

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

ISKANDAR SAFA AND AKRAM SAFA

Claimants

and

HELLENIC REPUBLIC

Respondent

ICSID Case No. ARB/16/20

DECISION ON JURISDICTION AND LIABILITY

Members of the Tribunal

Dr. Veijo Heiskanen, President
Mr. Klaus Reichert, Arbitrator
Professor Brigitte Stern, Arbitrator

Secretary of the Tribunal

Leah Waithira Njoroge

Date of dispatch to the Parties: 24 July 2020

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TABLE OF SELECTED ABBREVIATIONS AND DEFINED TERMS

1st ICC Arbitration or ICC1 Arbitration	ICC Case No. 18675/GZ/MHM/AGF/ZF/AYZ
2nd ICC Arbitration or ICC2 Arbitration	ICC Case No. 20215/AGF/ZF/AYZ
██████	████████████████████
Acts of Imputation	Greek administrative law Acts Nos. F.604.4/1443 S. 325 and F.604.4/1445 S. 327
ADM	Abu Dhabi Mar LLC
Archimedes Program	Program for the supply of three (plus one optional) new “class 214” submarines
BIT or Treaty	Agreement between the Lebanese Republic and the Hellenic Republic on the Promotion and Reciprocal Protection of Investments dated 24 July 1997 (entered into force on 17 July 1999)
C-[#]	Claimants’ Exhibit
CJEU	Court of Justice of the European Union
Cl. Mem.	Claimants’ Memorial on Jurisdiction, Admissibility and the Merits dated 30 October 2017
Cl. PHB	Claimants’ Post-Hearing Brief dated 9 August 2019
Cl. Rej.	Claimants’ Rejoinder on Preliminary Objections dated 1 March 2019
Cl. Reply	Claimants’ Counter-Memorial on Preliminary Objections and Reply on the Merits dated 19 December 2018
CL-[#]	Claimants’ Legal Authority
Commitment Letter	HSY’s commitment letter dated 27 October 2010
DCF	Discounted cash flow

EU	European Union
European Commission or Commission	European Commission
European Commission's Application	European Commission's application for leave to intervene as a non-disputing party dated 5 July 2018
European Commission's Observations	European Commission's observations filed pursuant to ICSID Arbitration Rule 37(2) on 5 October 2018
FET	Fair and equitable treatment
FPS	Full protection and security
Framework Agreement	Agreement between the Hellenic Republic, ADM, TKMS, HSY and HDW dated 18 March 2010
GNSH	Greek Naval Shipyards Holding S.A.
HDW	Howaldtswerke Deutsche Werft AG
Hearing	Hearing on Jurisdiction and Merits held from 25 March to 4 April 2019
HSY	Hellenic Shipyards S.A.
ICC1 Award	Award rendered in ICC Case No. 18675/GZ/MHM/AGF/ZF/AYZ on 29 September 2017
ICJ	International Court of Justice
ICSID Arbitration Rules	ICSID Rules of Procedure for Arbitration Proceedings April 2006
ICSID Convention	Convention on the Settlement of Investment Disputes Between States and Nationals of Other States dated 18 March 1965
ICSID or the Centre	International Centre for Settlement of Investment Disputes
IMF	International Monetary Fund

Implementation Agreement	Agreement between the Hellenic Republic, HSY, HDW, ADM and TKMS dated 30 September 2010
Logistics Holding	Logistics International Holding SAL
Logistics International	Logistics International SAL (Offshore)
Main Contracts	Reinstated contracts under the Archimedes and Neptune II Programs entered into between HSY and Ministry of National Defence of the Hellenic Republic
MF	MAN Ferrostaal AG
Military Decision	European Commission Decision E(2010)8274
Neptune II Program	Program for the modernization and repair of three existing “class 209” submarines
OSE	OSE S.A.
Privinvest Holding	Privinvest Holding SAL
Privinvest Shipbuilding	Privinvest Shipbuilding S.à.r.l. (later renamed Privinvest Shipbuilding SAL Holding)
R-[#]	Respondent’s Exhibit
Recovery Decision	European Commission Decision E(2008)3118
Resp. C-Mem.	Respondent’s Memorial on Preliminary Objections and Counter-Memorial on the Merits dated 30 April 2018
Resp. PHB	Respondent’s Post-Hearing Brief dated 9 August 2019
Resp. Rej.	Respondent’s Rejoinder on the Merits dated 1 March 2019
Resp. Reply	Respondent’s Reply on Preliminary Objections dated 1 February 2019
RL-[#]	Respondent’s Legal Authority
SATs	Sea Acceptance Tests

TFEU	Treaty on the Functioning of the EU
TKMS	ThyssenKrupp Marine Systems AG
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Tr. Day [#] [Speaker(s)] [page:line]	Transcript of the Hearing (as corrected by the Parties on 30 April 2019)
Tribunal	Arbitral tribunal constituted on 22 December 2016

I. INTRODUCTION

1. This case arises out of a dispute between Iskandar Safa and Akram Safa, natural persons having the nationality of Lebanon (the “**Claimants**”), and the Hellenic Republic (also the “**Respondent**” or “**Greece,**” and together with the Claimants, the “**Parties**”).
2. The dispute was submitted by the Claimants to the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”) on the basis of the Agreement between the Lebanese Republic and the Hellenic Republic on the Promotion and Reciprocal Protection of Investments dated 24 July 1997, which entered into force on 17 July 1999 (the “**Treaty**” or the “**BIT**”), and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966 (the “**ICSID Convention**”).
3. This dispute arises out of measures allegedly taken by the Hellenic Republic in relation to the Hellenic Shipyards S.A. (“**HSY**”), a company owning a shipyard located in Skaramangas, Greece, in which the Claimants are indirect shareholders.

II. PROCEDURAL HISTORY

4. On 14 June 2016, the Claimants filed with ICSID an electronic copy of the Request for Arbitration dated 10 June 2016 (the “**Request**”), without the accompanying exhibits. On 16 June 2019, ICSID received a hard copy of the Request, together with Exhibits C-1 through C-18 and Legal Authorities CLex 1 through CLex 20.
5. On 5 July 2016, the Secretary-General of ICSID registered the Request in accordance with Article 36(3) of the ICSID Convention and notified the Parties of the registration. In the Notice of Registration, the Secretary-General invited the Parties to proceed to constitute an arbitral tribunal as soon as possible in accordance with Rule 7(d) of ICSID’s Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings.

6. By letter dated 6 September 2016, the Claimants informed ICSID that they opted for the formula provided in Article 37(2)(b) of the ICSID Convention. In accordance with this provision, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party, and a presiding arbitrator appointed by agreement of the Parties.
7. On 12 September 2016, following appointment by the Claimants pursuant to Article 37(2)(b) of the ICSID Convention, Mr. Klaus Reichert (German/Irish) accepted his appointment as arbitrator.
8. On 28 September 2016, following appointment by the Respondent pursuant to Article 37(2)(b) of the ICSID Convention, Professor Brigitte Stern (French) accepted her appointment as arbitrator.
9. On 24 October 2016, the Claimants filed a request for the Chairman of the Administrative Council to appoint the arbitrator not yet appointed pursuant to Article 38 of the ICSID Convention.
10. On 22 December 2016, following appointment by agreement of the Parties, Dr. Veijo Heiskanen (Finnish) accepted his appointment as presiding arbitrator.
11. On 22 December 2016, the Secretary-General, in accordance with Rule 6(1) of the ICSID Rules of Procedure for Arbitration Proceedings (the “**ICSID Arbitration Rules**”), notified the Parties that all three arbitrators had accepted their appointments and that the Tribunal was therefore deemed to have been constituted on that date. The members of the Tribunal are: Dr. Veijo Heiskanen, a national of Finland, as President, appointed by agreement of the Parties; Mr. Klaus Reichert, a national of Germany and Ireland, appointed by the Claimants; and Professor Brigitte Stern, a national of France, appointed by the Respondent. Ms. Celeste Mowatt, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.
12. On 23 December 2016, the Claimants filed a proposal for disqualification of Professor Stern pursuant to Article 57 of the ICSID Convention and ICSID Arbitration Rule 9. As a result, the proceedings were suspended in accordance with ICSID Arbitration Rule 9(6).

13. On 23 December 2016, the Respondent was invited by Dr. Heiskanen and Mr. Reichert to submit a reply to the Claimants' disqualification proposal by 13 January 2017. The Parties were also informed of the procedural calendar for the disqualification proposal.
14. On 6 January 2017, further to the Respondent's letter of 5 January 2017, the deadline for the Respondent to submit its reply to the Claimants' disqualification proposal was extended to 16 January 2017. The procedural calendar for the disqualification proposal was revised accordingly.
15. On 16 January 2017, the Respondent filed observations on the proposal for disqualification.
16. On 23 January 2017, Professor Stern furnished explanations regarding the proposal for disqualification in accordance with ICSID Arbitration Rule 9(3).
17. On 6 February 2017, further to Dr. Heiskanen and Mr. Reichert's direction of 26 January 2017, the Claimants filed further observations on the proposal for disqualification.
18. On 7 March 2017, the proposal for disqualification of Professor Stern was declined by the co-arbitrators, and the proceedings were resumed pursuant to ICSID Arbitration Rule 9(6).
19. On 8 May 2017, in accordance with ICSID Arbitration Rule 13(1), the Tribunal held an in-person first session with the Parties in London.
20. Following the first session, on 15 May 2017, the Tribunal issued Procedural Order No. 1 recording the agreement of the Parties on procedural matters. Procedural Order No. 1 provides, *inter alia*, that the applicable ICSID Arbitration Rules would be those in effect from 10 April 2006, that the procedural language would be English, and that the place of proceeding would be London. Procedural Order No. 1 also set out the schedule for the jurisdictional and merits phase of the proceedings.
21. On 19 May 2017, an electronic copy of the Tribunal's Procedural Order No. 1 dated 15 May 2017, with a corrected version of the Procedural Timetable, was transmitted to the Parties.
22. In accordance with Procedural Order No. 1, on 30 October 2017, the Claimants filed a Memorial on Jurisdiction, Admissibility and the Merits, together with Exhibits C-0019

through C-0270, Legal Authorities CL-0027 through CL-0121, the Witness Statement of Mr. Iskandar Safa dated 26 October 2017, the Witness Statement of [REDACTED] dated 24 October 2017, the Legal Opinion of [REDACTED] dated 24 October 2017, the Legal Opinion of [REDACTED] dated 21 September 2017, the Expert Report of [REDACTED] and [REDACTED] (both Greek and English versions) dated 25 September 2017, the Expert Report of [REDACTED] and [REDACTED] dated 30 October 2017, together with Exhibits 4.1 to 8.6 and Appendices 1.1, 1.2, 4.1 – 4.8, 5.1 – 5.5, 6.1 – 6.10, 7.1 – 7.13 and 8.1 – 8.3.

