CALRISSIAN & CO., INC.

[Claimant]

v.

THE FEDERAL REPUBLIC OF DAGOBAH

[Respondent]

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SCC: Arbitration Institute of the Stockholm Chamber of Commerce

SRA: Sovereign Debt Restructuring Act No. 45/12 (Appendix 5)

UNCITRAL Rules: UNCITRAL Arbitration Rules

VCLT: Vienna Convention on the Law of Treaties
STATEMENT OF FACTS


2. In 2001, Respondent was faced with an unsustainable debt burden which caused a 2.5-year economic crisis. As the recession escalated, the IMF issued recommendations for Dagobah to appropriately implement the sovereign debt restructuring process so as to prevent another crisis in future.

3. On 7 May 2001, Dagobah restructured its sovereign debt. Respondent launched an offer according to which bondholders could exchange their bonds for new ones with reduced face value.

4. In response, Corellia initiated negotiations regarding the BIT. Corellia claimed that sovereign bonds fall within the BIT definition of investment. Failing to settle the issue amicably, Corellia commenced an arbitral proceeding against Dagobah before the PCA.

5. On 29 April 2003, the PCA rendered a split decision stating that sovereign bonds constitute an investment under the BIT. However, there was serious objection to this award. On 19 May 2003, the dissenting arbitrator presented an opinion, explaining reasons why Corellia's assertion could not be approved.

6. Notwithstanding the award, Corellian nationals never pursued any litigation against Dagobah regarding the sovereign debt restructuring.

7. In 2010, Respondent was hit by a new recession. On 14 September 2011 Dagobah’s debt exceeded USD 400 billion and became unsustainable. Although Respondent adopted necessary austerity measures, it could not generate enough revenues for servicing its debt.

8. The IMF suggested a new sovereign debt restructuring. The restructuring was a precondition for Respondent to obtain a bailout estimated at USD 150 billion.

9. On 28 May 2012, Respondent enacted the Sovereign Restructuring Act (‘SRA’), applicable to all bonds governed by Dagobah law. The legislation provided that if a qualified majority of the owners (75% of the value of all outstanding bonds governed by domestic law) agreed to modify the terms of the bonds, such decision would bind all the remaining bondholders.
10. The new law was decided to be constitutional in a review conducted prior to its enactment. Furthermore, IMF was consulted and involved in drafting SRA. Respondent intended to inform all the affected parties, thus consecutive drafts of SRA were systematically published on the Internet.

11. On 29 November 2012, Respondent offered bondholders the option to exchange their bonds for new ones worth approximately 70% of the outstanding sums. Respondent consulted a committee representing the owners of approximately 50% of the nominal value of the bonds.

12. More than 85% of holders of bonds that were subjected to the law of Dagobah accepted the offer. Thus, on 12 February 2013 all of such bonds were exchanged for new ones.

13. Contrary to the old bonds, the exchanged bonds were governed by the law of the Kingdom of Yavin. The new bonds also gave Yavin’s courts jurisdiction over disputes related to them.

14. Lastly, they contained innovative provisions regulating collective action (Collective Action Clauses, ‘CACs’), which related both to (1) the collective change of the bond terms and (2) the enforcement of any of the current bonds’ contractual obligations. CACs stated the requirement for the bondholders to gather at least 20% of the nominal value of the issue in order to initiate any legal action against Respondent.
SUMMARY OF ARGUMENTS

1. **Jurisdiction.** First, sovereign bonds do not constitute an investment in the meaning of BIT. The parties to BIT intended to specify the scope of BIT and employed an objective approach in the definition of an investment which derived, to some extent, from jurisprudence and doctrine under ICSID Convention. Sovereign bonds do not meet the requirements of BIT – there is no capital commitment, no expectation of gain, no assumption of risk and no territorial link.

2. Second, PCA Award is irrelevant for the jurisdiction of this Tribunal and should be disregarded. As the parties to BIT never gave PCA the competence to modify their treaty, its conclusions are just narrow and case-specific interpretations. They influenced neither the meaning of disputed terms nor the practice between states-signatories. In any event, PCA rendered its award under different circumstances than in the present case.

3. Third, forum selection clause in sovereign bonds prevails over BIT dispute resolution clause. Claims brought before this Tribunal are contractual and fall outside of its jurisdiction. Assuming they are classified as treaty claims, they are still essentially based on contract, what calls for application of clause contained in bonds. In any event, Claimant rejected offer to arbitrate as per BIT before commencement of this proceeding. Thus, domestic courts are the sole appropriate forum for solving this dispute.

4. **Merits.** First, Respondent acted in accordance with FET standard as Claimant’s expectations were not legitimate. Claimant did not receive any specific warranties from Respondent, nor in a form of stabilization clause or otherwise. Above all, Respondent acts were a lawful exercise of its regulatory power. Claimant could not expect that Respondent, facing economic crisis, would freeze its legal system and would not proceed with any regulatory changes. Furthermore, Respondent acted in reasonable and non-discriminatory manner. It also observed the principle of good faith.

5. Second, Respondent is not liable for failure to meet its BIT obligations since it acted to protect its essential security interest of financial stability. The debt restructuring undertaken to counter the 2010 economic crisis was a reasonable, appropriate and proportional measure. Thus, it is justified under Art. 6 BIT. In any event, Respondent’s actions were reasoned under
customary international law defence of necessity, and Respondent is released from the duty to compensate Claimant.
PART ONE: JURISDICTION

I. THE BONDS DO NOT CONSTITUTE AN INVESTMENT

1. This Tribunal cannot rule on the sovereign bonds owned by Claimant as they do not constitute an investment. Claimant is a hedge fund which tries to persuade this Tribunal that by acquiring Dagobah’s bonds in a single transaction on Corellian secondary market it somehow invested in the territory of Dagobah. This is despite that the BIT does not even refer to bonds as an investment.

2. Contrary to Claimant’s allegations\(^1\), this Tribunal lacks jurisdiction for two reasons. Firstly, Claimant’s assets do not fulfil requirements of the definition of an investment provided in the BIT (A). Secondly, Claimant also fails to meet the objective, international law definition applicable to the present dispute (B).

A. CLAIMANT’S BONDS DO NOT FULFIL BIT DEFINITION OF INVESTMENT

3. The Tribunal can hear this case only if it finds its jurisdiction *ratione materiae* and decides that the sovereign bonds constitute an investment. Article 1 BIT defines an investment as

   ‘every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk’.

4. The BIT sets following prerequisites: (i) the commitment of capital or other resources, (ii) the expectation of gain or profit, (iii) the assumption of risk and (iv) the territorial link. Claimant fails to meet each of these requirements. Therefore, its assets may not enjoy protection under BIT.

   i) Claimant did not make a capital commitment

5. Capital commitment is ordinarily understood as consisting of following elements: (1) contribution, (2) creation of further economic value and (3) prolonged duration. The sovereign bonds owned by Calrissian lack such feature.

\(^1\) Req.Arbi., ¶10.
6. Firstly, an investment must involve a contribution, financial or through work, from an investor. Investor’s contribution through work is assessed by its engagement in a project and by scope of works it performed. Thus, contribution means that there are more than one contracts, e.g. contracts with employees or subcontractors. Also, this materialized contribution has to be lasting.

7. As sovereign bonds in dispute have strictly commercial nature, the only transaction with Calrissian was payment of consideration. Consideration is not a contribution. The debt and interest would be paid back on the maturity date in 2015 which would erase any effects of the transaction. Although there were two transactions in general – the original issuance of 2003 and the acquisition in 2005, Calrissian was only a party to the latter.

8. Secondly, investments are made within the frame of a commercial activity and are aimed at creating a further economic value which cannot be identified with a pure gain. Ordinarily, a capital commitment means a constant and fixed engagement in a host state’s territory, which can influence this state’s economy. This is also expressed in the purpose of BIT, where the Parties agreed that investments must stimulate economic development.

9. Indeed, sovereign bonds generate interest but they do not create further economic value. Bonds are financial instruments which allow the interest to accrue but do not serve to produce goods, render services, create jobs, to launch or engage in an existing business.

10. Thirdly, capital commitment is ordinarily understood as a stable flow of funds into the host state extended for some time. Investments are generally made for a period of a few years. Some tribunals even concluded the requirement of duration as a physical persistence of an investment tied to the requirement of contribution to host state economic development.

11. Claimant did not acquire bonds directly from the issuer but on the secondary market in Corellia. Thus, Claimant made a single, ‘spot’ transfer of funds. It could easily withdraw

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2 Mitchell, ¶27.
3 Jan de Nul, ¶92.
4 Malaysian Salvors Annullment, ¶144.
8 Sedelmayer, ¶2.2.4.
9 BIT, Preamble.
10 Salini I, ¶54; Fedax, ¶23.
11 LESI DIPENTA, ¶13.
from the transaction by trading bonds to another buyer on a secondary market, which is a common practice. The acquisitions of bonds was not a persistent engagement.

12. Respondent is aware that in Abaclat and Ambiente Ufficio tribunals considered price paid for bonds sufficient to constitute a capital commitment. However, in these cases a BIT contained an extremely broad and inclusive notion of investment\(^{13}\) and did not mention any specific features that an investment must retain\(^{14}\). Finally, it specifically stipulated in its catalogue bonds, private or public titles and any other right to performances or services having economic value\(^{15}\). This stipulation has laid a basis for the tribunals’ conclusions that price suffices for capital commitment and sovereign bonds enjoy protection under that BIT\(^{16}\).

