FOREIGN DIRECT INVESTMENT INTERNATIONAL MOOT
COMPETITION
BUENOS AIRES, ARGENTINA
4 TO 6 NOVEMBER 2016

ARBITRATION PURSUANT TO THE RULES OF
INTERNATIONAL CHAMBER OF COMMERCE

PETER EXPLOSIVE
Claimant
v.
THE REPUBLIC OF OCEANIA
Respondent

ICC Case No. 28000/AC

MEMORIAL FOR CLAIMANT
PART ONE: ARGUMENTS ON JURISDICTION


I. THE CLAIMANT IS AN INVESTOR PURSUANT TO ARTICLE 1.2 OF THE EUROASIA BIT

A. The requirements of ratione personae jurisdiction are present
   i. The Claimant satisfies the nationality requirement under the Euroasia BIT
   ii. The secession of Fairyland by Euroasia is valid

B. The requirements of ratione materiae jurisdiction are present
   i. Peter Explosive is an investor, as he invested in the territory of Oceania
   ii. The acquisition of shares and further development of business of Rocket Bombs satisfy criteria for the investment under the Salini test

II. THE CLAIMANT WAS NOT REQUIRED TO COMPLY WITH THE PRE-A RBITRAL STEPS AS PROVIDED IN ARTICLE 9 OF THE EUROASIA BIT PRIOR TO BRINGING HIS CLAIMA BEFORE THIS TRIBUNAL

A. Amicable consultations between the parties are not mandatory
   i. The Claimant was not obliged to comply with the requirements of Article 9.1 of the Euroasia BIT
ii. The Claimant complied with the requirements of Article 9.1 of the Euroasia BIT .................................................................9

B. Exhaustion of local remedies is not a mandatory requirement..............10
C. In any event, pre-arbitral steps are not effective in the case at hand.........11


A. The application of the MFN clause is possible in the case at hand..........................................................13
B. The MFN clause applies to both substantive and procedural aspects of treatment afforded under the BIT..................................................15

PART TWO: MERITS

IF THE TRIBUNAL FINDS THAT IT HAS JURISDICTION

IV. THE CLAIMANT MADE A PROTECTED INVESTMENT, ESPECIALLY IN THE LIGHT OF THE “CLEAN HANDS” DOCTRINE WITH REFERENCE TO ARTICLE 1.1 OF THE EASTASIA BIT ........................................17

A. The “Clean hands” doctrine have not gained status of general principle of international law..........................................................17
B. In any event, the investments made in accordance with the Euroasia BIT........................................................................17
C. The investments, which are compatible with the BIT, are valid even if they do not comply with the national law........................................18
D. The Respondent is estopped from invoking “clean hands” doctrine........19

V. THE RESPONDENT HAS INDIRECTLY EXPROPRIATED CLAIMANT’S INVESTMENTS IN VIOLATION OF ARTICLE 4.1 OF THE EUROASIA BIT .....................................................................................22
A. The Respondent has indirectly expropriated Claimant’s investment by virtue of its regulatory measures……………………………………………………………………………….23
i. The duration of interference into the Claimant’s investments is excessive .23
ii. The degree of interference into the Claimant’s investments is excessive...25

B. The expropriation conducted by the Respondent does not satisfy the criteria of legality………………………………………………………………………………………………27
i. The measures in question did not serve a public purpose .......................27
ii. The measures in question were discriminatory.................................29
iii. The measures in question were not carried out in accordance with due process of law………………………………………………………………….29
iv. The measures in question were not accompanied by prompt, adequate and effective compensation…………………………………………………..30

VI. RESPONDENT’S ACTIONS ARE NOT EXEMPTED ON THE BASIS THAT THEY WERE NECESSARY FOR MAINTAINING INTERNATIONAL PEACE AND SECURITY……………………………………………………………………………………………….31
A. The Respondent’s actions are not exempted under the Euroasia BIT……..31
B. In any event, the Respondent is under the obligation to pay compensation for the violation of the Euroasia BIT…………………………………………………….33

VII. THE CLAIMANT DID NOT CONTRIBUTE TO THE DAMAGE SUFFERED BY HIS INVESTMENT .................................................................34
A. The case at hand does not meet the requirement of existence of internationally wrongful act..........................................................34

B. Even if the annexation was illegal and can be attributed to Euroasia, the Claimant’s conduct could not contribute to the damage.........................35

PRAYER FOR RELIEF .................................................................38
# LIST OF AUTHORITIES

<table>
<thead>
<tr>
<th>ABBREVIATION</th>
<th>FULL CITATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BOOKS</strong></td>
<td></td>
</tr>
<tr>
<td><em>Aloysius Llamzon</em></td>
<td>Llamzon, Aloysius P., <em>Corruption in International Investment Arbitration</em>. Oxford University Press (September 2014)</td>
</tr>
<tr>
<td><em>Gary Born and MarijaŠćekić</em></td>
<td>Pre-Arbitration Procedural Requirements ‘A Dismal Swamp’ Gary Born and MarijaŠćekić</td>
</tr>
<tr>
<td><em>Kevin Lim</em></td>
<td>Kevin Lim, <em>Upholding Corrupt Investors’ Claims Against Complicit or Compliant Host States - Where Angels Should Not Fear to Tread</em></td>
</tr>
<tr>
<td>Author/Title</td>
<td>Reference</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Weiniger</td>
<td>Arbitration, 1st ed. (New York: Oxford University Press, 2008),</td>
</tr>
<tr>
<td>Marboe</td>
<td>Irmgard Marboe, Calculation of Compensation and Damages in International Investment Law (2009)</td>
</tr>
<tr>
<td>Richard Kreindler</td>
<td>Richard Kreindler, Corruption in International Investment Arbitration: Jurisdiction and the Unclean Hands</td>
</tr>
<tr>
<td>Santa Elena</td>
<td>Santa Elena, Continental Casualty, Unglaube</td>
</tr>
<tr>
<td>Schreuer, Protection</td>
<td>Christoph Schreuer, Protection against Arbitrary or Discriminatory Measures, The Future of Investment Arbitration, C. A. Rogers, R.P. Alford eds., 183 (2009);</td>
</tr>
<tr>
<td>Yearbook</td>
<td>Yearbook of the ILC, 1976, vol. II, ILC Commentary 2001,</td>
</tr>
<tr>
<td>Z. Douglas</td>
<td>Zachary Douglas, The international law of investment claims</td>
</tr>
</tbody>
</table>

**LAW JOURNALS**

<table>
<thead>
<tr>
<th>Author</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>J.Charney</td>
<td>The Adaptation of J.Charney’s Opinions on Self-Determination to the Turkish Cypriot Case Ibid</td>
</tr>
<tr>
<td>Schreuer</td>
<td>Christoph Schreuer, Fair and Equitable Treatment in Arbitral Practice, 6 J. World Investment &amp; Trade 357 (2005)</td>
</tr>
<tr>
<td></td>
<td>Hurst Hannum, Legal Aspects of Self-Determination</td>
</tr>
<tr>
<td>-------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td><strong>Sadowski</strong></td>
<td>Transnational Dispute Management, Wojciech Sadowski - Yukos and contributory fault, (2014)</td>
</tr>
</tbody>
</table>
### LIST OF LEGAL SOURCES

