Team Competition Number: T06

The United Nations Commission on International Trade Law

BETWEEN

EZKAR	**REPUBLIC OF VERTLAND**
(CLAIMANT)	**(RESPONDENT)**

MEMORIAL FOR CLAIMANT

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STATEMENT OF FACTS

1. In 1976, Vertland (the '**Respondent**') and Sanphancisco, the Claimant's State (collectively the '**Parties**'), entered into the Vertland-Sanphancisco BIT (the '**BIT**'). EZKar (the '**Claimant**') invested in Vertland in 2007 and incorporated EZKar-Vert, a wholly owned subsidiary in 2007. Following this, the state-owned enterprise V-M contracted with EZKar-Vert, exempting the Claimant from relevant licensing and safety laws otherwise applicable to transport services for a period of 10 years (the '**V-M Agreement**').

2. In 2013, the Vertese trial court found the Claimant liable for violating licensing laws (the '**Judgment**') and awarded disproportionately high punitive damages of 100 million against the Claimant. In 2015, protests against foreign companies became frequent, and a particular protest turned violent, causing substantial damages to the Claimant's office premises. Massive change in Vertland's laws took place following a pro-nationalist president taking office. The Taxation Regulations, Environmental Regulations, and Trunk PH Law were collectively enacted (the '**Respondent's Laws**'). The Taxation Regulations removed a 50% tax rebate for the Claimant, and further required them to pay back up to 10 years' worth of back taxes. The Environmental Regulations imposed a special fee on all new private cars purchased. This was a policy which applied only to private cars and not taxis. The Trunk PH Law prevented the Claimant from charging by distance and using geolocation software. It further required the Claimant to obtain the requisite

licencing, in contradiction what it was promised under the VM-Agreement. The Respondent's Laws and the Judgement unduly prejudiced the Claimant and resulted in its investment becoming completely unviable by 2016, thus breaching its obligations under the BIT ('**BIT obligations**'). The Respondent further failed to return $75,000 of deposit after terminating a lease agreement between EZKar-Vert and itself (the '**Lease Agreement**'). The Respondent thus egregiously breached the V-M Agreement and the Lease Agreement (collectively the '**Agreements**').

3. The Claimant is now seeking redress from the Tribunal.

ARGUMENTS ON JURISDICTION

I. JURISDICTION HAS BEEN ESTABLISHED

4. The Claimant seeks the Tribunal's finding that the Respondent had breached its BIT obligations. Jurisdiction for arbitration can be established as (1) the Claimant's assets are an investment and (2) the Claimant is an investor under the BIT.

A. THE CLAIMANT'S ASSETS ARE AN INVESTMENT PURSUANT TO ARTICLE 1 OF THE BIT

5. The Claimant's assets are an investment, and are thus protected by the obligations pursuant to the BIT. Pursuant to Article 1, an investment means (a) every asset that (b) an investor owns or controls, directly or indirectly that (c) have the characteristics of contribution, profit, or risk.

1. The Claimant's assets are EZKar-Vert and the contractual rights under the Agreements

6. An 'asset' that is protected by the BIT can be tangible, such as an enterprise, or intangible[1], such as claims to performance of a given obligation.[2] Here, the Claimant's

[1] Moot Article 1(b), (g), (h) of the BIT.
[2] *Inmaris Perestroika Sailing Maritime Services GmbH and others v Ukraine* (Decision on Jurisdiction) [2010] ICSID Case No.ARB/08/8 [100]-[101]; *Alps Finance and Trade AG v Slovakia* (Award) [Redacted] [2011]

assets are 51% share equity in EZKar-Vert,[3] contractual rights arising from the V-M Agreement to be exempted from Vertese licensing and safety laws,[4] and the Lease Agreement.[5]

2. The Claimant owned or controlled the assets

7. The assets are owned or controlled by the Claimant. Presently, the BIT does not expressly define 'own or control'. Pursuant to Article 31 of the VCLT, the BIT should be interpreted according to its ordinary meaning, in light of its object and purpose.[6]

8. The Claimant owned 51% of the share equity. 'Ownership' generally means holding legal title.[7] The Claimant clearly held legal title to 51% of the share equity, as EZKar-Vert was a wholly-owned subsidiary of the Claimant[8] until 49% of its shares were sold to Nick Traviska.[9]

9. The Claimant controlled EZKar-Vert, and as such controlled the contractual rights arising from the Lease Agreement and the V-M Agreement. Tribunals have held that a presumption of 'control' over an enterprise arises where there is a majority ownership in

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UNCITRAL [231].
[3] Moot (n 1) [4], and [8].
[4] ibid [4].
[5] ibid [17].
[6] United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, UN, Treaty Series, vol. 1155 344.
[7] *Caratube v Kazakhstan* (Decision on the Annulment Application of Caratube) [2014] ICSID Case No.ARB/08/12 [383].
[8] Moot (n 1) [4].
[9] ibid [8].

shares.[10] Since the Claimant still owned 51% of EZKar-Vert's shares, it is presumed that the Claimant maintains control over EZKar-Vert. The Claimant controlled EZKar-Vert when EZKar-Vert had obtained the contractual rights under the V-M Agreement and the Lease Agreement. Therefore, the Claimant owns or controls all the assets.

3. The Claimant's assets have the characteristics of contribution, profit, or risk

10. An 'investment' must have the characteristics of contribution of resources, profit, or risk. The requirements are disjunctive, as seen from 'or' in Article 1.[11] Regardless, all characteristics are established on the facts.

11. First, the investment must involve the contribution of resources, where 'resources' are an input of economic value.[12] Owning shares of a local company constitutes a contribution of resources.[13] Here, the Claimant has contributed resources by owning shares in the locally-incorporated EZKar-Vert and leasing office premises. These assets are economically valuable given its huge success in guaranteeing safe and reasonably priced car rides in Vertland.[14]

12. Second, the investment must involve an expectation of gain or profit, which involves

[10] *Caratube v Kazakhstan* (Award) [2012] ICSID Case No.ARB/08/12 [382]; *Aguas v Bolivia* (Decision on Respondent's Objections to Jurisdiction) [2005] ICSID Case No.ARB/02/03 [231], [234] and [264].
[11] Moot (n 1) Article 1 of the BIT.
[12] *Phoenix Action v Czech Republic* (Award) [2009] ICSID Case No.ARB/06/5 [118]-[120].
[13] ibid [121].
[14] Moot (n 1) [7].

economic return.[15] The Claimant incorporated EZKar-Vert, leased an office, and contracted with the Respondent, with the expectation that Vertland would be a fertile market for the expansion of the Claimant and its business model.[16]

13. Lastly, the investment must involve an assumption of risk. 'Risk' is broadly defined, and can be associated with a State's prerogative to renew the contract, increased costs of labour or additional taxes, or risks of protests.[17] Presently, the Claimant's investment suffers from these risks as EZKar-Vert risks additional taxation and cost,[18] the V-M Agreement is subject to renewal after 10 years,[19] and demonstrations affect EZKar-Vert's office and business.[20] Therefore, the Claimant's assets are investments under Article 1.