13. Notably, BIT at hand does not contain any similar provision and must not serve as a means to extend Parties’ consent on the scope. Widening interpretation of ‘investment’ would extend the intent while investment tribunals are not entitled to do that.

14. In any case, Respondent underlines that financial instruments were considered a foreign investment if and only if they had a subsidiary character as to an outreaching investment conducted or planned\(^{17}\), which is not the case here. For instance, in Fedax, an investor acquired promissory notes issued originally by the government to a company for services it rendered to the state\(^{18}\). In CSOB, the tribunal held that a loan can be considered an investment as it was a part of the overall undertaking to privatize a bank in Slovakia\(^{19}\).

15. Here, Claimant acquired sovereign bonds not tied to any outreaching investment. Calrissian as a hedge fund did not conduct any adjoining transactions but was only concerned with the interest on the bonds. Claimant had no other connection to Dagobah. The bonds were not issued to fund a particular investment project but were aimed at restoring financial balance and stability to the state budget. Therefore, they had a free-standing, abstract character.

16. Respondent reiterates that Claimant’s interpretation goes beyond the wording of the BIT. As Calrissian did not make a capital commitment, there was no investment.

\(^{13}\) Beess/Chrostin.
\(^{14}\) Argentina-Italy BIT, Art. 1(1).
\(^{15}\) Abaclat, ¶352.
\(^{16}\) Beess/Chrostin.
\(^{17}\) Fedax; Sempra Energy International; CSOB.
\(^{18}\) Fedax.
\(^{19}\) CSOB, ¶72.
ii) Sovereign bonds do not incorporate an expectation of gain as required by the BIT

17. Any assets to be considered an investment have to contain the expectation of gain. Profitability may not be identified with a feature of regularity, as the former is of a specific character.

18. As investments are entrepreneurial projects with uncertain outcome, also the expected gain is influenced by incertitude and randomness. Albeit operating in risky business environment, investors still can impact the prosperity of their investments. Therefore, they expect an income proportional to their engagement. It is especially clear when assessing a dividend from an investment in an enterprise – which is a net result of main investors’ resourcefulness and is paid according to a number of stock held. There is no such relation between the investor’s engagement and profitability of bonds. Bondholder simply buys bonds and waits passively for payment of the debt and interest.

19. On the contrary, sovereign bonds contain gain which is automatically accrued according to a fixed interest rate and, then, it is paid to a bondholder after the maturity date. Hence, sovereign bonds are generally considered safe assets. Simultaneously however, Calrissian as a bondholder, cannot in any way influence the profitability of bonds. The profit is either paid by the government or not.

20. Sovereign bonds do not contain an expectation of gain understood as dependent not only on the market factors but also onto investor’s engagement.

iii) The bonds bear a risk ordinary for every commercial transaction

21. The risk required by the BIT is of a specific character and separates investments from ordinary commercial transactions. It is a unique feature of an investment.

22. Investments are characterized by a shared risk and an uncertainty as to their success. This risk is connected with an entrepreneurial project over which an investor has certain control and is partly empowered to influence its success to gain profit (a qualified risk). An investor may impact the success of an investment by innovation, rational division of labour or hiring qualified workers. However, there are other factors, external to an investor, like government policy or social unrest that an investor may face. Therefore, it has to assume risk covering

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20 Waibel, p.237.
21 Henderson, ‘Bonds’.
22 Waibel, p.237.
23 Voss.
also political or social influences on an investment. As a result, an investor shares the risk with a host state\textsuperscript{24}.

23. On the contrary, the risk present in the case at hand is a risk of non-performance, a purely commercial risk that is innate in every commercial transaction\textsuperscript{25}. The issuer's obligation to pay the sum and interests in bonds is fixed, unconditional and not tied to the success of any economic operation\textsuperscript{26} (an ordinary risk). There is no way for Claimant to influence successful payment and profitability of its assets. The risk is not shared between a bondholder and a state but lays solely on the former.

24. In sum, acquisition of sovereign bonds is a commercial transaction and cannot be qualified as an investment.

iv) Sovereign bonds lack a territorial link with Dagobah

25. Another requirement is an existence of a territorial nexus. The BIT in Art. 1 defines an ‘investor of a Party’ as

\begin{quote}
’a Party or a national of a Party that attempts to make, is making, or has made an investment in the territory of the other Party’.
\end{quote}

26. Tribunals required such a nexus because it links an economic materialization of an investment with a foreign investor. In other words, only when there is a transfer of funds or other asset from an investor to the territory of host state, does an investment enjoy protection under an investment treaty. There are different understandings of the territorial connection. Claimant does not meet any of them.

27. First, this nexus must be direct and not consequential\textsuperscript{27}. Sovereign bonds lack a territorial nexus, especially when they are acquired on a secondary market. Such an acquisition is neither automatic nor certain\textsuperscript{28}. Even if it occurs, it is distantly linked to the territory of a host state.

\textsuperscript{24} Waibel, p.237.
\textsuperscript{25} Appendix 3, ¶92; Waibel, p.226.
\textsuperscript{26} Waibel, p.237.
\textsuperscript{27} Douglas 2, ¶404.
\textsuperscript{28} Abaclat, Dissenting Opinion, ¶71.
28. Second, there is also another, stricter, understanding of a territorial link. It requires a nexus between an investment and a specific economic activity or entrepreneurial project led in the territory of a host state\(^{29}\).

29. Here, although forum selection clause in sovereign bonds indicates Dagobah courts\(^{30}\), the territorial link is weak and indirect. Firstly, sovereign bonds were acquired from a third party on a secondary market in Corellia\(^ {31}\). Secondly, sovereign bonds were not linked to any economic transaction conducted in the territory of Dagobah.

30. Respondent is aware that few tribunals reduced the nexus to the question if funds ultimately went to the state budget\(^{32}\). However, such conclusion was either made when there was an overall entrepreneurial project conducted\(^ {33}\) or services provided to the government\(^ {34}\) or sovereign bonds were specifically mentioned in catalogue of investment forms in a BIT\(^ {35}\). Conclusions of those tribunals cannot be applied in the present case as it lacks such accompanying circumstances.

31. Henceforth, sovereign bonds do not contain a territorial link as required by Art. 1 BIT and do not constitute an investment in the territory of Dagobah.

**B. CLAIMANT’S BONDS DO NOT MEET THE OBJECTIVE DEFINITION OF INVESTMENT**

32. Claimant’s assets do not meet another requirement of an investment that is to contribute to host state’s economic development. A definition of an investment is widely recognized in tribunals’ decisions as an objective one (i). Under this jurisprudence, an investment should not only comprise four features described above, but also contribute to host state’s economic development, while sovereign bonds owned by Claimant did not (ii). Thus, they are not an investment.

i) **BIT employs an objective definition which sets minimum requirements to assert the existence of an investment**

33. Respondent underlines that the definition of an investment has an objective meaning in itself.

\(^{29}\) Waibel, p.242; Phoenix Action, ¶82.

\(^{30}\) Proc.Ord.2, ¶16.

\(^{31}\) Proc.Ord.2, ¶11.

\(^{32}\) Fedax; SGS v. Philippines; CSOB; Abaclat.

\(^{33}\) CSOB.

\(^{34}\) Fedax; SGS v. Philippines.

\(^{35}\) Abaclat.
34. Article 31 VCLT, binding upon Corellia and Dagobah\textsuperscript{36}, states that a treaty shall be interpreted according to the ordinary meaning given to its terms, in a context and in the light of the treaty’s object and purpose. This also applies to the term ‘investment’ since its meaning is not abstract or out of context. It cannot be extended by parties to a treaty to bring any rights having an economic value within its scope, as it would be in contradiction to Art. 31 VCLT\textsuperscript{37}.

35. Both ICSID\textsuperscript{38} and non-ICSID tribunals\textsuperscript{39} considered that the term ‘investment’ has an objective meaning in itself. The tribunal in Romak concluded that such a definition serves as a benchmark to assess which non-listed assets constitute an investment and which do not\textsuperscript{40}.

36. The ad hoc tribunal in Alps Finance, with regard to the objective meaning of the term ‘investment’, asserted that an investment should satisfy some minimum requirements such as contribution of an investor, certain duration and assumption of risk\textsuperscript{41}. ICSID tribunals listed similar criteria: commitment of resources, duration, risk\textsuperscript{42}, and added another – significance for host state’s development\textsuperscript{43}. Thus, the word ‘investment’ has similar meaning under ICSID Convention and certain BITs\textsuperscript{44}.

37. Despite this dispute is not under ICSID, the notion of ‘investment’ is universal for investment arbitration, as concluded in Romak. PCA recognized there that ICSID awards are the most numerous ones in the public domain and they are useful in tribunal’s reasoning\textsuperscript{45}. Decisions of other investment tribunals serve as an important interpretative guideline and are highly persuasive\textsuperscript{46}.

38. Here, the definition of an investment is vague and controversial. Hence, Respondent asks this Tribunal to look at broader interpretative standards and to follow other investment tribunals which applied an objective definition of an investment.

39. The BIT in Art. 1 defining an ‘investment’ mentions the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk. Moreover, it requires the territorial link between an investment and territory of a host state and the contribution to a

\begin{footnotesize}
\textsuperscript{36} Proc.Ord.2, ¶7.
\textsuperscript{37} Douglas I, ¶342.
\textsuperscript{38} Salini I, ¶52; KT Asia, ¶168; Abaclat, ¶370.
\textsuperscript{39} Romak, ¶180; Alps Finance, ¶231.
\textsuperscript{40} Romak, ¶180.
\textsuperscript{41} Alps Finance, ¶231.
\textsuperscript{42} Schreuer 2, ¶153.
\textsuperscript{43} Salini I, ¶52; Abaclat, ¶347.
\textsuperscript{44} Romak, ¶194.
\textsuperscript{45} Romak, ¶196.
\textsuperscript{46} Caron, p.406-10; Shapiro, p.28-36; Ginsburg, p.635.
\end{footnotesize}
host state’s economy. These elements prove that the parties to the BIT intended to confer an objective character upon the definition of an investment.

