt that Respondent acted reasonably when following the IMF recommendations, because it prudently expected to receive bailout from the IMF and thereby reduce its debt level. Therefore the measures were proportionate to the aims pursued.

96. Hence, the restructuring measures should be acknowledged necessary for safeguarding the essential security interest of Respondent. Consequently Respondent shall not be precluded from adopting the SRA under Art. 6 of the BIT.

B This Tribunal should not apply customary international law requirements for necessity defense invocation

97. Claimant may argue that Art. 6 of the BIT should be read in conjunction with customary international law and that, apart from Art. 6, the disputed measures

\textsuperscript{57}UF, para.16

\textsuperscript{58}Sornarajah, p.463-464

\textsuperscript{59}Burke White and von Staden, p.374

\textsuperscript{60}Continental Casualty [181]; Metalpar [198]; Handyside, p.22

\textsuperscript{61}Sempra Annulment [204]

\textsuperscript{62}James and others [50]; Tecmed [122]

\textsuperscript{63}Wälde/Kolo, p.828

\textsuperscript{64}Para. 93 of this Memorandum
should also comply with the customary international rules on necessity. Respondent will demonstrate that this allegation is meritless.

98. First, the customary law of necessity is not applicable for the purposes of interpretation of Art. 6 of the BIT. Under Art. 31(3.c) VCLT the basis for the interpretation is the treaty text: an interpretation contra legem is impeded. As stated by Prof. Sands, “there can be no question of the customary norm replacing the treaty norm, either partly or wholly”. Art. 6 of the BIT differs significantly from the customary international law on necessity as codified in Art. 25 of the ILC Articles. For instance, Art. 6 does not include such stringent requirements of the state of necessity as “grave and imminent peril”, “the only way criterion” and etc. Therefore application of Art. 25 of the ILC Articles would replace the relevant provision in the Treaty and this is not allowed under the VCLT rules of interpretation. It would be also contrary to the principle of effet utile, since replacement of Art. 6 of the BIT with customary international rules would make Art. 6 obsolete.

99. Second, Art. 25 of the ILC Articles cannot be applied simultaneously with Art. 6 of the BIT. Such approach would violate the principle of lex specialis. Since both norms cover the same subject matter and comprise conflicting substantive standards, the BIT provision being negotiated between the parties shall prevail over the customary international rule.

100. The investment arbitration practice supports this approach in application of Art. 25 of the ILC Articles. For instance, Sempra tribunal has applied the customary rules on state of necessity to the interpretation of the necessity clause in the BIT. The Annulment Committee found this a manifest error of law and annulled the award.

101. Therefore, only treaty preconditions for necessity defense in the CD-BIT are applicable in the present case, to the exclusion of the respective rules in customary international law.

C Alternatively, the adopted measures comply with customary international law requirements for necessity defense

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65 Sands, para.39

66 Subramanian, p.84; CMS Annulment [129]

67 Binder, p.620; Pauwelyn, p.247-251

68 Art. 55 of the ILC Articles; Burke White and von Staden, p.396; Binder, p.621; Moon, p.17; Gabcikovo-Nagymaros [132]; CMS Annulment [344]

69 Sornarajah, p.461; CMS Annulment [133]

70 CMS Annulment [344]; Sempra Annulment [120-124]; Continental Casualty [234]

71 Sempra Annulment [120-125]
102. Even if the Tribunal finds that preconditions for necessity defense in customary international law apply, Respondent nevertheless should be exempt from liability. Art. 25 of the ILC Articles provides that the State shall not be held liable for violation of international obligation, if: (1) there was a grave and imminent peril threatening to the essential security interest of a state in breach; (2) the measures taken were the only way to preclude the peril; (3) a state had not contributed to the state of necessity; (4) the international obligation in question does not exclude the possibility of invoking necessity; (5) the measures do not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole. Respondent submits that each of these requirements is met in the case at hand.

1. The essential security interest of Respondent was threatened by a grave and imminent peril

103. As stated above, the Respondent’s economic stability should qualify as its essential security interest. Respondent further submits that the severe financial crisis that hit Respondent constituted a grave and imminent peril to its essential security interest.

104. Grave and imminent peril is a serious threat to the political and economic survival of a state and possibility to maintain its essential services in operation and preserve internal peace. 72 According to the practice of investment tribunals, economic crises may in principle constitute such kind of threat. 73

105. It is explained by economists that financial and economic crisis are the most dangerous and develop the most rapidly in peripheral countries, especially those which have financial or economic problems. 74 This is exactly Respondent’s case. In 2001 Respondent had already experienced two-and-a-half year long debt crisis, 75 and prior to the 2010 economic crisis Respondent’s economy was weak and “fragile”. That is why the consequences of the crisis were so crucial to Respondent. Accompanied by constantly increasing oil price it led to growth in debt to more than US$ 400 billion, 76 which amounted to 124% net government debt to GDP ratio. This debt level was unsustainable to Respondent. 77 Even low public spending and austerity measures could no more help combating the recession. 78

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72 Martin, p.61; LG&E [257]; Enron Annulment [360]
73 LG&E [257]; Enron Annulment [360]
74 Neri/Ropele, p.283
75 UF, para.3
76 UF, para.15
77 UF, para.14
78 App.4
development of these events could compromise political and economic independency and survival of Respondent. By way of comparative example, in 2000-s Argentina was suffering the economic crisis as well and its debt was estimated at much lower level - US $144 billion. Yet, LG&E tribunal admitted that Argentina faced extremely serious threat to its existence,\(^79\) which confirms that a financial crisis of a larger scale, like the one in Dagobah, should be regarded as a grave threat as well.