B. THE CLAIMANT IS AN INVESTOR OF A PARTY PURSUANT TO ARTICLE 1 OF THE BIT

14. The Claimant is an 'investor of a Party' as defined by Article 1, and is entitled to protection under the BIT.

15. An investor includes an 'enterprise of a Party' that is making an investment in the other Party.[21] 'Of a Party' is undefined in the BIT. Pursuant to Article 31 of VCLT, the BIT should be interpreted according to its ordinary meaning, in light of its object and

[15] *Gauff v Tanzania* (Award)[2008] ICSID Case No.ARB/05/22 [320].
[16] Moot (n 1) [3].
[17] *Salini v Morocco* (Decision on Jurisdiction) [2001] ICSID Case No.ARB/00/4 [54]; *Phoenix Action* (n 12) [126].
[18] Moot (n 1) [14].
[19] ibid [4].
[20] ibid [12], and [13].
[21] ibid Article 1 of the BIT.

purpose.[22] Accordingly, the ordinary meaning of the word 'of' is ‘association between two parties’.[23] Presently, the Claimant is associated with Sanphancisco as it is 'based' there.[24] Additionally, Sanphancisco is the only nation linked to the formation of the Claimant. The Claimant should thus be considered an ‘investor of a Party’ within Article 1.

II. THE RESPONDENT IS LIABLE UNDER THE BIT FOR ITS BREACH OF CONTRACT PURSUANT TO ARTICLE 25

16. The Respondent had undertaken contractual obligations in its own name under the Lease Agreement, and via V-M, its wholly-owned subsidiary under the V-M Agreement. However, the Respondent had failed to uphold these contractual obligations to the Claimant. The Tribunal has jurisdiction to adjudicate breaches of contractual obligations because Article 25 elevates the contractual claim to a treaty claim.

A. V-M’S BREACHES OF CONTRACTUAL OBLIGATIONS CAN BE ATTRIBUTED TO THE RESPONDENT

17. The Lease Agreement was expressly entered into by the Respondent, as the Vertese Government.[25] The V-M Agreement, entered into by V-M, can be attributed to the Respondent.

[22] VCLT (n 6).
[23] Oxford Living Dictionaries <https://en.oxforddictionaries.com/definition/of> (accessed 18 May 2017).
[24] Moot (n 1) [3].
[25] Moot (n 1) [17].

18. Contractual claims must be attributed to the State in order to be elevated to treaty claims by umbrella clauses such as Article 25, and adjudicated before the Tribunal.[26] The Draft Articles on Responsibility of States for Internationally Wrongful Acts ('**ARSIWA**') are widely accepted as a codification of customary international law,[27] and are useful in determining the attributability of acts.

19. Article 8 of ARSIWA attributes V-M's act to the Respondent if V-M is acting on the instructions of the Respondent State.[28] Where a state organ enters into an agreement while managed by a board of directors that were appointed by the head of the State, the agreement is attributable to the State.[29] Here, V-M was owned by the Respondent and managed by three government officials and two private individuals appointed by the President of Vertland.[30] The V-M Agreement was entered under the direction of the Respondent, as the Respondent wanted to facilitate EZKar-Vert's entry into the industry.[31] As such, V-M's acts in creating the agreement, allowing Ezkar-Vert to conduct its operations within Vertland, and granting exemptions are attributable to Vertland.

20. Therefore, the Tribunal can attribute the contractual obligations of V-M to the

[26] *Noble Ventures v Romania* (Award) [2005] ICSID Case No.ARB/01/11 [63].
[27] United Nations, General Assembly, *Responsibility of States for internationally wrongful acts Compilation of decisions of international courts, tribunals and other bodies: report of the Secretary General,* A/62/62 (1 February 2007).
[28] International Law Commission *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1 <http://www.refworld.org/docid/3ddb8f804.html> (accessed 10 May 2017) 47.
[29] *Noble Ventures* (n 26) [64].
[30] Moot (n 1) [5].
[31] ibid [4].

Respondent for the purposes of Article 25. Contractual obligations under the V-M Agreement and the Lease Agreement had been breached and these violations of contractual obligations amount to violation of BIT obligations pursuant to Article 25.

B. ARTICLE 25 OF THE BIT ALLOWS THE CLAIMANT TO ELEVATE THE RESPONDENT'S BREACHES OF CONTRACTUAL OBLIGATIONS TO A VIOLATION OF THE BIT

21. The Respondent is contractually obliged to exempt EZKar-Vert from relevant licensing and safety laws.[32] By imposing the Trunk PH Law and requiring private vehicle operators to obtain licensing, including drivers working for EZKar-Vert, the Respondent breached its contractual obligation under the V-M Agreement. Additionally, the Respondent breached the Lease Agreement by failing to return the sum of $75,000.

22. An umbrella clause elevates contractual breaches to violations of BIT obligations,[33] and a narrow interpretation of an umbrella clause should not be adopted.[34] Here, Article 25 is aimed at covering obligations outside of the BIT[35] and should be interpreted to include contractual obligations.

[32] ibid [4].
[33] *SGS v Philippines* (Decision of the Tribunal on Objections to Jurisdiction) [2004] ICSID Case No.ARB/02/6 [120]; *Ioan Micula v Romania* (Final Award) [2013] ICSID Case No.ARB/05/20 [413]-[415]; *SGS. v Paraguay* (Decision on Jurisdiction) ICSID Case No.ARB/07/29 [170].
[34] *SGS v Pakistan* (Decision of the Tribunal on Objections to Jurisdiction) [2003] ICSID Case No.ARB/01/13 [164].
[35] Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (2nd edn, OUP 2012) 255.