40. As a result, sovereign bonds owned by Claimant have to fulfil also the requirements implied from the objective definition of an investment to enjoy protection in this arbitral proceedings.

ii) Sovereign bonds did not contribute to Dagobah's economic development

41. Sovereign bonds to be an investment should contribute to the economic development of host state. This requirement is derived from the BIT Preamble and from an objective meaning of the term ‘investment’.

42. Firstly, the Parties to the BIT agreed that investments will stimulate the economic development of both countries. As preambles are inevitable in treaty interpretation, there is no basis to leave Parties’ original intent expressed in the Preamble. Investments should in some way contribute to host state’s economic development.

43. Secondly, considering an objective meaning of an investment, tribunals concluded that an investment has to contribute to host state’s economic development. In general, this contribution should be direct. Such a contribution may obviously be of different sizes, even small sums can qualify. However, Claimant never contributed a penny.

44. Sovereign bonds do not have any positive influence on the economy. They do not have macroeconomic effect on host state's development or may even implicate negative effects such as currency crisis, which occurred e.g. in Thailand in 1997. Further, sovereign bonds are not followed by a transfer of business and technical know-how as in the case of patent rights or licences, mentioned in Art. 1 BIT. Therefore, sovereign bonds are not a material contribution fostering development of host state, in this case Dagobah.

45. All in all, Claimant fails to argue for the protection of its sovereign bonds under the BIT. The objective definition, applicable to the case at hand, sets some minimum conditions to assert the existence of an investment. It requires that an investment should contribute to host state’s economic development. Thus, not every asset may fall into the scope of 1 BIT. Calrissian’s

47 BIT, Preamble.
48 VCLT, Art. 31(2).
49 Salini I; Joy Mining, ¶53; Jan de Nul, ¶91; Helnan International Hotels, ¶77; Malaysian Salvors, ¶73-74.
50 Salini II, ¶¶50-58; LESI DIPENTA, ¶13; Victor Pey Casado, ¶232; Schreuer 2, ¶¶153-158; Waibel, p.233.
51 Acharlat, Dissenting Opinion, ¶49.
52 Mankiw, p.488.
53 Vandeveldt, p.123.
54 Voss.
assets do not consist of a capital commitment, a gain expectation or risk assumption and did not contribute to Dagobah’s development. Therefore, the Tribunal should decide that sovereign bonds do not constitute an investment in the meaning of the BIT.

II. PCA AWARD HAS NO EFFECT ON THE JURISDICTION OF THIS TRIBUNAL

46. Prior to the present dispute PCA rendered an interpretative award where it decided that sovereign bonds constitute an investment under the BIT. Claimant wrongly asserts that PCA Award binds this Tribunal. The Award is irrelevant for the following reasons. Firstly, PCA acted beyond the competence it had, as it could only interpret and not modify the BIT (A). Furthermore, Corellia and Dagobah never decided to apply PCA Award through formal acts or established practise, which left it without effect (B).

A. PCA EXCEEDED INTERPRETATIVE POWER IT OBTAINED UNDER THE BIT

47. Dagobah and Corellia, under Art. 7(2) BIT, granted PCA competence of a precisely specified scope: to interpret the provisions of BIT (i). In the case at hand, all conclusions that PCA Award reached should be disregarded, as they amount to an illegitimate modification of the BIT (ii).

i) PCA is empowered solely to interpret the BIT

48. As sovereign states, Dagobah and Corellia have the final word on interpretation and modification of their treaties. However, they are capable of delegating both powers to a third party. Such understanding of this competence is in line with the VCLT and case law.

49. In the case at hand, Dagobah and Corellia retained the principle authority to both: modify the BIT and interpret it through bilateral negotiations. However, the two states agreed that in case of a dispute, they would delegate their sovereign interpretative power over the BIT to PCA. As per Arts. 7(1) and 7(2)

   (1) [A]ny dispute between the Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channels.

55 Art. 31, 32, 39 VCLT.
56 Art. 31(2)(3) VCLT; Villiger, p.429; Roberts 2, p.208.
57 Kasikili/Sedudu Island, ¶49.
58 Art. 7(1) BIT.
(2) If a dispute between the Parties cannot thus be settled, it shall, upon the request of either Party, be submitted to an arbitral tribunal for binding decision in accordance with the applicable rules of international law.

50. The provision of Art. 7(1) refers to the dispute “concerning the interpretation or application” of the BIT. Hence, it precisely indicates the exact scope of the PCA’s competence. 'Interpretation' does not equal 'modification', therefore these terms should be distinguished.

51. Firstly, modification of an agreement is aimed at changing its substance. It most often remains within the sole competence of the parties to a treaty. This is in accordance with Art. 39 VCLT which states that ‘a treaty may be amended by agreement between the parties’. On the contrary, interpretation serves merely to find operative meaning within the existing legal framework. It involves a much narrower degree of discretion with regard to shaping the meaning of treaty terms.

52. Secondly, modification is prospective as it shapes future relationship and treaty application. Interpretation is retrospective as it reflects past and current intents of parties.

53. Lastly, modification is permanent in its nature and affects contractual relationship as a whole. Unlike modification, interpretation is context-specific and limited in its scope of application.

54. Taking it all into account, there is a clear gap between modification and interpretation. The wording of Art. 7(2) is narrow, concise and mentions only the term 'interpretation'. In general, the purpose of such delegation is to avoid enforcement and commitment problems, as well as solve uncertainties. It is not supposed to permanently and substantially affect the contractual relationship in question. Furthermore, Art. 7(2) does not allow PCA to extend the meaning of the BIT terms beyond consent of Corellia and Dagobah. Such action is against the purpose of interpretation which is retrospective, context-specific and limited to the existing content of the BIT.

55. In conclusion, PCA could only act within the scope of power that Corellia and Dagobah entrusted to it. The two states consented solely to interpretation of the BIT made by PCA. At the same time, they kept sole power to modify their treaty.

60 Roberts 2, p.201.
61 Access to German Minority Schools in Upper Silesia, Advisory Opinion, p.19; Yasseen, p.47.
62 van Aaken,15; Betz/Koremenos, pp.374-376.
ii) PCA Award constitutes an illegitimate modification of the BIT

56. In the case at hand, PCA rendered an allegedly interpretative award that in its substance equalled to the modification of Art. 1 BIT. The modification was caused by assuming that this treaty term shall cover sovereign bonds. Modification was not possible under the BIT as it lacks any express legal basis. What PCA did, was beyond the scope of the competence to interpret, the only one granted to it by Corellia and Dagobah.

57. First, the term 'bonds' is absent from the BIT. Moreover, there are no provisions relating to any form of financial instruments. Claimant wrongly implies that PCA could, within its competence to interpret, give conclusions that equal to writing terms into the BIT.

58. Furthermore, the approach PCA tribunal took was too general. PCA rendered the Award on the basis of unique facts and under specific circumstances. Nevertheless, it gave the Award unjustifiably broad wording. It ignored the fact it was competent only to interpret, which is a context-specific action. This flawed approach is confirmed in the Dissenting Opinion to PCA Award. Hence, Claimant may not rely on such catch-all interpretation.

59. Above all, Claimant incorrectly alleges that the interpretation of the BIT by PCA binds investment tribunals adjudicating on its basis. An act made beyond competence never bears any formal consequences. PCA Award was a form of excess of power on the part of tribunal and as such, cannot have any legal effect.

60. All things considered, PCA has no competence to forcefully extend the consensus that Dagobah and Corellia reached in their BIT. They wanted neither to protect sovereign bonds as investment, nor to allow PCA to modify their treaty. Thus, PCA conclusions cannot be taken into account by this Tribunal in assessing jurisdiction.

B. PARTIES NEVER PUT PCA’S CONCLUSIONS INTO MOTION

61. Irrespective of PCA Award’s formal power, Dagobah and Corellia made no effort to make it operative. They decided to refrain from enforcing the Award in line with PCA Rules or amending the BIT accordingly. Thus, the PCA Award was deprived of any effect.

62. According to customary international law, a treaty can be modified i.a. by conduct of parties. Such way of amending a contractual relationship may take a variety of forms,

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63 Appx.3, ¶93-94.
64 Req.Arb. ¶8-9.
65 Art. 38 VCTL.
including implied or silent modifications, and originate from a wide range of reasons. Nevertheless, it is absent in the present case.

63. Firstly, neither Dagobah nor Corellia fulfilled their obligation arising under PCA Rules after the Award was rendered. PCA Rules stipulate that state parties shall communicate to the International Bureau the laws, regulations, or other documents evidencing the execution of awards. In the present case, there is no evidence of any submitted documents testifying execution of the Award.

64. Secondly, following publication, both states remained idle. Hence, PCA Award never influenced the conduct of Dagobah and Corellia to the extent that could justify creation of implicit agreement or established practise. More importantly, the two states did not take actions to amend the definition of ‘investment’ in the BIT. On the contrary, Respondent voiced its concerns regarding PCA Award and expressly rejected its conclusions. Likewise, Corellia decided to abandon any legal actions with regard to the bond’s protection. As states’ practice is an important source of interpretation of their treaties, it is the proof that Dagobah and Corellia rejected conclusions reached in the Award. Consequently, no change to the BIT by states’ conduct or practise occurred.