23. On 14 December 2017, the Parties were informed that due to an internal redistribution of cases at the Centre, Ms. Geraldine Fischer, Legal Counsel, ICSID, would serve as Secretary of the Tribunal effective immediately in replacement of Ms. Mowatt.
24. On 15 February 2018, the Respondent informed the Tribunal that the European Commission (the “**European Commission**” or the “**Commission**”) had requested disclosure of certain parts of the Claimants’ Memorial that related to the implementation of the European Commission’s earlier decision for recovery of State aid and its implementation.
25. On 16 February 2018, further to the Claimants’ email, the Tribunal invited the Respondent to make any additional submissions it wished on the European Commission’s request by 19 February 2018. The Claimants were also invited to respond to any such additional submission by 22 February 2018.
26. On 19 February 2018, the Respondent sent a letter in response to the Tribunal’s invitation to provide additional comments.
27. On 22 February 2018, the Claimants filed a request for a procedural order on confidentiality, requesting that the Tribunal order the Respondent “not [to] disclose to the European Commission, whether directly or indirectly through any third Parties, any document or information submitted to the record of the current arbitration including Claimants’ Memorial dated 30 October 2017 as well as any other memorials, communications, pleadings, witness statements, expert reports and exhibits, or any summary, excerpt or excerpts thereof.”

28. On 23 February 2018, the Tribunal invited the Respondent to comment on the Claimants' request by 28 February 2018.
29. On 28 February 2018, the Respondent provided its reply objecting to the Claimants' request of 22 February 2018.
30. On 5 March 2018, in view of the impending hearing before the Court of Justice of the European Union ("CJEU"), the Tribunal communicated its decision to the Parties, rejecting the Claimants' Request for a Confidentiality Order and indicated that a reasoned decision would follow.
31. On 12 March 2018, further to its message of 5 March 2018, the Tribunal issued Procedural Order No. 2 concerning the Claimants' request of 22 February 2018.
32. Having considered the Respondent's submission of 23 March 2018 and the Claimants' submission of 28 March 2018, the Tribunal granted the Respondent an extension of time of two weeks to file its Memorial on Preliminary Objections and Counter-Memorial on Merits until 23 April 2018. The Tribunal further directed the Parties to confer and seek agreement on a revised timetable for the remainder of the proceedings.
33. On 20 April 2018, the Respondent requested a further extension of time, until 9 May 2018, to file its Memorial on Preliminary Objections and Counter-Memorial on the Merits.
34. Further to the request, on 21 April 2018, the Tribunal decided to suspend the Respondent's deadline fixed for 23 April 2018 and invited the Parties to confer and seek agreement on a revised timetable, and to revert to the Tribunal by 24 April 2018.
35. The Parties exchanged correspondence on this matter between 21 and 24 April 2018, but were unable to agree on a revised procedural calendar. The Claimants requested the Tribunal to decide on the matter, whereas the Respondent suggested that a hearing be held to discuss the matter further.
36. The Tribunal took note of the Respondent's request but considered that it was sufficiently briefed on the issue and did not find a hearing necessary in the circumstances.

37. On 25 April 2018, having considered the Parties' positions, the Tribunal fixed a revised procedural calendar.
38. On 1 May 2018, the Respondent filed a Memorial on Preliminary Objections and a Counter-Memorial on the Merits dated 30 April 2018, together with Exhibits R-0001 through R-0299, Legal Authorities RL-0001 through RL-0071, the Witness Statement of [REDACTED] dated April 2018, the Witness Statement of [REDACTED] dated 23 April 2018, the Witness Statement of [REDACTED] dated 19 April 2018, the Witness Statement of [REDACTED] dated 13 April 2018, the Witness Statement of [REDACTED] dated 16 April 2018, the Witness Statement of [REDACTED] dated 23 April 2018, the Witness Statement of [REDACTED] (undated), the Witness Statement of [REDACTED] dated 10 April 2018, the Expert Report of [REDACTED] dated 30 April 2018, the Expert Report of [REDACTED] dated 27 April 2018, the Expert Report of [REDACTED] dated 30 April 2018, the Expert Report of [REDACTED] dated 30 March 2016, the Expert Report of [REDACTED] dated 30 April 2018, the Expert Report of [REDACTED] dated 30 April 2018 and the Expert Report of [REDACTED] dated 17 April 2018.
39. On 5 July 2018, the European Commission filed an application for leave to intervene as a non-disputing party (the "**European Commission's Application**") pursuant to ICSID Arbitration Rule 37(2).
40. On 6 July 2018, the Tribunal invited the Parties to submit their observations on the European Commission's Application by 20 July 2018.
41. On 10 July 2018, the Claimants requested an extension of time until 10 August 2018 to submit their observations on the European Commission's Application.
42. On 12 July 2018, further to the Tribunal's invitation dated 10 July 2018 to comment, the Respondent objected to the Claimants' request for an extension and proposed that the deadline for submitting the observations on the European Commission's Application be extended until 27 July 2018.

43. On 13 July 2018, the Tribunal extended the deadline for the filing of the Parties' observations on the European Commission's Application to 6 August 2018.
44. On 25 July 2018, the Claimants filed their requests for document production and objections to evidence submitted by the Hellenic Republic along with Annexes I ("Claimants' Document Production Requests") and II ("Overview of the Hellenic Republic's Violations Regarding Submitted Evidence"). On the same day, the Respondent also filed a request for document production.
45. On 30 July 2018, the Tribunal invited the Respondent to comment on the Claimants' Annex II submission dated 25 July 2018 ("Overview of the Hellenic Republic's Violations Regarding Submitted Evidence") by 8 August 2018.
46. On 6 August 2018, each Party filed observations on the European Commission's Application of 5 July 2018.
47. On 7 August 2018, the Respondent requested leave to reply to the Claimants' observations of 6 August 2018.
48. On 7 August 2018, the Respondent filed a reply to Claimants' objections to the request for document production.
49. On 7 August 2018, the Tribunal issued Procedural Order No. 3 concerning the production of documents.
50. On 8 August 2018, the Tribunal invited the Parties to comment on the other Party's respective observations of 6 August 2018 regarding the European Commission's Application by 13 August 2018.
51. On 8 August 2018, the Respondent submitted comments on the Claimants' Annex II ("Overview of the Hellenic Republic's Violations Regarding Submitted Evidence") submission of 25 July 2018.

52. On 13 August 2018, having considered the Parties' submissions, the Tribunal decided on the procedural issues raised by the Claimants relating to several exhibits submitted by the Respondent (Annex II).
53. On 13 August 2018, the Parties filed their respective replies on the European Commission's Application.
54. On 22 August 2018, the Tribunal issued Procedural Order No. 4 concerning the European Commission's Application of 5 July 2018.
55. On 27 August 2018, the European Commission filed a request to alter Procedural Order No. 4.
56. On 28 August 2018, the Tribunal invited the Parties to submit their observations on the European Commission's request by 3 September 2018.
57. On 3 September 2018, the Parties filed their respective observations on the European Commission's request to alter Procedural Order No. 4.
58. On 14 September 2018, the Tribunal issued Procedural Order No. 5 concerning the European Commission's request.
59. On 24 September 2018, the European Commission submitted an Undertaking on Costs dated 21 September 2018.
60. On 26 September 2018, the Claimants submitted comments on the European Commission's submission dated 21 September 2018.
61. On 27 September 2018, the Tribunal invited the Respondent to submit its observations on the Claimants' comments on the European Commission's letter dated 21 September 2018, by 1 October 2018.
62. On 1 October 2018, the Respondent submitted its observations on the Claimants' comments on the European Commission's letter dated 21 September 2018.

63. On 5 October 2018, the European Commission filed its written observations pursuant to ICSID Arbitration Rule 37(2) (the “**European Commission’s Observations**”).
64. On 8 October 2018, the Tribunal found that the Commission’s undertaking complied with the Tribunal’s Procedural Order Nos. 4 and 5, and that the Tribunal had sufficient powers under the Commission’s undertaking to enforce ICSID Arbitration Rule 37, as determined in Procedural Order No. 5.
65. On 23 November 2018, the Respondent requested that the Tribunal postpone the Hearing on Jurisdiction and Merits (the “**Hearing**”) until 2020 so that the Respondent could consider the award in ICC Case No. 20215/AGF/ZF/AYZ that was expected to be rendered in 2019.
66. On 26 November 2018, the Tribunal invited the Claimants to submit their comments on the Respondent’s request of 23 November 2018 by 29 November 2018.
67. On 29 November 2018, the Claimants submitted their comments on the Respondent’s request to adjourn the Hearing.
68. On 5 December 2018, after considering the Parties’ positions, the Tribunal denied the Respondent’s request to adjourn the Hearing.
69. On 19 December 2018, the Claimants filed a Counter-Memorial on Preliminary Objections and a Reply on the Merits, together with Exhibits C-0273 through C-0352, Legal Authorities CL-0159 through CL-0195, the Legal Opinion of [REDACTED] dated 17 December 2018, the Supplementary Expert Report of [REDACTED] and [REDACTED] dated 5 December 2018, the Legal Opinion of [REDACTED] dated 5 December 2018 and the Legal Opinion of [REDACTED] dated 13 December 2018.
70. On 1 February 2019, the Respondent filed a Reply on Preliminary Objections, together with Exhibits R-0300 through R-0306 and Legal Authorities RL-0072 through RL-0081.
71. On 1 March 2019, the Respondent filed a Rejoinder on the Merits, together with Exhibits R-0307 through R-0336 and Legal Authorities RL-0082 through RL-0095.