106. Moreover the social problems caused by the crisis compromised Respondent’s ability to maintain its essential services in operation and preserve internal peace. Thus, public services in Dagobah were on the verge of being destructed.\(^80\) The crisis resulted in large-scale dismissals, the increase in unemployment rates up to 10.9%, spike of inflation rate, the demonstrations and social unrest erupted in the capital and in other larger cities.\(^81\)

107. The above mentioned facts show that the economic crisis in Dagobah constituted a grave and imminent peril to Respondent and its essential security interest.

108. Consequently, the first requirement for necessity defense invocation is fulfilled.

2. **Adoption of SRA was the only way to preserve essential security interest of Respondent**

109. According to Art. 25(1)(a) of the ILC Articles, the measures adopted by a state invoking necessity have to constitute the “only way” for that state to safeguard its essential security interest. It should be emphasized that this requirement implies the possibility not of any and all alternative measures, but only of those which could effectively protect the essential security interests of a state.\(^82\)

110. Respondent submits that the disputed measures were the only possible measures that could allow to deal with the crisis. As shown above, the restructuring measures were the only way to obtain the support required for economic survival of Respondent.

111. Moreover, as follows from the record, Respondent made serious attempts to adopt other, more austerity measures in order to escape from crisis. In

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\(^79\) *LG&E [257]*

\(^80\) App.4

\(^81\) PO3, para.38

\(^82\) Crawford, p. 184; Bjorklund, p.12
particular, it tried to reduce investments in infrastructure. However these measures could not help to stabilize the economic situation in Dagobah. Notwithstanding, some public services were on the verge of being compromised. These measures did not generate enough revenues for servicing the debt without restructuring or defaulting. The fact that the other measures failed, proves that there were no alternatives to the decision finally taken.

112. At the same time Claimant has not presented any expert report or other reliable proof stating that there were other measures available.

113. Therefore no reasonable alternatives were available to Respondent by the time of the crisis. The restructuring of the debt conducted by Respondent was the only way to safeguard its essential security interest.

3. **Respondent has not contributed to the crisis resulting in the state of necessity**

114. For a plea of necessity to be precluded, the contribution to the situation of necessity must be sufficiently substantial and not merely incidental or peripheral. Hence there should be serious evidence that Respondent has contributed to the crisis resulting in the state of necessity. However, there is none in the record.

115. On the contrary, the economic crisis was not the result of Respondent’s policy, but was of a global character and affected many nations around the world in 2008. Even assuming that the policy of Respondent affected the economic situation in Dagobah in any way, this contribution was not “substantial”. More than that, the attitude adopted by Respondent has shown a desire to slow down by all available means the severity of the crisis, for example, by consistently following the IMF’s recommendations in order to ensure financial stability.

116. On this basis, Respondent had not contributed to the state of necessity.

4. **The measures do not seriously impair an essential interest of Corellia or of the international community as a whole**

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83PO2, para.20

84 Ibid.

85 ILC Draft Articles, commentaries to Art. 25 [20]; CMS [329]

86LG&E v. Argentina, Decision on liability, para. 256

87UF, para.14

88UF, para.15
117. According to Art. 25 (1) (b) of the ILC Articles, the conduct in question must not seriously impair an essential interest of the other State or States concerned, or of the international community as a whole.\(^89\)

118. Respondent submits that the adopted measures have by no means impaired the essential interests of Corellia or of international community as a whole. Nothing in the record shows that the essential interest of Corellia was compromised by introducing collective action clause into the sovereign bonds of Respondent and consequent restructuring. Claimant has not presented any evidence in this respect. Regarding the international community, the international financial community as represented by the IMF has by itself given to Respondent the recommendations to adopt the measures in question. It would have never given these recommendations if the restructuring measures could bring significant harm to the other states or states’ community.

119. On this basis, the fourth requirement for necessity defense is satisfied in the present case.

5. The international obligation in question does not exclude the possibility of invoking necessity

120. Under Art. 25 2(a) of the ILC Articles, in order to invoke necessity defense, the international obligation in question should not exclude the possibility of invoking necessity.

121. In the present case it is clear that the obligations under the BIT do not exclude necessity defense, since there is an explicit justification of necessary measures given in Art. 6 of the BIT.

122. Consequently, Respondent should be exempt from liability based on the rules as set in customary international law.

\(^89\) ILC Draft Articles, commentaries to Art. 25, para.18
PRAYER FOR RELIEF

For the foregoing reasons Respondent respectfully asks the Tribunal to find that:

1. Tribunal did not have jurisdiction over the dispute concerning the sovereign bonds owned by Claimant under the CD-BIT;

2. Award of the PCA did not have an effect on jurisdiction of this tribunal;

3. Tribunal should rule on the claims asserted in the view of the forum selection clause contained in the sovereign bonds;

4. Respondent’s debt restructuring measures did not amount to a breach of the fair and equitable treatment standard under the CD-BIT;

5. Respondent’s actions are exempted from breaching the CD-BIT since the debt restructuring measure was a measure necessary to safeguard the respondent’s essential security interests.

RESPECTFULLY SUBMITTED
COUNSEL FOR RESPONDENT
Team Keith