<table>
<thead>
<tr>
<th>ABBRIVATION</th>
<th>FULL CITATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ARBITRAL DECISIONS</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ADC v Hungary</strong></td>
<td>ADC v Hungary, ICSID Award 2006</td>
</tr>
<tr>
<td><strong>Ambiente v Argentina supra</strong></td>
<td>Ambiente Ufficio S.p.A. and others v. Argentine Republic, ICSID Case No. ARB/08/9 (formerly Giordano Alpi and others v. Argentine Republic)</td>
</tr>
<tr>
<td><strong>Azurix v. The Argentine Republic</strong></td>
<td>Azurix Corp. v. The Argentine Republic, ICSID Case No. ARB/01/12</td>
</tr>
<tr>
<td><strong>CME v Czech Republic</strong></td>
<td>CME Czech Republic B.V. v. The Czech Republic, UNCITRAL Final Award 14 March 2003</td>
</tr>
<tr>
<td><strong>Daimler Financial Services AG</strong></td>
<td>Daimler Financial Services AG v Argentina, ICSID Case No ARB/05/1, Award, 22 August 2012</td>
</tr>
<tr>
<td><strong>Eureko v. Poland</strong></td>
<td>Eureko B.V. v. Republic of Poland, Partial Award. 19 Aug 2005</td>
</tr>
<tr>
<td><strong>Fraport AG</strong></td>
<td>Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines, ICSID Case No. ARB/03/25, award (August 16, 2007)</td>
</tr>
<tr>
<td><strong>Gas Natural SDG</strong></td>
<td>Gas Natural SDG v Argentina, ICSID Case No ARB/03/10, Decision on Preliminary Questions on Jurisdiction, 17 June 2005</td>
</tr>
<tr>
<td><strong>Goetz v Burundi</strong></td>
<td>Antoine Goetz et consorts v. République du Burundi, ICSID Case No. ARB/95/3</td>
</tr>
<tr>
<td><strong>Gemplus SA</strong></td>
<td>Gemplus S.A., SLP S.A., Gemplus Industrial S.A. de C.V. v. The United Mexican States, Award 16 June 2010</td>
</tr>
<tr>
<td><strong>Guaracachi America,</strong></td>
<td>Guaracachi America, Inc. and Rurelec PLC v. The Plurinational</td>
</tr>
<tr>
<td>Inc. and Rurelec PLC v. The Plurinational State of Bolivia</td>
<td>State of Bolivia (UNCITRAL, PCA Case No. 2011-17), Award (corrected), 31 January 2014,</td>
</tr>
<tr>
<td>Hochtief AG</td>
<td>Hochtief AG v Argentina, ICSID Case No ARB/07/31, Decision on Jurisdiction, 24 October 2011</td>
</tr>
<tr>
<td>ICC Case No10256</td>
<td>ICC Case No 10256, Interim Award (12 August 2000) in Figueres</td>
</tr>
<tr>
<td>ICC Case No 8445</td>
<td>ICC Case No. 8445 of 1996</td>
</tr>
<tr>
<td>IoannisKardassopoulos v. Georgia</td>
<td>IoannisKardassopoulos v. Georgia, ICSID Case No. ARB/06/5, decision on jurisdiction (July 6, 2007)</td>
</tr>
<tr>
<td>LG&amp;E</td>
<td>LG&amp;E energy corp. LG&amp;E capital corp. LG&amp;E international Inc. v Argentine Republic ICSID Case N° ARB/02/1</td>
</tr>
<tr>
<td>Maffezini v. Spain</td>
<td>Emilio Augustin Maffezini v Spain, ICSID Case No. ARB/97/7, Decisions of the Tribunal on objections to jurisdiction, 25 January 2000</td>
</tr>
<tr>
<td>Metalclad v Mexico</td>
<td>Metalclad Corporation v. The United Mexican States, ICSID Case No. ARB(AF)/97/1</td>
</tr>
<tr>
<td>Middle East Cement v. Egypt</td>
<td>Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt, ICSID Case No. ARB/99/6</td>
</tr>
<tr>
<td>Mobil Corporation, Venezuela Holdings</td>
<td>Venezolana de Petróleos Holdings, Inc., Mobil Cerro Negro, Ltd., and Mobil Venezolana de Petróleos, Inc. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/07/27), Award, 9 October 2014</td>
</tr>
<tr>
<td>Mohamed v. Libya</td>
<td>Mohamed Abdulmohsen Al-Kharafi &amp; Sons Co. v. Libya and others Final Award 22 March 2013</td>
</tr>
<tr>
<td>Country/Case Study</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Ecuador</td>
<td>ARB/08/6), Decision on Remaining Issues of Jurisdiction and Liability, 12 September 2014</td>
</tr>
<tr>
<td>Pope &amp; Talbot</td>
<td>Pope &amp; Talbot Inc. v. The Government of Canada, UNCITRAL</td>
</tr>
<tr>
<td>Rumeli v Kazakhstan</td>
<td>Rumeli v Kazakhstan, Award, 29 July 2008</td>
</tr>
<tr>
<td>RosInvestCo UK Ltd</td>
<td>RosInvestCo UK Ltd. v. The Russian Federation, SCC Arbitration V (079/2005), Final award, 12 September 2010</td>
</tr>
<tr>
<td>Revere Copper v. Private Investment Corporation</td>
<td>Revere Copper and Brass Inc. v Overseas Private Investment Corporation, Award</td>
</tr>
<tr>
<td>Siemens v Argentine Republic</td>
<td>Siemens v Argentine Republic, ICSID Case No ARB/02/8, Decision on Jurisdiction, 3 August 2004</td>
</tr>
<tr>
<td>United States v. Great Britain</td>
<td>United States v. Great Britain, 6 UNRIAA (1923)</td>
</tr>
<tr>
<td>Waguih v Egypt</td>
<td>Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt, ICSID Case No. ARB/05/15</td>
</tr>
<tr>
<td>Wintershall v. Argentina</td>
<td>Wintershall Aktiengesellschaft v Argentina, Award, ICSID Case No ARB/04/14</td>
</tr>
<tr>
<td><strong>International Court Cases</strong></td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Yukos v. the Russian Federation</strong></td>
<td><em>Yukos Universal limited (Isle of Man) v. the Russian Federation, Award of 18 July 2014, PCA Case No AA 277</em></td>
</tr>
<tr>
<td><strong>Yemen Desert Line v Yemen</strong></td>
<td><em>Yemen Desert Line v Yemen, Award, 6 February 2008</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Treaties</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Convention of 15 June 1955</strong></td>
</tr>
<tr>
<td><strong>Convention on the law of nationality</strong></td>
</tr>
<tr>
<td><strong>Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970</strong></td>
</tr>
<tr>
<td><strong>General Assembly resolution</strong></td>
</tr>
<tr>
<td><strong>German Model BIT</strong></td>
</tr>
<tr>
<td><strong>International Covenant on Civil and Political</strong></td>
</tr>
<tr>
<td><strong>IBA Litigation Committee</strong></td>
</tr>
<tr>
<td>-----------------------------</td>
</tr>
<tr>
<td><strong>UN General Assembly resolution</strong></td>
</tr>
<tr>
<td><strong>United Nations, Draft articles on Diplomatic Protection</strong></td>
</tr>
</tbody>
</table>

**MISCELLANEOUS**

UNCTAD Series on Issues in International Investment Agreements II, Most Favored Nation Treatment (2010);


The 40th anniversary of the adoption of ICCR and ICESCR

Eurasian Citizenship Act
STATEMENT OF FACTS


2. In February 1998, Peter Explosive (or “Claimant”), a resident of Fairyland, who at the time was undisputedly a national of Eastasia, acquired shares in a decrepit company called Rocket Bombs Ltd. (“Rocket Bombs”) located in Oceania and became its 100% shareholder. Then, in March 1998, he also became a president and sole member of the board of directors of the company.

3. Rocket Bomb’s loss of its license in November 1997 and the suspension of arms production also took its toll on the local community. In order to resume arms production, Rocket Bombs was obliged by the environmental law of Oceania to obtain a license from the National Environment Authority of Oceania containing an environmental approval for the commencement of arms production.

4. To obtain such a decision, Rocket Bombs was obliged to adjust its production line to the environmental requirements contained in the Environment Act 1996. Thus, Peter Explosive decided to try to expedite the decision of the Ministry of Environment regarding the subsidy and to secure the resumption of arms production in the factories of Rocket Bombs. In July 1998, he managed to have a private meeting with the President of the National Environment Authority of Oceania. On 23 July 1998, the National Environment Authority issued an environmental license approving the commencement of arms production by Rocket Bombs.

5. Over the years, Rocket Bombs became a very prosperous company and one of the largest arms producers in Oceania. As the business became increasingly profitable, Peter Explosive started to modernise the production line and to adjust it to the requirements set forth in the Environment Act 1996. The production line fully complied with the legal requirements in Oceania by 1 January 2014.

6. The vast majority of people living in Fairyland are of Euroasian origin as historically it was a part of the territory of Euroasia. In August 2013, the authorities of Fairyland decided to hold a referendum on the secession of Fairyland from Eastasia and its reunification with Euroasia. On 1 November 2013, the referendum was held and the majority decided in favour of secession. The national government of Eastasia
declared that the referendum was unlawful and had no effect on the shape of the Eastasian territory. On 1 March 2014, the armed forces of Euroasia entered the territory of Fairyland. The annexation was bloodless and rather peaceful as Eastasia did not send any armed forces to protect its territory.

7. On 1 May 2014 the President of the Republic of Oceania issued an Executive Order on Blocking Property of Persons Contributing to the Situation in the Republic of Eastasia (the “Executive Order”). The Executive Order introduced a system of sanctions. The sanctions were applied to Rocket Bombs, as well as to Peter Explosive. In fact, in the arms production sector, it was the only company designated by the sanctions. It resulted in the deterioration of Rocket Bombs’ business and in a rapid decrease in the value of its shares. Peter Explosive was unable to sell the shares in the company to a third person.

8. Throughout 2013, the General Prosecutor’s Office of Oceania was conducting an investigation regarding the corruption in the National Environment Authority of Oceania. On 21 November 2013, the investigation resulted in a formal initiation of criminal proceedings against those officials, including the President of the National Environment Authority of Oceania. The latter seemed to be the main target of the General Prosecutor’s Office.

9. On 1 February 2015, the President of the National Environment Authority, along with the other officials, was convicted of accepting bribes. The scandal heavily engaged the media and the public of Oceania. On 5 May 2015, Peter Explosive was informed that he was under investigation with regard to the environmental license obtained on 23 July 1998 for Rocket Bombs. On 23 June 2015, the General Prosecutor’s Office officially initiated criminal proceedings against Peter Explosive.
PART ONE: ARGUMENTS ON JURISDICTION


I. THE CLAIMANT IS AN INVESTOR PURSUANT TO ARTICLE 1.2 OF THE EUROASIA BIT

10. In accordance with Article 6.2 of the Rules of Arbitration of the International Chamber of Commerce (the “ICC Arbitration Rules”), the ICC Tribunal has jurisdiction to hear claims if there is an Arbitration Agreement where the parties have agreed to submit a dispute to arbitration under the ICC Rules.