72. Also on 1 March 2019, the Claimants filed a Rejoinder on Preliminary Objections, together with Exhibits C-0353 through C-0354 and Legal Authorities CL-0196 through CL-0200.
73. On 15 March 2019, the President held a pre-hearing organizational meeting with the Parties by telephone conference.
74. On 18 March 2019, further to the pre-hearing organizational meeting of 15 March 2019, the Tribunal, having considered the Parties' annotated draft agenda and their oral submissions during the meeting, issued directions for the organization of the Hearing.
75. On 19 March 2019, the Parties were informed that Ms. Leah Waithira Njoroge, ICSID Legal Counsel, would serve as the Secretary of the Tribunal in the proceedings.
76. The Hearing was held in London from 25 March to 4 April 2019. The following persons were present at the Hearing:

TRIBUNAL	
Mr./Ms. First Name/ Last Name	Affiliation
Dr. Veijo Heiskanen	President
Mr. Klaus Reichert	Arbitrator
Professor Brigitte Stern	Arbitrator

ICSID SECRETARIAT	
Mr./Ms. First Name/ Last Name	Affiliation
Ms. Leah Waithira Njoroge	Secretary of the Tribunal

ISKANDAR SAFA AND AKRAM SAFA	
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Dr. Sven Lange	Busse Disputes Rechtsanwalts-gesellschaft mbH
Ms. Allison Torline	Busse Disputes Rechtsanwalts-gesellschaft mbH
Dr. Manuela France Doughan	Busse Disputes Rechtsanwalts-gesellschaft mbH
Ms. Lisa Heike (<i>Via Video Conference</i>)	Busse Disputes Rechtsanwalts-gesellschaft mbH
Ms. Irina Samodelkina (<i>Via Video Conference</i>)	Busse Disputes Rechtsanwalts-gesellschaft mbH
Mr. Philippe Pinsolle	Quinn Emanuel Urquhart & Sullivan LLP

Ms. Anne-Marie Lacoste	Quinn Emanuel Urquhart & Sullivan LLP
Mr. Akshay Shreedhar	Quinn Emanuel Urquhart & Sullivan LLP
Ms. Eliana Paschalides	PPT Legal
Parties:	
Mr. David Langford	Prinvest Group
Witnesses:	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Experts:	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

HELLENIC REPUBLIC	
Mr./Ms. First Name/ Last Name	Affiliation
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Dr. Jonathan Ketcheson	Twenty Essex
Dr. John Bethell	Twenty Essex
Mr. Guy Blackwood QC	Quadrant Chambers
Mr. Costas Frangeskides	Holman Fenwick Willan LLP
Mr. Adam Strong	Holman Fenwick Willan LLP
Mr. Ben Atkinson	Holman Fenwick Willan LLP
Ms. Eirini Roussou	Holman Fenwick Willan LLP
Mr. Ed Brown-Humes	Holman Fenwick Willan LLP
Ms. Katerina Botsini	Holman Fenwick Willan LLP
Mr. Nikias Papageorgiou	Holman Fenwick Willan LLP
Mrs. Emmanouela Panopoulou	Legal Council of the State
Mr. Dionysios Kolovos	Legal Council of the State
Mrs. Ourania Mendrinou	Legal Council of the State
Mrs. Natalie-Christina Samara	Legal Council of the State
Mr. Panagiotis Panagiotounakos	Legal Council of the State
Mrs. Christina Zouberi	Legal Council of the State
Ms. Ioanna Alexandropoulou	Counsel

79. On 9 May 2019, the Tribunal issued Procedural Order No. 6 concerning the Claimants' request for leave to submit new evidence on quantum.
80. On 3 July 2019, the Claimants filed a request for leave to submit additional documents and, on 9 July 2019, the Respondent filed observations on the Claimants' request.
81. On 11 July 2019, after considering the Parties' positions, the Tribunal granted the Claimants' request to submit additional documents. The Tribunal directed the Claimants to file the additional documents identified in their request for leave of 3 July 2019 by 15 July 2019. The Tribunal further invited the Respondent to file any observations it had on the additional evidence and the related submissions filed by the Claimants by 23 August 2019. The Tribunal took note that, as the new evidence had not been tested at a hearing, it would consider whether any further procedural decisions were required.
82. On 9 August 2019, each Party filed a post-hearing submission.
83. On 15 August 2019, the Respondent objected to the Claimants' inclusion of three additional legal authorities (CL-0212, CL-0213 and CL-0214) in their post-hearing brief of 9 August 2019 without leave of the Tribunal. By letter of 20 August 2019, the Tribunal invited the Claimants to submit their observations on the Respondent's objection.
84. On 22 August 2019, the Claimants submitted their observations on the Respondent's objection to the inclusion of legal authorities CL-0212, CL-0213 and CL-0214 in the Claimants' post-hearing brief of 9 August 2019. In the same submission, the Claimants also requested leave of the Tribunal to file further additional documents, *i.e.*, two Athens court decisions.
85. On 23 August 2019, the Respondent filed its observations on the Claimants' additional evidence (the Claimants' request for leave to submit additional evidence of 3 July 2019).
86. On 3 September 2019, after having considered the Parties' positions, the Tribunal decided to exclude legal authorities CL-212, CL-213 and CL-214 from the record of this proceeding and invited the Respondent to submit comments on the Claimants' request for leave to

submit further additional documents, *i.e.*, the two Athens court decisions, by 6 September 2019.

87. On 6 September 2019, the Respondent filed its observations on the Claimants' request for leave to submit further additional evidence. On the same day, the Parties agreed on an extension of time for the Parties to file their submissions on costs.
88. On 9 September 2019, the Tribunal approved the extension of time for submissions on costs as agreed by the Parties. Consequently, the Parties were to file the first round of submissions on 20 September 2019 and the second round on 4 October 2019.
89. On the same day, after having considered the Parties' positions, the Tribunal decided to grant the Claimants' request for leave to file additional documents of 22 August 2019 and directed the Claimants to submit the two Athens court decisions identified in the request for leave, together with any comments by 11 September 2019. The Tribunal also invited the Respondent to comment on the new evidence by 16 September 2019. The Tribunal took note that, as the new evidence had not been tested at a hearing, it would consider whether any further procedural decisions were required.
90. On 11 September 2019, the Claimants filed a submission regarding the two Athens court decisions, together with Exhibits C-0361 and C-0362 (being the court decisions) as directed by the Tribunal.
91. On 16 September 2019, the Respondent filed its observations on the Claimants' additional evidence as directed by the Tribunal.
92. The Parties filed their first round of submissions on costs on 20 September 2019.
93. The Parties filed their second round of submissions on costs on 4 October 2019.

III. FACTUAL BACKGROUND

94. [REDACTED]

[REDACTED]

95.

[REDACTED]

96.

[REDACTED]

A. HSY AND ITS OPERATIONS BEFORE THE CLAIMANTS' ACQUISITION OF ITS SHARES

(1) HSY's Ownership and Early Operations

97.

[REDACTED]

¹ Cl. Mem., para. 274; Resp. C-Mem., para. 13.

² Cl. Mem., para. 274.

[REDACTED]

[Redacted]

98.

[Redacted]

99.

[Redacted]

(2) The European Commission’s Recovery Decision

100.

[Redacted]

101.

[Redacted]

³ Cl. Mem., para. 274.

⁴ Cl. Mem., para. 274; Resp. C-Mem., para. 13.

⁵ Cl. Mem., para. 279; Resp. C-Mem., para. 15; [Redacted]

⁶ Cl. Reply, para. 910; C-Mem., para. 279; Resp. C-Mem., paras. 15, 333 *et seq.*; [Redacted]

⁷ Resp. C-Mem., paras. 15, 333–334; [Redacted]

⁸ [Redacted]

[REDACTED]

102.

[REDACTED]

(3) The Dispute Between HSY and the Hellenic Republic Relating to the Archimedes and Neptune II Programs

103.

[REDACTED]

104.

[REDACTED]

⁹ Resp. C-Mem., para. 336.

¹⁰ Resp. C-Mem., para. 337.

¹¹ [REDACTED]

¹² Cl. Mem., para. 277; ICCI Award (C-0019), para. 116; [REDACTED]

¹³ Resp. C-Mem., para. 18; Cl. Reply, para. 910; [REDACTED]

¹⁴ Cl. Mem., para. 277; Resp. C-Mem., paras. 16, 60; [REDACTED]

¹⁵ Resp. C-Mem., paras. 19, 61; Cl. Reply, para. 931; Witness Statement of Mr. Iskandar Safa (C-0020), para. 12; Resp. C-Mem., para. 18; Witness Statement of Admiral Dimopoulos (R-0008), paras. 7–9; Framework Agreement (C-0003), preamble, p. 2.

105. [REDACTED]

B. THE GREEK FINANCIAL CRISIS

106. [REDACTED]

107. [REDACTED]

108. [REDACTED]

109. [REDACTED]

110. [REDACTED]

¹⁶ Framework Agreement (C-0003), preamble, p. 2.

¹⁷ Resp. C-Mem., para. 27.

¹⁸ Resp. C-Mem., paras. 30–31, 35–37, 43–44, 46, 51.

¹⁹ Resp. C-Mem., para. 40.

²⁰ Resp. C-Mem., para. 41.

²¹ Resp. C-Mem., para. 45.

²² Resp. C-Mem., para. 48.

111. [REDACTED]

112. [REDACTED]

C. THE CLAIMANTS' ACQUISITION OF HSY'S SHARES IN 2010

(1) The Prinvest Group

113. [REDACTED]

114. [REDACTED]

²³ Resp. C-Mem., para. 50.

²⁴ Resp. C-Mem., para. 57.

²⁵ Cl. Mem., para. 506; Cl. Reply, paras. 1298–1299.

²⁶ Cl. Mem., para. 271.

(2) The Negotiations Between the Prinvest Group, the [REDACTED] and the Hellenic Republic, and the Resulting Agreements

115. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

116. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(3) The Framework Agreement

117. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

118. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²⁷ Resp. C-Mem., para. 71.

²⁸ Cl. Mem., para. 277; Resp. C-Mem., para. 33; Resp. Rej., para. 10(g).

²⁹ Resp. C-Mem., para. 33.

³⁰ Resp. C-Mem., para. 72; Letter of Offer from Mr. Iskandar Safa to GNSH dated 2 December 2009 (C-0002).

³¹ Cl. Mem., para. 286; Letter of Offer from Mr. Iskandar Safa to GNSH dated 2 December 2009 (C-0002).

³² Cl. Mem., para. 300; Resp. Rej., para. 10(h).

³³ Resp. C-Mem., para. 76; [REDACTED]

³⁴ Resp. C-Mem., para. 77; Cl. Mem., para. 302.

[Redacted text block]

119.

[Redacted text block]

(a) [Redacted text block]

(b) [Redacted text block]

(c) [Redacted text block]

(d) [Redacted text block]

(e) [Redacted text block]

³⁵Framework Agreement (C-0003), p. 1.

³⁶ Framework Agreement (C-0003), clause 5.c.

³⁷ Framework Agreement (C-0003), clause 5.a.

³⁸ Framework Agreement (C-0003), clause 4.

³⁹ Framework Agreement (C-0003), clause 4.c–d.

⁴⁰ Framework Agreement (C-0003), clause 6.a.

[Redacted text block]

120. [Redacted text block]

(4) The Implementation Agreement

121. [Redacted text block]

122. [Redacted text block]

⁴¹ Framework Agreement (C-0003), clause 11.
⁴² Framework Agreement (C-0003), clause 12.
⁴³ Implementation Agreement between the Hellenic Republic, HSY, HDW, ADM and ThyssenKrupp Marine Systems AG dated 30 September 2010 (C-0005).
⁴⁴ Implementation Agreement (C-0005), preamble p. 3.
⁴⁵ Explanatory Report and Bill of Law regarding Law 3885/2010 (C-0032).
⁴⁶ Law 3885/2010 (R-0233).
⁴⁷ Implementation Agreement (C-0005), Section A.
⁴⁸ Implementation Agreement (C-0005), Section A.
⁴⁹ Implementation Agreement (C-0005), Section B.
⁵⁰ Implementation Agreement (C-0005), Section C.

