THE INTERNATIONAL COURT OF ARBITRATION
OF
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID Case No. ARB/18/155

FriendsLook plc
Whistler Inc.
and SpeakUp Media Inc,

– Claimants –

v.

Republic of Tyrea

– Respondent –

MEMORANDUM FOR CLAIMANTS

16.09.2019

Currim team
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STATEMENT OF FACTS

1. FriendsLook plc (“FriendsLook”) is a media platform constituted under the laws of Novanda, which primordial function is to let people share their thoughts freely through texts, videos, images and groups and also by letting them create events.

2. Whistler Inc. (“Whistler”) is also a media platform, constituted under the laws of Kitoa, that allows its users to freely express their thoughts and ideas on a wide range of subjects through short texts.

3. SpeakUp Media Inc. (“SpeakUp”), similarly, is a social network constituted under the laws of Kitoa that let people share information through more than 400 million different “blogs” worldwide.¹

4. FriendLook is an investor under the Agreement between Tyrea and Novanda for the Promotion and Reciprocal Protection of Investments, dated of 28 March 2000 (“Tyrea-Novanda BIT”), while Whistler and SpeakUp are investors under the Agreement between Tyrea and Kitoa for the Promotion and Reciprocal Protection of Investments (“Tyrea-Kitoa BIT”), dated of 20 January 2001 (together hereinafter referred to as “BITs”). Jointly, all these notorious internationals media platforms are considered the “Claimants”.

5. The Republic of Tyrea (“Respondent”) was a military dictatorship until 2012, when a civil war between Minyars and Tyreans, Respondent’s citizens, ended the dictatorship.² Since Respondent has become a democracy, it has been trying to attract new investments from social networks, building its image as a liberal economy and as a democracy that has let the censorship and government control of its military dictatorship times in the past.

6. Some of those actions were, for instance, the enactment of Law No. 1125-L on Media and Information (“Media Law”) and statements from Respondent’s representatives assuring that the country was interested in collaborating with social networks.³

7. As Claimants’ revenue are generated mostly through the sale of advertising space, web traffic is vital for that networks.⁴ Therefore, due to the incentives promoted by Respondent, in 2015, Claimants started operating in Respondent’s territory⁵. In fact, Claimants have been facilitating communication in the country and contributing to Respondent’s economy.⁶

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¹ Case Files, pp. 49-50
² Case Files, p. 48
³ Case Files, pp. 48-49
⁴ Case Files, p. 5
⁵ Case Files, pp. 3-4
⁶ Case Files, p. 4
8. However, in December 2017, Respondent made a public statement alleging that its inability to control ethnic tension within its own territory was partly caused through the perpetrators’ use of the Claimants’ social media platforms for spreading hate speech and coordinating violent activities.7

9. Consequently, Respondent enacted Law No. 0808-L on 12 January 2018 (“Law No. 0808-L”), which provided that social networks in Respondent’s territory would have to develop and implement an algorithm in less than 60 days, that not only would filter what Respondent considered potentially prejudicial content, but also give Respondent’s authorities access to personal data and messaging of users.8 As a matter of fact, even the Minister of Telecommunications (“Minister”), Information Technology and Mass Media of the Respondent’s territory, in an official meeting with the Regional Vice-President of SpeakUp, declared that the time given was too short to make such algorithm.9

10. Nonetheless, Claimants promptly started to do their best to ensure that they would meet the deadline. However, unpredictably, after thirty days from the enactment of Law No. 0808-L, Respondent slashed the deadline to 45 days.

11. Even with half of the time Claimants were expecting to still have, they did not give up in collaborating with Respondent’s authorities and trying to meet the new deadline. Indeed, Claimants were able to implement a first version of the algorithm within the new deadline that was as perfect as the lack of time allowed it be.10

12. However, due to the nuances of the language spoken in Respondent’s territory (“Tyrean language”), two weeks of testing and adjustments would be necessary to make the algorithms effective. As time was too short for any testing and adjustment, the algorithms of all social networks in Respondent’s territory were not able to block hate speeches and texts with connection to extremists’ ideas.11

13. Despite the fact that the algorithms of all social media platforms used by radicals were in need of adjustments, Claimants were the only ones to have their websites blocked by Respondent after the deadline12.

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7 Case Files, p.24
8 Case Files, p. 51
9 Case Files, p. 13
10 Case Files, p. 52
11 Case Files, p. 52
12 Case Files, pp. 52-53
14. As a result of Respondent’s controlling and dictatorship acts, all users and accounts that Claimants had in their platforms, which were used to be the main social medias of Respondent’s territory, were lost.\(^\text{13}\)

15. Claimants’ revenue, which was generated mostly through web traffic, dropped significantly. In addition, all the effort and money used to make new tailor-made features and start a marked expansion were lost.\(^\text{14}\) In turn, nothing happened to government-made networks, which Respondent could control.\(^\text{15}\)

16. On 29 June 2018, distressed with Respondent’s violations of the BITs, Claimants submitted the Request for Arbitration before the ICSID pursuant to Art. 9 of the BITs.

17. Moreover, due to Respondent’s acts, the worldwide press started a fight for freedom of speech\(^\text{16}\) and to speculate about the reasons that made that once-dictatorship country to take such measures against specifically those three international social networks.

18. On 21 December 2018, Respondent blamed Claimants for inflecting social and political chaos, and submitted a request for provisional measures.\(^\text{17}\)

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\(^\text{13}\) Case Files, p. 5.
\(^\text{14}\) Case Files, p. 5
\(^\text{15}\) Case Files, p. 51
\(^\text{16}\) Case Files, p. 66
\(^\text{17}\) Case Files, p. 36.
SUMMARY OF ARGUMENTS

1. **JURISDICTION.** The Tribunal has jurisdiction over the present dispute. First, the arbitration clause provided in Art. 9 of the BITs is binding and establishes the jurisdiction of the Arbitral Tribunal under the ICSID Convention. Second, the Tribunal has jurisdiction because Claimants perfected Respondent’s consent to ICSID arbitration by submitting the Request for Arbitration in the time limit of six months after the receipt of Respondent’s notice of denunciation. Third, the Tribunal should accept a multiparty arbitration according to the identical facts under identical BITs and based on ICSID case law. Fourth, the Tribunal shall not grant Respondent’s request for provisional measures because they are based on conjunctions and hypothetical facts, not following the ICSID Convention and ICSID Rules requirements.

2. **MERITS.** Claimants submit that, first, Respondent breached the BITs on the basis of adopting actions tantamount to indirect expropriation and that it breached the fair and equitable treatment clause established on the BITs. Second, Claimants submit that the expropriatory actions of Respondent give rise to a full compensation that should be calculated according to what Claimants did not earned in consequence of the illegal actions.
LEGAL FRAMEWORK

3. The present arbitration is initially based upon the BIT with the Federation of Novanda signed on 28 March 2000 (the “Tyrea-Novanda BIT”) and the BIT with the Union of Kitoa signed on 20 January 2001 (the “Tyrea-Kitoa BIT”) (together hereinafter referred as to “BITs”).

4. In order to initiate the present proceedings, both parties must consent to the jurisdiction of the Tribunal. The investor’s consent comes from its request for arbitration, and the consent of the State comes directly from the relevant treaty. Art. 9 of the BITs provides that any dispute shall be settle by arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (this matter will be further explored below, topic A). Moreover, Art. 9 of the BITs also informs that the Parties agreed that the arbitration is to be conducted by the ICSID Rules.

5. Concerning other signed treaties, all three States, Novanda, Kitoa and Tyrea are parties to the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). Respondent ratified both the conventions on 1 December 2014.

6. The interpretation of said treaties shall be made in accordance with the provisions of the Vienna Convention on the Law of Treaties (“VCLT”). The VCLT is applicable, not only to the BITs because it was signed by both Novanda and Kitoa, but to all treaties related to the dispute, since Respondent is not known to be a persistent objector to any rule of customary international law relating to the law of treaties and the VCLT is the codification of the law on treaties and it is part of customary international law.

7. The general principles of law and subsidiary sources of law applicable to the present will be presented in the following pages together with their related issue.

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18 Case Files, p. 48
19 Lanco International, ¶40
20 Case Files, p. 62
21 Case Files, p. 62
22 Weeramantry, p.20; Zemanek, p.1; Dörr, p. 6
ARGUMENTS

PART ONE: JURISDICTION

A. THE ARBITRAL TRIBUNAL HAS JURISDICTION OVER THE DISPUTE

8. Respondent, in order to refrain from complying with the obligations it contracted by means of the BITs, challenged the jurisdiction of the Tribunal to adjudicate the claims arguing that Claimants’ claims are inadmissible as it has denounced the ICSID.

9. However, Claimants shall demonstrate below that Respondent’s arguments shall not prevail and that (i) the Arbitral Tribunal has jurisdiction to adjudicate the claims arising from the arbitration clause provided in the BITs; (ii) Respondent’s consent to ICISD jurisdiction is unaffected by its denunciation of the Convention; and (iii) the BITs’ provisions shall continue to be effective for a period of fifteen years from their termination.

I. THE ARBITRAL TRIBUNAL HAS JURISDICTION UNDER THE BITs

10. Claimants submit their claims for arbitration pursuant to the dispute resolution clause contained in Art. 9 of the BITs. The referred article confers jurisdiction upon the Tribunal to adjudicate disputes between a Contracting Party and an investor of the other Party arising out of or related to an alleged breach of any right conferred or created by the treaties with respect to an investment.

11. It is undisputed that Claimants and their claims meet all the jurisdictional requirements of the BITs. Firstly, Claimants operations in the Respondent’s territory qualify them as investors under Art. 1.1 of the BITs. Second, the dispute between the Parties is a legal dispute arising directly out of an investment made by Claimants, as defined in the ICSID, and thirdly, all the Parties are signatories to the ICSID.