11. In the case at hand, the Respondent consented to conduct the arbitration disputes with Euroasian investors under the ICC Rules by signing the Euroasia BIT. Thus, in accordance with Article 9.5(b) of the Euroasia BIT:

“Where the dispute is submitted to international arbitration, the investor may choose to refer the dispute to... The International Chamber of Commerce. The arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce and the dispute shall be settled by three arbitrators appointed in accordance with the said Rules.”

12. The Claimant submitted a request for arbitration before the ICC against the Republic of Oceania on 11 September 2015. By doing this, Peter Explosive has accepted the Respondent’s offer to arbitrate. Consequently, both parties have consented to arbitration under the ICC Rules.

13. The dispute resolution clause contained in Article 9 of the Euroasia BIT covers “any dispute regarding an investment” which arises between an investor of one of the Contracting Parties and the other Contracting Party and relates to the Euroasia BIT.\(^1\)

14. Article 1.2 of the Euroasia BIT defines the term ‘investor’ as “any natural or legal person of one Contracting Party who invests in the territory of the other Contracting

\(^1\) Article 9 of the Euroasia BIT.
Party” while ‘natural person’ is understood as any natural person having the nationality of either Contracting Party in accordance with its laws.²

15. The Claimant submits that the Tribunal has jurisdiction to hear the dispute at hand since: (A) the Claimant is a national of Euroasia (jurisdiction ratione personae), and (B) the Claimant made investments in the territory of the host state (jurisdiction ratione materiae).³

A. The requirements of ratione personae jurisdiction are present

i. The Claimant satisfies the nationality requirement under the Euroasia BIT

16. It is a firmly established principle in international law that the nationality of an investor is determined by the national law of a state whose nationality is claimed.⁴ The Claimant is a resident of Fairyland, a region that reunited with Euroasia. He was recognized as a citizen of Euroasia under its national laws and a Euroasian identity card and passport.⁵

17. The amendments adopted to the Eurasian Citizenship Act⁶ conferred Euroasian nationality on the Claimant. This conferment is within the confines of international law⁷, since it followed the valid exercise of right to self-determination by citizens of Fairyland.

ii. The secession of Fairyland by Eurasia is valid

18. The secession of Fairyland was a result of exercising by the citizens of Fairyland of their right to self-determination. To exercise this right a referendum was held where the majority decided in favour of secession. The principle of self-determination of peoples pertains to the transformation of self-determination which was firstly conceived as a political principal to a peremptory legal norm.⁸

---

² Article 2.1 of the Euroasia BIT.
³ Z. Douglas, p.145.
⁴ International Investment Law.
⁵ Statement of Uncontested Facts, p.34.
⁶ Eurasian Citizenship Act.
⁸ B. Burak Cop, p.23.
19. In accordance with The Adaptation of J.Charney’s Opinions on Self-Determination, there are three criteria allowing “the support of the international community” to a people having a claim of self-determination in the non-colonial context:

   a. a bona fide exhaustion of peaceful methods of resolving the dispute;
   b. a demonstration that the persons making the group’s self-determination claim represent the will of the majority of that group;
   c. a resort to the use of force and a claim to independence is taken only as a means of last resort.\(^9\)

20. Historically the vast majority of citizens of Fairyland had a Euroasian nationality. After the Second World War the Republic of Fairyland was annexed by the Republic of Eastasia.\(^10\)

21. In accordance with Article 1.1 of International Covenant on Civil and Political Rights:

   “All peoples have the right of self-determination. By virtue of that right they freely mean their political status and freely pursue their economic, social and cultural development.”\(^11\)

22. The right of self-determination naturally can be exercised though the legal way, e.g. though the referendum. It means that the legality of the referendum is not to be doubted by the Tribunal. So, it does not matter that under the Eastasian Constitution “each province may organise a regional referendum pertaining to matters within the exclusive competence of that province” while the Constitution does not contain any provision regulating secession from the Republic.\(^12\)

23. The legitimacy of annexation is also considered as lawful, since Eastasia did not send any armed forces to protect its territory.

24. The secession of Fairyland is not a violation of Eastasia’s territorial integrity. In customary international law, one of the modes of implementing the right of self-

\(^9\) J.Charney’s, p.464.

\(^10\) Procedural Order No 3, p.61, para. 9.

\(^11\) “ICCPR” Art.1.

\(^12\) The Eastasian constitution.
determination is the free association or integration with an independent State.\textsuperscript{13} The people of Fairyland were merely exercising this right. The violation of Eastasia’s territorial integrity was therefore just a necessary legal consequence of Fairyland’s expression of self-determination.\textsuperscript{14}

B. The requirement of \textit{ratione materiae} jurisdiction are present

\textit{i. Peter Explosive is an investor, as he invested in the territory of Oceania by acquiring 100\% of shares of Rocket Bombs and conducting successfully its business within the territory of host state.}

25. In accordance with Article 1.1 of the Euroasia BIT The term “investment” comprises every kind of asset directly or indirectly invested by an investor of one Contracting Party in the territory of the other Contracting Party and shall include, in particular, shares of companies or any other form of participation in a company.

26. According to the Uncontested Facts Peter Explosive acquired Rocket Bombs’ shares in 1998. In March 1998 he became a president and a sole member of the board of directors of the company. Over the years, Rocket Bombs became a very prosperous company and one of the largest arms producers in Oceania.\textsuperscript{15}

\textit{ii. The acquisition of shares and further development of business of Rocket Bombs satisfy the criteria for the investment under the Salini test.}

27. The \textit{Salini} test, which is ofyen used by arbitral tribunal to address the issue of existence of investment in each particular case, has the following criteria:

\begin{itemize}
\item a) a contribution of money or assets;
\item b) a duration over which the project is to be implemented;
\item c) an element of risk;
\item d) a contribution to the economic development of the host state.\textsuperscript{16}
\end{itemize}

\textsuperscript{13} Hurst Hannum.

\textsuperscript{14} General Assembly resolution 2625 (XXV).

\textsuperscript{15} Uncontested Facts, page. 33-34.

\textsuperscript{16} Salini test.
28. The acquisition of shares by Peter Explosive in the Oceanian company Rocket Bombs Ltd and further becoming its 100% shareholder must evidence the contribution made by the Claimant in the territory of Oceania. Peter Explosive made Rocket Bombs prosperous and successful. In the case Ambiente v Argentina, the tribunal said that in the territory is determined by “which State benefited from the investment”.  

29. Peter Explosive made an uncontested contribution in the Republic of Oceania. After Rocket Bombs become successful, the prosperity of the company benefited the local community and Valhalla itself, so more people from Valhalla than ever before were working for Rocket Bombs.

30. In accordance with the second criterion, Peter Explosive made some important projects for Rocket Bombs, that is why the later became a successful company. Since 1998 to 2014, Peter Explosive made some successful projects, opened several new factories and conclude a great number of contracts. Different tribunals have decided the issue of sufficient duration of investment differently. In the case at hand, it is a long time, that is enough for the recognition of the existence of investment, because during this time Rocket Bombs became prosperous.

31. The third criterion is about the existence of an element of risk. Peter Explosive also had a risk when he bought shares. At the moment when Peter Explosive bought a company, it was in incredibly bad situation. If the Claimant had made a foster in the company, it would been insolvent and Peter Explosive would have lost his money and reputation.

32. In accordance with the fourth criterion, the Claimant made an investment and made a significant contribution to the economy of Oceania before the sanctions were implemented. The fact that the state subsequently imposed sanctions on the company, does not eliminate the contribution made by Peter during the operation of the company with him as the holder of 100% shares of the company.

---

17 Ambiente v Argentina, p. 498-499.

18 Uncontested Facts, pp. 33, 34.

19 Ibid.

20 Uncontested Facts, page 33, 34.
33. Rocket Bomb’s loss of its license in November 1997 and the suspension of arms production also took its toll on the local community. Peter Explosive rehired the previous employees of the factories from Valhalla. Activity Rocket Bomb source was limited within the local community of Valhalla and the company’s problems had affected this community and the city as a whole. After the intervention of Peter Explosive, local community has been rehabilitated, because he was hired factory workers, and the company was withdrawn at the state level. Thus, it was raised to a new level, the development of one of the regions of Oceania and the South Pacific received a major local weapons manufacturer.

34. Thus, the Salini test shows that Peter Explosive made an investment in the Republic of Oceania. Consequently, the Claimant should be considered as an investor in the framework of the Euroasia BIT.

35. Having considered all the arguments, it is possible to say that Peter Explosive is an investor because he invested in the Republic of Eastasia. However, the Claimant may rely on the provisions of the Euroasia BIT, since he became a citizen of the Republic of Euroasia.

II. THE CLAIMANT WAS NOT REQUIRED TO COMPLY WITH THE PRE-ARBITRAL STEPS AS PROVIDED IN ARTICLE 9 OF THE EUROASIA BIT

36. The Claimant insists that there is no binding requirement to comply with the pre-arbitral steps enumerated in Article 9 of the Euroasia BIT before the submission of claims to the present Tribunal. Therefore, the Claimant will demonstrate that: (A) amicable consultations between the parties are not mandatory; (B) exhaustion of local remedies is not a mandatory requirement; (C) in any event, pre-arbitral steps are not effective in the case at hand.