[Redacted]

123. [Redacted]

124. [Redacted]

(5) The Privinvest Group's Acquisition of HSY's Shares

125. [Redacted]

126. [Redacted]

127. [Redacted]

⁵¹ Implementation Agreement (C-0005), Section A, clause 5; Section F, clauses 3 and 6(e).

⁵² Implementation Agreement (C-0005), Section E.

⁵³ Implementation Agreement (C-0005), Section F.

⁵⁴ Implementation Agreement (C-0005), Section F, clause 11.

⁵⁵ Implementation Agreement (C-0005), Section F, clause 12.

⁵⁶ Cl. Mem., para. 305; [Redacted]

⁵⁷ [Redacted]

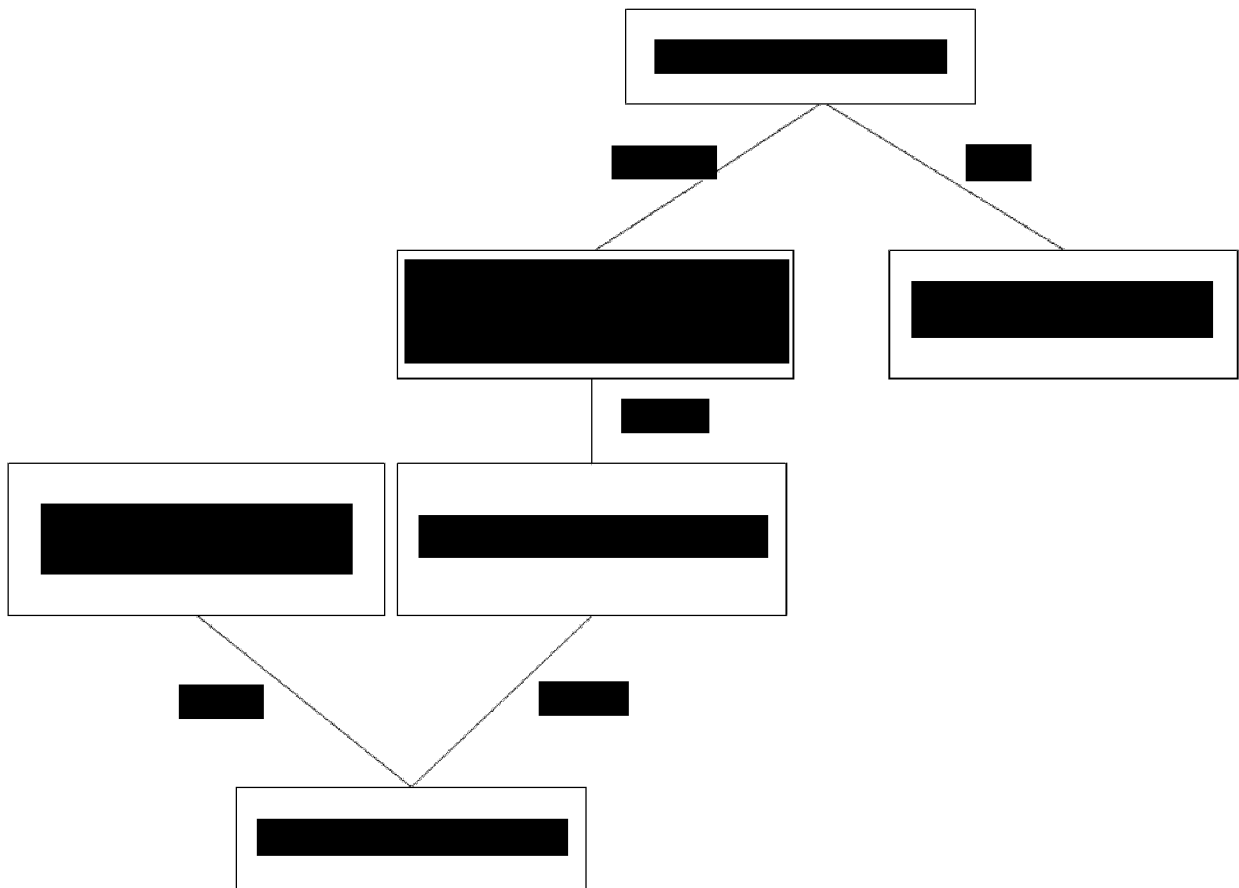
[REDACTED]

128.

[REDACTED]

129.

[REDACTED]



58 [REDACTED]

59 [REDACTED]

⁶⁰ Cl. Mem., para. 306.

130. [REDACTED]
[REDACTED]
[REDACTED]

(6) Closing of the Implementation Agreement

131. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

132. [REDACTED]
[REDACTED]
[REDACTED]

133. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

134. [REDACTED]

⁶¹ Cl. Mem., para. 308.

⁶² Cl. Mem., para. 303; [REDACTED]
[REDACTED].

⁶³ Resp. C-Mem., para. 316; Cl. Mem., para. 307 [REDACTED]
[REDACTED]

⁶⁴ Cl. Mem., para. 307 ([REDACTED])

⁶⁵ Resp. C-Mem., para. 327 [REDACTED]
[REDACTED]

⁶⁶ Resp. C-Mem., para. 328; Cl. Mem., para. 304.

D. DEVELOPMENTS AFTER THE ACQUISITION

(1) The Prinvest Group Takes Over HSY

135. [REDACTED]

136. [REDACTED]

137. [REDACTED]

138. [REDACTED]

139. [REDACTED]

⁶⁷ Cl. Mem., para. 310; [REDACTED]

⁶⁸ Cl. Mem., para. 424; Resp. C-Mem. para. 571.

⁶⁹ Resp. C-Mem., para. 785; Cl. Mem., para. 424.

⁷⁰ Resp. C-Mem., para. 786; Cl. Mem., para. 487; [REDACTED]

⁷¹ Resp. C-Mem., para. 787; Cl. Mem., para. 441.

⁷² ICC1 Award (C-0019).

⁷³ Resp. C-Mem., para. 788; [REDACTED]

⁷⁴ Resp. C-Mem., para. 789; [REDACTED]

[REDACTED]

140.

[REDACTED]

141.

[REDACTED]

142.

[REDACTED]

⁷⁵ Resp. C-Mem., para. 790;

⁷⁶ Resp. C-Mem., para. 791;

⁷⁷ Resp. C-Mem., para. 792;

⁷⁸ Resp. C-Mem., para. 793.

⁷⁹ Resp. C-Mem., para. 794;

⁸⁰ Resp. C-Mem., para. 795; Cl. Mem., para. 322, 487;

⁸¹ Resp. C-Mem., para. 796; Cl. Mem., para. 322;

(2) The Military Decision

a. Pre-acquisition discussions between HSY and the Hellenic Republic leading up to the Military Decision

143. [REDACTED]

144. [REDACTED]

145. [REDACTED]

⁸² Resp. C-Mem., para. 338 (referring to various letters from the Commission (**R-0047** to **R-0057**)).

⁸³ [REDACTED]

⁸⁴ [REDACTED]

⁸⁵ [REDACTED]

⁸⁶ [REDACTED]

⁸⁷ Resp. C-Mem., paras. 348–349; Cl. Mem. para. 455.

146.

[REDACTED]

b. Commitment Letters of 27 and 29 October 2010

147.

[REDACTED]

88

[REDACTED]

89

[REDACTED]

⁹⁰ Cl. Mem., para. 310; Resp. C-Mem., para. 479;

[REDACTED]

⁹¹ Resp. C-Mem., paras. 357–358;

[REDACTED]

148. [REDACTED]

c. The Adoption of the Military Decision

149. [REDACTED]

150. [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

⁹² [REDACTED]

⁹³ [REDACTED]

⁹⁴ Decision E(2010)8274 final dated 1 December 2010 (C-0006), para. 9(a).

⁹⁵ Decision E(2010)8274 final dated 1 December 2010 (C-0006), para. 9(a).

⁹⁶ Decision E(2010)8274 final dated 1 December 2010 (C-0006), para. 9(b).

(d) [REDACTED]
[REDACTED]

(e) [REDACTED]
[REDACTED]
[REDACTED]

(f) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

151. [REDACTED]
[REDACTED]
[REDACTED]

⁹⁷ Decision E(2010)8274 final dated 1 December 2010 (C-0006), para. 9(c).

⁹⁸ Decision E(2010)8274 final dated 1 December 2010 (C-0006), para. 9(d).

⁹⁹ Decision E(2010)8274 final dated 1 December 2010 (C-0006), para. 9(e).

¹⁰⁰ Decision E(2010)8274 final dated 1 December 2010 (C-0006), para. 9(e).

¹⁰¹ Decision E(2010)8274 final dated 1 December 2010 (C-0006), para. 10.

¹⁰² Decision E(2010)8274 final dated 1 December 2010 (C-0006), para. 18.

d. Steps Towards Implementation of the Military Decision

152. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

153. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

154. [REDACTED]
[REDACTED]

155. [REDACTED]
[REDACTED]

¹⁰³ Resp. C-Mem., para. 367; [REDACTED]
[REDACTED]

¹⁰⁴ [REDACTED]
[REDACTED]

¹⁰⁵ [REDACTED]
[REDACTED]

¹⁰⁶ Resp. C-Mem., paras. 369–373; [REDACTED]
[REDACTED]

¹⁰⁷ Resp. C-Mem., para. 396; [REDACTED]

¹⁰⁸ Resp. C-Mem., para. 396. *Case C-485/10, European Commission v. Hellenic Republic*, ECLI:EU:C:2012:395 dated 28 June 2012 (R-0064).

¹⁰⁹ Resp. C-Mem., para. 376; Law 4099/2012, Art. 169 (C-0008), para. 2.

(3) The Hellenic Republic's Efforts to Obtain Payment under the Recovery Decision

156. [REDACTED]
[REDACTED]

157. [REDACTED]
[REDACTED]

158. [REDACTED]
[REDACTED]
[REDACTED]

159. [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

160. [REDACTED]
[REDACTED]

161. [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

¹¹⁰ Cl. Mem., para. 370; Resp. C-Mem., para. 514 [REDACTED]
[REDACTED]

¹¹¹ Resp. C-Mem., para. 517; Cl. Mem., para. 370 [REDACTED]
[REDACTED]

¹¹² Resp. C-Mem., para. 518; Cl. Mem., para. 371; [REDACTED]

¹¹³ Resp. C-Mem., para. 519; Cl. Mem., para. 371 (first bullet).

¹¹⁴ Resp. C-Mem., para. 519.