23. An umbrella clause may be interpreted pursuant to Article 31 of VCLT[36] as having the effect of elevating a breach of contract to a treaty claim.[37] The wording, object, and purpose of the BIT are considered to determine whether it was intended for the clause to apply to contractual obligations.[38] Here, the use of mandatory phrasing 'shall fulfill' in contrast to 'shall guarantee the observance' seen in narrowly interpreted umbrella clauses, [39] strongly suggests that a BIT obligation arises from Article 25. This interpretation supports the object of the BIT stated in the preamble, namely to have 'a stable framework for investment [that] will maximize effective utilisation of economic resources and improve living standards'. [40] By elevating the Party's contractual obligations that are related to investment to a BIT obligation, Article 25 ensures the Party's commitment of creating a stable legal framework for investment in its territory. A restrictive interpretation would 'deprive the investor of any internationally secured legal remedy' for their investment contracts.[41]

24. Additionally, clauses similar to Article 25 are sufficiently certain, and its narrow scope avoids any risk of floodgate litigation.[42] The clause is limited to 'obligations … assumed with regard to investments'.[43] Here, the Respondent contracted to exempt the Claimant's investment from the relevant licensing and safety laws. This obligation had been assumed specific to investments, and it is reasonable for the fulfillment of such obligation to be

[36] VCLT (n 6).
[37] *Noble Ventures* (n 26) [46].
[38] ibid [48]; *SGS v Pakistan* (n 34) [164].
[39] *SGS v Pakistan* (n 38) [166]-[171].
[40] Moot (n 1) BIT Preamble.
[41] *Noble Ventures* (n 26) [52].
[42] *SGS v Pakistan* (n 38) [164].
[43] Moot (n 1) Article 25 of the BIT.

protected under Article 25.

25. Additionally, the Lease Agreement entered by the Respondent and Ezkar-Vert is also an obligation 'with regard to investment' as it was entered into to provide an office premise to accommodate local operations by the Claimant's investment enterprise.[44]

26. Obligations under the V-M Agreement had been breached by the imposition of Trunk PH Law.[45] The Respondent is thus liable under Article 25 for imposing the PH Trunk Law.

27. The Respondent's failure to return the deposit of $75,000 is a contractual breach of the Lease Agreement, an investment. The breach should be elevated to a breach of its obligation pursuant to Article 25. Therefore, the Respondent's failure to fulfill its various contractual obligation breaches Article 25.

C. THE CLAIMANT CAN INVOKE ARTICLE 25 EVEN IF THE CLAIMANT AND THE RESPONDENT ARE NOT CONTRACTING PARTIES OF THE AGREEMENTS

28. While the Claimant accepts that the Agreements were entered into by the Claimant's subsidiary and V-M, Article 25 applies to contracts concluded by the investor's subsidiary with a legal entity separate from the State.

29. Where the obligation was entered 'with regard to investments', an undertaking by the host

[44] ibid [17].
[45] ibid [14].

State with a subsidiary is included under the umbrella clause.[46] The Claimant is thus able to rely on the V-M Agreement's obligations given that its subsidiary, EZKar-Vert, was a party to the contract.

30. Cases that conclude otherwise can be distinguished given the tribunals' lack of reasoning,[47] or a lack of an investment agreement with the investor's subsidiary.[48] It is common for the subsidiary company to act pursuant to the direction of the parent company, with the parent company as the ultimate beneficiary. It is thus reasonable for the Claimant to be allowed to invoke the clause, as majority shareholder of EZKar-Vert and the ultimate beneficiary of the V-M Agreement. The Lease Agreement was also entered into to provide an office premise to accommodate the Claimant's local operation.[49] The Claimant is thus allowed to rely on Article 25 to elevate its contractual claims.

31. Additionally, the fact that the Respondent did not contract in its own name does not preclude the Claimant's claim. The proposition that BIT obligations may not be imposed on the State for contracts entered into by separate legal entities from the State[50] should not be followed. This would heavily disadvantage investors and render Article 25 superfluous. In upholding the purpose of Article 25, and protecting investors under the BIT, the Claimant should be allowed to pursue its claim under Article 25.

[46] *Continental Casualty v Argentina* (Award) [2008] ICSID Case No.ARB/03/9 [297].
[47] *Siemens A.G. v Argentina* (Award) [2007] ICSID Case No.ARB/02/8 [204].
[48] *El Paso Energy v Argentina* (Award) [2011] ICSID Case No.ARB/03/15 [531] and [533].
[49] Moot (n 1) [17].
[50] *Impregilo v Pakistan* (Decision on Jurisdiction) [2005] ICSID Case No.ARB/03/3 [223].

III. THE RESPONDENT CANNOT DENY THE BENEFITS OF THE BIT TO THE CLAIMANT PURSUANT TO ARTICLE 17 OF THE BIT

32. The Respondent is unable to rely on Article 17 to deny the benefits of the BIT to the Claimant and avoid its BIT obligations.

33. Article 17 allows the State to deny benefits of the BIT to the investor of a Party if the investor is an enterprise and persons of a non-Party own or control the investor. If fulfilled, the Tribunal has no jurisdiction to hear substantive claims under the BIT.[51]

34. On the present facts, however, Article 17 is not applicable given that the Claimant is not 'owned or controlled by persons of a non-Party'.[52] The Claimant is, as an investor and an enterprise of Sanphancisco, not controlled by any persons of a non-Party to the BIT. Thus, the Respondent cannot rely on Article 17 to deny the benefits of the BIT to the Claimant.

[51] Dolzer/Schreuer (n 35) 55.
[52] Moot (n 1) Article 17 of the BIT.

ARGUMENTS ON MERITS

I. THE RESPONDENT HAS BREACHED ITS OBLIGATION TO PROVIDE FAIR AND EQUITABLE TREATMENT AND FULL PROTECTION AND SECURITY

35. The Respondent is obliged to accord fair and equitable treatment ('**FET**') and full protection and security ('**FPS**') to the Claimant's pursuant to Article 5. However, the Respondent's enactment of the Trunk PH Law and removal of tax benefits were contrary to the FET standard. The Respondent's unreasonably delayed response to the violent protests had also caused substantial damage to the Claimant's assets, and breached its obligation to provide FPS to the Claimant. Therefore, the Respondent had violated Article 5.

A. THE RESPONDENT FAILED TO ACCORD FAIR AND EQUITABLE TREATMENT TO THE CLAIMANT PURSUANT TO ARTICLE 5 OF THE BIT

36. The Respondent is obliged to accord FET, which entails according due process, imposing reasonable laws, and fulfilling the Claimant's legitimate expectations. A breach of any of the above would lead to the conclusion that FET was not accorded.[53] The Respondent had breached its obligations to accord FET by failing to accord the Claimant with due process through the Vertese justice system. The Respondent had also acted in bad faith by passing unreasonable laws. Lastly, the Respondent's measures constituted a breach of the

[53] *Waste Management v Mexico ('Number 2')* (Award) [2004] ICSID Case No.ARB(AF)/00/3 [98].