65. Furthermore, Claimant errs in suggesting that the Award was final. In accordance with Art. 7(2) BIT, UNCITRAL rules govern arbitration before PCA. They allow to set any award aside on the basis they enumerate, which influences the final outcome of a proceeding. A means prone to any form of objection has no authority to interfere with established text of the treaty. Consequently, PCA Award lacks power to influence this Tribunal.

66. Thus, PCA Award could not directly or indirectly modify the definition of investment as agreed by Dagobah and Corellia. It also could not provide any binding interpretation. Consequently, the basis on which this Tribunal adjudicates remain unaffected. It is within its competence to independently assess whether sovereign bonds constitute a protected investment or not.

Oppenheim, p.1253; Sinclair, p.138; Villiger, p.429.
Art.34(7) PCA Rules.
III. FORUM SELECTION CLAUSE CONTAINED IN THE BONDS PREVAILS OVER THE BIT ARBITRATION CLAUSE

67. State courts of Dagobah are the only appropriate forum for solving the dispute at hand. This Tribunal may not assert jurisdiction over Claimant’s contractual claims due to the forum selection clause contained in the bonds (A). Furthermore, the BIT lacks an umbrella clause and in consequence, Claimant’s contractual claims may not be elevated to the level of the treaty (B). Alternatively, even if the Tribunal recognizes that Claimant pursues treaty claims, they are essentially based on contract and the forum selection clause contained in the bonds still prevails.

A. CLAIMS SOUGHT IN THIS ARBITRATION ARE CONTRACTUAL AND SUBJECT TO THE BONDS' FORUM SELECTION CLAUSE

68. Respondent upholds that Claimant never made an investment and thus, it cannot seek treaty protection. However, even if sovereign bonds constitute a protected investment, a forum selection clause they contain deprives this Tribunal of jurisdiction. It is because claims Calrissian seeks are of contractual nature. The claims are contractual as they arise directly from performance of a payment obligation arising under the bonds (i). Due to forum selection clause the bonds contain, Claimant may seek redress only before domestic courts of Dagobah (ii).

i) Claims Calrissian pursues arise in connection with an alleged failure to perform payment obligation

69. Calrissian claims are purely contractual and only disguised as treaty claims. This distinction is crucial as treaty and contract regimes are separate with regard to source and scope of rights they encompass69 and dispute resolution forum they provide70.

70. The true origin of alleged damage is Respondent's failure to pay full amounts due under restructured bonds. However, Dagobah did not have to fulfil this contractual obligation towards Claimant. The majority of bondholders legitimately consented to modification of the bonds' terms of payment71. Thanks to this decision, Dagobah could perform redemption of bonds for a lesser amount. Under Dagobah law, Calrissian became validly bound by this independent act of third parties. Consequently, Claimant cannot receive the initial value of the

69 Cremades/Cairns, p.325.
70 Schreuer Vivendi, p.228; Cremades/Cairns, p.326.
71 Uncontested Facts, ¶18.
bonds from Dagobah. However, Dagobah finds itself in the position of a commercial actor who fails to fulfil a contractual payment obligation. Thus, Claimant wrongly evokes violation of FET standard as the basis of its claim.

71. When a private party enters into a contract it is immediately subjected, together with its business partner, to a separate set of rules and guarantees. This contractual regime is unrelated to any treaty regime created by BITs. Disputes arising under this specific, separate framework are subject to its own dispute resolution mechanisms. Contract claims that parties may seek have a different cause of action as well as content, and are likely diverse in terms of parties, applicable law and form of state’s liability than those reviewed in investment disputes.

72. In the case at hand, Calrissian purchased bonds on the secondary market. It acquired the right of contractual nature to receive their due amount together with interests. However, other bondholders decided to change terms that governed bonds, what affected their redemption price. This decision, according to properly enacted and constitutional legislation of Dagobah, bound Claimant. Calrissian wrongly purports it amounted to breach of any kind.

73. However, if there are any claims that might arise under these circumstances, they concern a failure to perform payment obligation. The only breach Dagobah could have committed is an infringement of Calrissian's contractual right to receive initial monetary amounts the bonds entitled it to. Thus, the claims Clarissian seeks in this arbitration have purely contractual basis.

ii) Contractual claims are subject to the forum selection clause contained in the bonds.

74. Contract claims should be decided under contractual forum selection clauses. In the present dispute, it is the clause contained in the bonds which indicates Dagobah domestic court.

75. Distinction between treaty and contract claims is essential for proper administration of justice. Enforcing contract and treaty claims before the same forum creates risk of confusing between

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72 Req.Arb., ¶¶11, 12.
73 Cremades/Cairns, p.330.
74 van Harten, p.1.
76 Proc.Ord.2, ¶22.
them two and rendering an unsound award. Investment tribunals support this position by refusing to adjudicate on purely contract claims.

76. The issues this Tribunal is dealing with closely resemble the problem that was faced by the tribunal in *SGS v. Pakistan*. The relevant contractual and BIT provisions in question are almost identical.

77. The contractual dispute resolution clause reviewed in *SGS v. Pakistan* provided for domestic arbitration under Pakistani law that encompassed "[a]ny dispute, controversy or claim arising out of or relating to" the agreement. Referring to this forum selection clause, the tribunal decided that it could not assert jurisdiction over contract claims.

78. In the case at hand, contract clause is similar in the sense it also applies broadly to all disputes. The dispute resolution clause contained in bonds states that any dispute arising from or relating to this contract will be "exclusively resolved before the courts of Dagobah." The use of adverb ‘exclusively’ makes it even more evident and restrictive than in the case of *SGS v. Pakistan* contractual clause.

79. At the same time, Pakistani-Swiss BIT provided for a dispute resolution mechanism almost identical to that found in the BIT. In Art. 9(1) it states that ‘solving disputes with respect to investments’ will take place firstly through consultations, and then submitted to arbitration.

80. In comparison, Art. 8(1) BIT also stipulates that ‘any legal dispute’ arising between an investor and a state ‘in connection with an investment’ is to be settled amicably, and then submitted to arbitration. Phrase ‘with respect to’ or ‘in connection with’ have both equally broad meaning, what implies at least comparable legal consequences.

81. Under applicable BIT and with regard to contract, *SGS v. Pakistan* concluded that:

‘[f]rom the description alone without more, we believe that no implication necessarily arises that both BIT and purely contract claims are intended to be covered’. 

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77 Cremades/Cairns, p.332.
78 Jan de Nul, ¶133; PSEG, ¶158; Sempra, ¶122; Siemens, ¶180; TSC ¶62-66, Paushok, ¶557; Salini I, ¶¶70,76; Bureau Veritas, ¶¶159,161.
79 *SGS v. Pakistan*, ¶15.
81 Pakistani-Swiss BIT, Art.9(1) and (2).
82 Zeiler, p.346.
83 *SGS v. Pakistan*, ¶161.
82. Further case law and authorities support the view that a contractual clause deprives a treaty-based tribunal of jurisdiction over purely contract-related claims\(^{84}\).

83. In conclusion, this Tribunal may not decide on Claimant’s claims, as under the relevant forum selection clause Dagobah court remains the only appropriate forum to deal with contractual claims related to the bonds.

**B. THIS TRIBUNAL CANNOT DECIDE ON CONTRACT CLAIMS AS THE BIT LACKS AN UMBRELLA CLAUSE**

84. The Tribunal has no basis to assert jurisdiction over contract claims, as such remained beyond Corellia’s and Dagobah’s consent.

85. Claimant does not contest that some BITs contain instruments that allow to elevate a breach of contract claim to a breach of international law. Such effect is typically achieved by an ‘observance of undertakings clause’, also called an ‘umbrella clause’ that allows investment tribunals to decide on contract claims.

86. In the case at hand, Dagobah and Corellia decided not to include an umbrella clause in their BIT. Consequently, they excluded jurisdiction of investment tribunals over contract claims. In absence of any umbrella clause this Tribunal has no legal instruments to deal with claims arising out of contracts.

**C. IF THIS TRIBUNAL FINDS CLAIMANT RAISES TREATY CLAIMS, THEY ARE ESSENTIALLY BASED ON CONTRACT AND SUBJECT TO THE BONDS’ FORUM SELECTION CLAUSE**

87. Even if claims in the present dispute arose under the BIT, forum selections clause from the bonds still applies. It is due to the fact these claims are essentially based on contract.

88. Respondent accepts that breach of a contract may lead under certain circumstances to a breach of treaty guarantees. However, it does not mean an investment tribunal is automatically able to assert its jurisdiction over claims arising in such situation.

89. In case treaty claims are essentially based on contract, investment tribunals lack jurisdiction. It is especially the case when an exclusive forum selection clause is present in a contract. Previous tribunals have treated contractual forum selection clauses as precluding a treaty-

\(^{84}\)Alexandrov, p. 364; Joy Mining, ¶98; Sempra, ¶123; El Paso, ¶82, LESI Dipenta, ¶128.
based tribunal’s consideration not only of ‘purely’ contractual claims, but also of claims where the ‘essential basis’ for the claim is a breach of contract.\footnote{SGS v. Philippines, ¶154; Vivendi, ¶98.}

90. This approach was articulated by the Vivendi I annulment committee, which held that

‘in a case where the essential basis of a claim brought before an international tribunal is a breach of contract, the tribunal will give effect to any valid choice of forum clause in the contract’.