¹¹⁵ Resp. C-Mem., para. 520; Cl. Mem., para. 374 (third bullet); [REDACTED]
[REDACTED]

¹¹⁶ Resp. C-Mem., para. 521; Cl. Mem., para. 371 (third bullet); [REDACTED]
[REDACTED]

¹¹⁷ Cl. Mem., para. 371 (third bullet); [REDACTED]
[REDACTED]

162. [REDACTED]
[REDACTED]
[REDACTED]

163. [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

164. [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

165. [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]

(4) The Special Administration

166. [REDACTED]
[REDACTED] [REDACTED]

¹¹⁸ Resp. C-Mem., para. 522; Cl. Mem., para. 379 (third bullet). [REDACTED]
[REDACTED]

¹¹⁹ Resp. C-Mem., para. 523; Cl. Mem., para. 372; [REDACTED]

¹²⁰ Resp. C-Mem., para. 524; Cl. Mem., para. 372; [REDACTED]
[REDACTED]

¹²¹ Resp. C-Mem., para. 527; Cl. Mem., para. 373. [REDACTED]
[REDACTED]

¹²² Resp. C-Mem., para. 530; Cl. Mem., para. 390; [REDACTED]

¹²³ Cl. Mem., para. 390.

¹²⁴ Resp. C-Mem., para. 531; Cl. Mem., para. 384; [REDACTED]
[REDACTED]

[REDACTED]

167. [REDACTED]

168. [REDACTED]

(5) The OSE Claims

169. [REDACTED]

(6) The Special Social Contribution Tax

170. [REDACTED]

¹²⁵ Cl. Mem., para. 386; Resp. C-Mem., paras. 533–535; [REDACTED]

¹²⁷ Cl. Reply, para. 896 (second bullet); [REDACTED]

¹²⁸ Cl. Reply, para. 896 (fourth bullet); [REDACTED]

¹²⁹ [REDACTED]

¹³⁰ C. Mem., para. 471; Cl. Reply, para. 944; [REDACTED]

¹³¹ Resp. C-Mem., paras. 689–690 [REDACTED]

171. [REDACTED]

172. [REDACTED]

(7) The Acts of Imputation

173. [REDACTED]

174. [REDACTED]

¹³² C. Mem., para. 477; Assessment Note regarding Special Tax Contribution dated 31 December 2010 (C-0236); Analysis of Special Contribution Tax 2010 dated 24 June 2015 (with supporting documentation) (C-0239).

¹³³ [REDACTED]

¹³⁴ C. Mem., para. 477; Recalculated Assessment Note regarding the Special Tax Contribution dated 23 November 2011 (C-0238).

¹³⁵ Resp. C-Mem., para. 723; Cl. Mem., para. 481; Act of imputation F.604.4/1443 S. 325 (C-0009); [REDACTED]

¹³⁶ Cl. Mem., paras. 481–482; Resp. C-Mem., para. 723; [REDACTED]

¹³⁷ Resp. C-Mem., para. 723; Cl. Mem., para. 482; [REDACTED]

¹³⁸ Resp. C-Mem., para. 723; Cl. Mem., para. 482; [REDACTED]

¹³⁹ Resp. C-Mem., paras. 741–742; Cl. Mem., para. 483; [REDACTED]

175. [REDACTED]

(8) Law 4258/2014

176. [REDACTED]

177. [REDACTED]

178. [REDACTED]

¹⁴⁰ Resp. C-Mem., para. 745; Court of Audit Judgments 623 and 624/2015 (**R-0235**).

¹⁴¹ Resp. PHB, para. 223; Tr. Day 1, 44:6–8; Claimants’ Opening Statement, p. 86.

¹⁴² Cl. Mem., para. 441; Resp. C-Mem., para. 787.

¹⁴³ Resp. C-Mem., para. 800; ICC1 Award (**C-0019**), para. 1001.

¹⁴⁴ Resp. C-Mem., paras. 801–804; [REDACTED]

¹⁴⁵ Resp. C-Mem., paras. 801–804; [REDACTED]

¹⁴⁶ ICC1 Award (**C-0019**), paras. 1001–1005, 1016.

¹⁴⁷ Cl. Mem., para. 350; Resp. C-Mem., para. 808; Law 4258/2014 (**C-0011**).

[REDACTED]

179. [REDACTED]

180. [REDACTED]

E. EVENTS LEADING UP TO THE PRESENT DISPUTE

181. [REDACTED]

¹⁴⁸ Cl. Mem., para. 350; Law 4258/2014, Article 26(2) (C-0011).

¹⁴⁹ Cl. Mem., para. 351; Resp. C-Mem., para. 818; Amendment of law 4258/2014 dated 14 October 2016 (C-0105).

¹⁵⁰ Cl. Mem., para. 351; Resp. C-Mem., para. 819; Proposal to amend law 4258/2014 dated 27 July 2017 (C-0106).

¹⁵¹ Cl. Mem., para. 366; [REDACTED]

¹⁵² [REDACTED]

¹⁵³ See Draft Protocol Agreement dated 9 March 2012 (C-0080).

¹⁵⁴ Cl. Mem., para. 424; Resp. C-Mem., para. 571.

¹⁵⁵ [REDACTED]

[REDACTED]

182.

[REDACTED]

183.

[REDACTED]

184.

[REDACTED]

185.

[REDACTED]

¹⁵⁶ Cl. Mem., para. 438;

[REDACTED]

¹⁵⁷

[REDACTED]

¹⁵⁸

¹⁵⁹ Cl. Mem., para. 327;

[REDACTED]

¹⁶⁰ Cl. Mem., para. 328;

[REDACTED]

¹⁶¹ Cl. Mem., para. 329;

[REDACTED]

¹⁶² See Section D.(7) above.

¹⁶³ See Section D.(8) above.

¹⁶⁴ Cl. Mem., para. 493; Resp. C-Mem., paras. 869–870.

[REDACTED]

186. [REDACTED]

F. OTHER PROCEEDINGS

187. [REDACTED]

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

¹⁶⁵ Cl. Mem., para. 493; [REDACTED]

¹⁶⁶ Cl. Mem., para. 498; [REDACTED]

¹⁶⁷ ICC1 Award (C-0019), para. 24. *See also* Section V.E(2) below.

(d) [REDACTED]
[REDACTED]
[REDACTED]

(e) [REDACTED]
[REDACTED]

(f) [REDACTED]
[REDACTED]
[REDACTED]

188. [REDACTED]
[REDACTED]

189. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

190. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁶⁸ ICC1 Award (C-0019).

¹⁶⁹ ICC1 Award (C-0019). [REDACTED]

¹⁷⁰ Cl. Reply, para. 893; [REDACTED]
[REDACTED]

¹⁷¹ Cl. Reply, para. 894; [REDACTED]

¹⁷² Cl. Reply, para. 942; Resp. C-Mem., paras. 923–938.

¹⁷³ Resp. PHB, para. 12; Cl. PHB, para. 2122 (second bullet).

IV. REQUESTS FOR RELIEF

191. In their Memorial, the Claimants requested that the Tribunal render an award:

- (a) Declaring that the Tribunal has jurisdiction under the BIT and the ICSID Convention over the Claimants' claims;
- (b) Declaring that the Hellenic Republic has breached its various obligations under the BIT, including Article 2(3), 4(1), 4(2) and 10(2) of the BIT;
- (c) Ordering the Hellenic Republic to pay the Claimants as joint creditors compensation for the breaches of the BIT in an amount of EUR 382 million;
- (d) Ordering the Hellenic Republic to pay to the Claimants as joint creditors moral damages in an amount to be determined by the Tribunal in its discretion;
- (e) Ordering the Hellenic Republic to pay to the Claimants, as joint creditors, interest on the amounts awarded to the Claimants under (c) and (d) above at a 6-month EURIBOR rate plus 2 percentage points, compounded semi-annually, from 7 October 2011 until the date of the award;
- (f) Ordering the Hellenic Republic to pay to the Claimants, as joint creditors, interest on the amounts awarded to the Claimants under (c) and (d) above and (g) below at a rate to be determined by the Tribunal in its discretion, but not below a 6-month EURIBOR rate plus 2 percentage points, compounded semi-annually, from the date of the award until full payment by the Hellenic Republic; and
- (g) Ordering the Hellenic Republic to pay all costs and expenses incurred in these arbitration proceedings, including the fees and expenses of ICSID and those of the members of the Tribunal, as well as the fees and expenses of the Claimants' external legal representatives, in-house legal costs and interest, on a full indemnity basis.¹⁷⁴

¹⁷⁴ Cl. Mem., para. 683.

192. The Claimants reserved their right to amend or supplement their request for relief during the pendency of the proceeding.¹⁷⁵
193. In their Reply, the Claimants sought the following relief:
- (a) A declaration that the Tribunal has jurisdiction under the BIT and the ICSID Convention over the Claimants' claims;
 - (b) A declaration that the Hellenic Republic has breached Article 4(1) of the BIT by illegally expropriating the Claimants' investment;
 - (c) A declaration that the Hellenic Republic has breached Article 4(2) of the BIT by illegally expropriating the assets of HSY;
 - (d) A declaration that the Hellenic Republic has breached Article 2(3) of the BIT by failing to accord to the Claimants' investment fair and equitable treatment and full protection and security;
 - (e) A declaration that the Hellenic Republic has breached Article 10(2) of the BIT by failing to observe obligations it had entered into with regard to the Claimants' investment;
 - (f) That the Hellenic Republic is ordered to pay to the Claimants as joint creditors compensation for the breaches of the BIT;
 - (i) in an amount of EUR 367 million for the complete loss of the Claimants' investment; or
 - (ii) in the alternative, in an amount of EUR 131 million for the frustration of the ICC1 Award;
 - (g) That the Hellenic Republic is ordered to pay to the Claimants as joint creditors moral damages in an amount to be determined by the Tribunal in its discretion;

¹⁷⁵ Cl. Mem., para. 684.

(h) That the Hellenic Republic is ordered to pay to the Claimants, as joint creditors, interest:

- (i) on the amounts awarded to the Claimants under No.(f) (i) and (g) above at a 6-month EURIBOR rate plus 2 percentage points, compounded semi-annually, from 7 October 2011 until the date of the award; or
- (ii) in the alternative, on the amounts awarded to the Claimants under No. (f)(ii) and (g) above at a 6-month EURIBOR rate plus 2 percentage points, compounded semi-annually, from 29 September 2017 until the date of the award;

(i) That the Hellenic Republic is ordered to pay to the Claimants, as joint creditors, interest on the amounts awarded to the Claimants under No. (f) and (g) above, and No. (j) below at a rate to be determined by the Tribunal at its discretion, but not below a 6-month EURIBOR rate plus 2 percentage points, compounded semi-annually, from the date of the award until payment in full; and

(j) That the Hellenic Republic is ordered to pay all costs and expenses incurred by the Claimants in these arbitration proceedings, including the fees and expenses of ICSID and those of the members of the Tribunal, as well as the fees and expenses of the Claimants' external legal representatives, in-house legal costs, and interest, on a full indemnity basis.¹⁷⁶

194. The Claimants propose that the Tribunal consider including in the award an order that the Claimants shall use their influence over the companies they control to effect:

(a) A transfer of 2. Horn's 75.1% shareholding in HSY to the Hellenic Republic or to a nominee designated by the Hellenic Republic; and

¹⁷⁶ Cl. Reply, para. 1777.