A. Amicable consultations between the parties are not mandatory

   i. The Claimant was not obliged to comply with the requirements of Article 9.1 of the Euroasia BIT

37. Pursuant to Article 9.1 of the Euroasia BIT:

   “Any dispute regarding an investment between an investor of one of the Contracting Parties and the other Party, arising out of or relating to this
Agreement, shall, to the extent possible, be settled in an amicable consultations between the parties to the dispute.”

38. According to arbitral practice there is no breach of binding obligations if pre-arbitration procedural requirements are not satisfied.\textsuperscript{21} The tribunal in \textit{ICC Case No 10256} held that clauses requiring efforts to reach an amicable settlement, before commencing arbitration,

“are primarily expression[s] of intention’ and ‘should not be applied to oblige the parties to engage in fruitless negotiations or to delay an orderly resolution of the dispute.”\textsuperscript{22}

39. Moreover in \textit{ICC Case No. 8445} it was emphasized that:

“All kinds of amicable settlement the dispute are not binding form. Only where there is reasonably clear set of substantive and procedural requirements courts will held the validity of agreements.”\textsuperscript{23}

40. Therefore, the Claimant was not obliged to comply with the amicable consultations requirement enshrined to Article 9.1 of the Euroasia BIT.

\textit{ii. The Claimant complied with the requirements of Article 9.1 of the Euroasia BIT}

41. Although the Claimant was not obliged to comply with the requirement of Article 9.1 Euroasia BIT, this requirement has been satisfied.

42. The Claimant has satisfied the amicable consultations requirement on 23 February 2015 by way of notification the Oceanian authorities of his dispute with the Respondent and his intention to commence the arbitral proceedings in case of Respondent’s failure to negotiate with Peter Explosive.\textsuperscript{24} As Oceania has been ignoring the notification for more than half of a year, the Claimant has filled the Request for Arbitration to the ICC.

\textsuperscript{21}Gary Born and MarijaŠćekić p. 234.
\textsuperscript{22}ICC Case No1025687.
\textsuperscript{23} ICC Case No10256.
\textsuperscript{24} Request for Arbitration, p.4; Procedural order No3, p.60.
43. Courts usually emphasize the definiteness of the negotiation procedures set forth by the contract. Courts are more likely to enforce clauses containing specified number of negotiation sessions, or designated negotiation participants than in the case of “open-ended or unstructured obligations to negotiate”.25

44. As the Euroasia BIT does not set time limits for the answer to notification and the Respondent did not answered in reasonable time, the Claimant had no grounds to rely on the settlement of the dispute by way of amicable consultations.

45. Therefore, there is no certainty to settle the dispute via amicable consultations.

B. Exhaustion of local remedies is not a mandatory requirement

46. Article 9.2 of the Euroasia BIT provides that the dispute “may be submitted to the competent judicial or administrative courts” of the State of investment.

47. In accordance with Article 31 of the Vienna Convention on the Law of Treaties 1969 (the “VCLT”) the BIT’s provisions:

“shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

48. A study of ICC arbitral tribunals concludes:

“When a word expressing obligation [such as “shall”], is used in connection with amicable dispute resolution techniques, arbitrators have found that this makes the provision binding. In the words of one recent award, the requirement of a BIT for initial resort to domestic litigation is “binding”.” 26

49. In this case, Article 9.2 of the Euroasia BIT does not provide that it shall be submitted to the domestic courts or authorities. It can therefore be concluded that the submission of the dispute to the domestic courts is an option and not a mandatory requirement. Moreover,


26 Oriental Republic of Uruguay, §§140-1.
“…the use of imperative terms, such as ‘shall’ or ‘must’, has sometimes been held to be consistent with a mandatory obligation; in contrast, terms such as ‘can’, ‘may’, or ‘should’ are typically non-mandatory.”

50. A multi-tiered dispute resolution clause may be considered enforceable if its terms are sufficiently clear and definite. The clause shall state clearly that there are previous and mandatory steps that must precede the commencement of arbitration or a lawsuit.

51. In Gary Born’s and MarijaŠćekić’s words the better approach is to treat local litigation requirements as presumptively aspirational and hortatory, rather than presumptively mandatory. Only in cases involving clear, unequivocal language should a local litigation requirement be interpreted as imposing a binding, mandatory obligation.

52. The same position was in *WintershallAktiengesellschaft v Argentine Republic*, where the Article 10 of the BIT provides that claimant-investor first submitting his/its dispute to a Court of competent jurisdiction in Argentina and then proceeding to ICSID arbitration.

53. Hence, the Claimant has not required submitting to the competent judicial or administrative courts of the Contracting Party before the Tribunal.

C. **In any event pre-arbitral steps are not effective in the case at hand**

54. Under the Article 9.2 of the Euroasia BIT the Claimant may submit to the Oceanian national courts. Even if the Claimant chooses competent judicial or administrative courts of Oceania he will not be able to settle the dispute that way. There is no possibility to bring under international treaties or in accordance with the international law or Oceanian national law pursuant to Oceanian court system.

---

27 Gary Born and MarijaŠćekić, p. 238.

28 Multi-Tiered Dispute Resolution, p. 3.

29 Gary Born and MarijaŠćekić, p243.


31 Procedural Order No 3, p.60.
55. Furthermore, the Claimant has no grounds to rely on the settlement of the dispute by local remedies. The Respondent State does not have an adequate system of judicial protection. It does not seem that the Oceanian Constitutional Tribunal would set aside the Executive Order of 1 May 2014. In this case, the local courts are notoriously lacking independence because of existence of sanctions against Peter Explosive and Rocket Bombs Ltd and criminal proceedings against the Claimant.

56. The commencement of criminal investigation against the Claimant was started in 1 February 2015 while Peter Explosive notified the Republic of Oceania of his intention to the dispute in 23 February 2015. Therefore, it proves that Oceania had already made its decision not to endeavor for an amicable solution.

57. For the same reasons it is more likely that governmental authorities also will be biased during amicable consultations. Thus, even if amicable dispute settlement was possible, it would have been fruitless.

58. In *Mohamed Abdulmohsen Al-Kharafi & Sons Co. v. Libya and others* the tribunal held that “parties may not be obliged to enter into fruitless negotiations that would only delay the orderly settlement of the dispute”.

59. The same position was stated in *ICC Case No. 8445* where the tribunal held that the efforts to negotiate were sufficient and fruitless negotiations should not prevent a party from commencement of arbitration.

60. Hence, the Claimant is deprived of an opportunity to settle the present dispute either by way of amicable consultations, or by submission of claim to the Oceanian national courts.

---

32 Procedural Order No 3, p.60.

33 Mohamed Abdulmohsen Al-Kharafi .244.

34 ICC Case No. 8445.

61. The Claimant asserts that Article 3 of the Euroasia BIT contains the Most Favored Nation clause (the “MFN clause”), which allows various investors of one host State to enjoy equally favourable treatment. Claimant’s position is that it can rely on the MFN clause to invoke the dispute resolution mechanism provided under the Eastasia BIT for the following reasons: (A) the application of the MFN clause is possible in the case at hand; (B) the MFN clause applies to both substantive and procedural aspects of treatment afforded under the BIT.

A. The application of the MFN clause is possible in the case at hand.

62. For the MFN clause to be applicable two criteria should be satisfied:
   a) The two treaties should cover the same or similar subject matter (ejusdem generis principle);
   b) One treaty should be more favourable than the treatment under another treaty.

63. The Claimant submits that both of these criteria are satisfied in the present case.

64. In order to define the subject matters of the Euroasia BIT and the Eastasia BIT, it is necessary to analyze the definitions of investments provided by both treaties. In the Ambatielos case the tribunal held that if a treaty of the party to a dispute with a third-party contains provisions for the settlement of disputes that are more favourable to the protection of the investor’s rights and interests, such provisions may be extended be virtue of the MFN clause as they are fully compatible with the ejusdem generis principle. This decision determines and supports the rule of similarity of subject matters in a dispute for the MFN clause to be applicable.


36 UNCTAD Series on Issues in International Investment Agreements II, Most Favored Nation Treatment, p.13.


38 Ambatielos.
65. Article 1.1 of the Euroasia BIT defines investments as “every kind of asset directly or indirectly invested by an investor of one Contracting Party in the territory of the other Contracting Party”. This provision is envisaged in Article 1.1 of the Eastasia BIT with an addition of the accordance to “the laws and regulations of the host state”.

66. Both treaties cover movable and immovable property and property rights, company shares, claims to money and intellectual rights as investments. Thus, the subject matters of the Euroasia BIT and the Eastasia BIT are similar, which makes the MFN clause envisaged in the Euroasia BIT applicable.

67. Article 3 of the Euroasia BIT includes the provision that Euroasia shall provide «no less favourable treatment» than that accorded to its own investors or a third party investors.\(^39\) Therefore, even if the dispute resolution clause contained in the Euroasia BIT envisages a multistage procedure of disputes settlement, namely: amicable consultations, resolving in courts of the host state and only then international arbitration\(^40\), it is less favourable for the Claimant than the similar provision contained in the Eastasia BIT.

68. Namely, all of the enumerated procedures are time consuming, which means that the Claimant would have been unable to run his business, get profit and perform his duties owed to the persons and entities the Rocket Bombs Ltd had contractual relationships with, if he followed Article 9 of the Euroasia BIT.

69. Furthermore, the dispute settlement provision under the Eastasia BIT does not complicate Claimant’s access to the international arbitration.