91. The Vivendi I annulment committee relied, i.a., on the Woodruff case. In that case, a tribunal also dealt with conflict between contract and treaty forum selection clause. It stated that when dealing with a claim fundamentally based on a contract, a tribunal has to consider the rights and duties arising from that contract, and may not construe a contract that the parties themselves did not make.\footnote{Woodruff, p.222.} It further stated this situation would have happened if a decision had been made in a case by a treaty tribunal. It was due to the fact such ruling would have absolve from the pledged contractual duty of first recurring for right to the domestic courts. At the same time, it would have given a right, which by this same contract was renounced, and absolve one of the parties from a duty that it took upon itself by his own voluntary action.\footnote{Woodruff, p.223.}

92. In the present dispute Calrissian seeks compensation for treaty claims under breaches of FET standard that are essentially based on contract. Alleged infringement of treaty rights occurred in inseparable relation to bonds, as there are no other circumstances present different than lack of performance of contractual payment obligation. Claimant itself argues it is entitled to compensation of all losses incurred in relation to bonds as a consequence of breach of FET standard.\footnote{Req.Arb. ¶¶12-14.} This support jurisdiction of Dagobah domestic courts, as it testifies that claims arising under FET are inseparable from the breach of contractual obligation to pay for bonds' redemption. As the prevailing value of claims concerns the unpaid bonds, claims pursued have their strong basis in contract. Consequently, this Tribunal should give effect to forum selection clause from the bonds.

93. Furthermore, as Woodruff tribunal pointed, a contrary action would be an unlawful interference with substantial provisions of contract. It is due to the fact initial and prevailing intent of Dagobah and Calrissian was to proceed before domestic courts. This Tribunal may neither disregard it, nor interfere with it.
94. In conclusion, the Tribunal has no jurisdiction over the present dispute. The only appropriate forum that should decide Calrissian’s claims are domestic courts of Dagobah.
PART TWO: MERITS OF THE CASE

I. RESPONDENT AWARDED CLAIMANT’S INVESTMENT FAIR AND EQUITABLE TREATMENT DURING THE DEBT RESTRUCTURING PROCESS

95. Calrissian’s only claim in this arbitration is that by adopting SRA Respondent violated FET standard provided in Art. 2 BIT. Claimant alleges that measures adopted by Dagobah in relation to its sovereign debt restructuring were coercive and violated certain warranties granted to Claimant. Pursuant to Art. 2 BIT

‘[i]nvestments of each Party or of nationals of each Party shall at all times be accorded fair and equitable treatment […]. Neither Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investment in its territory of nationals of the other Party’.

96. Respondent’s debt restructuring did not amount to a violation of FET standard for the following reasons. Firstly, Calrissian’s wrongly interprets Art. 2 BIT, as FET standard shall be interpreted narrowly, in accordance with the customary international law (A). Secondly, Claimant could not have had any legitimate expectations (B). Furthermore, all the measures pursued by Dagobah were in line with the IMF’s recommendations and aimed at fighting the crisis. They were reasonable and had a non-discriminatory character (C). Moreover, Dagobah acted in good faith in its effort to regain financial stability (D).

A. THE TRIBUNAL SHALL APPLY FET STANDARD AS EQUAL WITH THE MINIMUM STANDARD OF TREATMENT

97. Art. 2 BIT has to be interpreted in the light of international law as equal to the customary minimum standard of treatment.

98. Obligation to interpret FET standard in accordance with international law has three reasons. Firstly, BIT in its Art. 8 explicitly states that international law is the applicable regime for dispute resolution. Secondly, a similar obligation flows from the SCC Rules and the ICJ Statute89. Thirdly, Art. 31(3c) VCLT requires treaty interpretation in the light of international law. Therefore, the absence of a direct reference in Art. 2 BIT to the international law regime has no relevance here. Similar conclusion can be drawn from the case law90.

99. The above proves that the Tribunal should apply FET in a narrow manner which is recognized

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89 ICJ Statute, Art. 38; SCC Rules, Art. 22.
90 Saluka, ¶296, Siemens, ¶291.
in international law as the minimum standard of treatment\textsuperscript{91}. In the case at hand, Claimant has not even tried to prove any willful negligence of Dagobah. There is no evidence that Respondent’s actions stood in direct contrast to the internationally accepted standards.

100. Not every change in the legal environment will amount to a breach of FET. As it was pointed out in \textit{Genin}, the catalogue of actions that amount to FET violation is limited. Breach of the minimum standard requires acts showing a willful neglect of duty, an insufficiency of action falling far below international standards, or even subjective bad faith\textsuperscript{92}. Here, the restructuring process was in line with the minimum standard of customary international law.

101. Respondent submits that the Tribunal should rely on the more general and lenient reading of FET standard. Strict understanding of FET would prevent Respondent from introducing any legitimate regulatory reform in response to rapid changes of circumstances. Should this Tribunal decide to adopt the broad interpretation, in any case Respondent afforded Claimant’s investment fair and equitable treatment.

B. CLAIMANT COULD NOT HAVE ANY LEGITIMATE EXPECTATIONS

102. FET standard is closely tied to the notion of legitimate expectations\textsuperscript{93}. In the case at hand, Claimant could not have had any legitimate expectations for the following reasons. Firstly, Calrissian did not receive any specific warranties from Respondent (i). Secondly, while shaping its expectations, Claimant ignored the socio-economic situation of Dagobah and its level of development (ii). In any event, Respondent lawfully exercised its regulatory power (iii).

i) Claimant’s expectations were not legitimate as Claimant did not receive any specific warranties from Respondent

103. According to jurisprudence an expectation is legitimate only if the investor received an explicit promise or guarantee from the host state\textsuperscript{94}. Calrissian did not get any representation from Respondent, specifically in the form of a stabilization clause.

104. Undoubtedly, the state has the right to enact, modify or cancel a law at its own discretion\textsuperscript{95}. There is nothing objectionable about the amendment to the regulatory framework existing at

\textsuperscript{91} SD Myers, ¶259.
\textsuperscript{92} Genin, ¶367.
\textsuperscript{93} Saluka, ¶37.
\textsuperscript{94} Parkerings, ¶331.
\textsuperscript{95} Parkerings, ¶332.
the time an investment was made, if there was no assurance of a host state, e.g. in the form of a stabilization clause.\textsuperscript{96} It is the case here for the following reasons.

105. Firstly, Claimant did not receive any explicit guarantee that the legal and financial environment would remain unchanged.\textsuperscript{97} Nothing was stated that Respondent’s sovereign debt would not suffer another restructuring in the future.\textsuperscript{98} Preambular agreement as to the importance of stability framework is insufficient to establish such a burdensome obligation upon host states.\textsuperscript{99}

106. Secondly, Respondent underlines that no protective clause or instrument was used by Claimant. There was no stabilization clause in the sovereign bonds. There was also no specific representation of a government official. Claimant, while acquiring the bonds, knew about the lack of any warranties. Hence, it consciously undertook the risk of changes in the investment’s environment.

107. Thirdly, BITs are not ‘an insurance against business risk and the claimants should bear the consequences of their own actions as experienced businessmen’.\textsuperscript{100} Investor has to bear inherent business risks. They cannot be reasoned under a treaty. Investing in a developing state implicates acceptance of less stable socio-economic and political environments.\textsuperscript{101} This is especially true in case of hedge funds such as Claimant since high returns normally leads to high risk. Calrissian dealing with investments on a professional basis should have evaluated the risk of buying bonds without stabilization clause in a post-crisis state.

108. In any case, all measures used by Respondent to fight the crisis were predictable and transparent. Dagobah’s economic situation was severe. As Global Financial Herald pointed out, it was ‘more than probable that the country will soon be experiencing its second sovereign debt restructuring in the last eleven years’.\textsuperscript{102} It was commonly known that IMF recommended Dagobah to pursue the sovereign debt restructuring. Moreover, SRA drafts were published online. Hence, Calrissian had an easy access to acknowledge Dagobah’s financial situation.

109. Taking into consideration Dagobah’s harsh economic situation, measures to counter the first crisis and lack of any warranty that such measures will not be used again, Claimant could not

\textsuperscript{96} Parkerings, ¶332.
\textsuperscript{97} Proc.Ord.3, ¶32.
\textsuperscript{98} Proc.Ord.2, ¶18.
\textsuperscript{100} MTD, ¶178.
\textsuperscript{101} Reinisch, p.127.
\textsuperscript{102} Appendix 4.
have legitimately expected that its investment will not be affected by the restructuring, in case of any future crisis. Calrissian’s hope that nothing changes was an absurd.

ii) Claimant unreasonably shaped its expectations without taking into account the economic situation of Dagobah

110. Claimant, while making its decision to acquire bonds, did not take into account neither the economic situation of Dagobah, nor its level of development, nor the history of previous financial problems.

111. Not every hope amounts to an expectation under international law. An investor has to make its business decisions and shape its expectations on the basis of the factual situation prevailing in the country at the time of an investment. Investors must not take into account the regulation in abstract. They must consider level of development as well as political, socio-economic and historical conditions prevailing in the host state in order to assess what expectations may be legitimate. Otherwise, there is a risk of giving too much weight to the investor’s interests at the expense of public welfare and state regulatory power. Thus, not every expectation laying basis for a business decision is protected by international law.

112. Dagobah was a developing country with short history of democracy. It was deemed an emerging market. However, in early 2001, Dagobah was faced with an unsustainable debt burden and descended into a two-and-a-half yearlong economic crisis. The bonds on which Calrissian's claims are based were issued in 2003 and acquired by Claimant in 2005. Hence, in 2005, Claimant did know that Respondent’s economic crisis finished just one-and-a-half year earlier. Moreover, it was aware that one of the measures used by Respondent to manage the crisis in May 2001 was debt restructuring. All in all, Calrissian could not expect that the economy of Dagobah will persistently stabilize and will remain free from crises forever.