Claimant's legitimate expectations. Therefore, by passing the Respondent's Laws, the Respondent has failed to accord FET under Article 5.

1. The Respondent failed to accord due process

37. A lack of due process is ground for finding a breach of FET where there is a judicial outcome that offends a sense of judicial propriety.[54] Tribunals will have regard to the manner the large verdict was construed by the judiciary.[55] In *Loewen v United States*, the tribunal found a lack of due process where a compensatory damage of $100 million was granted along with enhanced punitive damages award of $400 million.[56]

38. Presently, the manifestly excessive damages imposed on the Claimant breaches the Respondent's obligation to provide FET. $100 million in punitive damages was imposed on the Claimant for a mere $500,000 in damages. The difference between the compensatory damages and punitive damages is excessively disproportionate. The punitive damages are disproportionately unfair to EZKar-Vert for only failing to ensure its drivers held valid licenses, and were thus improper and discreditable. Therefore, the Respondent has failed to accord sufficient due process, and failed to accord FET.

[54] *Loewen v USA* (Award) [2003] ICSID Case No.ARB(AF)/98/3 [183].
[55] ibid [121].
[56] ibid [122].

2. The Respondent's Laws were unreasonable

39. The restrictive Taxation Regulations and the Trunk PH Law were unreasonable, amounting to a breach of FET pursuant to Article 5. A measure is unreasonable when it is arbitrary, meaning there is a manifest lack of justification. [57] Here, the Taxation Regulations and Trunk PH Law were unreasonable.

40. Presently, the Taxation Regulations were manifestly arbitrary since no reasons were offered for its imposition. [58] Similarly, the Trunk PH Law was unjustified. The Respondent only stated that the law was an attempt to 'restrict and regulate private-hire vehicle operators'.[59] This is evidently not a justification, but a factual description of the regulatory action. The Respondent cannot construe a simple description of what the regulatory action *is*, as a justification for the *purpose* of the law, since this would grant the Respondent unlimited advantage. Thus, the Trunk PH Law and Taxation Regulations are unreasonable and breached the FET standard.

3. The Respondent acted in bad faith

41. The Respondent acted in bad faith by enacting the Trunk PH Law to drive out the Claimant's investment. Bad faith is established where the State deliberately frustrates an

[57] *Ioan Micula* (n 33) [525]; *Glamis Gold v USA* (Award) [2009] UNCITRAL [817]; *Lauder v Czech Republic* (Final Award) [2001] UNCITRAL [232].
[58] Moot (n 1) [14].
[59] ibid [14c].

investment by improper means.[60]

42. Presently, acts conducted by the Trunk Administration were for the purposes of frustrating the Claimant's investment. The Trunk Administration had publicly announced that it was against foreign investments, proclaiming that '[n]ow is the time to take it all back'[61] The Trunk Administration was also heavily funded by taxi conglomerates that were strongly against the Claimant's investment, and would greatly benefit from the Trunk PH Law.[62] It is evident that the Trunk PH law was enacted to remove the Claimant's investment in favour of the local taxi conglomerates who supported President Trunk. Thus, the Respondent has, by targeting the Claimant's investment through the Trunk PH Law, acted in bad faith.

4. The Respondent breached the Claimant's legitimate expectations

43. The Respondent's representations gave rise to the Claimant's legitimate expectations of operating with ease amidst a stable framework, which the Claimant has relied on. These expectations were subsequently breached.

44. Under FET, the Respondent is obliged to fulfil the Claimant's legitimate expectations that were relied on.[63] First, legitimate expectations arise from the State undertaking a

[60] *Waste Management* (n 53) [138]; *Frontier Petroleum v Czech Republic* (Final Award) [2010] UNCITRAL [300].
[61] Moot (n 1) [12].
[62] ibid [14].
[63] *Tecmed, S.A. v Mexico* (Award) [2003] ICSID Case No.ARB (AF)/00/2 [154].

specific legal obligation by contract,[64] and from circumstances surrounding the investment.[65] Further, an investor can legitimately expect certain general stability of the legal and business environment surrounding the investment.[66] Here, the Claimant had legitimate expectations of being able to operate with ease within a stable business environment in Vertland. The Respondent made specific assurances to the Claimant in the V-M Agreement, promising that the Claimant could conduct its operations within Vertland with ease for 10 years.[67] Further, the preamble of the BIT emphasised the importance of a stable framework for investors.[68] Therefore, the Claimant's expectation of stability and ease of operation was legitimate.

45. Second, the investor must have relied on the legitimate expectations.[69] The Claimant has relied on the representation when they made their investment by expanding its operations and opening office premises in Vertland following the conclusion of V-M Agreement.[70]

46. Third, legitimate expectations are breached if new measures affect the expectation beyond an acceptable margin of change.[71] The Respondent did not keep its promise by enacting the Trunk PH Law, which prevented the Claimant from conducting its operations with ease. The Respondent had banned the use of geolocation software, which is critically important in private-hire operations. It also prohibited 'distance-pricing',

[64] *Total S.A. v Argentina* (Decision on Liability) [2010] ICSID Case No.ARB/04/01 [117].
[65] *Parkerings-Compagniet AS v Lithuania* (Award) [2007] ICSID Case No.ARB/05/8 [331].
[66] ibid [333].
[67] Moot (n 1) [4].
[68] ibid BIT Preamble.
[69] *Waste Management* (n 53) [98]; *Glamis Gold* (n 57) [620].
[70] Moot (n 1) [17].
[71] *El Paso* (n 48) [402].

forcing the Claimant to adopt other less accurate pricing plans.

47. Additionally, the Taxation Regulations have destabilised the Claimant's investment regime. Previously, the Claimant was operating in legal and business environment at the time of investment that guaranteed a 50% tax rebate for 10 years.[72] Now, the Claimant is prematurely deprived of 2 years' worth of tax rebates, and is forced to pay back 10 years of rebates. Thus, the environment in which the Claimant had been operating in has substantially changed. This violated the Claimant's legitimate expectations of stability and ease of operation.

48. In sum, the Respondent's Laws are unreasonable. Additionally, the Trunk PH Law and Taxation Regulations were enacted in bad faith and violated the Claimant's legitimate expectation. Therefore, the Respondent failed to uphold its promise under Article 5.