12. It is further undisputed that in accordance with the Kompetenz-Kompetenz principle, the Tribunal has the power to rule on its own jurisdiction

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23 Case Files, p. 3; Art. 1.1 of the BITs.
24 McIlwrath/Savage, p. 22; Redfern and Hunter, p. 97; Lévy pp. 115-129.
13. Finally, contrary to Respondent’s objection, Claimants accepted the standing offer made by Respondent by means of Art. 9 of the BITS, by submitting the Request for Arbitration concerning the claims Claimants listed therein.25

14. As a result, Claimants’ consent and Respondent’s direct consent given to the arbitrations clauses, gave rise to this arbitration and to the jurisdiction of the Tribunal.

II. RESPONDENT’S CONSENT IS UNAFFECTED BY ITS DENUNCIATION OF THE ICSID CONVENTION

15. Respondent’s objection is primarily based on its denunciation of the ICSID on 5 January 2018. Respondent alleges that the offer to arbitrate under the ICSID no longer stands and that it has not given its consent to the jurisdiction of the ICSID prior to the receipt of the notice of denunciation (“Notice”).

16. However, Claimants shall demonstrate that Respondent’s assumptions shall not thrive, since (i) Claimants accepted Respondent’s consent before the denunciation became effective; (ii) the consent to ICSID jurisdiction is unilateral and binding; and alternatively, even if this Tribunal understand that the denunciation took effect before Claimants submitted its Request for Arbitration, (iii) the BITs provisions shall continue to be effective for a period of fifteen years from their termination.

III. CLAIMANTS ACCEPTED THE CONSENT BEFORE THE DENUNCIATION BECAME EFFECTIVE.

17. Respondent submitted the Notice to the World Bank on 05.01.201826, while Claimants submitted the Request for Arbitration on 29.06.201827, that is: 5 months and 24 days after the receipt of the Notice. The Request for Arbitration was registered by the Secretariat on 16.07.2018.28

18. The ICSID establishes consequences of a State’s denunciation in Arts. 71 and 72.29 Claimants submit that the ordinary meaning of Art. 71 of the ICSID is clear and explains in

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25 Redfern and Hunter, p. 371; Schreuer, p. 521; Case files, p. 3
26 Case Files pp. 27&59.
27 Case Files, p. 2.
28 Case Files, p. 21.
29 Nolan & Caivano, p. 5.
simple terms, and without any textual limit, that all consequences of denunciation of the ICSID shall take effect six months after receipt of the notice of denunciation.

19. Therefore, in accordance with Art. 71, Respondent’s consent expressed in the BITs remains undisturbed by the Notice and for the duration of six months’ period set out in Art. 71, since the denunciation would take effect six months later on 05.07.2018, and hence Respondent would cease to have rights or obligations as a Contracting State to ICSID as of that date.  

20. In addition, Art. 72 of the ICSID provides that the notice pursuant to Art. 71 of the ICSID shall not affect the rights or obligations under this Convention of that State, arising out of the consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.

21. This is further confirmed by Art. 70 of the VCLT, pursuant to which explicit language is required in order for a treaty’s denunciation to ‘release’ the denouncing State from obligations that accrued during the life of the treaty.

22. In that sense, Claimants state that the deadline provided in Art. 71 of the ICSID is a persistence of rights and binding for a period of 6 months. Claimants consider that, during this period, the effects of denouncing are suspended, and the consent to arbitration given by Respondent in the BITs remains valid in order for Claimants to validly seize the jurisdiction of the ICSID.

23. Claimants could accept Respondent’s offer to arbitrate until the end of the six months’ time limit specified in Art. 71 of the ICSID. Respondent’s offer, once accepted, cannot be unilaterally withdrawn, according to Art. 25 of the Convention. In fact, the withdrawal from the ICSID must not constitute a subsidiary means of denial of international obligations already subscribed.

24. In this sense, the date of consent, in which Claimants accepted Respondent’s offer, was the date of the submission of the Request for Arbitration. If Respondent alleges that it has no longer obligations because the Secretariat has registered after the time limit established in Art. 71, this Tribunal should understand that the registration depends only on the ICSID Secretariat,

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30 Nolan & Sourgens, pp. 4-20; Nolan & Caivano, p. 36; Nolan & Caivano, p. 21; Favianca and OldV. ¶294
31 Nolan & Caivano, p. 31; Nolan & Sourgens, p. 48; Favianca and OldV, ¶295
32 Fouret p. 74; Malik, pp. 19-20; Favianca and OldV, ¶295
33 Manciaux, pp. 4-5; Blackaby p. 45; Malik, p. 33.
34 Fouret, p. 74; Malik, pp. 19-20.
and not on Claimants procedural conduct. Claimants should not be prejudiced in its filling of a Request for Arbitration for any delays that may accrue in connection with the registration.36

25. In Blue Bank v. Venezuela, the respondent objected to the jurisdiction of the ICSID tribunal on the ground that the request for arbitration was registered by the ICSID Secretariat after the six months period. The tribunal understood that Art. 71 has a mandatory language providing that the denunciation shall takes effect only after the expiry of six months from the date of receipt of the notice of denunciation by the depositary, and that if the intention was for the denunciation to take immediate effect, it would have made no sense to specify in Art. 71 that there should be a further waiting period of six months.37

26. In addition, in Venoklim v. Venezuela, the tribunal understood that if the interpretation of Arts. 71 and 72 was as respondent proposed, it would result in a violation of basic principle of legal certainty, since no investor could know beforehand when a State will denounce the ICSID. Precisely to avoid this type of inconvenient, the ICSID established in Art. 71 the period of six months.38

27. Therefore, Respondent’s argument that its denunciation has immediate effects does not prevail, since during the six months period, Claimants remain consent prospectively to ICSID arbitration, and Respondent’s duties provided in the BITs remain in force.39

28. As a result, the Tribunal has jurisdiction to hear the dispute in this case on the basis that at the time Claimants consented to ICSID jurisdiction on 29.06.2018, Respondent was still an ICSID Contracting State and its consent to arbitration in the BIT was extant.40

IV. THE UNCONDITIONAL CONSENT GIVEN BY RESPONDENT TO THE ICSID CONVENTION

29. Respondent’s argument that this Tribunal has no jurisdiction because it has denounced the ICSID is irrelevant, since Respondent has given its unconditional consent to the jurisdiction of the ICSID with respect to Art. 9.3 of the BITs, and it cannot frustrate that commitment by rendering ICSID arbitration impossible through denunciation.41

30. First of all, Claimants submit that the ordinary meaning of this “unconditional consent” is that the Contracting Parties to the BITs agreed that there are no conditions limiting their consent

36 Blue Bank v. Venezuela, ¶92; Venoklim v. Venezuela, ¶71
37 Blue Bank v. Venezuela, ¶94
38 Venoklim v. Venezuela, ¶93
39 Nolan/Caivano, p. 21; Favianca and OldV, ¶294
40 Art. 25(1) of ICSID; Favianca and OldV, ¶277
41 Favianca and OldV, ¶295
to ICSID arbitration, and that the consent are complete upon the entry into force of the BITs and upon Respondent becoming an ICSID Contracting State.  

31. Claimants submit that the arbitration clause provided in the BITs, through which Respondent agreed to the jurisdiction of the ICSID created Respondent’s consent. That moment is the very day the Respondent gave its unilateral declaration, which is binding and evidences the will to be bound.

32. The interpretation of Art. 9 of the BITs proposed by Respondent runs contrary to the object and purpose of the BITs, and is not conducted in good faith, as well as would result in a denial of justice, as these arguments would deprive Claimants of ICSID arbitration.

33. Claimants highlight that no party may withdraw its consent unilaterally. This binding nature is premised on the need for legal stability in international law, which itself can be understood as an expression of the underlying duty of substantive good faith and non-contractual owed by sovereigns.

34. Respondent’s consent given under Art. 9 of the BITs cover all future disputes that may arise out of the investment. Thus, once it has been determined by the BITs that Respondent’s obligations exist; they will exist without the need for action of any third parties, that is, regardless of Claimants’ consents.

35. Claimants are third parties with respect to the BITs, and when a right has been created for the benefit of a third party, it cannot be revoked or modified without the consent of such party, in accordance with Arts. 36 and 37 of the VCLT.

36. The Tribunal should not ignore this kind of assent to ICSID jurisdiction, and especially should not ignore that the purpose of a BIT is to promote and protect investments coming from the investor state. This intent is expressly stated in the recitals of the BITs and their initial articles, which guarantees the investors’ full security and protection, impartial and efficient dispute settlement mechanisms.

37. In addition, Claimants state that, when investing in Respondent’s territory, they look to a potential state’s legal infrastructure to protect them against regulatory risks and the risk of

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42 Faviana and OdV.
43 Sicard-Mirabal & Derains, p. 43; Nolan & Caivano, p. 29; Defarges/Pellet, p. 380.
44 Faviana and OdV.
45 Art. 25(1) of the ICSID; Faviana and OdV.
46 Nolan & Caivano, p. 30; New Zealand v. France. ¶49
47 Rodner & Estévez, p. 444
48 Rodner & Estévez, p. 447; Faviana and OdV.
49 Nolan & Caivano, p. 33; Tietje, Nowrot & Wackernage, p. 23.
wrongful interference with their investment by the host state.\textsuperscript{50} Indeed, investment would not be made if the expectation of the investor were otherwise.\textsuperscript{51}

38. A state’s consent to arbitration, thus, might be better understood as a condition of international investments made and maintained after the consent has been given. From an international legal perspective, it would be in violation of a state’s fundamental duty of good faith to allow it, by denunciation of the ICSID, to render a practical nullity, or to change the extent or character of, engagements making available neutral international dispute resolution of investment dispute after Claimants had made their investments on the basis of such engagements.\textsuperscript{52}

39. In addition, in accordance with the principle of \textit{pacta sunt servanda} codified in Art. 26 of the VCLT, Respondent’s consent in the BITs constitute an independent obligation to arbitrate, whether or not it is ever perfected, and must be given effect even after the denunciation of the ICSID. Claimants future consent to ICSID jurisdiction, accepting the arbitration offer contained in the BITs does not affect the Respondent’s existing obligations, since they are binding upon the parties to it and must be performed by them in good faith.