113. Claimant did not take into account above mentioned circumstances while making its decision to acquire the bonds. Thus, as Claimant knowingly bought the bonds, despite Dagobah's situation at that time, its expectations cannot be deemed legitimate.

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103 Parkerings, ¶344.
104 Duke Energy, ¶¶340, 347, 365, 366; Saluka, ¶329; Siemens, ¶299; Schreuer/Kriebaum, p.266.
106 Campbell, pp.361–379.
107 Schreuer/Kriebaum, p.265.
108 Facts, ¶1-3.
iii) In any case, Respondent lawfully exercised its regulatory power

114. Claimant could not expect that Respondent will refrain from exercising right assigned to it – its general regulatory power, especially in the case of economic crisis. Furthermore, all the measures used by Dagobah were lawful and enacted in accordance with due process.

115. State has a right to regulate matters within its own borders. Obligations arising from a treaty cannot confine this right. Questioning state’s regulatory power would make the exercise of many state functions impossible. Implying a requirement of complete stability within FET would burden the host state with inappropriate and unrealistic obligations. State must be able to introduce legitimate regulatory change, if the situation requires so. The doctrine of general regulatory power of a state is commonly accepted and was reinforced in *Saluka*. The tribunal held that states are not liable if, in the normal exercise of their regulatory power, they adopt in a non-discriminatory manner good faith regulation aimed at the general welfare.

116. Moreover, the state’s right to regulate cannot be considered frozen or restricted as a result of the existence of investment treaties. Scholars point out that while determining FET violation emphasis has to be laid on the high measure of deference that international law extends to the right of state to regulate matters within their own borders. As Douglas underlines, applying a strict standard to the state’s acts is utopic.

117. This approach is in line with the jurisprudence. In *Enron*, the tribunal noted that the stabilization requirement does not mean freezing of the legal system or disappearance of the regulatory power of the state. *LG&E* tribunal also agreed that investment treaties do not wholly curtail a host state’s power to regulate in the public interest. Instead, it emphasized that the ‘state has the right to adopt measures having social or general welfare purpose’.

118. In the present case, right to regulate was crucial to the welfare of the country during the crisis. Respondent’s financial situation had a strong impact on the living conditions of Dagobah nationals and the stability of the entire state. Economic situation was severe. Some public services were on the verge of being compromised. Respondent was left with no choice but

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110 Kriebaum, p.721.
111 Methanex, Metaclad.
112 Saluka, ¶255.
113 Potesta, p.25.
114 Reinish, p.127.
115 Douglas 1, p.28.
116 Enron, ¶261.
117 LG&E, ¶195.
to follow IMF recommendation and implement the debt restructuring. By doing so, Respondent simply used the regulatory power assigned to it.

119. It also has to be noted that all the measures enacted by Respondent were implemented in accordance with Dagobah law and IMF’s recommendations. They observed the requirement of due process. SRA drafts were published online. Respondent even gave Calrissian an opportunity to express its opinion about the draft119. Claimant did not take this chance120. Moreover, SRA was deemed constitutional in a review conducted prior to its enactment121.

120. In the light of the above, Claimant expectations were not legitimate as Respondent was lawfully exercising its regulatory power.

C. MEASURES ADOPTED BY RESPONDENT WERE REASONABLE AND NON-DISCRIMINATORY

121. Respondent recognizes that unreasonable or discriminatory treatment can amount to the breach of FET122. However, nothing in this case justifies such conclusion. Dagobah observed FET standard by acting in reasonable manner (i), strictly observing IMF recommendations. Furthermore, Respondent’s actions were non-discriminatory (ii), as they did not target any specific group.

i) Respondent acted in a reasonable manner

122. At first, Respondent underlines that in investment arbitration, standard of reasonableness is perceived as tantamount to the standard of non-arbitrariness123. Thus, ‘acting in arbitrary manner’ and ‘acting unreasonably’ have the same meaning and may be used interchangeably. Arbitral tribunals explained the meaning of arbitrariness within which they recognize two obligations.

123. First, ICJ described as arbitrary, a conduct that displays a willful disregard of the law124. In LG&E, tribunal considered that the prohibition of arbitrariness required the host state to ‘engage in a rational decision-making process which considers the effect of a measure on foreign investments and balances the interests of the state’125. Hence, the tribunals have

120 Proc.Ord.3, ¶35.
121 Facts, ¶22.
122 Schreuer 1, p.8.
123 Schreuer 1, p.1.
124 ELSI, ¶127.
125 LG&E, ¶158.
emphasized that state acts must be imposed as a result of a reasoned judgment, not with disregard of the rule of law.\textsuperscript{126}

124. Here, contrary to Claimant’s allegations, Respondent’s decision to enact SRA was made with due consideration and was a result of a reasoned judgment and consultations with IMF. Dagobah government considered all available measures to fight the crisis, its effects and ways of implementation. However, it came to the conclusion that there was no way to overcome the recession other than debt restructuring. Respondent strictly followed IMF’s suggestions in order to achieve the bailout, to avoid the default. IMF was also involved in the drafting of SRA.\textsuperscript{127} Thus, it was prepared according to the best international practices.

125. As to the restructuring offer, Respondent got involved in the dialogue with a committee representing the owners of approximately 50\% of the bonds’ value to be affected by SRA.\textsuperscript{128} It was Claimant’s own decision not to take advantage of Respondent’s offer to sit in the committee. Calrissian expressed interest in joining the consultation after the deadline for submission.\textsuperscript{129}

126. Second, to act in a reasonable manner, state must have a legitimate reason for implementing a measure.\textsuperscript{130} It means that state’s conduct is tied to some rational policy.\textsuperscript{131} In the \textit{LG&E} case, tribunal treated the avoidance of economic collapse in Argentina as a legitimate concern.\textsuperscript{132} This conclusion can be directly applied here, as both Argentina and Dagobah were in grave economic situation.

127. Here, Respondent had a legitimate reason to introduce new legislation. It was not able to generate revenues for servicing its debt without restructuring or defaulting.\textsuperscript{133} Measures were taken to preserve basic functions of the state and access to the world’s capital markets. SRA was part of Respondent’s far-reaching plan to regain financial stability. Dagobah adopted significant austerity measures, in particular it reduced investments in infrastructure.\textsuperscript{134}

128. All facts considered, Respondent submits that it proceeded reasonably in its efforts to reduce the debt and manage the economic crisis. Also, it observed IMF recommendations.

\textsuperscript{126} \textit{LG&E}, ¶162.
\textsuperscript{127} Proc.Ord.2, ¶21.
\textsuperscript{128} Proc.Ord.2, ¶21.
\textsuperscript{129} Proc.Ord.3, ¶35.
\textsuperscript{130} LG&E, ¶162.
\textsuperscript{131} Saluka, ¶460.
\textsuperscript{132} LG&E, ¶162.
\textsuperscript{133} Proc.Ord.2, ¶20.
\textsuperscript{134} Proc.Ord.2, ¶20.
ii) Respondent’s actions were non-discriminatory

129. Measures enacted by Respondent encompassed all the bondholders and did not have a discriminatory character.

130. What follows from number of cases\(^\text{135}\) is that the primary criterion for discrimination is less favorable treatment of some investors, especially on the basis of nationality\(^\text{136}\). In Nycomb, tribunal stated that in evaluating whether there is discrimination one should only compare ‘like with like’\(^\text{137}\).

131. If one assesses Dagobah’s conduct in the view of this reasoning, it proves that there was no differentiation in treatment between those Dagobah nationals and others. Respondent did act in non-discriminatory manner as it treated all bondholders equally. SRA was applicable to all bonds governed by Dagobah's law\(^\text{138}\). This legislation was addressed to both domestic and foreign bondholders. The aim of SRA was not to discriminate any specific group, but to regulate the situation of every person holding a bond. Thus, none of the investors was treated less favorably than others.

132. To summarize, Respondent actions were reasonable as they were linked to a rational policy to combat the financial crisis. Dagobah government acted in non-discriminatory manner, treating all the bondholders in same manner and always observing their interests.

D. RESPONDENT ACTED IN GOOD FAITH

133. Contrary to Claimant’s allegations that SRA was a violation of good faith principle, Respondent submits that it had no intention to harm Calrissian’s investment. The only aim was to fight the crisis and to restore stability.

134. Tribunals have confirmed that good faith principle is inherent in FET\(^\text{139}\). The basic obligation of the host state is to act in good faith, and to not deliberately destroy or frustrate the investment by improper means\(^\text{140}\).

135. In the case at hand, Respondent did act in good faith, without intention to destroy or frustrate Claimant’s investment. The only purpose for implementing SRA was to manage the economic crisis, not to target the investment. Economic situation of Dagobah was severe and pressing.

\(^{135}\) Occidental, Siemens, Eastern Sugar, Lauder.
\(^{136}\) Schreuer 1, p.18.
\(^{137}\) Nycomb, p.99.
\(^{138}\) Facts, ¶17.
\(^{139}\) Saluka, Waste Management.
\(^{140}\) Waste Management, ¶138.
There were several demonstrations and social unrest erupted in the capital as well as in other larger cities. This was a result of large-scale dismissals, and the increase in unemployment rates up to 10.9%. Respondent was not able to generate revenues for servicing its debt without restructuring or defaulting. These facts were the only reason for introducing SRA.