B. THE RESPONDENT FAILED TO PROVIDE FULL PROTECTION AND SECURITY TO THE CLAIMANTS PURSUANT TO ARTICLE 5 OF THE BIT

49. Even if the treatment accorded was fair and equitable, the Respondent breached an obligation to provide FPS with respect to the Claimant's physical assets, pursuant to Article 5. A host State violates this standard when it fails to take the necessary measures of precaution to prevent the damage to the investment.[73] This can take the form of a

[72] Moot (n 1) [2] and [4].
[73] *Wena Hotels v Egypt* (Award) [2000] ICSID Case No.ARB/98/4 [84].

failure to provide police protection.[74]

50. The Respondent failed to take the necessary measures to protect EzKar-Vert's property during the protests. As protests against foreign companies were becoming more frequent since the nationalist fervour in 2010,[75] the police should have been vigilant and wary of possible protests turning violent. It would be necessary for the police to attend to distress calls promptly and without unreasonable delay. However, they have evidently failed to do so during the protests at EZKar-Vert building as the police only came 'late in the evening' despite repeated calls.[76] Even if the Respondent's police may be preoccupied with other protests, the fact that this particular protest involved bricks and flares unlike other protests evinced the grave danger posed to the Claimant.[77] The egregious delay in police protection for this violent protest resulted in significant damage and looting to the Claimant's property.[78] The Respondent had failed to provide reasonable police protection and had breached its obligations pursuant to Article 5.

II. THE RESPONDENT HAS BREACHED ITS OBLIGATION TO ACCORD NATIONAL TREATMENT

51. Pursuant to Article 3, the Party has an obligation pursuant to Article 3 to not differentiate between foreign investors and domestic investors. This promotes equal treatment

[74] *OAO Tatneft v Ukraine* (Award on the Merits) [2014] UNCITRAL [428]-[430].
[75] Moot (n 1) [12].
[76] ibid [13].
[77] ibid.
[78] ibid.

between foreign investor and nationals.[79] However, the Respondent, in implementing the Trunk PH Law and the Environmental Regulations, has accorded less favourable treatment to the Claimant and its investment. The Respondent has thus breached its obligation to provide national treatment pursuant to Article 3.

52. There are three requirements to constitute a breach of an obligation to provide national treatment: [80] First, the foreign investor and domestic investor must be placed in 'like circumstances'. Second, the treatment accorded to the foreign investor is not as favourable as that accorded to domestic investors. Third, the differentiation in treatment must be unjustified.

A. THE CLAIMANT AND LOCAL TAXI COMPANIES WERE PLACED IN LIKE CIRCUMSTANCES

53. It is necessary to show that the foreign investor and the domestic investor are in like circumstances.[81] The Claimant and domestic investors were placed in like circumstances in this case. In particular, the Claimant's investment concerns private ride-hailing services. The Claimant should thus be compared with other businesses providing ride-hailing services, such as the local Vertese taxi companies.

54. In determining whether the foreign investor and domestic investor are in comparable

[79] Dolzer/Schreuer (n 35) 198.
[80] Dolzer/Schreuer (n 35) 199; *United Parcel Service of America v Canada* (Award) [2007] ICSID No. UNCT/02/1 [83].
[81] Dolzer/Schreuer (n 35) 200.

circumstances, the relevant comparator is generally construed widely, and may vary from case to case.[82] 'Like circumstances' is broadly defined to refer to the same businesses,[83] the same sectors of activity,[84] the same economic or business sector, or even companies that are engaged in the same activity even if encompassing different sectors. [85]

55. There are no local private hire companies to be used as a closer comparator with the Claimant. The severe impact on the taxi industry by the entry of EZKar-Vert[86] implies that the private hire business model was novel and that there were few, if any, existing local private hire services in Vertland.

56. Presently, EZKar-Vert's business model involves the same customer base as the local taxi drivers. Both EZKar-Vert's private hire service and local taxis transport customers who hail their vehicles down. They can be therefore said to be in the same business, or at the very least in the same sector. Even if local private hire companies are present, the appropriate comparator still includes taxis as a companies engaging in the same activity.

57. Thus, the Claimant and the local taxi companies are in 'like circumstances' and the first requirement to find a breach of national treatment is met.

[82] *Marvin Roy Feldman Karpa v Mexico* (Award) [2002] ICSID Case No.ARB(AF)/99/1 [171].
[83] ibid.
[84] *Occidental Petroleum v Ecuador* (Final Award) [2004] ICSID Case No.ARB/06/11 [173].
[85] *SD Myers v Canada* (First Partial Award) [2000] UNCITRAL [250].
[86] Moot (n 1) [9].

B. THE CLAIMANT WAS TREATED LESS FAVOURABLY THAN DOMESTIC INVESTORS

58. Second, the treatment must be discriminatory insofar as the foreign investor is treated less favourably than local investors.[87] Differentiation need not be motivated by nationality.[88]

59. Presently, the Trunk PH Law negatively affects EZKar-Vert's private hire business, but not the local taxi industry. Differentiating measures are clearly present. By implementing the Trunk PH Law, private hire businesses are prevented from providing services that use geolocation software and charge by distance. In contrast, local taxi companies retain the opportunity to use geolocation software and charge by distance, and their business model remains unaffected. Taxis are thus treated more favourably.

60. Similarly, the Environmental Regulations treat private hire businesses less favourably by imposing special fees on private cars purchased. This discourages potential purchasers of private cars, and reduces the number of potential drivers that private hire business can employ. However, these fees do not apply to cars purchased for use as taxis,[89] and leave taxi companies unaffected in their ability to employ potential drivers. The taxi companies are thus treated more favourably as compared to the Claimant.

[87] *Lauder* (n 57) [220]; *Marvin Roy* (n 82) [173].
[88] *International Thunderbird Gaming v Mexico* (Award) [2006] UNCITRAL [177].
[89] Moot (n 1) [14c].

C. THE RESPONDENT'S DISCRIMINATION WAS UNJUSTIFIED

61. Third, for the differentiation to breach the national treatment standard, the differentiating measure must be unjustified.[90] There is no justification for the differentiation in treatment between local taxi companies and EZKar-Vert.

62. Differentiations are justifiable if rational grounds are shown[91] or the justification is expressly provided for in the BIT.[92] This would better uphold the purpose of an obligation, and protect investors from being disadvantaged.[93] Presently, no rational grounds are stated for the Trunk PH Law and Taxation Regulations. Furthermore, the Trunk PH Law's differentiation based on the need to restrict and regulate private-hire vehicle operators is not stated in the BIT. Thus, there is insufficient justification.