40. In \textit{CSOB v. Slovakia}, the Tribunal understood that with respect to most investment laws at least, consent in writing binds the state with regard to an investment regardless of the investor’s consent or even reference to ICSID arbitration.\textsuperscript{53}

41. Moreover, the Tribunal must recognize that that one of the fundamental principles of the ICSID is to prevent the frustration of existing state consents to arbitration.\textsuperscript{54} When it is understood as an independent international obligation, Respondent’s consent to ICSID arbitration operates as more than an offer to arbitrate. An implication is that denunciation by a state should not be viewed as immediately putting an end to the investor’s ability to invoke ICSID jurisdiction for an arbitration against a state.\textsuperscript{55}

42. Consequently, this Tribunal should recognize that Respondent’s denunciation of the ICSID cannot have the effect of depriving a consent to arbitration contained in the BITs, subject to \textit{pacta sunt servanda}, and which the fundamental nature of consent is to be a legally binding

\textsuperscript{51} Nolan & Caivano, pp. 33-34;
\textsuperscript{52} Nolan & Caivano, pp. 33-34
\textsuperscript{53} CSOB v. Slovakia, ¶58
\textsuperscript{54} Nolan & Caivano, pp. 873-911.
\textsuperscript{55} Nolan & Caivano, p. 32
international commitment included in the treaties, that exists and operates irrespective of the acts of the investors.\(^{56}\)

V. THE BITs PROVISIONS SHALL CONTINUE TO BE EFFECTIVE FOR A PERIOD OF FIFTEEN YEARS FROM THE TERMINATION.

43. In 05.01.2018 the Respondent denounced the BITs\(^{57}\), which took effect six months later, on 05.07.2018, according to Art. 71 of the ICSID.

44. However, in view of the fifteen-year survival clause provided in Art. 13(3) of the BITs\(^{58}\), investments made prior to 28.03.2015, shall remain protected by the Tyrea-Novanda BIT until 2030; while investments made prior to 20.01.2016, shall remain protected by the Tyrea-Kitoa BIT until 2031.\(^{59}\)

45. FriendsLook decided to expand its operations to Tyrea in January 2015, while Whistler and SpeakUp expanded its operations to Tyrea also in June 2015.\(^{60}\) Therefore, Claimants made their investments during the period in which the BITs were still in force.

46. In that sense, given that the BITs are international treaties, the denunciation of the Convention and the cease of obligations will be subject to the international law of treaties. This effectively means that unless both contracting parties agree to exclude the ICSID clause from the BITs, Respondent would have to terminate the whole treaty, as it cannot unilaterally terminate an individual provision from a treaty.\(^{61}\)

47. This understanding is enshrined in Art. 44(1) of the VCLT, which provides that a right of a party, provided in a treaty to denounce the operation of the treaty “may be exercised only with respect to the whole treaty unless the treaty otherwise provides or the parties otherwise agree”.\(^{62}\)

48. Therefore, the presence of the survival clauses provided in Art. 13(3) of the BITs, carries the legitimate expectation of Claimants and guarantees that the international protection for investments will not cease to exist abruptly in the case of denunciation or treaty termination.\(^{63}\)

49. Moreover, Respondent may argue that the final award may not be enforceable because it has denounced the ICSID, including the enforcement provision of Art. 53 of the ICSID. Even if

\(^{56}\) Nolan & Caivano, pp. 873-911.
\(^{57}\) Case Files, p. 7
\(^{58}\) Art. 13.3 of the BITs.
\(^{59}\) Redfern and Hunter, pp. 441-500; Tietje, Nowrot & Wackernagel, p. 6.
\(^{60}\) Case Files, p. 4.
\(^{61}\) UNCTAD, p. 3.
\(^{62}\) UNCTAD, p. 3.
\(^{63}\) Ecuador-United States BIT.
the denunciation would affect the enforcement procedure under the ICSID, Claimants would still have the option to enforce the award under the NY Convention, since Respondent is also a party to the said convention.\textsuperscript{64}

50. Thus, even with Respondent’s denunciation of the ICSID, Claimants investments will still be protected, and they will still be able to invoke arbitration.\textsuperscript{65}

**B. THE TRIBUNAL HAS JURISDICTION TO HEAR CLAIMANTS’ CASE JOINTLY IN A MULTI-PARTY ARBITRATION.**

51. Respondent has repeatedly demonstrated its disdain for these proceedings. This has been manifested in different forms, including delaying its proceeding by alleging that Claimants cannot pursue this case on a multiparty basis because Respondent has never agreed to multiparty arbitration.\textsuperscript{66}

52. Claimants have started the present proceedings based on identical BIT provisions and factual circumstances and raising identical claims. Having a single arbitration is not only permitted as will be demonstrated below, but it also contributes to the efficiency of these proceedings and avoids a risk of contradictory decisions. Respondent’s objections and its insistent request for dismissal of the proceedings, therefore, are simply another dilatory tactic devised to avoid compensating Claimants for the violations of the BITs.

53. In this sense, Claimants shall demonstrate that (i) the ICSID allow multiparty claims; (ii) the BITs are identical; (iii) a multi-party claim does not require a special consent of Respondent; and (iv) a multiparty claim serves the interest of fair and efficient resolution.

**I. ICSID CONVENTION ALLOW MULTIPARTY CLAIMS**

54. It is evident that multiparty arbitration is a generally accepted practice including in ICSID arbitrations. The possibility of arbitrating multi-party investment treaty disputes did not arise until the early 1990s. Then, starting with the NAFTA, pairs and groupings of states began to

\textsuperscript{64} Case Files p. 66; Dugan, p. 680; UNCTAD, p. 4; Redfern and Hunter, p. 650.

\textsuperscript{65} Wick, p. 248

\textsuperscript{66} Case Files, p. 24.
address the possibility of multiple claims by different parties with common issues of fact or
law.\textsuperscript{67}

55. In relation to the history of ICSID, the ICSID Convention and the ICSID Rules do not
have specific provisions regarding multiparty arbitration. The Convention speaks of a “national
of another Contracting State” in singular, but it would be wrong to conclude that only one party
may be admitted to ICSID proceedings on the investor’s side.\textsuperscript{68}

56. The drafters of the ICSID contemplated multiparty proceedings during the negotiation of
the Convention although it was not extensively discussed.\textsuperscript{69} At the Third Annual Meeting of the
ICSID Administrative Council in 1969, the Secretary-General Aron Broches discussed the
Secretariat’s intention to develop rules for multiparty procedures.\textsuperscript{70} Moreover, the British expert
mentioned that there could be more than just two parties to a dispute and that he assumed that
this was implicit in the draft.\textsuperscript{71} However no special rules were ever proposed.

57. The silence of the afore-mentioned legal instruments, however, is not conclusive and
cannot be construed as a prohibition of proceedings with multiple claimants. The ICSID’s
practice has been to register a claim submitted by two or more claimants in a single request for
arbitration if the claims are not manifestly outside the jurisdiction of the Centre, showing that
having more than one party on the investor’s side in one single proceeding is perfectly possible.
In fact, refusals to register a multiparty request are very uncommon.\textsuperscript{72}

58. Accordingly, no claimant has ever been dismissed from an investment arbitration simply
because it filed its claims jointly with another claimant. On the contrary, it is common for
multiple parties in investor-State arbitration to file their arbitrations jointly, even where there are
separate legal instruments involved.\textsuperscript{73}

59. For instance, in \textit{Ambiente Ufficio v. Argentine}, claimants submitted a multiparty claim
and jointly filed a request for arbitration, in which all the pertinent claims arise from and relate to
a substantially identical factual and legal pattern. The tribunal understood that the identity of the

\textsuperscript{67} Paulsson & Petrochilos, p. 68.

\textsuperscript{68} Art. 25 of the ICSID; Schreuer, p. 161.; Ambiente Ufficio v. Argentine, ¶124

\textsuperscript{69} Kinnear & Mavromati, pp. 243 - 264

\textsuperscript{69} Commission, p. 833; ICSID Rules Working Paper, Vol. 3; History of the ICSID, pp. 400-413; Kinnear
& Mavromati, pp. 243 - 264

\textsuperscript{69} Schreuer, p. 162.; Ambiente Ufficio v. Argentin, ¶126

\textsuperscript{72} ICSID Rules Working Paper, Vol. 3; Ambiente Ufficio v. Argentina, ¶122; Schreuer, p. 162.

\textsuperscript{73} Foresti; OKO Pankki v. Estonia; Guaracachi America v. Bolivia; Ambiente Ufficio v. Argentina; Suez
v. Argentina; Itera v. Georgia; Antoine Goetz.
illegality complained, of the legal basis and of the relief sought is more than sufficient to establish a link between the claims that justify their being treated in the same proceedings.\textsuperscript{74}

60. The fact is that where dispute resolution provisions in different instruments are compatible, as in the present case, investors may (and commonly do) initiate arbitration proceedings jointly under different instruments.\textsuperscript{75}

61. Therefore, it is evident that multiparty arbitration is a generally accepted practice in ICSID arbitration. In the present case, the dispute resolution provisions of the BITs are identical and do not preclude the Claimants from initiating arbitration proceedings jointly to have their dispute relating to the same facts and legal basis resolved together.\textsuperscript{76}

II. THE FACTS AND THE BITs PROVISIONS THAT GAVE RISE TO THIS ARBITRATION ARE IDENTICAL

62. Claimants submitted, \textit{ab initio} and in a single proceeding, the Request for Arbitration, which invoked the provisions of two separate BITs.

63. First, Claimants point out to this Tribunal that the scope of protection provided in the BITs are equal.\textsuperscript{77} In fact, the dispute settlement articles\textsuperscript{78}, as well as the entire BITs are identical.