70. Nevertheless, the provisions of the Eastasia BIT on the settlement of disputes between investors and contracting parties literally allow an investor to skip the settlement in domestic courts, which saves time, allows to omit pre-arbitral expenses and simplifies the Claimant’s access to international arbitration. Therefore, the Eastasia BIT is more favourable than the Euroasia BIT.

\(^39\)Euroasia BIT, Article 3 National treatment and Most-Favoured Nation provisions.

\(^40\)Problem, Euroasia BIT, Art. 9.
B. **The MFN clause applies to both substantive and procedural aspects of treatment afforded under the BIT.**

71. The Claimant submits that the scope of treatment afforded to investors under one BIT, which can be enjoyed by other investors of the host State through operation of the MFN clause, is not limited to substantive issues.

72. In the case at hand, Peter Explosive may rely on the MFN clause to invoke the dispute resolution clause contained in Article 8 of the Eastasia BIT just as Mr. Emilio Agustín Maffezini did in the *Maffezini vs Spain* case.\(^41\)

73. In the named case the tribunal agreed with the claimant that “*the most favored nation clause included in the Argentine-Spain BIT embraced the dispute settlement provisions of this treaty.*”\(^42\) The tribunal held that more favorable to the protection of the investor’s rights and interests provisions for the settlement of disputes than those in the basic treaty, may be extended relying on the most favored nation clause, as they are fully compatible with the *ejusdem generis* principle.\(^43\) The tribunal relied on the fact that the provisions of such kind are aimed on “*the protection of foreign investors, as they are also related to the protection of rights of traders under treaties of commerce*”\(^44\).

74. Furthermore, the tribunal held that the requirement for the prior resort to domestic courts envisaged in the Argentine-Spain BIT could not affect the fundamental question of public policy considered in the context of the treaty.\(^45\) Therefore, it was concluded that Mr. Emilio Agustín Maffezini could skip the pre-arbitral steps of the dispute settlements.

75. This position of the tribunal was re-affirmed in the following cases with the participation of Argentina: *Siemens v Argentine Republic*\(^46\), *Gas Natural SDG v* 

---

\(^{41}\) *Maffezini v Spain* (25, January 2000).

\(^{42}\) *Ibid.*

\(^{43}\) *Maffezini v Spain*, para.56.

\(^{44}\) *Maffezini v Spain*, para.54.

\(^{45}\) *Maffezini v Spain*, para.64.

\(^{46}\) *Siemens v Argentine Republic.*
Argentina\(^{47}\), Hochtief AG v Argentina\(^{48}\), Daimler Financial Services AG v Argentina\(^{49}\).

76. The same position is supported in the RosInvestCo UK Ltd. V. The Russian Federation award. In the award, the tribunal broadened the jurisdictional scope of the basic treaty, beyond disputes relating to expropriation compensation:

“The application of the MFN clause of Article 3 widens the scope of Article 8 and thus is in conflict to its limitation <...> if it applies to substantive protection, then it should apply even more to “only” procedural protection”\(^{50}\).

77. The same attempt to bypass the pre-arbitral procedure is made by Peter Explosive in the case at hand.

78. The application of the MFN clause envisaged in the Article 3 of the Euroasia BIT for skipping the domestic courts cannot reflect the public policy of both BITs and since these similar provisions are targeted on the protection of foreign investors’ rights the Claimant contends that it is entitled to enjoy the easier access to international arbitration provided under Article 8 of the Eastasia BIT.

\(^{47}\) Gas Natural SDG v Argentina.

\(^{48}\) Hochtief AG v Argentina.

\(^{49}\) Daimler Financial Services AG v Argentina.

\(^{50}\) RosInvestCo UK Ltd. V. The Russian Federation.
PART TWO: MERITS

IF THE TRIBUNAL FINDS THAT IT HAS JURISDICTION

IV. THE CLAIMANT HAS MADE A PROTECTED INVESTMENT, ESPECIALLY IN THE LIGHT OF THE “CLEAN HANDS” DOCTRINE WITH REFERENCE TO ARTICLE 1.1 OF THE EASTASIA BIT

A. The “Clean hands” doctrine have not gained status of general principle of international law.

79. According to the tribunal in the recent case *Yukos Universal Limited v the Russian Federation*:

“Unclean hands” does not exist as a general principle of international law which would bar a claim by an investor, such as Claimants in this case.”

80. Aforementioned conclusion was made by the tribunal after analyzing all previous arbitral cases and ICJ cases before 2014 year. As was stated by Aloysius P Llamzon:

“The scope, content, and even the very status of the “clean hands doctrine” remain highly unsettled in general international law, with two recent International Law Commission Rapporteurs - Professors James Crawford and John Dugard - having expressed doubts as to the principle’s status in international law.”

81. The aforementioned positions show that the “clean hands” doctrine cannot be considered as a general principle of international law and, thus, should not be considered by this Tribunal as an obstacle to the consideration of the dispute.

B. In any event, while making the investments in accordance with the Euroasia BIT, the Claimant acted with “clean hands” and in good faith

---

51 *Yukos Universal*, para 1363.

82. Clean hands doctrine is essentially similar to principle of good faith and originates from it. The Facts of the case expressly show that Claimant acted in good faith when conducting investments in Oceania. As the business became increasingly profitable, Peter Explosive started to modernize the production line and to adjust it to the requirements set forth in the Environment Act 1996. The production line fully complied with the legal requirements in Oceania by 1 January 2014.

83. In addition, the balance of public and private interests was met. Oceania, especially Valhalla, and its citizens highly profited from the activities of Rocket Bombs Ltd. More people from Valhalla than ever before were working for Rocket Bombs. Thus, Claimant’s investment brought forward both economic and social development.

84. Moreover, there is no information that claimant’s business brought damage to the environment. According to the tribunal in Rumeli v. Kazakhstan:

   "Investments made in violation of domestic rules may be outside the substantive guarantees contained in the relevant agreement, depending upon the nature and gravity of the violation."

85. In this case, there was no grave violations of the domestic law, no damages occurred. On the contrary, whole local community benefited from the Claimant’s investments.

C. The investments, which are compatible with the BIT, are valid even if they do not comply with the national law.

86. According to Article 31 of the VCLT:

   "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

---

54 Richard Kreindler, p. 317.
55 Uncontested facts, at 13.
56 Rumeli v Kazakhstan, p147.
87. One of the purposes of the Eastasia BIT set out in the Preamble is to create and maintain favorable conditions for investments and to promote investments, which requires stimulating business initiatives.\(^{57}\)

88. According to the Uncontested Facts when the Claimant started his business in arms production, he had to acquire very expensive environmentally friendly technology to adjust production line, which is necessary to obtain the license. Even though the Environment Act of Oceania of 1996 provided a possibility to subsidy for a purchase of such technology, but the threshold was very high. Anyway, the adjustment process of the production line and the administrative procedure to get an environmental decision was very long and time-consuming.\(^{58}\)

89. All this facts show that Oceania as a party to the Eastasia BIT did not provide favorable conditions to promote business initiative of the Eastasian investor. This precludes invoking the “clean hands” doctrine by the Respondent.

D. The Respondent is estopped from invoking the “clean hands” doctrine

90. Recognition, acquiescence, and estoppel are considered to be part of the corpus of general principles of law recognised by civilized nations.\(^{59}\)

91. The idea of estoppel in general is that a party which has made or consented to a particular statement upon which another party relies in subsequent activity to its detriment or the other’s benefit cannot thereupon change its position.”\(^{60}\)

92. According to the Uncontested Facts from July 1998, when the Claimant obtained the environmental license until February 2015 - for 18 years the Claimant operated with the “illegal” license and the Respondent failed to challenge illegalities.\(^{61}\) Thus, the Respondent is estopped from invoking the “clean hands” doctrine.

93. It is stated in the ICSID Convention that it

\(^{57}\) The Eastasia BIT, preamble.

\(^{58}\) Uncontested facts at 6.

\(^{59}\) Kevin Lim at 71.

\(^{60}\) Malcolm Shaw, p. 437.

\(^{61}\) Uncontestes Facts at 6, 18.
supports the view that a host state which overlooks or tolerates violations of its own law in the making of an investment can be estopped or otherwise prevented from raising the illegality of the investment as a means to deny the tribunal’s jurisdiction or defeat the investor’s claim on the merits.”62.

94. This reasoning was applied in Fraport case63 and IoannisKardassopoulos v. Georgia64.

95. This assertion is protected by the statement of the Tribunal in Desert Line v. Yemen where it emphasized that:

“A host state which has for some time tolerated a legal situation is thereafter precluded from insisting later, against the investor, that the situation was unlawful from the beginning.”65

96. In Kardassopoulos v. Georgia the tribunal found that Georgia was estopped from objecting tribunals jurisdiction on the basis that agreement was contrary to Georgia’s law due to the fact that it for many years afterwards did not object its legality which created a legitimate expectation for the Claimant that his investment was in accordance with Georgia’s law.66

97. As the Respondent did not object for almost 18 years investments of the Peter Explosive, which created legal expectations for Peter Explosive that his investments would be protected under the BIT, now it is precluded from raising objections.