- (b) A release of all Privinvest Holding's financial claims against HSY.¹⁷⁷
195. The Claimants propose that “such transfer and release shall occur only upon full and effective payment of all sums, including costs and interest payable by the Hellenic Republic under the award to be rendered by the Tribunal.”¹⁷⁸
196. The Claimants continued to reserve their right to amend or supplement their request for relief during the pendency of the proceeding.¹⁷⁹
197. In its Counter-Memorial, the Respondent requested the Tribunal to:
- (a) declare and order that the Tribunal and the Centre lack jurisdiction over the dispute;
 - (b) further or in the alternative, declare and order that the Claimants' claims are inadmissible;
 - (c) further or in the alternative, dismiss the Claimants' claims on the merits;
 - (d) award the Respondent the costs of the arbitration;
 - (e) order that the Claimants bear one hundred percent of the remaining costs of arbitration; and
 - (f) grant the Respondent any further relief that the Tribunal deems fit.¹⁸⁰
198. The Respondent also reserved its right to amend or supplement its request for relief.¹⁸¹
199. In its Reply on Preliminary Objections, the Respondent formulated the same request for relief indicated at paragraph 197 above and reserved the right to amend or supplement its request for relief.¹⁸²

¹⁷⁷ Cl. Reply, para. 1778.

¹⁷⁸ Cl. Reply, paras. 1777–1778.

¹⁷⁹ Cl. Reply, para. 1779.

¹⁸⁰ Resp. C-Mem., para. 1341.

¹⁸¹ Resp. C-Mem., para. 1342.

¹⁸² Resp. Reply, para. 100.

V. JURISDICTION AND ADMISSIBILITY

A. UNDISPUTED PRELIMINARY ISSUES

200. [REDACTED]

[REDACTED]

[REDACTED]

¹⁸³ Cl. Mem., para. 521.

¹⁸⁴ Cl. Mem., para. 521 (citing Christoph H. Schreuer et al., *The ICSID Convention*, 2nd ed. 2009 (CL-0036)), Article 25, paras. 428, 431 *et seq.*, 448).

¹⁸⁵ Cl. Mem., para. 521.

¹⁸⁶ Cl. Mem., para. 508.

¹⁸⁷ Cl. Mem., para. 512 (referring to the Database of ICSID Member States available at: <https://icsid.worldbank.org/en/Pages/icsiddocs/List-of-Member-States.aspx> (CL-0017)).

¹⁸⁸ Cl. Reply, para. 1292 (first bullet); Cl. Mem., para. 512 (referring to Cl. Mem. para. 504 and copies of the Claimants' passports submitted (C-0266)).

203.

[REDACTED]

[REDACTED]

B. DISPUTED PRELIMINARY ISSUES

205.

[REDACTED]

[REDACTED]

¹⁸⁹ The BIT and the ICSID Convention entered into force on 17 July 1999 and 14 October 1966, respectively.

¹⁹⁰ As noted above, copies of the Claimants' passports submitted at C-0266.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. WHETHER THE CLAIMANTS MADE AN INVESTMENT UNDER THE BIT AND THE ICSID CONVENTION

(1) The Parties' Positions

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁹¹ Resp. PHB, para. 230(a); Resp. Reply, para. 6; Resp. C-Mem., para. 876.

[REDACTED]

210.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁹² Resp. C-Mem., para. 877.

¹⁹³ Resp. C-Mem., para. 877.

¹⁹⁴ Cl. Mem., para. 305.

¹⁹⁵ Resp. Reply, para. 6 (referring to Graphical Depiction of HSY's Shareholding Structure Over Time (C-0325)).

¹⁹⁶ Resp. Reply, para. 7; Share Purchase Agreement between [REDACTED] and Prinvest Shipbuilding S.à r.l. concerning the acquisition of a 100% shareholding in [REDACTED] dated 22 September 2010 (C-0004), Sections B and C, Article 27(1.2.4).

¹⁹⁷ Graphical Depiction of HSY's Shareholding Structure Over Time (C-0325), pp. 4–6.

¹⁹⁸ Resp. Reply, para. 7.

[REDACTED]

[REDACTED]

[REDACTED]

214. [REDACTED]

¹⁹⁹ Resp. C-Mem., para. 881.
²⁰⁰ Resp. C-Mem., para. 881 (referring to Letter from First Claimant and [REDACTED] dated 30 September 2010 (C-0063)).
²⁰¹ *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Annulment, 2 November 2015 (R-0002), para. 262.
²⁰² Resp. C-Mem., para. 883.
²⁰³ Resp. C-Mem., para. 884.
²⁰⁴ Resp. Reply, para. 8.
²⁰⁵ Resp. C-Mem., para. 885 (citing *Romak S.A. v. Republic of Uzbekistan*, UNCITRAL, Award, 26 November 2009 (RL-0003), paras. 188 and 207).

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216.

[Redacted]

[Redacted]

[Redacted]

²⁰⁶ Article 1(1) of the BIT (CL-0001).

²⁰⁷ Resp. C-Mem., para. 887.

²⁰⁸ Resp. C-Mem., para. 888 (citing *İçkale İnşaat Limited Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/24, Award, 8 March 2016 (RL-0071), paras. 289–290).

²⁰⁹ Resp. C-Mem., para. 891.

²¹⁰ Resp. C-Mem., para. 891.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²¹¹ Resp. Reply, para. 8(d).

²¹² Resp. C-Mem., para. 892.1.

²¹³ Resp. C-Mem., para. 892.1.

²¹⁴ Resp. C-Mem., para. 892.2.

²¹⁵ Resp. C-Mem., para. 892.2.

²¹⁶ Resp. C-Mem., para. 893.

²¹⁷ Resp. C-Mem., para. 894.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

²¹⁸ Resp. C-Mem., para. 895.

²¹⁹ Resp. C-Mem., para. 896.

²²⁰ Resp. C-Mem., para. 897.

²²¹ Cl. PHB, para. 2107; Cl. Mem., para. 502.

²²² Cl. PHB, para. 2107; Cl. Mem., para. 502.

²²³ Cl. PHB, para. 2108 (first bullet) (referring to Tr. Day 2, Verdirame, 361:3–5 and Tr. Day 4, [REDACTED] 739:3–8).

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²²⁴ Cl. Reply, para. 1291 (second bullet); Cl. Mem., para. 505.

²²⁵ Cl. Mem., para. 506 (first bullet).

²²⁶ Cl. Mem., para. 506 (first bullet).

²²⁷ Cl. Mem., para. 506 (second bullet).

²²⁸ Cl. Mem., para. 506 (third bullet).

²²⁹ Cl. Mem., para. 506 (third bullet).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ Cl. Reply, para. 1298 (citing *Quiborax S.A. and Non-Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Jurisdiction, 27 September 2012 (“*Quiborax*”) (CL-0043), para. 195).

²³⁷ Cl. Reply, para. 1299, the Claimants set out a summary of the series of transactions from 22 September 2010 to 8 May 2018 that constitute the Claimants’ indirect shareholding in HSY in a graphical table (C-0325). Further documents produced by the Claimants to support these transactions including the share registers, certificates of registration, share purchase agreements involving the Privinvest Group companies and third parties are exhibited from C-0326 to C-0341.

²³⁸ Cl. Reply, para. 1299 (first bullet).

²³⁹ Cl. Reply, para. 1299 (second bullet). *See* Certificate from the Commercial Registry in Beirut regarding Privinvest Shipbuilding SAL Holding dated 30 August 2018(C-0331).

²⁴⁰ Cl. Reply, para. 1299 (third bullet), footnote 1031. *See* Certificate from the Commercial Registry in Beirut regarding Privinvest Holding SAL dated 30 August 2018 (C-0332).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁴¹ Cl. Reply, para. 1299 (fourth bullet); Share Purchase and Transfer Agreement between Prinvest Shipbuilding SAL Holding and Logistics International SAL (Offshore) concerning the acquisition of a 50% shareholding in [REDACTED] dated 5 December 2011 (C-0333); Official List of Shareholders in [REDACTED] dated 5 December 2011 (C-0334); Certificate from the Commercial Registry in Beirut regarding Logistics International SAL (Offshore) dated 30 August 2018 (C-0335). Cl. Reply, para. 1299 (fourth bullet) (C-0333-C-0335).

²⁴² Cl. Reply, para. 1299 (fifth bullet); Share Purchase and Transfer Agreement between Prinvest Shipbuilding SAL Holding and Logistics International SAL (Offshore) Concerning the Acquisition of a 30% Shareholding in [REDACTED] dated 28 November 2012 (C-0336).

²⁴³ Cl. Reply, para. 1299 (sixth bullet); Certificate from the Commercial Registry in Beirut regarding Logistics International Holding SAL dated 30 August 2018 (C-0338); Certificate from the Commercial Registry in Beirut regarding Prinvest Shipbuilding SAL Holding dated 30 August 2018 (C-0331).

²⁴⁴ Cl. Reply, para. 1299 (seventh bullet); Share Purchase and Transfer Agreement between Logistics International SAL (Offshore) and Prinvest Shipbuilding SAL Holding Concerning the Acquisition of an 80% Shareholding in [REDACTED] dated 25 February 2015 (C-0339); Official List of Shareholders in [REDACTED] dated 23 April 2015 (C-0340).

²⁴⁵ Cl. Reply, para. 1299 (eighth bullet); Certificate from the Commercial Registry in Beirut regarding Prinvest Shipbuilding SAL Holding dated 30 August 2018 (C-0331).

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

²⁴⁶ Cl. Reply, para. 1299 (ninth bullet); Certificate from the Commercial Registry in Beirut regarding Privinvest Shipbuilding SAL Holding dated 30 August 2018 (**C-0331**).

²⁴⁷ Cl. Reply, para. 1300.

²⁴⁸ Cl. Reply, para. 1301.

²⁴⁹ Cl. Reply, para. 1301 (first bullet); Certificate from the Commercial Registry in Beirut regarding PI DEV SAL Holding dated 7 September 2018 (**C-0341**); Certificate from the Commercial Registry in Beirut regarding Privinvest Shipbuilding SAL Holding dated 30 August 2018 (**C-0331**).

²⁵⁰ Cl. Reply, para. 1301 (second bullet); Certificate from the Commercial Registry in Beirut regarding Privinvest Shipbuilding SAL Holding dated 30 August 2018 (**C-0331**).

[REDACTED]

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²⁵¹ Cl. Reply, para. 1302.

²⁵² Cl. Mem., paras. 505–507 (referring, *inter alia*, to Article 1 (1) of the BIT (CL-0001) which defines the scope of investment).

²⁵³ Cl. Reply, para. 1303 (referring to Resp. C-Mem., para. 882).