64. Likewise Art. 3 of the BITs ensuring fair and equitable treatment to investors are identical, as well as Art. 6 providing that Respondent has expropriated Claimants.\textsuperscript{79}

65. Second, FriendsLook is a private company incorporated under the laws of Novanda and it’s an investor within the meaning of Art. 1.1 of the Tyrea-Novanda BIT\textsuperscript{80}, while Whistler and SpeakUp are incorporated under the laws of Kitoa, investors within the meaning of Art. 1.1. of the Tyrea-Kitoa BIT.\textsuperscript{81}

66. In addition, the offers to arbitration contained in the BITs were not subject to any condition or limitation in their scope that would prevent Claimants from submitting a single arbitration case against Respondent.\textsuperscript{82} In fact, each of the Claimants accepted the arbitration offer

\textsuperscript{74} \textit{Ambiente Ufficio v. Argentine}, ¶122
\textsuperscript{75} \textit{Pac v. El Salvador; Telekom v. Kazakhstan; Duke Energy v. Ecuador; Perenco v. Ecuador and Petroecuador}
\textsuperscript{76} \textit{Guaracachi America v. Bolivia}, ¶495; \textit{Ambiente Ufficio v. Argentine}, ¶123
\textsuperscript{77} \textit{Flughafen Zürich v. Venezuela}, ¶497
\textsuperscript{78} Art. 9 of the BITs.
\textsuperscript{79} Case files, pp. 55-56.
\textsuperscript{80} Case files, p. 3.
\textsuperscript{81} Case files, p. 3.
\textsuperscript{82} \textit{Flughafen v. Venezuela}, ¶498
in the precise terms in which it was given by Respondent, notably, providing consent by Respondent that disputes over the BITs were to be settled by recourse to arbitration.83

67. In the present case, Respondent’s blocking of only Claimant’s social media platforms84, constitutes breaches of several provisions of each of the two applicable BITs, notably those providing full security and protection and ensuring fair and equitable treatment to the investment, those forbidding expropriation without due compensation and those requiring that commitments made regarding the investment are honored to this Tribunal.85

68. The measures taken by Respondent jeopardize Claimants and the very freedom of expression in Respondent’s territory.86 Claimants were deprived of significant assets, including their ability to generate revenue through the sale of advertising space, considering that Claimants’ revenues are ad-driven and heavily depend on their web traffic, as well as payments for ad blocking and promotional content.87

69. Claimants were also deprived of the opportunity to proceed with the marked expansion in the region by utilizing their dominant and physical presence in the Respondent territory, to expand its activities to neighboring markets. After the blockage of Claimants platforms by Respondent, the neighboring countries informed Claimants that in view of the recent events, it would not be prudent to allow them to operate in their countries.88

70. Consequently, in view of Respondent’s specific actions mentioned above, all Claimants have lost all users residing in Tyrea, and all the efforts and spent capital with the development of new features and products for Claimants social media platforms have gone to waste.89

71. Therefore, it is evident that the object of Claimants’ claims are the same. The facts and BITs provisions that gave rise to this arbitration are identical for the three Claimants and their arguments and claims are exactly the same

72. In Flughafen v. Venezuela, the tribunal analyzed two different treaties, although the scope of protection offered to inventors were analogous. The tribunal concluded that respondent consented to both treaties, and that none of the treaties prohibited investors from different treaties to act together. The tribunal affirmed that the consent of the State was not being broken and that the ICSID has no rule that prohibits the filling of joint claims by multiple claimants.90

83 Art. 9 of the BITs.
84 Case Files, p. 12
85 Art. 3 of the BITs.
86 Case Files, p. 5.
87 Case Files, p. 5.
88 Case Files, pp. 5-6.
89 Case Files, p. 5.
90 Flughafen v. Venezuela, ¶234
73. Moreover, in Ambiente Ufficio v. Argentine, the tribunal pointed out that there is no requirement under the ICSID, or it could be deduced from it, that the claimants in a multiparty proceeding must be necessarily connected by a contractual link among themselves. The tribunal further noticed that the claimants’ claims were about the same illegality, which respondent has committed against them all, and the factual background of their claims is virtually the same for all claimants, establishing the link for the tribunal jurisdiction.91

74. Further, in Abaclat, the tribunal understood that it is irrelevant whether claimants have or do not have homogeneous contractual rights. It concluded that the only relevant question is whether claimants have rights of compensation for a homogeneous damage caused to them by potential homogeneous breaches by respondent of obligations provided for in the BIT.92

75. As a result, Claimants request this Tribunal to consider that there is sufficient nexus between Claimants claims to determine a single proceeding.

III. CLAIMANTS’ CLAIMS DO NOT REQUIRE RESPONDENT’S SPECIAL CONSENT

76. In addition to the arguments raised above, which clearly demonstrate the jurisdiction of the Tribunal over a dispute initiated by three claimants in accordance with two BITs, it should also be noted that no special consent is required by Respondent where different investors bring claims jointly in one proceeding.93

77. As explained in the topics B.I. above, a multiparty arbitration has become a common and generally accepted practice in ICSID arbitration, and it does not require any consent on the part of Respondent beyond the general requirements of consent to arbitration, provided the claims arise from the same dispute, same set of facts and same investment.94

78. In fact, the submission of identical claims based on the alleged violation of two different BITs in a single proceeding is not subject to the qualified express consent of the Respondent.95

79. In the present case, as already demonstrated, each Claimant accepted Respondent’s offer to arbitrate in the precise terms in which it was given by the Respondent, notably, providing consent by Respondent that disputes over the application of the treaties were to be settled by

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91 Ambiente Ufficio v. Argentine, ¶123
92 Abaclat, ¶247
93 Canfor Corp. v. USA; Terminal Forest v. USA; Corn v. United Mexican States; Archer Daniels v. United Mexican States.
94 Ambiente Ufficio v. Argentine, ¶124; Flughafen v. Venezuela, ¶447
95 Guaracachi America v. Bolivia, ¶343
The parties to the treaties could have limited such consent and, by extension, the jurisdiction of the Tribunal; but they did not do so.

80. In this case, the Tribunal considers that the silence in the Treaties concerning the explicit possibility of joint arbitrations plays against the Respondent’s point of view, since one cannot use silence to limit the scope of the consent given. The Tribunal must rely on the general rules of treaty interpretation as codified in Arts. 31 and 32 of the VCLT.97

81. The argument that there must be a specific consent in each of the BITs to the possibility of joining different claims in the same arbitral proceeding ultimately goes too far. Were such specific consent necessary, it would be impossible to accept, as Respondent has argued, that all prior multiparty arbitrations were only allowed to proceed because of the implicit consent provided by the respondent States through their failure to raise any jurisdictional objection in this regard.

82. In addition, Claimants point out that the Respondent’s Civil Procedure Code, adopted in 1998, were familiar with multiparty proceedings at the time that the Parties gave consent to ICSID and the BITs.98

83. Further, there is no fundamental incompatibility between the consents to arbitration in the two BITs that would result in one or the other consent being violated by the mere fact of the claims being heard together.

84. A similar conclusion has been reached in Guaracachi America v. Bolivia, in which the claimants submitted identical claims under different BITs, and the tribunal understood that there is no need for qualified express consent of respondent to a multiparty arbitration given the obvious link between the claimants claims and the identity of the facts alleged, albeit in that case the different BITs.99

85. In Ambiente v. Argentina case, the tribunal concluded that the institution of multiparty proceedings does not require any consent on the part of the respondent beyond the general requirements of consent to arbitration.

86. Moreover, in the case Flughafen v. Venezuela100, the claimants shared a single view of the facts and the outcomes of the violations of Respondent actions. The tribunals dismissed respondent objections that it did not consent to a single arbitration in which multiple claimants of

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96 Guaracachi America v. Bolivia. ¶243
97 Ambiente Ufficio v. Argentine. ¶127
98 Case Files, p. 62.
99 Guaracachi America v. Bolivia. ¶343
100 Flughafen Zürich v. Venezuela. ¶497
various nationalities asserted claims under different bilateral investment treaties but arising from
the same dispute.

87. Accordingly, considering that it is evident that multiparty arbitration is a generally
accepted practice in ICSID arbitration, and in the arbitral practice beyond that, and that the
institution of multi-party proceedings does not require any specific consent on the part of the
respondent Government beyond the general requirements of consent to arbitration101, this
Tribunal shall find that Respondent’s arguments that it has not agreed to a multiparty arbitration
are groundless.

IV. A MULTIPARTY CLAIM SERVES THE INTEREST OF FAIR AND EFFICIENT RESOLUTION.

88. Claimants finally submit that, at the practical level, bringing all of the claims in one
single proceeding is unquestionably the most efficient and advantageous course for this Tribunal
to resolve the present dispute, which is also to the benefit of Respondent itself.

89. Having two different arbitrations to solve identical claims, arising out of identical factual
circumstances and BITs provisions would require all Parties to bear the costs of two or three
arbitrations, produce the same evidence several times and risk inconsistency between future
awards. Thus, proceeding with the present arbitration, where the claims of the three Claimants
could be decided together serves the interest of fair and efficient resolution of the dispute
between the Parties.102

90. In fact, as noted by Schwarz, there is a lot to be said in favor of establishing one tribunal
instead of several different ones to settle disputes that are commercially related. First, a single
tribunal would gain full knowledge of all relevant facts and circumstances and would likely be
able to see the “larger picture” of the parties’ dispute. Second, consolidate multiple parties in an
arbitration will often save the parties a significant amount of time and other resources. Third,
resolving multiparty disputes in a single forum resolves the risk that different tribunals reach
inconsistent or contradictory conclusions with regard to the same manner.103

91. This was also the understanding of the case Guaracachi America, Inc., since a separate
filling of claims would require the claimants to invest much more money and effort and would
lead to duplicative proceedings and to a possible inconsistency between future awards. The

101 Ambiente Ufficio v. Argentine, ¶123
102 Waincymer, pp. 495 - 608
103 Schwarz, p. 317; Ambiente Ufficio v. Argentina, ¶123
tribunal concluded that the advantages of a unified proceeding in terms of efficiency and consistency are undisputed.104

92. Moreover, Respondent has not presented any reason why to not proceed with a multiparty arbitration, other than the fact that it has not agreed to it.