98. It was stated further in abovementioned case that:

“If the investor acts illegally, the host state can request it to correct its behavior and impose upon it sanctions available under domestic law.”67

62 Kevin Lim., At 79.

63 Fraport AG Frankfurt at 386–387.

64 IoannisKardassopoulos v. Georgia, 191-192.

65 Yemen Desert Line v Yemen, at 148.

66 IoannisKardassopoulos v. Georgia, at 192, 194.

67 Ibid, at 1355.
99. Moreover, there is no strong and convincing evidence of bribe. The proceeding against Claimant are pending, there is no final decision upon it. As stated in Wena Hotels host state bears burden of proving corrupt investors act.

100. Under the current international law, the acceptance of bribe by the President of the National Environment Authority of Oceania is attributable to Oceania. Therefore, international law is applicable “to govern issues of attribution in the context of an investment treaty claim by an investor against the host state” and thus attributability is governed by Articles on Responsibility of States for Internationally wrongful acts.

101. Article 4 of ARSIWA provides that:

“[T]he conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.”

102. In ILC’s Commentaries to ARSIWA in commentary for Article 4 is stated that there is a problem in determination of whether a particular person who is considered as a State organ “acts in that capacity”. It is also stated in the Commentaries that:

“It is irrelevant for this purpose that the person concerned may have had ulterior or improper motives or may be abusing public power. Where such a person acts in an apparently official capacity, or under colour of authority, the actions in question will be attributable to the State.”

103. The President of the National Environment Authority of Oceania when accepting bribe was acting in official capacity as he issued the license.

---


69 Wena Hotels Ltd v. Arab Republic of Egypt At 111,117.

70 Kevin Lim, at 42.

71 Articles on Responsibility.

72 International Law Commission’s at 1.
104. Article 7 of ARSIWA in its turn provides that:

“[T]he conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.”

105. Commentary to this Article provides that the Respondent is estopped from invoking clean hands doctrine:

“[O]ne form of ultra vires conduct covered by article 7 would be for a State official to accept a bribe to perform some act or conclude some transaction.”\(^{73}\)

106. Thus, corruption of President of National Authority of Oceania is attributable to Oceania.

107. Dismissal of corrupt investor’s claims in all the cases or a so-called “zero tolerance” approach to corruption is very dissatisfactory as will lead to the undeserved protection of states misdeeds.

108. Kevin Lim concludes that in appropriate circumstances, for example, when state condoned bribery by an investor, tribunal should better uphold corrupt investors claims\(^{74}\).

109. Hence, the Respondent is estopped from invoking the “clean hands” doctrine in present case by virtue of the State’s failure to challenge illegalities against the Claimant.

V. THE RESPONDENT HAS INDIRECTLY EXPROPRIATED CLAIMANT'S INVESTMENTS IN VIOLATION OF ARTICLE 4.1 EUROASIA BIT

110. While Oceania has not explicitly expropriated Rocket Bombs, nonetheless, the measures it had taken have had an effect “equivalent to nationalization or expropriation”. Expropriation may be implemented both directly and indirectly, \(i.e.\)

\(^{73}\) Commentary on the International Law, at 13.

\(^{74}\) Kevin Lim at 59.
through regulatory measures.\(^{75}\) Thus, the Claimant submits that (A) Respondent has indirectly expropriated Claimant’s investment by virtue of its regulatory measures, and (B) Respondent’s actions do not satisfy criteria to lawful expropriation.

A. The Respondent has indirectly expropriated Claimant’s investment by virtue of its regulatory measures

111. The Claimant insists that the implementation of sanctions imposed on Rocket Bombs Ltd and Peter Explosive, and introduction of the Executive Order of 1 May 2014 on Blocking Property of Persons Contributing to the Situation in the Republic of Eastasia (the "the Executive Order") separately and in conjunction have resulted in an expropriatory taking of Claimant’s investments associated with Rocket Bombs Ltd.

112. Pursuant to Article 4.1 of the Euroasia BIT:

> “Investments by investors of either Contracting Party may not directly or indirectly be expropriated, nationalized or subject to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except for the public purpose.”

113. There are several criteria elaborated in arbitral practice and applicable to identify the existence of expropriation. To be more precise, the governmental actions can lead to expropriation if they have a permanent character, or substantially interfere within the foreign investor's property rights.\(^{76}\)

114. In this context, the Claimant invites this Tribunal to consider the following elements of expropriation: (i) the duration of interference; (ii) the degree of interference.

   i. The duration of interference into the Claimant's investments is excessive

\(^{75}\) C. McLachlan, L. Shore, M. Weiniger, para. 8.68;

\(^{76}\) R. Dolzer and C. Shreuer pp.65-93.
115. Previous arbitral tribunals have considered that the longer an investor experiences interference with the rights and benefits of its investment, the more likely such interference will be deemed expropriation.\textsuperscript{77}

116. The tribunal in the \textit{Azurix case} emphasized that a measure is more likely to be considered as expropriatory if it has a permanent, as opposed to ephemeral, effect.\textsuperscript{78} Other tribunals considered different periods of interference as sufficient for an expropriatory taking, for instance, from four months to three years led to expropriation.\textsuperscript{79}

117. In the case at hand, the Respondent has introduced the Executive Order and a system of sanctions on 1 May 2014. Respondent has not announced the end date neither of the Executive Order, nor of the system of sanctions.

118. Even if the Claimant starts the process of contesting constitutionality of the Executive Order in the Oceanian Constitutional Tribunal, more likely, that it will not change the situation since \textit{“the Tribunal’s historic deference to the executive branch in the conduct of foreign policy”} \textsuperscript{80}

119. In any event, such process will last at least 3 years which is, according to the tribunal in \textit{Metalclad v Mexico}, a sufficient duration of interference with investor’s rights for the expropriation.\textsuperscript{81}

120. As for the submission of the request for reconsideration of inclusion of Peter Explosive and Rocket Bombs Ltd to the sanctions list, there are two reasons of its unproductivity. Firstly, the only relevant Oceanian authority who considers such requests is the President of the Republic of Oceania.\textsuperscript{82}

121. Thus, more likely that it will take much time for the President to consider the request since a similar position implies a large number of more important functions.

\textsuperscript{77} CME v Czech Republic, para /609.

\textsuperscript{78} Azurix v Argentina, Award, para 285/

\textsuperscript{79} Metalclad v Mexico, para/ 107; Wena Hotels v Egypt, para. 99; Middle East Cement, para. 107.

\textsuperscript{80} Procedural Order No 3, p.60, para 6.

\textsuperscript{81} Metalclad v Mexico, para. 107.

\textsuperscript{82} Procedural Order No 3, p.61, para. 10.
Secondly, the Ministry of National Defence of the Republic of Euroasia is the key client of Rocket Bombs Ltd and the only reason for the imposition of sanctions against the Claimant. Therefore, even if a request is filed, sanctions against the Claimant will not be cancelled.

122. Hence, Oceanian measures have had and will have a permanent effect on Peter Explosive’s investments.

ii. The degree of interference into the Claimant’s investments is excessive

123. It is recognized by international arbitral practice that a degree of interference with an investment is a deceive criterion applied to identify an expropriation. Therefore, the Claimant will demonstrate that a degree of Oceania’s interference with the Peter Explosive’s investments is excessive.

124. According to arbitral practice, indirect expropriation occurs if a governmental measure substantially deprives an investor of its rights ownership and control of its investment, despite the fact that a legal title remains unchanged. The requirement of demonstration of “substantial deprivation” of property rights was emphasized in Pope & Talbot v Canada.

125. The tribunal in Starret Housing v Iran considered that interference is sufficiently excessive if it makes property fights “practically useless”. In Metalclad it was stated that interference should have “the effect of depriving the owner in the whole or in significant part, of the use or reasonably-to-be-expected economic benefit of the property”.

126. In Perenco v Equador the tribunal draw a distinction between “partial deprivation of value”, which is not an expropriation, and “complete or near complete deprivation of

---

83 LG&E v. Argentina, para. 190.
84 Feldman, para. 152; Pope & Talbot, para. 100; Waste management II, para. 143.
85 Pope & Talbot, para. 102.
86 Starrett Housing v. Iran, para. 89; 154.
87 Metalclad v. Mexico, para. 103.
value”, which is an expropriation. According to this tribunal “an expropriation requires very great loss or impairment of all of a claimant’s investment.”\textsuperscript{88}

127. In another recent case, *Venezuela Holdings v Venezuela*, it was held that an effective deprivation requires “either a total loss of the investment’s value or a total loss of control by the investor of its investment, both of a permanent nature.”\textsuperscript{89}

128. Consequently, deprivation of property should be ‘severe, fundamental or substantial and not ephemeral’ to constitute expropriation.\textsuperscript{90}

129. In the present case, Respondent’s restrictions on the contractual relationships with the Republic of Oceania have substantially deprived Peter Explosive of a fundamental right of ownership of his investment. As a result of sanctions, the value of shares in Rocket Bombs Ltd was reduced almost to zero.\textsuperscript{91}

130. The Claimant was unable to continue its contractual relationships with its only suppliers, since they all were operating within Oceania. Consequently, the whole production of Rocket Bombs Ltd was stopped with no hope on renewal. Peter Explosive has no more opportunity to sell the shares in Rocket Bombs Ltd, and Rocket Bombs Ltd has no more opportunity to meet its contractual obligations towards entities other than from Oceania.\textsuperscript{92}

131. The Claimant also deprived of an opportunity to challenge the decision of the President of the Republic of Oceania to include Peter Explosive and Rocket Bombs Ltd into the sanctions list and to contest constitutionality of the Executive Order, since the value of the shares in Rocket Bombs Ltd will fall to zero at the time the final decision is made.