63. The Environmental Regulations differentiate based on a need to control carbon-emissions, which may fall under an exception for environmental laws within the BIT.[94] However, there must be a reasonable nexus between the measures and the justification.[95] Presently, wanting to control carbon-emissions in Vertland does not bear a reasonable nexus to imposing restrictions only on new private cars purchased. It is not reasonable for the measure to differentiate between private cars and cars purchased for use as taxis, as

[90] Dolzer/Schreuer (n 35) 202.
[91] Rudolph Dolzer 'Generalklauseln in Investitionsschutzverträgen' *Negotiating for Peace, Liber Amicorum Tono Eitel* (Springer-Verlag Berlin 2003) 296–305.
[92] *United Parcel* (n 80) [156]; *Occidental* (n 84) [167].
[93] *Occidental* (n 84) [175]-[176].
[94] Moot (n 1) Article 12 of the BIT.
[95] *Pope & Talbot v Canada* (Award on the Merits of Phase 2) [2001] UNCITRAL [79]; Andrew Newcombe and Lluis Paradell, *Law and Practice of Investment Treaties* (Kluwer Law International 2009) 177; *GAMI Investments v Mexico* (Award) [2004] UNCITRAL [114].

both types of vehicles would produce the same amount of carbon-emissions. This justification is thus insufficient for exempting the Respondent from a breach of duty to accord national treatment.

64. Even if the Respondent seeks to justify the Respondent's Laws by citing the object of curbing civil unrests and protectionist intent, the means by which they do so has to be legitimate. The means employed for protectionism cannot result in domestic investors having a disproportionate benefit resulting in an adverse effect on foreign investors.[96] An adverse effect can be found where the measure prevents foreign investors from operating.[97] The Respondent's Laws resulted in a disproportionately adverse effect on the Claimant as it prevented them from being able to effectively operate within Vertland. Hence, the Respondent is not fulfilling their policy aims legitimately, and cannot justify the differentiating treatment towards the Claimant.

65. In conclusion, the Respondent has differentiated between local taxi companies and the Claimant, who are both in like circumstances. There is no justification for the Respondent's differential treatment of the Claimant and its investment. The Respondent has thus breached its obligation to provide national treatment pursuant to Article 3.

[96] *SD Myers* (n 85) [252].
[97] ibid [255].

III. THE RESPONDENT HAS BREACHED ITS OBLIGATION TO NOT EXPROPRIATE

A. THE RESPONDENT'S LAWS AND THE JUDGEMENT CONSTITUTE UNLAWFUL EXPROPRIATION AGAINST THE CLAIMANT'S INVESTMENT PURSUANT TO ARTICLE 6 OF THE BIT, AND THE CLAIM IS NOT PRECLUDED BY ARTICLE 12 OF THE BIT

66. The Respondent's Laws amount to indirect expropriation. The expropriation is unlawful because the Respondent's actions do not fulfill the requirements as laid out in Article 6. The Claimant is not barred by Article 12 or Article 21 in pursuing expropriatory claims regarding the Taxation Regulations and the Environmental Regulations respectively. At any rate, the remaining measures are sufficient to constitute indirect expropriation.

67. Therefore, the Claimant is entitled to compensation for the losses suffered as a result of the Respondent's unlawful expropriation.

1. The Respondent indirectly expropriated the Claimant's investment

68. The Respondent's acts constitute an indirect expropriation of the Claimant's investment because their laws substantially deprive the Claimant of the economic benefit of its investment. The Respondent's Laws and Judgment do not fall within the 'police power

exception', but are unlawful expropriation pursuant to Article 6.

(a) The Trunk PH Law and the Judgment expropriated the Claimant's contractual rights

69. The Claimant's contractual rights under the V-M Agreement exempt EZKar-Vert from licensing laws otherwise applicable to transport services within Vertland. The imposition of licensing laws through the Trunk PH Law and enforcement of licensing laws through the Judgment constitute an expropriation of the Claimant's contractual rights. Therefore, the $100 million punitive damages, $500,000 damages, and cost of licensing are costs flowing from the breach of the Claimant's contractual right, and reflect the substantial sum expropriated from the Claimant.

70. In determining expropriation, the question is whether the State had, in terminating the contract, exercised its sovereign powers rather than acted as an ordinary contracting party.[98]

71. First, the Trunk PH Law had imposed licensing requirements on the Claimant, which effectively removed the Claimant's contractual right to be exempted from licensing laws. It required private hire-vehicle operators, such as the drivers employed by EZKar-Vert, to apply for and obtain the necessary licenses. In enacting and imposing the law, the Respondent cannot be said to be acting as a contractual counterparty. The imposition of the Trunk PH Law is thus an exercise of sovereign powers.

[98] *Crystallex v Venezuela* (Award) [2016] ICSID Case No.ARB(AF)/11/2 [692]; *Impregilo* (n 50) [278].

72. Second, the Vertese court has expropriated the Claimant's contractual rights, by finding the Claimant liable in failing to ensure valid licenses. By passing the Judgment, the Respondent was exercising the judicial functions of the state and not acting as a contractual counterparty. The Judgment constitutes a breach of the Respondent's obligation under the V-M Agreement to exempt the Claimant from licensing, and involved the use of sovereign power.

73. Thus, the Respondent was exercising sovereign powers with respect to both the Trunk PH Law and the Judgment, and had expropriated the Claimant's contractual rights.

(b) The Respondent's Laws expropriated the Claimant's investment

74. The Respondent's Laws amount to indirect expropriation. Indirect expropriation requires a 'substantial deprivation' of the economic use and enjoyment of the Claimant's investment, which involves a question of the severity of the economic impact and the duration of that impact.[99] The standard for 'substantial deprivation' requires that the affected property is impaired to the extent that it must be seen as 'taken',[100] or a 'sterilising of the enterprise'.[101] This is ultimately a fact-sensitive exercise.[102]

75. The Respondent's Laws have substantially deprived the Claimant of the economic benefit

[99] *Pope & Talbot* (n 95) [102].
[100] *Glamis Gold* (n 57) [357] citing *GAMI* (n 95) [126].
[101] *Waste Management* (n 53) [160].
[102] *Crompton (Chemtura) v Canada* (Award) [2010] UNCITRAL [249] and [259].

of its investment. The Taxation Regulations had retroactively reversed the Respondent's tax policy since 2005, and required the Claimant to pay eight years' worth of tax rebates.[103] The Claimant's investment initially enjoyed favourable tax policies as part of its economic benefit, as evinced by the 'hugely successful' policies[104] and 50% tax rebate.[105] The Taxation Regulations have deprived the Claimant of significant economic benefit that it had gained, by retroactively demanding all of the taxation rebates from the Claimant's entrance into the Vertese market in 2007.