93. In addition, Tribunal has a duty to conduct the proceedings in a way that avoids unnecessary delays and expenses, and to provide a fair and efficient process for resolving the parties’ dispute.105

94. For these reasons, Claimants should be allowed to proceed jointly in the present arbitration and Respondent’s objection should be dismissed.

C. THE TRIBUNAL SHOULD NOT GRANT THE PROVISIONAL MEASURES REQUESTED BY RESPONDENT

95. On 21.12.2019, Respondent filed a Request for Provisional Measures (“Request”), under Art. 47 of the ICSID and 39(1) of the ICSID Rules, requesting the Tribunal to order Claimants to refrain, for the duration of the arbitral proceedings, from taking any steps that might aggravate this dispute and exacerbate Respondent’s position in it.106

96. According to Respondent, Claimants engaged in various actions aimed at aggravating the present dispute and mischaracterizing Respondent and the measures taken by its government, by means of waging a large-scale aggressive media campaign against its government, within and outside Respondent’s territory.107

97. Moreover, Respondent unreasonably submits that there were no threats from Respondent’s Minister, just a simple discussion of the situation. Finally, Respondent alleges that Claimants have engaged in publication of case materials intentionally distorting the context of this dispute, and that Claimants engaged lobbyists to pressure Respondent’s authorities to revoke the measures.108

98. However, it is a fact that provisional measures shall only be granted when it is proved that they are actually necessary, as required by ICSID. Considered in light of these standards, Respondent’s request for provisional measure must not be granted, as: (i) the circumstances

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104 Guaracachi America, v. Bolivia, ¶495
105 Born, pp. 2120-2318; Duty Free v. Poland. ¶76
106 Case Files, p. 36.
107 Case Files, p. 36.
108 Case Files, p. 37.
indicated by Respondent for requiring the provisional measures do not justify its request; and (ii) granting the provisional measure would affect Claimants’ online functioning.

I. THE CIRCUMSTANCES INDICATED BY RESPONDENT THAT REQUIRE THE PROVISIONAL MEASURE DO NOT JUSTIFY THE REQUEST.

99. Initially, Claimants understand that the Tribunal has the authority to order provisional measures to grant the relief sought. However, as regularly noted by ICSID Tribunals, Claimants assert that these measures have an exceptional character and might be granted only in exceptional circumstances. Claimants affirm that there needs to be a strong showing of an immediate and compelling need.

100. According to the ICSID proceedings, the framework for provisional measures is laid out in Art. 47 of the ICSID and Rule 39 of the ICSID Rules, providing that, before ordering any provisional measure under the ICSID and the ICSID Rules, the Tribunal must certify that: (i) a right in need of protection exists and that the circumstances require that the provisional measures be ordered to preserve such right, which must show that the situation is (ii) urgent and that the requested measures are (iii) necessary to prevent irreparable harm to the party’s right to be protected; and (iv) the tribunal must not prejudge the dispute on the merits.

101. First, with regard to the existence of a right in need for protection is a right under the status quo between the parties pending the tribunal’s final decision on the merits. It could be any right of one of the parties that is in jeopardy by the actions of the other party.

102. Second, with regard to the urgency requirement, this Tribunal should first look at the meaning of urgency, as Art. 47 of the ICSID was inspired by Art. 41 of the Statute of the ICJ, Claimants submit that this Tribunal shall look to the definition of urgency provided by the ICJ’s case law. In the words of the ICJ, the requirement of urgency is met when “there is a real risk that action prejudicial to the rights of either party might be taken before the Court has given its final decision”.

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109 Yesilirmak, p. 160.
110 CEMEX v. Venezuela, ¶56; Emilio Agustín v. Spain, ¶55; Occidental v. Ecuador; Phoenix v. Czech Republic, ¶40; Plama Consortium v. Bulgaria, ¶48; Sergei Paushok v. Mongolia. ¶58
112 RSM v. Saint Lucia; Emilio Agustín v. Spain, ¶157. Schreuer, p. 772
113 Schreuer, p. 778.
114 Kaufmann-Kohler & Antonietti, p. 508.; Shereuer, Art. 47, § 1; Pey Casado v. Chile.
115 Great Bealt, ¶58; Quintana, p. 672; Keller, p. 185.
Following this line of reasoning, ICSID tribunals found, generally speaking, that a provisional measure is urgent as soon as the decision over such measure could not wait until the final award.\textsuperscript{116}

103. As for the requirement of irreparable harm, as noted by the tribunal in \textit{Occidental v. Ecuador}, it has to be imminent and not merely potential or hypothetical, it not only refer to the risk of harm with respect to the requesting party but to both parties.\textsuperscript{117}

104. Therefore, the right invoked by Respondent to grant provisional measures needs to be based on circumstances of necessity, regarding the protection of a party’s threatened(s) right(s), and urgency, regarding a foreseeable and certain irreparable harm.\textsuperscript{118}

105. However, Claimants submit that Respondent’s arguments are based on suppositions and conjectures, and this Tribunal shall reject each of the points supported by Respondent in its Request, as follows.

106. First, Respondent tried to justify its request by bringing a distorted account of Claimant’s actions since the commencement of the arbitration, claiming that the aggravation of the dispute and the unfavorable repercussion of the measures taken by Respondent were Claimants’ strict fault.\textsuperscript{119}

107. In respect to the alleged aggressive campaign, Claimants submit \textit{ab initio}, that there was no media campaign. Claimants have not waged, are not waging and have no intention of waging an "aggressive media campaign". In any event, it is important to underline that Respondent minimizes or ignores altogether its own engagement with the media.

108. Second, Claimants submit that Respondent completely misrepresents what is in fact Claimants’ media engagement. In fact, the evidence of their so called “media campaign” is confined to a total of ten new articles supposedly published over the course of 6 months.\textsuperscript{120} Claimants remind this Tribunal that their role in publication of the articles referred to by Respondent in its Request has not been proven by any evidence.\textsuperscript{121} Moreover, Claimants emphasize that they have no control of what is publicized and who publishes in their social platforms.\textsuperscript{122}

109. Third, with respect to the publishing of the Request for Arbitration in The Global Herald\textsuperscript{123}, Claimants purpose were only to inform their customers and other people with an interest in the issues at stake in the arbitration and the Claimants' position therein. In fact, Claimants highlight that, as

\textsuperscript{116} Keller, p. 185.
\textsuperscript{117} \textit{Occidental v. Ecuador.} pp. 203-209
\textsuperscript{119} Case Files, p. 42
\textsuperscript{120} Case Files, pp. 36-37.
\textsuperscript{121} Case Files, p. 67.
\textsuperscript{122} \textit{Gavrilović v. Croatia.}, ¶ 68
\textsuperscript{123} Case Files, p. 67.
decided in *Amco Asia Corp.*, a press campaign is not an influence on the rights actually in dispute in the arbitration, which is the relevant reference point in granting provisional measures.\(^{124}\)

110. In this respect, Claimants also emphasize that there is no general rule imposing a duty of confidentiality on the parties, prohibiting them from disclosing their case, as already decided in the *Churchill Mining v. Indonesia* case\(^ {125}\), and already stated 30 years ago in *Amco Asia Corp.*\(^ {126}\) The Churchill tribunal recognized that none of the public statements made by the Claimant reached a level that could jeopardize Respondent's rights in dispute. Claimants also point out to *World Duty Free*\(^ {127}\) in which the tribunal rejected the State's request for a ban on public discussion of the case by the parties.

111. Finally, Respondent’s potential implications alleging that its bid for hosting World Expo 2025 could attract a considerable number of visitors, generating large revenues and boosting his international image worldwide\(^ {128}\), are based on conjunctures and suppositions done by Respondent, and not on existing rights.\(^ {129}\)

112. In *Occidental Petroleum*, the Tribunal concluded that the claimants were seeking a provisional measure in order to prevent an action which they are not even sure is being planned, which is clearly not the purpose of a provisional measure. Indeed, provisional measures are not meant to protect against any potential or hypothetical harm susceptible to result from uncertain actions. Rather, they are meant to protect the requesting party from imminent harm, which was not considered by Respondent’s request.\(^ {130}\)

113. As a result, through a very general request, the circumstances submitted by Respondent do not justify its request. Claimants, therefore, request that Respondent’s request for provisional measures be rejected, since Respondent did not meet the requirements under Art. 47 of the Convention and Rule 39 of the ICSID Rules.\(^ {131}\)

II. **Granting the provisional measure requested by Respondent would affect Claimant’s online functioning.**

\(^{124}\) *Tallin v. Estonia*, ¶57; *Amco Asia Corp.; Gavrilović v. Croatia*, ¶47

\(^{125}\) *Churchill Mining v. Indonesia*, ¶47

\(^{126}\) *Amco Asia Corp.*, ¶242

\(^{127}\) *World Duty Free*, ¶16

\(^{128}\) Case Files, p.36.