136. While preparing to implement SRA, Respondent undertook several steps to minimize the negative effects of the change of law. Firstly, Dagobah included investors’ representatives in the process of drafting SRA. It provided every bondholder with an opportunity to express its opinion about the SRA. Secondly, bondholders were also informed of the ongoing draft and different versions of the text were published on government websites.

137. All things considered, Dagobah at all times observed FET standard, acting in a reasonable and non-discriminatory manner. Respondent also acted in good faith, taking into account Calrissian’s interests. Above all, Dagobah government was legitimately exercising its regulatory power in order to combat the economic crisis.

II. IN ANY CASE, RESPONDENT IS EXEMPTED FROM POTENTIAL LIABILITY FOR ALLEGED BREACHES OF THE BIT SINCE IT UNDERTOOK THE MEASURES IN ORDER TO PROTECT ITS ESSENTIAL SECURITY INTEREST

138. Due to the 2010 global recession, Respondent’s financial market was hit by severe instability. In the light of the crisis, Respondent was forced to enact measures to rescue its economy. Taking into consideration the welfare of its citizens, Dagobah implemented the IMF’s recommendations to restructure its sovereign debt. Without the restructuring, Respondent would not be granted a bailout, and its economic situation would deteriorate further, leading to state bankruptcy. For these reasons, Dagobah may protect itself with the essential security defence under the BIT. In any event the prerequisites of the customary international law defence of necessity as codified in Art. 25 ILC Articles are fulfilled.

A. RESPONDENT’S MEASURES ARE JUSTIFIED UNDER ART. 6 BIT

139. Article 6 the BIT provides a security clause, which allows the Parties to release themselves from liability for any breaches of the BIT if they have enacted measures.
‘that are necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interest necessary to protect their essential security interests’.

140. Respondent chose a set of policy and economic measures, the debt restructuring being one of them, to protect its citizens’ well-being and its stability. Since these measures were necessary to protect the essential interest of economic stability, Respondent cannot be held liable for any alleged breach of the BIT.

i) BIT is the primary source of security defence

141. Tribunals have so far developed three approaches to the relation between BITs and customary international law security defences. However, only one of them has been met with broad acceptance, and that is to adopt BIT as primary defence and customary international law as secondary defence. This approach was applied by the tribunals in the CMS annulment, LG&E and Continental Casualty cases. Respondent submits that the Tribunal shall also adopt it in the case at hand.

142. The abovementioned approach goes along with the interpretative requirements contained in Art. 31 VCLT, whereby any treaty has to be interpreted according to its object, purpose and context. Hence, the BIT is not to be read in the light of customary international law. Furthermore, no evidence exists that the Parties wished for an interpretation in the light of customary international law, since the BIT contains no provision expressing such an intention. This argument has also been widely accepted by tribunals in recent cases.

143. Further, treaty comes before custom, and thus a BIT must be applied before any relevant customary or general rules of international law. Hence, the priority of a BIT derives from the hierarchy of sources of international law.

144. Finally, BITs shape specific relations between states in a particular, treaty-related, context, as observed by the doctrine. Therefore, it is a given BIT that most accurately describes the scope of rights and obligations of its parties.

145. In the light of the above, the Tribunal shall adopt the BIT as primary source of security defence, observing Art. 25 ILC Articles as an alternative, secondary means of protection (see B).

147 Abaclat ¶¶325, 349; Continental Casualty, ¶¶162-164.
148 Nicaragua, ¶¶34-36.
149 Crawford, p.135; Shaw, p.34.
150 Aaken/Kurtz, pp.884-885.
ii) The financial crisis threatened Respondent’s essential security interest of financial stability

146. The meaning of the term ‘essential security interest’ has a wide definition, and encompasses not only threats to the national security of a state, but also dangers to its welfare and stability. It is clear that the scope of dangers that may threaten state’s stability has evolved, thus embracing not only direct physical threats, but also economic crises or cyberterrorism. Tribunals have to interpret the concept of essential security interest dynamically, in the light of its current socio-political context.

147. This view is also supported by the rules of treaty interpretation provided for in Art. 31 VCLT. Due to the fact that the context of application of essential security interests has inevitably broadened throughout years, it must be interpreted widely to encompass various phenomena. Since the Parties decided not to explicitly provide for a definition of ‘essential security interest’ in the BIT, the Tribunal should follow former jurisprudence and respective doctrine in this matter. Therefore, Art. 6 BIT shall be broadly interpreted.

148. Additionally, there is a direct causal link between financial crisis and the state’s internal security. Phenomena such as raising inflation or decreasing government spending may lead to severe civil unrests or even to the virtual bankruptcy of a state, limiting the scope of its basic functions. It is not uncommon in recent economic history that entire governments collapsed due to financial crises and, consequently, due to citizens’ opposition to austerity measures undertaken by states. Such a situation was shared by Argentina in 2001, Greece in 2009 and Ireland in 2011.

149. Respondent was faced with a 2.5-years economic crisis, which rendered it unable to meet its debt obligations. Even though Dagobah implemented the IMF’s recommendations in 2001, it was hit by a new recession at the beginning of 2010, which further increased government debt levels. The IMF deemed the US 400 billion debt to be unsustainable.

150. Undoubtedly, government debt levels surpassing the GDP may severely affect the economic stability of any state, especially a developing one. Growing debt can create macroeconomic vulnerabilities, leading to price shocks, as well as to hindering the ability of

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151 Continental Casualty, ¶231.
152 OECD Report, pp.102-105; Schill, p.267; Thoerjenlund, p.436.
153 Gallagher, p.21; Schill, p.265-267.
154 Abaclat, ¶175; CMS, ¶360; LG&E, ¶278.
155 Facts, ¶4.
156 Facts, ¶14.
157 Facts, ¶15.
households and enterprises to maintain consumption and investment\textsuperscript{159}. Therefore, it may eventually lead to a long-run economic crisis of the affected country.

151. Furthermore, from the 2001 crisis onwards, Respondent was under heavy international pressure to implement economic reforms. International organizations, as well as foreign governments, including Corellia’s, pushed for substantive changes\textsuperscript{160}. The IMF set debt restructuring as one of the bailout conditions\textsuperscript{161}, even though implementing counter-crisis measures might prove very risky for a developing state\textsuperscript{162}.

152. The crisis rendered Respondent’s public sector ineffective and at the verge of being compromised\textsuperscript{163}. The recession, which continued for almost 10 years, not only created a US 400 billion debt, but also posed a threat to the well-being of Dagobah’s citizens. After the 2008 global economic crisis, several demonstrations and social unrests occurred\textsuperscript{164}. Unemployment increased to 10.9\% and inflation rate has spiked\textsuperscript{165}. The seriousness of situation is underlined by the fact that austerity measures Respondent undertook did not improve its economic condition\textsuperscript{166}.

153. The gravity of situation was observed not only by the IMF, but also by other states, including Corellia. It is undisputed that Respondent was at the verge of a default in 2010. The wide range of strategic measures enacted by Respondent did not ease the situation, rendering debt restructuring inevitable as a means to protect Respondent’s essential security interests.

iii) The debt restructuring was a measure necessary to counter the crisis

154. Since every state has the right to maintain its own economic policy, the choice of measures for countering financial crises lies in the \textit{imperium} of this state\textsuperscript{167}. No tribunal is fully encompassed with means to assess whether measures were chosen rightly or not. In this regard, Respondent submits that ultimately only the state knows what will protect its interests in the most effective way available\textsuperscript{168}.

\textsuperscript{159} Proc.Ord.2, ¶20.
\textsuperscript{160} Facts, ¶¶5-6, 14-16.
\textsuperscript{161} Facts, ¶16.
\textsuperscript{162} Facts, ¶1, OECD Report, p.101.
\textsuperscript{163} Proc.Ord.2, ¶20.
\textsuperscript{164} Proc.Ord.3, ¶38.
\textsuperscript{165} Proc.Ord.3, ¶38.
\textsuperscript{166} Proc.Ord.2, ¶20, p.50.
\textsuperscript{167} Tannenwald, p.84; Lemire, ¶505.
\textsuperscript{168} Henckels, pp.7-8; Continental Casualty, ¶231.
155. Therefore, states shall enjoy a wide margin of appreciation in fighting economic crisis, with their actions tested solely against the standard of good faith\textsuperscript{169}. As long as the measures are lawful, available, and not entailing too severe costs, the state will comply with the abovementioned standard\textsuperscript{170}.

156. Alternatively, if the Tribunal rejects this standard, it should consider the proportionality test\textsuperscript{171}, according to which states may adopt measures which effectively lead to the realization of their aims as long as these measures are the least burdening for parties potentially affected\textsuperscript{172}. The \textit{Continental Casualty} tribunal indicated that these measures need to be appropriate, reasonable and proportional\textsuperscript{173}. First and foremost, Respondent observes that it is for Claimant to prove beyond any doubt that there were other, less burdening measures that could have been used by Respondent.

157. In any case, Respondent submits that it acted in good faith. Dagobah enacted measures in accordance with the IMF’s recommendations in order to be granted a financial bailout. Without the bailout, Respondent’s financial situation would only deteriorate. Therefore, the restructuring was aimed at reducing the state’s debt to sustainable levels without compromising its basic functions, thus protecting Dagobah’s essential security interest of financial stability. The ultimate goal of Respondent’ actions was to safeguard its citizens’ welfare. Respondent considered the interests of foreign investors while drafting SRA, yet in the process of balancing the interests of its citizens and foreign subjects, it had to undertake every appropriate and effective measure to protect its inhabitants.