76. The Environmental Regulations imposed a special fee for all new private car purchases, resulting in an increase in costs for all potential private-car owners, including potential EZKar-Vert drivers. This decreases EZKar-Vert's revenue, and negatively impacts the Claimant's investment. Although not all new private car-owners will join a private-ride hailing company, additional fees still impact the Claimant's investment.

77. Trunk PH Law required private-hire vehicles services to obtain licenses, prohibits private-hire vehicles other than taxis from charging customers on the basis of distance travelled, and prohibits the use of geolocation software by private-hire vehicles. This cripples EZKar-Vert's business operations and removes its competitive advantage. EZKar-Vert's use of geo-location software and a 'distance-charging' price model gives customers freedom to choose EZKar-Vert's services instead of being restricted to

[103] Moot (n 1) [14a].
[104] ibid [2].
[105] ibid [14a].

available taxis, and provides an alternative transport that does not charge arbitrarily.[106] By prohibiting 'distance-charging' and the use of geolocation software, the Trunk PH Law severely impacts EZKar-Vert's competitive advantage and its expected future earnings.

78. In conclusion, each of the Respondent's laws has substantially deprived the Claimant of its investment as it made operations by the Claimant in Vertland unviable. Even if each measure does not constitute expropriation in isolation, a succession of measures that have the collective effect of dispossessing the investor may amount to creeping expropriation, which is present here.[107] The Respondent's Laws and the Judgement collectively considered constitute creeping expropriation.

2. The Respondent's Laws do not fall under the 'police power exception'

79. The Respondent's Laws do not fall under the 'police power exception' and the Respondent has the obligation to compensate the Claimant.

80. The 'police power exception' is established in customary international law, and exempts States from paying compensation for expropriation where the State has acted in the normal exercise of their regulatory powers.[108] To invoke the 'police power exception', the State must exercise its powers for the purpose of protecting the public welfare. In

[106] Moot (n 1) [3].
[107] *Oxus Gold plc v Uzbekistan* (Award) [2005] UNCITRAL [740].
[108] *Saluka v Czech Republic* (Partial Award) [2006] UNCITRAL [255].

addition, the regulation has to be adopted in a non-discriminatory manner,[109] and the means employed must be proportionate to its purported aim.[110] A failure to meet any of the requirements prevents the Respondent from invoking the 'police power exception'.

(a) The Respondent's Laws were not enacted for the purposes of public welfare

81. First, the Respondent was not exercising its regulatory powers for the purpose of protecting the public welfare when enacting the Environmental Regulations. 'Public welfare' has been limited to specific regulatory spaces, such as taxation and health.[111]

82. Tribunals have recognised that environmental regulations do not fall within the 'police power exception'.[112] This is supported by Article 12's declaratory nature. Article 12(1) - (3) all begin with the declaratory statement that 'the Parties recognise' the importance of their Environmental Regulations. Taken at its highest, Article 12 merely ensures that the Respondent does not waive or derogate from the Environmental Regulations to encourage foreign investment. It does not allow the Respondent to invoke the 'police power exception' for the Environmental Regulations, and be exempted from its Article 6 obligations to not expropriate.

[109] ibid [255].
[110] *Philip Morris. v Uruguay* (Award) [2016] ICSID Case No.ARB/10/7 [305]; *Azurix. v Argentina* (Award) [2006] ICSID Case No.ARB/01/12 [311].
[111] *Santa Elena v Costa Rica* (Award) [2000] ICSID Case No.ARB/96/1[7]; *Tecmed* (n 63) [121].
[112] *Santa Elena* (n 111) [7]; *Tecmed* (n 63) [121].

83. Article 12 adopts the same wording as Article 12(1)-(4) of the US Model BIT.[113] However, the present BIT has omitted Article 12(6) and Annex B of the US Model BIT, which specify the substantive effect of breaching Article 12 of the US Model BIT. Article 12(6) of the US Model BIT expressly states that a breach of Article 12 requires parties to refer to 'consultations',[114] while Annex B of the US Model BIT clarifies that non-discriminatory environmental regulations do not constitute indirect expropriation.[115] By deliberately omitting Article 12(6) and Annex B, the Parties clearly intended for Article 12 to be declaratory in nature. Thus, Article 12 does not establish that environmental laws fall under the 'police power exception'. As such, the Respondent is still subject to compensation for their environmental regulations.

(b) The Respondent's Laws were discriminatory

84. Second, the Respondent's Laws were discriminatory given the difference in treatment between foreign and domestic investors. A State violates the principle of non-discrimination where it has discriminated against foreign nationals by according different treatments on the basis of their nationality.[116]

85. The Environmental Regulations were discriminatory given that the laws only apply to private vehicles. If the objective is to control carbon-emissions, non-private vehicles that

[113] 2012 US Model Bilateral Investment Treaty, Article 12(1) - 12(4) <available at https://www.state.gov/documents/organization/188371.pdf> [accessed 10 May 2017].
[114] ibid Article 12(6) of the BIT.
[115] Chester Brown, Kate Miles *Evolution in Investment Treaty Law and Arbitration* (Cambridge University Press 2012) 565.
[116] *Methanex v USA* (Final Award of the Tribunal on Jurisdiction and Merits) [2005] UNCITRAL [7]; *ADC v Hungary* (Award) [2006] ICSID Case No.ARB/03/16 [441]-[443].

produce the same amount of carbon-emissions should also be treated the same. The law effectively reduces the pool of drivers for foreign private-hire companies such as EZKar-Vert. EZKar-Vert is likely the predominant private-hire company in Vertland, as evinced by the initially heavy reliance on taxis for transportation and the subsequent rapid adoption rate of the Claimant's business model.[117] Any measure that reduces the size of the pool of drivers is tantamount to reducing the size of the pool of drivers for EZKar-Vert.

86. Taxation Regulations were discriminatory as the retrospective laws are not applied to local companies investing in Vertland. By reversing its tax policy retroactively since 2005 for all foreign companies, the Respondent discriminated foreign investors. It is unpersuasive for the Respondent to argue that removing the tax rebate places the foreign and domestic investor on equal footing. Whether the Taxation Regulations are discriminatory must be evaluated against its context. At the time of investing, the foreign investors would not have anticipated a retrospective demand of a decade's worth of the tax rebate. The sudden and unexpected demand would be disproportionately prejudicial to foreign investors.