\(^{129}\) *Quiborax S.A v. Bolivia*, ¶107; *Tallin v. Estonia*, ¶87

\(^{130}\) *Occidental v. Ecuador*, ¶66

\(^{131}\) *Emilio Agustín v. Spain*, ¶155
114. Respondent’s actions not only do not follow the requirements for provisional measure, but also would deprive and affect Claimants even more.\textsuperscript{132}

115. In fact, the circumstances that require that provisional measures be taken to preserve the respective rights of either party.\textsuperscript{133} However, if Respondent’s Request were granted, it would breach Respondent’s obligation to provide fair and equitable treatment notably provided in the BITs,\textsuperscript{134} and Claimants will have their online functioning even more affected, and will be deprived of significant assets, including their ability to generate revenue through the sale of advertising space, considering that the Claimants’ revenue is ad-driven and heavily depends on their web traffic as well as paying for ad blocking and promotional content.\textsuperscript{135}

116. Respondent has the duty to ensure that the ability of Internet platforms to provide space for freedom of expression is not undermined.\textsuperscript{136}

117. Consequently, Claimants respectfully request this Tribunal to deny Respondent’s Request.

\textbf{PART TWO: THE MERITS OF THE DISPUTE}

\textbf{D. RESPONDENT VIOLATED THE BITS}

118. Respondent has violated the fair and equitable treatment standard, provided in Art. 3 (1) of the BITs, as well carried put an unlawful expropriation of Claimants investments in violation of Art. 6 of the BITs.

\textbf{I. RESPONDENT VIOLATED ITS OBLIGATION OF FAIR AND EQUITABLE TREATMENT}

119. The fair and equitable clause (“FET clause”) found in Art. 3 of the BITs provides that the host State shall ensure fair and equitable treatment to the investments of nationals of the home State and that shall not impair, by “unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals”.

120. According to international practice, the FET clause lacks a specific meaning and must be adapted to the facts of particular circumstances. In order to find the correct

\textsuperscript{132} Alasdair Ross v. Costa Rica, ¶24
\textsuperscript{133} Tokios Tokelés v. Ukraine. ¶7
\textsuperscript{134} Art. 3.1 of the BITs.
\textsuperscript{135} Case Files, p. 5.
\textsuperscript{136} Landmark report by UN.
interpretation of the FET clause, the Tribunal should interpret the mentioned provision of the BITs in accordance with Art. 31 (1) VCLT.

121. In light of the good faith principle and according to international law, the purpose and goals of both BITs, found on the words of their respective preambles, can surely express the will and intention of the parties in assuming an obligation to stimulate the economic development of the Contracting Parties, create favorable conditions and ensure Fair and Equitable treatment of investments.\(^{137}\)

122. In this sense, investment arbitration tribunals defined that the FET standard encompasses the follow elements: (i) good faith, (ii) due process, (iii) nondiscrimination, (iv) proportionality, and (v) legitimate expectations. These elements are not cumulative, and a violation of one it is enough to violate the BIT.\(^{138}\)

123. In the present case, Respondent violated three elements of FET: (i) breached Claimants’ legitimate expectations, (ii) adopted disproportionate measures against Claimants’ investments, and (iii) acted in a discriminatory manner.

i. **Respondent Breach Claimants Legitimate Expectations**

124. Legitimate expectations are considered an essential element of FET. In order to avoid discretion and abuses of host state policies power, legitimate expectations are designed to create stability of legal framework and insurances promises previously made to investors.\(^{139}\) Thus, the violation of legitimate expectation is essentially bound with the phenomenon of change, as noted in *Occidental v. Ecuador*.\(^{140}\)

125. Tyrea took legislative measures to induce Claimants to rely in making the investment, by directly and personally assurance fruitful collaboration with them in the future.\(^{141}\) These promising conditions directly offered by the spokesperson for the Tyrean parliament were crucial to the time when the investment decision process took place, and without these conditions, no investment would be made.

\(^{137}\) *Dörr*, p. 587  
\(^{138}\) *Mann*, p 64  
\(^{139}\) *Saluka*, ¶ 284; *Schreuer*, p. 365, *Schill*, p. 153;  
\(^{140}\) *Occidental Petroleum v. Ecuador*, *Award*, ¶¶190-196  
\(^{141}\) *Case Files*, p. 48
126. Establishing Claimants’ investments in Tyrea would never have been successful on Tyrean’s previous political and legal landscape, once that the elements that constituted Tyrea before its transition to a democracy as censorship and strict government control over the web, were totally incompatible with social platform values to facilitate communication and the exchange of ideas.142

127. In this sense, Claimants took the decision to invest only after: (i) the creation of new Law on Media and Information No. 1125-L17; (ii) the promises direct made by Mr. Anderson to ensure fruitful collaboration; and (iii) the Tyrean representative government speech during the international conference “A New Web Era in Tyrea”, declaring that new internet era has begun with new internet possibilities.

128. Nevertheless once that the investment was made, Respondent abandoned the promises previously created, destroying the legal framework and collaboration assurances by abusing its alleged “police powers”.

129. Respondent has changed the legal environment, by creating additional requirements to those previously expected, established into the Amendment of the Media Law. That requirement obligates Claimants at the risk of having their investment expropriated, to (i) develop a complex algorithm in 60 days; (ii) filter users’ messages; and (iii) allow the Respondent’s government access to correspondence between users and their personal data.143

130. Those requirements represent an authoritarian manner of government, inconsistent with the scenario previously created by Respondent and contrarily to its citizens’ freedom of speech. That position is clearly in confrontation with social platform’s purpose and with Claimants expectations, which were to facilitate communications between Tyrean users, and not to serve as a tool for Respondent’s government to violate its own population’s privacy.144

131. It is true that, as noted by several arbitral tribunals, investors should anticipate changes in legal framework, aiming to adapt possible variances of circumstances and public interest by exercising host state policies power. However, as provided in Saluka and in Tecmed, the conduct of host state must not violate the requirements of consistency and transparency, even-handedness and nondiscrimination, and investors may expect that, in any

142 Case Files, pp. 48-49
143 Case Files, p. 49
144 Case Files, p. 50
case, the host country will implement its polices according to the good faith principle and observing a reasonable justification.  

132. Respondent’s actions, however, were carried out without a trace of transparency and were completely unjustifiable and inconsistent with its previous actions and statements. In addition to not providing any reasonable explanation to justify the obligation to develop and implement a complex algorithm within an extremely short deadline of 60 days, Respondent also decided to unilaterally shorten said deadline without any justification.

133. Notwithstanding the fact that the Minister had already admitted to the regional Vice-President of SpeakUp that the 60 days deadline was not sufficient to ensure the adequate work of the algorithm, and guaranteed that a feasible deadline would be included in the new law, Respondent decided to actually reduce it to 45 days, leaving Claimants with only 10 days to complied within the development and implementation of the algorithm.

134. Even assuming that the Respondent was guided by the best of intentions, it is clear that an objective breach has occurred, once this constant change in Respondent’s legislative environment and guaranteed objectively confused and misled Claimants, creating as provided in *PSEG Global*, a “roller-coaster” situation, where Claimants glimpse no basic expectation.

135. How does Respondent expect Claimants to comply with a deadline that its own Minister of Telecommunications admitted to being unfeasible? And why did Respondent decided to shorten an already impossible deadline instead of increasing it, as was guaranteed to Claimants?

136. Respondent’s conduct goes beyond the mere lack of transparency, violating the principle of good faith and every expectation created for Claimants in order to expropriate Claimants’ investment.

**ii. Respondent Adopted Disproportional Measures Against Claimants’ Investments**

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145 *Saluk*, ¶284; *Tecmed*, ¶154; *Schreuer*, p. 365, *Schill*, p. 153
146 Case Files p. 51
147 *Ibid*
148 *PESG Global*, ¶ 250
137. The principle of proportionality must guarantee an appropriate relationship between end and means in order to avoid the excess abuse of a host state’s police powers.\textsuperscript{149} Designed to balance private and public interest and to constrain the host state’s right of broad discretion, the principle of proportionality has been considered a part of FET, by tribunals and many scholars.\textsuperscript{150}

138. This principle can be divided into 3 sub-principles: (i) suitability; (ii) necessity; and (iii) proportionality stricto sensu.\textsuperscript{151}

139. As noted, the conduct of Respondent is based on its purpose to eliminate the violence threat perpetrated by the tension between the two major ethnicities inhabiting Tyrea, the Minor and the Tatyar.

140. In aiming to safeguard public order and national security, Respondent’s behavior failed to properly balance two specific measures with those respectively objective ends. Respondent’s intention to access private message and personal data of Claimants’ users, was not properly balanced with its population’s right to freedom of speech. Claimants’ investment was responsible to facilitate communication in Tyrea.\textsuperscript{152}

141. In the case at hand, Respondent’s measures represent a breach under the police power doctrine, once that no evidence that could actually decrease the tension between Minors and Tatyars was demonstrated. Indeed, the consequences of Respondent’s act, caused the opposite effect, once that generated protests by the Tyrean population against violations to their freedom of speech.\textsuperscript{153}

142. It must also be understood that Claimants’ investment only reflects the ideas of users. Thus, Respondent’s goals did not suit respondent measures, once that ethnic tension still exists out of Claimants social platform.\textsuperscript{154}

143. Moreover, the expropriation could be avoided, since less drastic measures existed at the time of Respondent’s decision to assuage the social tensions in its territory. To illustrate, as provided at Tyrean Penal Code, Respondent could have temporarily blocked

\textsuperscript{149} Lopez, pp. 261-2
\textsuperscript{150} Saluka, ¶ 284; Schreuer, p. 365, Schill, p. 153
\textsuperscript{151} Lopez, pp.261-2
\textsuperscript{152} Case Files, p. 51
\textsuperscript{153} Ibid
\textsuperscript{154} Ibid
Claimants investment, once that the main reasons that algorithms has not achieve its goals were the adjustments of Tyrean language and the lack of time in testing it.

144. Instead of collaborating with them until the algorithm worked properly, Respondent proceeded with the block of Claimants social platform, acting in a disproportional manner and violating FET.

iii. Respondent’s Measures Were Discriminatory

145. The Respondent’s government commitment to non-discrimination is set forth in additional to FET of the Tyrea-Novanda BIT and Tyrea-Kitoa BIT, provide in Art. 3 of each BITs.