132. Thus, the degree of interference with Peter Explosive’s investments by Oceania is excessive.

\textsuperscript{88} Perenco Ecuador Ltd. v. The Republic of Ecuador, para. 682-683.

\textsuperscript{89} Mobil Corporation, Venezuela Holdings, para. 286.

\textsuperscript{90} A. Newcombe, L. Paradell, p.341.

\textsuperscript{91} Request for arbitration, p.5.

\textsuperscript{92} Uncontested facts, pp.35-56.
133. As demonstrated above, both widely accepted requirements to indirect expropriation are satisfied in the case at hand.

B. The expropriation conducted by the Respondent does not satisfy criteria of legality

134. It is generally recognized in international law that an expropriation can be lawful if four criteria of its legality are satisfied. These criteria are enshrined in Article 4.1 of the Euroasia BIT.

135. Expropriation should be conducted (i) for the public purpose, (ii) in non-discriminatory manner, (iii) in compliance with a due process of law, and (iv) with payment of prompt, adequate and effective compensation. It is essential that all of these conditions should be met by the Respondent, otherwise expropriation will be unlawful. The Respondent failed to satisfy all four requirements.

i. The measures in question did not serve a public purpose

136. A regulatory measure will be treated as expropriatory if it does not based on legitimate objective. Although, the Respondent insists that implementation of sanctions was an exercise of its sovereign powers necessary to maintain international peace and security, the requirement of public purpose cannot be considered as completely self-judging. Thus, a public purpose assumes existence of serious public necessity and observance of the proportionality requirement.

137. On the matter of public purpose the tribunal in ADC v Hungary emphasized:

---

93 UNGA Resolution.
94 Waguih v Egypt, para 433.
95 August Reinisch, p.433.
96 Answer to Request for Arbitration, p.16.
97 ADC v Hungary, para 432.
98 A.Newcombe, L. Paradell, p.370.
99 Tecmed, para 122.
“If mere reference to “public interest” can magically put such interest into existence and therefore satisfy this requirement, then this requirement would be rendered meaningless since the Tribunal can imagine no situation where this requirement would not have been met”.

138. Oceania adopted the Executive Order and the system of sanctions because it did not accept accession of Fairyland to Euroasia and it is obliged “to take active steps to wipe out the consequences of such unlawful behavior”. However, the Respondent failed to demonstrate how implementation of sanctions against nationals of Fairyland can assist Oceania in expression of its attitude to the presumably unlawful actions of Euroasia.

139. Moreover, Respondent’s measures are not aimed at maintaining international peace and security, but rather at deprivation of Fairyland’s inhabitants of opportunity to live normal life. Such controversial examples of annexation as Kosovo, Crimea show that political issues penetrating actions of other countries in response to exercise of right on self-determination lead to anything more than suffering of inhabitants of these territories.

140. In the case at hand, the consequences of the Oceanian sanctions are very similar to those of the European Union’s and the USA’s versus the Russian Federation. People of Fairyland as well as people of Crimea are influenced by the consequences of political disputes between the states. As a result of sanctions, and subsequent bankruptcy of Rocket Bombs Ltd, a lot of people of Fairyland are going to lose their jobs.

141. Thus, the Respondent has not only deprived Peter Explosive of its investments in Rocket Bombs Ltd, but also caused enormous harm to inhabitants of Fairyland. Consequently, Oceanian measures are not proportional to the public purpose they are presumably directed on.

142. The Claimant also insists that there is no public purpose in expropriating property of Peter Explosive, since there was no threat of using weapons produced by Rocket Bombs Ltd.

---

100 ADC v Hungary, para 432.

101 Request for Arbitration, p.5; Answer to Request for Arbitration, p.16.
Bombs Ltd in accession of Fairyland to Euroasia because it was voluntary decision of Fairyland citizens to reunify with Euroasia.

143. As a result, the Respondent did not satisfy the public purpose requirement in expropriating Claimant’s investments.

**ii. The measures in question were discriminatory**

144. As it was stated by the tribunal in *Eureko v Poland*, a measure deemed discriminatory if it is aimed at excluding a foreign investor from conducting business activities in the host State. In such situations existence of discriminatory intent is not necessary.  

145. Section 1 of the Executive Order specifically refers to the persons operating in arms production services in Euroasia. Since Rocket Bombs Ltd is the only company which was involved in arms trade with Euroasia, sanctions had a discriminatory effect on the Claimant alone, depriving it of its further operation and contractual relationships with Oceanian nationals and entities.

**iii. The measures in question were not carried out in accordance with due process of law**

146. In the context of expropriation, a violation of the due process requirement can happen if a host State does not provide a foreign investor with an opportunity to receive a notice of fair hearing. The tribunal in the *ADC* case stated that a reasonable advance notice and impartial adjudicator should be provided.  

147. First of all, the Claimant tried to settle the dispute amicably but did not receive support from the Respondent. Secondly, before the implementation of the Executive Order the Oceanian authorities have not warned the Claimant about upcoming

---

103 LG&E, para 146.  
104 A.Newcombe, L.Paradell, p.206.  
105 ADC, para 435.
sanctions specifically against his company as the only one involved in the arms trade with Euroasia.

148. Even after this implementation the Respondent did not provide Peter Explosive with an opportunity to challenge the decision of authorities. Attempts to challenge the constitutionality of the Executive Order in the Oceanian Constitutional Tribunal or to change the point of view of the Oceanian President in the conditions of political orientation of the conflict between Oceania and Euroasia cannot be considered proper means of legal redress.

iv. The measures in question were not accompanied by prompt, adequate and effective compensation

149. Even if the Respondent has conducted expropriation in accordance with three requirements listed above, Peter Explosive still should be compensated. Absence of prompt, adequate and effective compensation for the expropriatory taking is recognized as a circumstance precluding lawfulness of expropriation by many arbitral tribunals.\textsuperscript{106}

150. In \textit{Guaracachi and Rurelec v. Bolivia} the tribunal stated that:

\begin{quote}
“Any State which carries out an expropriation is expected to accurately and professionally assess the true value of the expropriated assets.”\textsuperscript{107}
\end{quote}

151. Here, the Respondent considers its actions as lawful and, therefore, there was no even attempt to discuss the consequences of Oceanian actions on the Claimant. Consequently, the Respondent did not satisfy the last requirement of prompt, adequate and effective compensation.

152. As a result, Respondent’s actions constitute unlawful indirect expropriation of the Claimant’s investments in Rocket Bombs Ltd which cannot be justified by existence of public purpose declared by Oceania.

\textsuperscript{106} Santa Elena, para 71.

\textsuperscript{107} Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia, para. 441.
VI. RESPONDENT’S ACTIONS ARE NOT EXEMPTED ON THE BASIS THAT THEY WERE NECESSARY FOR MAINTAINING INTERNATIONAL PEACE AND SECURITY

153. The Respondent cannot rely on the essential security interest (the “ESI”) provision contained in Article 10 of the Euroasia BIT, since no state of necessity exists in the case at hand.

154. In the case at hand, Respondent’s actions do not fall within the framework of the ESI defense: (A) under the BIT’s ESI provision; (B) in any event, the Respondent is under the obligation to pay compensation for the violation of the Euroasia BIT.

A. The Respondent’s actions are not exempted under the Euroasia BIT

155. The Claimant insists Respondent’s actions resulted in the violation of the Euroasia BIT, since they were not necessary to safeguard essential security interests established by Article 10 of Cogitatia-Barancasia BIT. In accordance with this Article:

“Nothing in this Agreement shall be construed to prevent either Contracting Party from taking measures to fulfil its obligations with respect to the maintenance of international peace or security.”

156. Therefore, Respondent’s actions should be aimed at protection of international peace or security.¹⁰⁸ The Claimant asks this Tribunal to consider that (i) Article 10 of the Euroasia BIT is not of a self-judging character; (ii) Article 10 of the Euroasia BIT does not refer to the State’s essential security interests; (iii) Oceania’s actions were not necessary to safeguard the ESI under this Article.

i. Article 10 of the Euroasia BIT is not of a self-judging character

157. Firstly, it is essential that Article 31 of the VCLT states that treaties should be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”¹⁰⁹

158. Secondly, in arbitral practice it is emphasized with respect to the ESI provision that:

---

¹⁰⁸ Continental Casualty, §§163-64.
¹⁰⁹ VCLT, Art.31.
“the very fact such article has not been excluded from dispute settlement is indicative of its non-self-judging nature.”\(^{10}\)

159. The tribunal in the CMS case stated that:

> “considering the exceptional or extraordinary character of the measures adopted on grounds of necessity, the self-judging character of the relevant provisions contained in BITs cannot be presumed but must be expressed in the text of the treaty.”\(^{11}\)

160. In this respect the Claimant submits that Oceania cannot unilaterally decide which actions fall within the scope of Article 10 of the Euroasia BIT, since this Article is not of a self-judging character.

161. The self-judging nature of similar provisions is presumed if they contain the wording similar to “which it [a Contracting Party] considers necessary” or similar one.\(^{12}\)

162. In the present case the ESI provision does not contain such words as ‘necessary’ or other similar phrases that demonstrate the opportunity for the State to interpret the provision.