²⁵⁴ Cl. Reply, para. 1306 (first bullet) (referring to Resp. C-Mem., para. 884).

²⁵⁵ Cl. Reply, para. 1306 (second bullet) (referring to Resp. C-Mem., para. 884).

²⁵⁶ Cl. Reply, para. 1306 (second bullet) (referring to Cl. Mem., para. 307).

²⁵⁷ Cl. Reply, paras. 1307–1308.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁵⁸ Cl. Reply, para. 1307.

²⁵⁹ Cl. Reply, para. 1307 (referring to *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, UNCITRAL, PCA Case No. AA 226, Interim Award on Jurisdiction and Admissibility dated 30 November 2009 (CL-0164), para. 429 and *Československa obchodní banka, a.s. v. Slovak Republic*, ICSID Case No. ARB/97/4, Decision of the Tribunal on Objection to Jurisdiction dated 24 May 1999 (CL-0038), para. 32)).

²⁶⁰ Cl. Rej., para. 1794.

²⁶¹ Cl. Rej., para. 1800.

²⁶² Cl. Rej., para. 1796.

²⁶³ Cl. Rej., paras. 1805–1806.

²⁶⁴ Cl. Reply, para. 1292 (second bullet); Cl. Mem., para. 513.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁶⁵ Cl. Reply, para. 1312; Cl. Mem., para. 515.

²⁶⁶ Cl. Mem., para. 515 (referring to *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Decision on Jurisdiction, 8 March 2010 (CL-0040) para. 130; *Pantehniki S.A. Contractors & Engineers v. Republic of Albania*, ICSID Case No. ARB/07/21, Award, 30 July 2009 (“*Pantehniki*”) (CL-0041), para. 44).

²⁶⁷ Cl. Reply, para. 1316; Cl. Mem., paras. 515–516.

²⁶⁸ Cl. Reply, para. 1317; Cl. Mem., para. 517, (relying on *Saba Fakes v. Republic of Turkey*, ICSID Case No. ARB/07/20, Award, 14 July 2010 (“*Saba Fakes*”) (CL-0042), para. 110; *Quiborax* (CL-0043), para. 219; *Electrabel S.A. v. Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012 (“*Electrabel*”) (CL-0044), para. 5.43; *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, 31 October 2012 (CL-0045), para. 295).

²⁶⁹ Cl. Reply, para. 1317 and First Witness Statement of Mr. Iskandar Safa (C-0020), para. 47. *See also* Cl. Mem., para. 517 (first bullet) (referring to discussions regarding the Claimants’ investment at paras. 305–308 of Cl. Mem).

²⁷⁰ Cl. Rej., para. 1803 (fourth bullet) (referring, *inter alia*, to Letter from Lenz & Stachelin to Allen & Overy dated 7 September 2018 (C-0304)).

²⁷¹ Cl. Reply, para. 1321; Cl. Mem., para. 517 (first bullet) and Second Expert Report of [REDACTED] (C-0320), para. 13.5; Exhibits 13.1-13.11 to the Second Expert Report of [REDACTED] (C-0320).

[REDACTED]

[REDACTED]

[REDACTED]

²⁷² Cl. Mem., para. 517 (first bullet) (referring to *Fedax N.V. v. Republic of Venezuela*, ICSID Case No. ARB/96/3, Decision of the Tribunal on Objections to Jurisdiction, 11 July 1997 (CL-0037), para. 37; *Československa obchodní banka, a.s. v. Slovak Republic*, ICSID Case No. ARB/97/4, Decision of the Tribunal on Objections to Jurisdiction, 24 May 1999 (CL-0038), para. 75).

²⁷³ Cl. Reply, paras. 1323–1324. *See* First Witness Statement of Mr. Iskandar Safa (C-0020), para. 47-48; Cl. Mem., para. 517 (first bullet).

²⁷⁴ Cl. Reply, paras. 1325–1326 and First Witness Statement of Mr. Iskandar Safa (C-0020), paras. 13, 17, 46 and 49; Cl. Mem., para. 517 (first bullet).

²⁷⁵ Cl. Mem., para. 517 (first bullet) (referring to *Saba Fakes* (CL-0042), para. 110 and *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, para. 116 (“*Bayindir*”) (CL-0046)).

²⁷⁶ Cl. Mem., para. 517 (second bullet). *See also* Cl. Reply, para. 1328.

²⁷⁷ Cl. Reply, para. 1328; Cl. Mem., para. 517 (second bullet).

²⁷⁸ Cl. Mem., para. 517 (second bullet) (citing *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, 31 October 2012 (CL-0045), para. 300; *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006, para. 93 (CL-0047); *Quiborax* (CL-0043), para. 234; *Bayindir* (CL-0046), para. 133; and the First Witness Statement of Mr. Iskandar Safa (C-0020), para. 95).

²⁷⁹ Cl. Mem., para. 517 (third bullet) (referring to *Saba Fakes* (CL-0042), para. 110; *Electrabel* (CL-0044), para.5.43; *Quiborax* (CL-0043), para. 234).

[REDACTED]

[REDACTED]

[REDACTED]

(2) The Tribunal’s Analysis

244. For purposes of the Tribunal’s subject matter jurisdiction (*ratione materiae*) the relevant provisions are Article 1(1) of the BIT and Article 25(1) of the ICSID Convention. Article 1(1) of the BIT provides:

“Investment” means every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting

²⁸⁰ Cl. Reply, para 1329.

²⁸¹ Cl. Reply, para. 1329; Cl. Mem., para. 517 (third bullet).

²⁸² Cl. Mem., para. 518.

²⁸³ Cl. Mem., para. 519.

²⁸⁴ Cl. Mem., para. 519.

²⁸⁵ Cl. Mem., para. 519.

²⁸⁶ Cl. Mem., para. 519.

²⁸⁷ Cl. Mem., para. 519.

Party, in accordance with the latter's legislation, and in particular, though not exclusively includes:

(a) movable and immovable property and any rights in rem such as servitudes, ususfructus, mortgages, liens or pledges;

(b) shares in and stock and debentures of a company and any other form of participation in a company;

(c) claims to money or to any performance under contract having an economic value as well as loans connected to an investment;

(d) intellectual property rights; and

(e) business concessions conferred by law or under contract or by decision of the executive authority in accordance with the law, including concessions to search for, cultivate, extract or exploit natural resources.

A possible change in the form in which the investment have been made does not affect their character as investment.

245. Article 25(1) of the ICSID Convention, in turn, provides that the jurisdiction of the Centre “shall extend to any legal dispute arising directly out of an investment.” The ICSID Convention does not provide a definition of “investment,” but there is a consistent arbitral jurisprudence regarding the interpretation of the term. According to this interpretation, an “investment” within the meaning of the ICSID Convention involves a contribution of capital in the host State, which in turn implies (indeed by definition once there is a capital contribution) a certain duration and assumption of risk.²⁸⁸
246. As summarized above, the Respondent raises a number of arguments to support its objection that the Claimants have not made an “investment,” including that the Claimants have not proven that they held a 75.1% shareholding in HSY at all relevant times. According to the Respondent, there were several changes to the ownership structure of HSY, and the

²⁸⁸ See the case law referred to in Cl. Mem., fn. 668.

Claimants have failed to disclose such changes, although this was required by the Implementation Agreement.

247. The Tribunal notes that the Respondent does not dispute that the Claimants did acquire indirect ownership in HSY, but complains that the Claimants have failed to account for the changes that have occurred in the ownership structure of HSY. The Tribunal notes that such changes, even if they may not have been fully accounted for, do not change the fact that the Claimants maintained indirect shareholding throughout the relevant period from the date the claims allegedly arose until the registration of the present case by the Secretary-General of the Centre. This is supported by the evidence on record.²⁸⁹ Whether or not the Implementation Agreement required the changes in the ownership of HSY to be notified to the Respondent is not relevant for the determination of whether the Claimants have made an investment for purposes of the BIT and the ICSID Convention, and in any event any such obligation was not incumbent on the Claimants but on the parties to the Implementation Agreement. The Tribunal also notes that the Respondent did not previously challenge the Claimants' indirect shareholding in HSY, including in the ICC2 Arbitration.

²⁸⁹ See, e.g., Share Purchase Agreement between [REDACTED] and Prinvest Shipbuilding S.à.r.l. concerning the acquisition of a 100% shareholding in [REDACTED] dated 22 September 2010 (C-0004); Official List of Shareholders in [REDACTED] dated 9 September 2010 (C-0326); Share Purchase and Transfer Agreement between [REDACTED] and GSNH Concerning the Acquisition of 75.1% of the Shares in HSY dated 22 September 2010 (C-0327); HSY's Shareholder Book dated 22 September 2010 (C-0328); Share Transfer Agreement between [REDACTED] and Prinvest Shipbuilding S.à.r.l. regarding 100% of the shares in [REDACTED] dated 22 September 2010 (C-0329); Official List of Shareholders in [REDACTED] dated 4 October 2010 (C-0330); Certificate from the Commercial Registry in Beirut regarding Prinvest Shipbuilding SAL Holding dated 30 August 2018 (C-0331); Certificate from the Commercial Registry in Beirut regarding Prinvest Holding SAL dated 30 August 2018 (C-0332); Share Purchase and Transfer Agreement between Prinvest Shipbuilding SAL Holding and Logistics International SAL (Offshore) concerning the acquisition of a 50% shareholding in [REDACTED] dated 5 December 2011 (C-0333); Official List of Shareholders in [REDACTED] dated 5 December 2011 (C-0334); Certificate from the Commercial Registry in Beirut regarding Logistics International SAL (Offshore) dated 30 August 2018 (C-0335); Share Purchase and Transfer Agreement between Prinvest Shipbuilding SAL Holding and Logistics International SAL (Offshore) Concerning the Acquisition of a 30% Shareholding in [REDACTED] dated 28 November 2012 (C-0336); Official List of Shareholders in [REDACTED] dated 20 December 2012 (C-0337); Certificate from the Commercial Registry in Beirut regarding Logistics International Holding SAL dated 30 August 2018 (C-0338); Share Purchase and Transfer Agreement between Logistics International SAL (Offshore) and Prinvest Shipbuilding SAL Holding Concerning the Acquisition of an 80% Shareholding in [REDACTED] dated 25 February 2015 (C-0339); Official List of Shareholders in [REDACTED] dated 23 April 2015 (C-0340); and Certificate from the Commercial Registry in Beirut regarding PI DEV SAL Holding dated 7 September 2018 (C-0341).