146. The Police Powers doctrine recognizes a State’s sovereign right to make regulatory changes in its legal framework if such alterations are non-discriminatory and taking for a legitimate public welfare reason.\(^{155}\)

147. As argued above, (i) there is no causal link between Claimants1 platforms operation and the social conflicts in the country: and (ii) the blocking of Claimant’s platforms amounts to an indirect and unlawful expropriation.

148. Second, the expropriation, in this case, is accompanied by other violations, such as the ones against FET clause. Thus, as seen in Suez v. Argentina, “a decision on the application of the police powers doctrine in such circumstance would be duplicative and therefore inappropriate.”\(^{156}\)

149. Arbitral tribunals have recognized that an adverse regulatory measure must, additionally to a legitimate aim in the public interest, shall have a reasonable relationship of proportionality between the means employed and the aim sought to be realized. This proportionality would be lacking if the person concerned “bears an individual and excessive burden.”\(^{157}\)

150. In the case at hand, the measures taken by Respondent are disproportionate. Tyrean law, invoked by Respondent, does not provide a blank authorization to the government to block online platforms. The penalties are gradual and related to the severity of

\(^{155}\) Saluka, ¶263

\(^{156}\) Suez, v. Argentine, ¶1147

\(^{157}\) Azurix Corp, ¶311
the transgression. Besides the fine, the law is clear to state that failure to comply with the requirements shall result in “temporary or permanent blocking of the relevant Network, depending on the gravity of, and possibility to, cure the particular transgression.” (Emphasis added). Tyrean Government did not offer the right for Claimants to cure the alleged transgression. Despite having a preliminary version of the algorithm to comply with the new regulation, Claimants’ platforms were summarily blocked.

151. In this sense, there is a lack of proportionality between the means employed and the aim sought to be realized because Claimants bears an individual and excessive burden.

152. Thus, Claimant submits that Respondent has violated the provisions of FET, as dictated by Art. 3 of related BITs.

II. THE BLOCKING OF CLAIMANTS’ PLATFORMS CONSTITUTES AN UNLAWFUL EXPROPRIATION OF CLAIMANTS’ INVESTMENT, VIOLATING ARTICLE 6 OF THE TYREA-NOVANDA BIT AND ARTICLE 6 OF THE TYREA-KITOA BIT

153. As provided in Art. 6 of the BITs, “Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments” (Emphasis added).

154. Even though there is no legal definition of what is an indirect expropriation, the tribunal in Starrett Housing provides a clear definition: it is a situation were a State take measures that interfere with property rights to such an extent that these rights are rendered so useless that they must be deemed to have been expropriated.158

155. In order to determine if an indirect expropriation has occurred, this Tribunal should analyze the degree of interference with the property right.

156. Regarding the degree of interference, international case law helps defining this requisite. As noted in Metalclad, the tribunal stated that indirect expropriation constitutes an interference with the use of property that has the effect of depriving the owner of the use or reasonably-to-be-expected economic benefit of the property.159

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158 Starrett Housing, ¶66
159 Metalclad, ¶103; Antoine Goetz, ¶112; Eureko v. Poland, ¶¶240-1; Crawford, FDI, p. 852; Newcombe,
157. Likewise, in *Generation Ukraine* the tribunal noted that in order to constitute expropriation, the measure should create a persistent obstacle in the investor’s use, enjoyment or disposal of the investment.¹⁶⁰ Thus, the main criterion to determine an indirect expropriation is the degree of interference, which results in the deprivation of the property, which is “severe, fundamental or substantial and not ephemeral.”¹⁶¹

158. In the case at hand, despite Claimants’ control of their personnel and offices, they had their main asset blocked - the online platforms. Respondent has interfered with Claimants’ property rights to such extent that Claimants were virtually dispensed of their property and had no chance to operate their investment.

159. It is through these platforms that Claimants earn their profits and revenue - mainly due to advertising and marketing. Without users and operationalization, their business remains hollow, regardless of their personnel and back office structure remaining intact.

160. The degree of interference with Claimants’ legitimate expectations by Respondent is excessive. Consequently, Claimants suffered an excessive harm to their property rights.

III. THE INDIRECT EXPROPRIATION WAS UNLAWFUL

161. Art. 6 of the BITs establish the requirements for a legal expropriation. The expropriation should inter alia (a) be taken in the public interest; (b) not be discriminatory and not contrary to any undertaking the party may have given; and (c) on the basis of immediate and just compensation, that “shall represent the genuine value of the investments affected”.

162. There is a consensus that the lack of even one of these requirements makes the expropriation unlawful. Regardless, Respondent violated all these requirements.

i. *The requirement of public interest was not complied with*

¹⁶⁰ *Generation Ukraine*, ¶20.32
¹⁶¹ *Newcombe*, p.341
163. The requirement of public interest in the context of expropriation is a part of customary international law. However, this requirement is not completely self-judging. Likewise, the exercise of the right to expropriate depends on genuine public need and the exercise of good faith. Public need may comprise of serious public demands in the field of economy, political or military security related to foreign relations.

164. However, Respondent never offered valid reasons to justify the expropriation carried out against Claimants. Frivolously, argues that the acts were performed “exclusively at safeguarding Respondent’s public order and amounted to a reasonable and valid exercise of the Respondent’s regulatory power”, claiming the country was living a social chaos due to radicals and Claimants’ platforms were boosting those conflicts. Furthermore, concludes with the theatrical expression: “Drastic times call for drastic measures.”

165. Nevertheless, the circumstances of the case show otherwise.

166. First of all, Tyrea failed to provide sufficient evidence to establish a causal link between the ethical conflict (hate speech, violent attack) and social media operation. Tyrea could reasonably have used other means than those employed in this case to control its own population. In fact, it could have used Claimants virtual force to dispel fake news. Instead, Tyrea chose to attack those that could be used in its favor and in favor of freedom of speech.

167. Likewise, if the blocking of Claimants’ platforms was carried out to safeguard Tyrea’s public order, why were the other platforms not blocked as well? Why only Claimants”? Obviously, Tyrea does not clarify this point, merely alleging that the blocking was “based on a fair case-by-case assessment of the relevant circumstances”. The question that remains is: which circumstances?

168. For example, TruthSeeker, Claimants’ competitor created by Respondent, which is uncontestably used by radicals, is only being criminally investigated regarding an eventual application of a fine. Not even a temporary blocking is under discussion. Why?

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162 Malanczuk, p. 235; Hober, 38.  
163 ADC Affiliate, ¶432; Siemens v. Argentina, ¶273; Newcombe, p.372.  
164 ADC v. Hungry, ¶432.  
165 Newcombe, p.370.  
166 Case Files, p.8  
167 Ibid  
168 Case Files, p. 49  
169 Case Files, p. 63
Respondent, obviously, never explained. Indeed, the only indicative given by of one Tyrean digital daily newspaper was “the Government being reluctant to terminate its own creation”\textsuperscript{170}

169. Tyrean Communications Agency’s arguments are that the other social networks being less popular and convenient for spreading hate speech are therefore, less dangerous\textsuperscript{171}. Tyrean law, however, does not contain such provision. The penalties vary on the \textbf{possibility to cure} the particular transgression. There is no expression regarding the popularity of the network.

170. Moreover, no right to cure was given to the Claimants. TruthSeeker, however, is receiving all governmental patience. If there were any doubts about the genuine intentions of Tyrea, now, there are none. Likewise, if there is any public interest in this case is the population to have means to freely express itself.

171. Consequently, Claimants submit that Respondent expropriated Claimant’s property in violation of the public purpose requirement.

\textit{ii. Respondent’s measures were discriminatory}

172. A discriminatory act is an arbitrary exercise of regulatory power against a certain group.\textsuperscript{172} Such act must not be a less favorable treatment in comparison to other investors or investments, as founded by the Pope & Talbot, the treatment must be “equivalent to the ‘best’ treatment accorded to domestic investors or investments in like circumstances”.\textsuperscript{173} Also in this sense, the Waste Management tribunal noted that a discriminatory act is a manifest failure of natural justice, a complete lack of transparency or a lack of due process of law in judicial proceedings or a complete lack of transparency.\textsuperscript{174}

173. The new Media Law, subjected all social network established in Tyrea to the same regulations, which states as follows: every social network would have to develop and implement an effective algorithm, ensuring that any new Tyrean user provides to it true and accurate Personal ID card details, promptly providing access to the competent authorities of

\textsuperscript{170} Case Files, p.50  
\textsuperscript{171} Ibid  
\textsuperscript{172} Crawford, p.618; Dugan, p. 410; Saluka, ¶307  
\textsuperscript{173} Pope & Talbot, ¶48  
\textsuperscript{174} Waste Management, ¶98
Respondent at their justified official request, and any social network failing to comply with these requirements would be liable in accordance with the provisions of the Tyrean Penal Code.\textsuperscript{175}

174. Similar to Claimants platforms, Wink and TruthSeeker, were also bound to this new requirement. Those local social networks, also have been used by radicals and have not been able to comply with those requirements.\textsuperscript{176} However, Respondent social networks have never been blocked.\textsuperscript{177}

175. Respondent acted in discriminatory manner, once that failed to provide reasonable and justify motivation into the preference for its own social networks to the detriment of Claimants. In addition, Tyrea had never explained why its own social platform was not blocked. This lack of evidence that would justify Respondent prejudice treatment within Claimants, is sufficient to demonstrate the discriminatory treatment.

iii. \textit{Respondent’s measures were not accompanied by provision for the payment of immediate and just compensation.}

176. Even if the expropriation was made in accordance with public interest and not in a discriminatory way, Respondent cannot be excused of paying compensation under Art. 6(c) of the BITs. The lack of prompt, adequate and effective compensation is an illegal action under the BITs and under customary international law.\textsuperscript{178}

177. As no compensation was paid in the present case, Respondent’s expropriation of Claimants’ investments was undoubtedly unlawful.

178. Furthermore, it is also important to highlight that neither of the BITs provides a \textit{“denial of benefits”} clause, which endorses the need to grant the full compensation claim.