158. Furthermore, the debt restructuring is an appropriate and viable option for states faced with a crisis of similar scale. It is not only suggested by international economic organizations (such as IMF, ECB and the World Bank)\textsuperscript{174}, but was also used by states in similar situations to that of Respondent (Argentina, Greece). It is important to note that Respondent, without an express obligation to do so, firstly resorted to less burdening measures, such as austerity, albeit to no effect\textsuperscript{175}. As the scale of the crisis was too huge to be countered by regular economic measures, Respondent was left with nothing but to implement the debt restructuring.

\textsuperscript{169} Burke-White/Slaughter, p.7-9.
\textsuperscript{170} Reinisch, p.145-148.
\textsuperscript{171} Kingbury/Schill, pp.79-81.
\textsuperscript{172} Continental Casualty, ¶197, LG&E, ¶256.
\textsuperscript{173} Continental Casualty, ¶¶195-200.
\textsuperscript{174} Reinhart/Rogoff, pp.4, 9-11; IMF 2013, p.2.
\textsuperscript{175} Proc.Ord.2, ¶20.
159. Respondent also submits that it acted under heavy pressure from the international community to undertake the debt restructuring, as it also formed a condition for bailout. The bailout was eventually granted to Dagobah reducing the debt from US 400 billion to US 250 billion. Consequently, the debt restructuring effectively led to the aim pursued by Respondent, namely to diminishing the public debt to a sustainable and manageable level, below the state’s GDP rate.

160. In summary, Respondent submits that the debt restructuring was a necessary measure to fight the effects of the 2010 economic crisis.

iv) The debt restructuring was a proportional measure

161. Finally, Respondent submits that it aimed to protect its economic stability and the welfare of its citizens. The debt restructuring questioned by Claimant was not too heavily burdening when juxtaposed with its goal.

162. Proportionality requires that the measure adopted is rationally connected to its objective, and that the objective could not have been achieved equally as effectively with an alternative measure interfering less with the protected right or interest. Arbitral tribunals need to cautiously apply this test in order not to violate state deference.

163. In the case at hand, the debt restructuring was rationally connected to the aim of ensuring Dagobah’s financial stability. No other measure would ensure this goal, since the international bailout was conditioned only on restructuring the debt in bonds through an exchange offer. Therefore, there was no reasonable alternative to Dagobah’s actions that would yield a comparatively effective result.

164. Reducing the value of bonds by 30% of their net value is a relatively light interference with any alleged rights of investors when compared to the effects a continuing economic crisis might have had on Dagobah’s ability to pay any debt. Had the crisis continued, the following would have probably occurred: infringements of human rights, price shocks, galloping inflation and, eventually, state bankruptcy. Clearly, the only other option was for

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176 Facts, ¶16.
178 Henckels, pp.6-7.
179 Facts, ¶16.
180 Facts, ¶16.
181 Facts, ¶18.
182 Kämmerer, pp.626-628.
Respondent to default\textsuperscript{183}, yet its effect would only deteriorate the already difficult internal security situation of Dagobah\textsuperscript{184}.

165. Therefore, Respondent submits that it carefully weighed the interests of its citizens against the interests of investors. This is further proved by the fact that so far only Claimant has been questioning the validity of measures undertaken by Respondent.

166. All things considered, the debt restructuring was a reasonable, appropriate and proportional measure to counter the 2010 economic crisis.

**B. IN ANY EVENT, RESPONDENT’S ACTIONS ARE JUSTIFIED UNDER THE CUSTOMARY INTERNATIONAL LAW DEFENCE OF NECESSITY**

167. Respondent submits that it may also rely on the customary international law defence of necessity provided for in the ILC Articles, which forms a part of customary international law. The scope and purpose of Art. 25 ILC Articles do not overlap with Art. 6 BIT, since treaties and international custom may exist in parallel without annihilating each other\textsuperscript{185}.

168. Article 25 ILC Articles encompasses the following requirements: (1) essential security interest safeguarded against a grave and imminent peril; (2) the measure enacted was the only one possible; (3) the use of necessity defense is not prohibited by the legal provision in question and there is no impairment of an essential security interest of another state or the international community as a whole; (4) no contribution of the state involved. All these requirements were met in the case at hand\textsuperscript{186}, and therefore Respondent is exempted from liability from alleged breach of the BIT. It can also mitigate any potential damages resulting thereof.

i) **The debt restructuring was the only measure to safeguard Respondent’s essential security interest against a ‘grave and imminent peril’**

169. As the meaning of ‘essential security interest’ has already been developed under point A, Respondent will limit its arguments to the remaining premises.

\textsuperscript{183} Proc.Ord.2, ¶20.
\textsuperscript{184} Proc.Ord.3, ¶37.
\textsuperscript{185} Nicaragua; ¶¶34-36.
\textsuperscript{186} Thjoernelund, p.431-433; Boed, p.12.
170. For a peril to be ‘grave and imminent’, it does not have to pose a threat to the state’s existence\textsuperscript{187} and it is enough that the risk entailed will embody itself with high enough probability in the future\textsuperscript{188}.

171. In the case at hand, Respondent had no other option but to adopt the debt restructuring in order to counter the negative effects of the financial crisis. This measure was put forward by the IMF as a requirement for its bailout offer, thus demonstrating that without the restructuring Dagobah’s national economy would inevitably collapse. Further, the restructuring was also pressured by the international community, including the creditor states\textsuperscript{189}. In other words, Respondent acted in good faith following IMF’s recommendations in order to survive the crisis. Therefore, it cannot be held responsible for any negative effects thereof.

172. Furthermore, Respondent submits that the measures were enacted only to counter the effects of the 2010 financial crisis and only for its duration. This goal was eventually realized as Respondent was granted bailout, effectively erasing all its debt and reviving Respondent’s economy.

ii) \textbf{Respondent did not contribute to the occurrence of the 2010 economic crisis}

173. Furthermore, for the state to enjoy the customary international law necessity defence, there can be no contribution of the state to the emergence of necessity. The contribution to the situation of necessity must not be merely incidental, but must imply substantial impact on the turn of events\textsuperscript{190}. Since state organs may sometimes seem involved, the threshold for the assessment of contribution should be high\textsuperscript{191}.

174. Respondent did not contribute to the cause of the debt restructuring. The 2010 recession resulted from the global 2008 financial crisis\textsuperscript{192}, and would have most probably affected Dagobah’s economy and internal security regardless of any actions undertaken by Dagobah. The state did not provoke the emergence of the crisis, neither did it substantially influenced the course of events.

\textsuperscript{187} Reinisch, p.147.
\textsuperscript{188} Desierto, p.105.
\textsuperscript{189} Facts, ¶14.
\textsuperscript{190} Crawford, p.185.
\textsuperscript{191} Salmon, p.270.
\textsuperscript{192} Facts, ¶14.
175. Furthermore, the burden of proof in this respect lies on Claimant\textsuperscript{193}. Respondent submits that it enjoys full sovereignty with regard to its economic powers and may introduce such economic policy as it wishes to. Even if there was some contribution on Respondent’s part, its impact would be too moot and distanced for it to render necessity defense inoperative.

iii) The BIT does not preclude the invocation of necessity and the debt restructuring did not seriously impair any essential interest of other state or the international community

176. States are precluded from relying on the state of necessity in case they contravene a peremptory norm or in case the treaty explicitly prohibits the use of necessity as defence. Furthermore, the affected state cannot seriously impair any essential interest of other state or the international community.

177. Respondent did not breach any peremptory norm, and the BIT does not preclude reliance on Art. 25 ILC Articles. On the contrary, the Tribunal shall abide to Art. 8(3) BIT and Art.22(1) SCC Arbitration Rules, and duly apply all relevant rules of customary international law to solve the dispute.

178. Furthermore, Dagobah never seriously impaired the interests of other state or the international community as a whole. It is reasonable to claim that Respondent’s essential security interests outweighed all other considerations, since the only interests potentially competing with Dagobah’s financial stability were these of its bondholders. No specific interest of a particular state, including Corellia, was at stake. Likewise, Dagobah’s debt restructuring could only facilitate the fulfillment of its obligations vis-à-vis the international community, not impair them.

179. Since all requirements of the customary international law state of necessity were fulfilled, Respondent is exempted from liability for any alleged breached of the BIT. Consequently, Dagobah is released from the duty to compensate Claimant for any losses allegedly suffered by Calrissian due to the debt restructuring.

180. All things considered, Respondent asks for an exclusion from liability for any alleged breaches of the BIT, based on Art. 6 BIT Dagobah acted in good faith, undertaking reasonable, appropriate and proportional measures to counter the 2010 economic crisis. If the Tribunal rejects the BIT-based defense, Respondent points to the fact that it is also exempted

\textsuperscript{193} LG&E, ¶66.
from liability as per Art. 25 ILC Articles, since all of the requirements established thereby were duly fulfilled.
PART THREE: PRAYER FOR RELIEF

In light of above, Respondent respectfully requests the Tribunal to find that:

1. it lacks jurisdiction to hear the case, as sovereign bonds owned by Claimant do not constitute an investment;

2. the PCA Award is irrelevant to the dispute;

3. it should not rule on the claims asserted, since they are only admissible in front of the courts of Dagobah

4. it is not entitled to rule on the claims asserted in view of the forum selection clause contained in the sovereign bonds;

5. in any case, Respondent has not violated its obligations under the BIT as it afforded Claimant’s investment fair and equitable treatment and, in any case, Respondent is exempt from liability due to the invocation of security defences enshrined in the BIT and in customary international law; and

6. Claimant shall bear all costs related to these proceedings.

Respectfully submitted on 20 September 2014.

On behalf of Respondent,
Team Rau.