87. The Trunk PH Law was discriminatory as it treated private-hire vehicles differently from taxis. The taxi industry is locally owned, whereas the private-hire industry is predominantly owned by foreign investors as established above.[118] In substance, the Trunk PH Law treats local taxi companies differently from foreign-owned private-hire

[117] Moot (n 1) [7].
[118] n [85].

companies, and is thus discriminatory in nature. Cumulatively, the Respondent's Laws were likely passed to take all jobs taken by foreigners back to the Vertese citizens,[119] discriminating against the Claimant. The Respondent's Laws are therefore discriminatory.

(c) The Respondent's Laws were disproportionate to the aims

88. Third, the Respondent's Laws were not proportionate. Tribunals have found proportionality to be lacking if investors concerned bear an 'individual and excessive burden'.[120] Given that the resulting effect of the Respondent's Laws was that all of its competitive advantage was eroded, leading it to the collapse its investment, an excessive burden was placed on the Claimant such that the Respondent's Laws are not proportionate.

89. As the Respondent's Laws were discriminatory and disproportionate, the Respondent cannot rely on the 'police power exception' to exempt itself from compensating the Claimant.

3. The Respondent's expropriation was unlawful

90. The Respondent's expropriation was unlawful as the requirements under Article 6 are not

[119] Moot (n 1) [12].
[120] *Azurix* (n 110) [311]; *Philip Morris* (n 110) [295]; *Tulip Real Estate and Development Netherlands B.V. v Turkey* (Decision on Annulment) [2015] ICSID Case No.ARB/11/28 [91].

satisfied. Compensation for lawful expropriation is the 'just price of what was expropriated'.[121] In contrast, unlawful expropriation requires reparation that wipes out all the consequences of the illegal act.[122]

91. A failure to satisfy even one requirement under Article 6 amounts to unlawful expropriation. The Respondent's Laws and Judgment were not carried out (1) for a public purpose, (2) in a non-discriminatory manner, (3) on adequate and prompt compensation, and (4) in accordance with due process of law and Article 5.

92. The Respondent's Laws and Judgment are discriminatory and not in accordance with due process, as established above.[123] The Respondent did not provide compensation for the expropriation. When an expropriation is not accompanied by any compensation, it is unlawful.[124]

93. The Respondent's Laws have not been adequately justified by a public purpose. A State must provide evidence that its actions were for a public purpose,[125] and a mere reference to its regulatory intent is insufficient.[126] The Taxation Regulations were implemented

[121] UNCTAD, 'Expropriation UNCTAD Series II' [2012] 111-112; *The Factory at Chorzów (The Merits) (Germany v Poland)* [1928] PCIJ, Series A, No. 17, 47.
[122] UNCTAD-Expropriation (n 121) 111-112; *Chorzow* (n 121) 47.
[123] n [81]-[84], [34]-[35].
[124] *Metalclad v Mexico* (Award) [2000] ICSID Case No.ARB(AF)/97/1 [111]-[112].
See also *ADC* (n 116) [398] and [444]; *Burlington Resources v Ecuador* (Decision on Liability) [2012] ICSID Case No.ARB/08/5 [543].
[125] *ADC* (n 116) [432]; *Reinhard Hans Unglaube v Costa Rica* (Award) [2012] ICSID Case No.ARB/09/20 [203]-[205]; *Vestey Group v Venezuela* (Award) [2016] ICSID Case No.ARB/06/4 [296].
[126] *ADC* (n 116) [432]; *Reinhard* (n 125) [203]-[205]; *Marion Unglaube v Costa Rica* (Award) [2012] ICSID Case No.ARB/08/1.

without any express justification.[127] Additionally, the Respondent's mere reference to concerns of carbon-emission for the Environmental Regulations[128] and its need to regulate private-hire cars for the Trunk PH Law[129] were insufficient. A simple description of what the regulatory action *is* cannot be a justification for the *purpose* of the law. Thus, the Respondent's Laws were not imposed for a public purpose.

94. As the Respondent failed to fulfil the four requirements in Article 6, and the Respondent's acts were expropriatory, the Respondent is liable for breaching its obligations pursuant to Article 6.

B. THE CLAIMANT CAN CLAIM EXPROPRIATORY TAXATION REGULATIONS NOTWITHSTANDING ARTICLE 21 OF THE BIT

95. Article 21 prevents an investor from bringing expropriatory claims concerning taxation measures unless the investor had first referred the issue to competent tax authorities.[130] However, the Respondent cannot rely on Article 21 given that the Taxation Regulations do not constitute 'taxation' within the meaning of Article 21.

96. A measure constitutes tax if it fulfils four requirements.[131] First, there is a taxation law. Second, the measure imposes liability on classes of persons. Third, payment to the State

[127] Moot (n 1) [14a].
[128] ibid [14b].
[129] ibid [14c].
[130] Moot (n 1) Article 21 of the BIT.
[131] *Murphy Exploration and Production Company International v. Republic of Ecuador (Award on Jurisdiction)* [2010] ICSID Case No. ARB/08/4 [178].

is required. Fourth, the measure was for public purposes.

97. The fourth limb is not made out presently. A measure that imposes an obligation to pay money to the State without any proper justification does not satisfy the public purpose requirement.[132] A State must still provide evidence to justify that its actions are in the public interest.[133] No express justification had been given for the imposition of the Taxation Regulations.[134]

98. Since the Taxation Regulations were unjustified and not for public purpose, it does not constitute 'taxation' within the meaning of Article 21. The Respondent cannot rely on Article 21 to bar the Claimant from bringing an expropriatory claim in taxation.

REQUEST FOR RELIEF

99. In light of the above submissions, the Claimant respectfully requests that the Tribunal find that:

(a) Jurisdiction has been established;

(b) The Respondent has breached its obligations pursuant to Article 5, Article 3, Article 6 and Article 25 of the BIT;

(c) The Claimant is entitled to damages as compensation by the Respondent for breaching its obligations.

[132] *EnCana v Ecuador* (Partial Dissenting Opinion)[2005] UNCITRAL, LCIA Case No.UN 3481 [52].
[133] *ADC* (n 116) [433]; *Reinhard* (n 125) [203]-[205]; *Vestey* (n 125) [296].
[134] Moot (n 1) [14a].

100. Respectfully submitted by counsel on 15 June 2017.

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