\textsuperscript{175} Case Files, p. 8
\textsuperscript{176} Case Files, p. 31
\textsuperscript{177} Case Files, p. 67
\textsuperscript{178} Shaw, p. 743.
Lastly, as detailed on the topic above, even assuming *arguendo* the reasons behind Respondent acts were defensible, ‘the financial, economic and social concerns that inspired’ such acts ‘cannot relieve the Respondent of the obligation to compensate’.

**E. CLAIMANTS ARE ENTITLED TO FULL COMPENSATION FOR ALL DAMAGES SUFFERED DUE TO THE UNLAWFUL EXPROPRIATION**

Claimants submit to the Arbitral Tribunal that the expropriatory actions of Respondent give rise to a full compensation. Claimants (i) provided the most adequate method for calculating the damages caused by Respondent, (ii) the amount asked should not be considered as “speculative”, and (iii) Respondent is obliged to comply with full reparation of damages.

I. THE METHOD PROPOSED BY CLAIMANTS IS THE MOST ADEQUATE

When dealing with compensation under investment law, arbitral tribunals should consider the unlawful nature of the expropriation. Since Claimants’ legitimate expectations were undermined, in a discriminatory way, by Respondent’s actions, as demonstrated earlier, Claimants should receive a compensation that would wipe out the damages caused by the unlawful act.

There is a general principle of law recognized by the leading case on reparation in international law, *Factory at Chorzóm*, in which the PCIJ stated that “reparation must, as far as possible, wipe out all the consequences of the illegal act”. Later, this well-established rule of international law was incorporated in the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), Art. 36, a major reference on this subject. In short, the compensation must be so to “put the Claimant in the same position as if the expropriation had not been committed”.

The Discounted Cash Flow (DCF) is recommended by the World Bank in its Guidelines on the Treatment of Foreign Direct Investment when the investment has a proven record of profitability. According to International Practice, the DCF is the method a prospective buyer of the investment would certainly undertake to evaluate the value of the asset.

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179 Phelps Dodge, ¶130.
180 *Factory at Chorzów*, ¶125; Dugan, pp.577-578; Amoco, ¶191
181 ARSIWA, with commentaries, p.91; Crawford, p. 571 Blackaby, p. 466
182 *ADC Affiliate*, ¶497
183 World Bank Guidelines, IV(6); *Blackaby*, p. 494
Thus, the DCF is commonly used by quantum experts in investment treaty arbitrations to quantify compensation, because it recognizes that the economic value of an enterprise is related to the cash that the company can be expected to produce in future. 185

Consequently, in addition to Claimants’ costs tied to the physical offices established in Tyrea, as already recognized by Respondent if the Claimants were entitled to compensation, the Claimants are also entitled to receive compensation for what they reasonably failed to profit as a cause of the unlawful expropriation, including those related to the market expansion to neighboring states, as provided in the Damages Report presented by Alonzo & Rodriguez LLC. 186

Therefore, because the method of reparation proposed by Claimants is the only one that provides for a compensation that will effectively wipe out the consequences of the unlawful act, this is the most adequate form of reparation.

II. THE REQUESTED COMPENSATION IS NOT SPECULATIVE.

Respondent argued that Claimants’ proposed compensation is speculative and is not compatible to the DCF because there are no established historical record of financial performance. 187 That would not be the case at hand.

According to the World Bank guidelines, the DCF is applicable to investment that consists of an enterprise, which has been in operation for a sufficient period of time to generate the data required for the calculation of future income and which could have been expected with reasonable certainty. This required period of time for economic certainty was already achieved in other cases based upon two years of activity or, even without a track record of profitability, based upon a preoperational project that if it had been allowed to operate it would generate profits.

Compensation for damages caused by an unlawful act of a State is not mere speculation if it is linked by a real and evident chain of causation to the imputable act or

184 Tidewater, ¶186
185 Cox, p.320; World Bank Guidelines, IV(6); Amco Asia, ¶ 197; Phillips Petroleum, ¶123
186 Case Files, p. 19
187 Case Files pp. 25 & 33
omission. It is a general rule that compensation is due when there is a sufficient causal link between the actual breach of the BIT and the loss sustained by the claimant.\textsuperscript{188}

189. The \textit{Lemire} tribunal stated that even a transitive causal links do not exclude the responsibility of the wrongdoer to provide for compensation for lucrums cessans, the essential element required was the foreseeability of the damage.\textsuperscript{189}

190. Respondent’s Decree No. 0599/201-D of 11 February 2018\textsuperscript{190} indirectly expropriated Claimants’ investments is clearly linked to the loss of profit related to expanding businesses. Such link is clear as Claimants could only make the business expansion to Alcadia and Larnacia (bordering countries) if they were to use their dominant and physical presence in Tyrea to do so. Moreover, representatives from those countries expressly stated that due to the recent events, it would not be prudent to allow them to operate in their countries.\textsuperscript{191} Respondent blocked Claimants’ websites, this would clearly affect their revenues and expansions.\textsuperscript{192}

191. Assuming \textit{arguendo} that further predictability is required, it is a fact that FriendsLook already had showed great results with its expansion plans, it entered the market of Fitzrobia, market four times smaller than Respondent (population of 30 million compared to 120 millions) and not qualified as “a strategic new market”\textsuperscript{193}, initiating with profits that amounted to 25% of revenue and it increased to 35% in 2018.\textsuperscript{194} Whistler and SpeakUp already achieved a similar result in entering new markets, both companies showed profits that were able to steadily increased their revenue margin year by year.\textsuperscript{195}

192. Therefore, because there is a clear chain of causation between Respondent’s actions and Claimants’ direct and indirect losses, the loss of profit proposed by Claimants is not speculative, but is actually a simply determination of indirect damages.

III. \textbf{Compensation for only the costs tied to the physical offices established in Tyrea is against Respondent’s international obligations.}

\textsuperscript{188} \textit{Biwater Gauff}, ¶779; \textit{Blackaby}, p. 492; \textit{Crawford}, on State Responsibility, pp. 204–205.
\textsuperscript{189} \textit{Lemire}, ¶208
\textsuperscript{190} Case Files p. 10
\textsuperscript{191} Case Files, p. 6
\textsuperscript{192} Case Files pp. 11-12
\textsuperscript{193} Case Files, p. 48
\textsuperscript{194} Case Files, p. 61
\textsuperscript{195} Case Files, p. 61
193. As per VCLT Art. 31(3), the BITs must be interpreted in accordance with other rules applicable to Respondent’s international obligations. As specified by Human Rights Treaties and Customary International Law, an unfair compensation is a breach of the right grant to all of effective remedy.

194. Respondent is a party to the Charter of the United Nations (UN Charter). Art. 2 of the UN Charter provides that all its members shall fulfill in good faith the obligations assumed by them, what includes the obligation to fulfill with their human rights obligations.

195. In addition, in ICCPR, Art. 2, Respondent recognized the right of effective remedy against a violation of natural or legal persons rights. Such right is also part of customary international as provided for the Mixed Claims Commission in Opinion in the Lusitania Cases. It is a general rule of both the civil and the common law that every illegal invasion on private rights imports an injury for which the law gives a remedy and, ultimately, any “compensation”, “reparation” or “indemnity” is measured by pecuniary standards, because, says “Grotius, ‘money is the common measure of valuable thing’”.

196. Respondent also agreed to develop and to protect economic rights in ICESCR, Arts. 1, 2 and 25. The refusal to fulfill such treaty obligation involves international responsibility.

197. Moreover, Respondent argued that the DCF country risk rate, which is used to discount the projected cash flows, proposed by the Claimants was very low. Claimants applied a weighted average cost of capital (“WACC”) that included country risk, tax and currency risk, business risk, and force majeure risk that amount to a 5% discount rate. In Gold Reserve Inc. v. Venezuela, the tribunal applied a discount rate of 4 per cent, in 2014, Venezuela. That tribunal understood that it was not appropriate to increase the country risk premium

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196 Case Files, p.67
197 Crawford, p. 31
198 Opinion in the Lusitania Cases, p. 35.
199 Interpretation of Peace Treaties, p. 228; ARSIWA, with commentaries p.32
200 Case Files, p. 34
201 Case Files, p. 66
(increasing the discount rate) to reflect the market’s perception that a State might have a propensity to expropriate investments in breach of a BIT.\textsuperscript{202}

198. The form of compensation proposed by Claimants is known to be the one that effectively provide for a just reparation limited to the damages suffered.\textsuperscript{203} A compensation only for the costs tied to the physical offices established in Tyrea would undermine the right of effective remedy. This is would be a violation of Respondent’s international obligations.

199. As a consequence, the Tribunal should grant full compensation for both direct, the costs tied to the physical offices established in Tyrea, and indirect damages, the losses of profit.

\textsuperscript{202} Gold Reserve Incorporated, ¶841
\textsuperscript{203} Factory at Chorzów, ¶129; ARSIWA, with commentaries, p.125
REQUEST FOR RELIEF

1. In light of the above submissions, CLAIMANTS respectfully request this Tribunal to declare that:

   I. It has jurisdiction to hear this dispute under Art. 9 of the BITs;

   II. It has jurisdiction to hear Claimants’ case jointly in a multi-party arbitration;

   III. Respondent’s request for provisional measure should not be granted;

   IV. To find Respondent responsible for violation of Arts. 3 and 6 of the BITs;

   V. To adopt Claimants’ proposed method for the calculation of damages; and

   VI. To consequently award to Claimants, and to order Respondent to pay to Claimants:

      a. The full amount of compensation, for both direct and indirect, of

         i. 69,134,875 USD for FriendsLook plc,

         ii. 26,760,460 USD for Whistler Inc., and

         iii. 27,094,000 USD for SpeakUp Media Inc.

      b. With pre and post award interest

      c. For all costs of this arbitration

Submitted on 16.09.2019 by Currim Team

On behalf of CLAIMANTS
FriendsLook plc, Whistler Inc. & SpeakUp Media Inc