163. Thus, it is for this Tribunal to decide whether the actions taken by the Respondent can be considered as falling within the scope of Article 10 of the Euroasia BIT or not.

\textit{ii. Article 10 of the Euroasia BIT does not refer to the State’s essential security interests}

164. In the case at hand nothing indicates the existence of threat to the essential interest mentioned.

165. The tribunal in the CMS case emphasized that a notion of ‘security’ is connected with situations of military or political conflicts\(^{13}\), or economic crisis.\(^{14}\) It is also essential that Article 10 of the Euroasia BIT does not contain a precise definition of the ‘international peace and security’ as opposite to such international documents as NAFTA, GATS, Energy Charter treaty.\(^{15}\)

\(^{10}\) Sempra, §384.

\(^{11}\) CMS, Annulment, §339; Enron, §336; Sempra, §383.


\(^{13}\) CMS, §§318-22.

\(^{14}\) Continental Casualty, §§174-75, 180; LG&E, §§205-14.

\(^{15}\) NAFTA, Art.2102; ECT, Art.24.
166. Here, the only reason of the implementation of sanctions by Oceania was its
disagreement with the reunification of Fairyland and Euroasia. However, there were
no notions of military or political conflicts. The reunification was peaceful.
Moreover, from the Facts of the case it is clear that Eastasia had no plans to escalate
situation between the States.
167. Thus, the sanctions implemented by the Respondent can be considered as the action
which escalates situation between the countries, but not as an attempt to maintain
international peace and security.
168. Moreover, the Claimant asks the Tribunal to pay attention on the fact that the
primary purpose of every bilateral investment treaty is to protect foreign investments
and investments. In the case at hand, the Respondent tries to rely on the ESI
provision in order to avoid fulfilment of its obligations under the Euroasia BIT.  

iii. Oceania’s actions were not necessary to safeguard the ESI under this Article
169. Even if this Tribunal decides that the Respondent can rely on the ESI defense, its
actions were not necessary in the present situation.
170. The tribunal in Continental Casualty states that any measure aimed at safeguarding
ESI should contribute to its original purpose and be proportional to it.  
171. As it was already discussed in the Section V.B of this memorial the Respondent failed
to demonstrate how politically dictated measures can help to maintain international
peace and security.
172. Therefore, the ESI defense is not applicable in the case at hand.

B. In any event, the Respondent is under the obligation to pay compensation for
the violation of the Euroasia BIT

173. Even if the ESI defense is applicable, it does not eliminate the Respondent’s
obligation to pay compensation.

116 Dolzer/Schreuer, p.343.
117 Continental Casualty, §227.
174. It is recognized in arbitral practice that a necessity defense is of a temporary character. Thus, after the elimination of the situation, the Respondent will be obliged to pay compensation for the damage caused.

VII. THE CLAIMANT DID NOT CONTRIBUTE TO THE DAMAGE SUFFERED BY HIS INVESTMENT

175. The compensation sum can be mitigated relying on the contributory fault concept. However, this principle is inappropriate in the case at hand. There are three conditions for the doctrine of contributory fault to be applicable: (A) an internationally wrongful act of the state should exist, (B) blameable conduct of the victim of the wrongful act mentioned above.

A. The case at hand does not meet the requirement of existence of internationally wrongful act

176. If there is no internationally wrongful act, the state cannot be held responsible for it, and consequently, the doctrine of contributory fault is not applicable.

177. State’s actions constitute a wrongful act when they meet two criteria, namely: (1) an action is attributable to the State under international law; (2) an action constitutes a breach of an international obligation of the State.

178. The Claimant submits that the acts of Euroasia do not constitute a breach of an international obligation owed to any of the States.

179. The citizens of Fairyland have a right to determine the political status of Fairyland.

180. According to the principle of equal rights and self-determination of peoples enshrined in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

118 LG&E, §265.
119 CMS, Annulment, §382.
120 Transnational Dispute Management, p.1.
121 Transnational Dispute Management, p.1.
122 Yearbook p. 68.
“all peoples have the right freely <...> to determine their political status and to pursue their economic, social and cultural development”. Furthermore, all States must respect this right by virtue of provisions envisaged in the UN Charter.\textsuperscript{123}

181. On November 1, the citizens of Fairyland held the referendum where they chose in favor of secession.\textsuperscript{124} The procedure of determination of peoples’ political status should fall within the domestic jurisdiction of each State\textsuperscript{125}. The Eastasian law includes provisions on organization of regional referendum.

182. The actions of Euroasia meet the requirements, which preclude the wrongfulness.

183. If a state consents to an intervention of another state, the wrongfulness is precluded if the act is within the limits of the consent given.\textsuperscript{126} After the secession of Fairyland its authorities sent an official letter asking Euroasia for intervention. That intervention was peaceful and bloodless\textsuperscript{127}, which emphasizes that no violation of individuals’ rights and no breach of obligations owed to Oceania took place. It means that Oceania cannot trigger the responsibility of Euroasia as the injured state.

184. This position is supported by the incident of the dispatch of UK troops to Muscat and Oman in 1957 and to Jordan in 1958.\textsuperscript{128} Thus, the consent on intervention does not constitute an internationally wrongful act, and the actions of Euroasia were lawful by virtue of precluding the State’s responsibility relying on Fairyland’s government consent.

\textbf{B. Even if the annexation was illegal and can be attributed to Euroasia, the Claimant’s conduct could not contribute to the damage}

185. The alleged wrongful act is not attributable to the Claimant.

\textsuperscript{122} Declaration on Principles of International Law.

\textsuperscript{124} Problem, uncontested facts, para. 15.

\textsuperscript{125} Convention of 15 June 1955.

\textsuperscript{126} Malcolm Shaw, p. 793.

\textsuperscript{127} Problem, uncontested facts, para. 15.

\textsuperscript{128} Hansard, 872.
186. According to the ARSIWA, the conduct of a person or entity is considered as a State’s actions only if that person or entity had been empowered by the law with administrative, judicial, legislative or other functions.129

187. In the case at hand, the Claimant was not empowered with governmental functions. Peter Explosive is a business entity not entitled by virtue of law with aforementioned functions. Furthermore, it was impossible for him to be entitled with such functions, since until the very beginning of the alleged annexation (on March 1) he was not a national of Euroasia (he was recognized as Euroasian national on March 23); moreover, he was the Eastasian until March 2.

188. Consequently, the responsibility does not relate to the Claimant, as it could not contribute to the annexation of Fairyland.

189. Apart from the annexation, the Respondent argues that the Claimant contributed to the damage, supplying weapons to Euroasia even after Peter Explosive should have known of Euroasia’s intention to incorporate Fairyland by direct military intervention130. 

190. The resembling situation was examined in the Gemplus SA and ors. vs. Mexico case, where the respondent alleged the claimant to be responsible for appointing Mr. Cavallo as the Concessionaire’s General Director, since Mr. Cavallo was accused in some crimes and violation of human rights, which inflicted a scandal, which resulted in reduction of the price of claimants’ shares. Claimants submitted that the respondent did not provide the tribunal with evidence that could have known the background events in issue as Mr. Cavallo’s curriculum vitae was submitted to Mexico as part of the bid process in 1999. The claimants’ shareholders were not aware of the alleged criminal activity of Mr. Cavallo. Relying on the aforementioned facts, the tribunal held that the respondent caused the losses suffered by the claimants, without any reduction for “contributory negligence” or other fault, as alleged by the respondent131.

191. In the case at hand, the Respondent did not introduce the evidence that Peter Explosive knew or could have known about the intent of Euroasia to annex Fairyland.

129 UN General Assembly resolution art. 5.
130 Problem, Answer to Request for Arbitration para. 9.
131 Gemplus SA and ors v Mexico, award, para. 11-16.
192. The following facts emphasize that position of the Claimant: the only thing that Peter Explosive was doing is running his business and performing his ordinary contractual obligations, which could not contribute to the destabilization of the situation in Fairyland. The matter is that the contract with Euroasian Ministry of National Defense on arms supply was concluded on February 28, 2014, before the intervention, in addition, the pre-contractual negotiations between Peter Explosive and the Ministry of National Defense took place during the February, which means that the negotiations process was lingering. Furthermore, the debates were held for a long time and the exact moment of the government’s decision to intervene is unknown.

193. Apart from that, Euroasia advocated for Fairyland’s independence. Therefore, the Claimant could not know that the armed forces of Euroasia would enter Fairyland on March 1, 2014, and after that, Euroasia would announce Fairyland as a region of its territory on March 23, 2014.

194. Thus, the Claimant could not know about the forthcoming annexation of Fairyland.

195. Consequently, Peter Explosive has not contributed to the damage suffered by its investment as a result of measures taken by the Respondent.
PRAYER FOR RELIEF

The Claimant respectfully requests this Tribunal:

1. To find that the Tribunal has jurisdiction over Peter Explosive’s claims;
2. To declare that Oceania is liable for the expropriation of the Claimant’s investments in Rocket Bombs Ltd;
3. To find that the Respondent cannot invoke the necessity defense to excuse the violation of its BIT obligations;
4. To order the Respondent to pay the Claimant a compensation for the unlawful expropriation on its property.

Team Zoricic

On behalf of the Claimant

Peter Explosive