248. The Respondent also contends that the Claimants must show beneficial interest in HSY since it was ADM and not a Prinvest company that was initially supposed to acquire the shares in HSY. The Tribunal is unable to follow the Respondent's objection. Beneficial ownership is only relevant if a party other than the legal owner wishes to bring a claim; the legal owner need not prove the negative, that is, that a party other than the legal owner is not the beneficial owner.
249. The Respondent also argues that the Claimants' shareholding in HSY does not constitute an investment because the Claimants have not made a contribution of a sufficient duration and also have not assumed any risk. The Tribunal notes that while the purchase price (EUR 1) paid for HSY hardly qualifies as a capital contribution, the Claimants acquired the so-called [REDACTED] from the [REDACTED] and they have also extended, through companies they control, substantial shareholder loans to HSY by way of initial shareholder loans and additional shareholder loans.²⁹⁰ While the amount of the [REDACTED] is not evidenced, and while the precise amounts that were extended by way of the shareholder loans, as well as whether they are sufficiently supported by evidence, are disputed between the Parties,²⁹¹ the Tribunal considers that there is sufficient evidence to support the conclusion that the Claimants have made a substantial capital contribution of an extended duration and thus have also assumed the risk of losing this contribution in whole or in part. For purposes of determining whether the Claimants have made an investment, the Tribunal need not be in a position to precisely quantify the amount invested, so long as it is satisfied that there is sufficient evidence that a capital contribution has, in fact, been made.
250. The Tribunal is therefore satisfied that the Claimants' shareholding in HSY qualifies as an "investment" within the meaning of both Article 1(1) of the BIT and Article 25(1) of the ICSID Convention.

²⁹⁰ Expert Report of [REDACTED] (C-0026), paras. 8.3 and 8.10–8.11; Second Expert Report of [REDACTED] (C-0320), paras. 13.14–13.27. Cf. [REDACTED] First Report (R-0020), paras. 9.10 and 9.19.

²⁹¹ *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁹⁷ Resp. C-Mem., paras. 908–909.

²⁹⁸ Resp. C-Mem., paras. 910–913 (citing *Case Concerning Armed Activities on the Territory of the Congo (New Application 2002)* (“Democratic Republic of Congo v Rwanda), Judgment of 3 February 2006, 2006 ICJ Reports 6, (“DRC”) (RL-0007), para. 88 and *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction, 21 December 2012 (CL-0032), para. 108).

²⁹⁹ Resp. Reply, para. 21.

³⁰⁰ Resp. Reply, paras. 22–25 (referring to Cl. Reply, para. 1372 (second bullet)).

³⁰¹ Resp. Reply, para. 29.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁰² Resp. Reply, para. 30 (referring to Cl. Reply, paras. 1375 and 1377).

³⁰³ Resp. Reply, para. 31.

³⁰⁴ Resp. Reply, para. 31.

³⁰⁵ Resp. Reply, para. 31.

³⁰⁶ Resp. Reply, para. 33. *See* Summons sent by HSY and Prinvest Shipbuilding to the Hellenic Republic dated 14 February 2012 (C-0007), para. 1.

³⁰⁷ Resp. Reply, para. 33 (referring to Cl. Reply, para. 1375 and Cl. Mem., paras. 331–333).

³⁰⁸ Resp. Reply, para. 33(a).

³⁰⁹ Resp. Reply, para. 33(b).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³¹⁰ Resp. Reply, para. 35.

³¹¹ Resp. Reply, para. 35.

³¹² Resp. Reply, para. 35 (citing *Antoine Goetz and others v. Republic of Burundi*, ICSID Case No. ARB/95/3 (RL-0074), paras. 90–93). The Respondent also cites *Burlington* (RL-0005), paras. 316–318.

³¹³ Resp. Reply, para. 37 (referring to Cl. Mem., para. 528 (citing various legal authorities where tribunals have found that the purpose of the cooling-off period is to allow amicable settlement)).

³¹⁴ Resp. Reply, para. 38 (referring to Cl. Reply, para. 1380 (second bullet)).

³¹⁵ Resp. Reply, para. 40.

³¹⁶ Resp. Reply, para. 41 (citing *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (“*Georgia v. Russian Federation*”), Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 70 (RL-0075), para. 159).

[REDACTED]

[REDACTED]

[REDACTED]

³¹⁷ Resp. Reply, para. 41.

³¹⁸ Resp. Reply, para. 42.

³¹⁹ Resp. Reply, para. 43. Respondent refers to *Georgia v. Russian Federation (RL-0075)*, p. 70 as an example of the ICJ declining jurisdiction because Georgia failed to pursue amicable settlement.

³²⁰ Resp. Reply, para. 44(a) (referring to the draft protocol of agreement, Draft Protocol Agreement dated 9 March 2012 (C-0080); Summons sent by HSY and Privinvest Shipbuilding to the Hellenic Republic dated 14 February 2012 (C-0007) and Implementation Agreement between the Hellenic Republic, HSY, HDW, ADM and ThyssenKrupp Marine Systems AG dated 30 September 2010 (C-0005)).

³²¹ Resp. Reply, para. 44(a) (referring to Letter from HSY to the Ministry of Defence dated 26 April 2012 (C-0082)).

³²² Resp. Reply, para. 44(b).

³²³ Resp. Reply, para. 44(c).

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Générale de Surveillance S.A. v. Islamic Republic of Pakistan, ICSID Case No. ARB/01/13, Decision of the Tribunal on Objections to Jurisdiction, 6 August 2003 (“*SGS Société*”) (CL-0052), para. 184; *Bayindir* (CL-0046), paras. 95, 100; *RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/30, Decision on Jurisdiction, 6 June 2016 (CL-0176), para. 225; *Ronald S. Lauder v. The Czech Republic*, UNCITRAL, Final Award, 3 September 2001 (CL-0053), para. 187; *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008 (“*Biwater*”) (CL-0007), para. 343; *Anatolie Stati, Gabriel Stati, Ascom Group S.A. and Terra Raf Trans Traiding Ltd. v. Republic of Kazakhstan*, SCC Case No. V (116/2010), Award, 19 December 2013 (CL-0008), para. 829; *Enkev Beheer B.V. v. Republic of Poland*, PCA Case No. 2013-01, First Partial Award, 29 April 2014, (CL-0080), paras. 315–323).

³²⁹ Cl. Reply, para. 1372 (second bullet) (discussing the US-Ecuador BIT and the US-Argentina BIT). See Resp. C-Mem., paras. 902–905 (citing *Murphy* (RL-0004), paras. 104, 108 and 149; *Burlington* (RL-0005), paras. 312 and 340; *Enron* (RL-0006), para. 195).

³³⁰ Cl. Reply, para. 1372 (second bullet).

³³¹ Cl. Rej., para. 1820; Cl. Reply, para. 1372 (second bullet).

³³² Cl. Rej., para. 1822. (fourth bullet).

³³³ Cl. Rej., para. 1825 (referring to Cl. Mem., para. 527).

³³⁴ Cl. Rej., para. 1825 (referring to Cl. Mem., paras. 325–326).

³³⁵ Cl. Rej., para. 1825 (referring to Cl. Mem., para. 327). See Summons sent by HSY and Prinvest Shipbuilding to the Hellenic Republic dated 14 February 2012 (C-0007), para. 1.

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³³⁶ Cl. Rej., para. 1825 (referring to Cl. Mem., paras. 331–333).

³³⁷ Cl. Rej., para. 1827.

³³⁸ Cl. Rej., para. 1827.

³³⁹ Cl. Rej., para. 1828.

³⁴⁰ Cl. Rej., para. 1829.

³⁴¹ Cl. Rej., para. 1830; Cl. Mem., para. 527 (citing *Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain*, ICSID Case No. ARB/13/36, Award, 4 May 2017 (“*Eiser*”) (CL-0050), para. 318; *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, 30 August 2000 (“*Metalclad*”) (CL-0011), para. 67).

[REDACTED]

(2) The Tribunal’s Analysis

282. The Respondent’s objection regarding the cooling-off period is based on Article 9 of the BIT, which provides, in relevant part:

1. Disputes between an investor of a Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement, in relation to an investment of the former, shall, if possible, be settled by the disputing in an [sic] amicable way.

2. If such disputes cannot be settled within six months from [sic] either party requested amicable settlement, the investor concerned may submit the dispute either to the competent court of the Contracting Party in the territory of which the investment has been made or to international arbitration.

Each Contracting Party hereby consents to the submission of such dispute to international arbitration.

³⁴⁹ Cl. Rej., para. 1840 (third bullet); Cl. Reply, para. 1381.

³⁵⁰ Cl. Rej., para. 1840 (third bullet); Letter from HSY and Prinvest Shipbuilding SAL Holding to [REDACTED] dated 12 March 2012 (C-0081); First Witness Statement of Mr. Iskandar Safa (C-0020), para. 71.

³⁵¹ Cl. Rej., para. 1840 (third bullet); Cl. Mem., paras. 350–367; Cl. Reply, paras. 1053–1115.

³⁵² Cl. Rej., para. 1840 (third bullet); Letter from HSY to [REDACTED] dated 11 April 2014 (C-0088); Letter from HSY to [REDACTED] dated 10 May 2014 (C-0089).

³⁵³ Cl. Rej., para. 1840 (third bullet); Letter from HSY to [REDACTED] dated 8 December 2017 (C-0273); Second Witness Statement of Mr. Iskandar Safa (C-0274), para. 29.

283. As summarized above, the Parties disagree on whether: (i) Article 9(1) imposes a mandatory requirement for the Parties to seek amicable settlement; (ii) such requirement is a matter of jurisdiction or admissibility; (iii) the Claimants provided sufficient notice of the dispute; (iv) the Claimants complied with the six-months cooling-off period; and (v) it was futile for the Claimants to engage in attempts to settle the dispute amicably.
284. The preliminary factual question that arises is whether the Claimants have, in fact, complied with Article 9(1) of the BIT and sought amicable settlement of the dispute. When determining this matter, the Tribunal notes that the parties to the various transactions (in particular the Framework Agreement and the Implementation Agreement), which provide the context in which the present dispute arises, have conducted discussions since at least 2011 to seek a negotiated settlement of the issues that had arisen between them.³⁵⁴ These attempts were not successful, and subsequently, the parties commenced two separate ICC arbitrations to address these issues. These arbitrations arise largely out of the same factual circumstances as the present dispute. While the parties to these negotiations and arbitration proceedings are not formally the same as those to the present proceedings, Mr. Iskandar Safa, the first Claimant, was closely involved in the negotiations, as were the various ministers of the Respondent. Moreover, the claimants in the ICC1 Arbitration also brought claims specifically based on the Treaty, including claims for expropriation and breach of the fair and equitable treatment standard.³⁵⁵ Consequently, although the ICC1 tribunal dismissed these claims for lack of jurisdiction, the Respondent was put on notice and was well informed of the existence of treaty claims well before the present case was filed, even though there had been no formal notice of dispute under the BIT. Accordingly, the relevant parties, including the Parties to this arbitration, had ample opportunity to settle all the issues that had arisen between them, including the treaty claims. In the circumstances, even if a formal notice of dispute under the Treaty was never served, it would be unduly formalistic for the Tribunal to conclude that the requirements of Article 9(1) and (2) of the BIT have not been met.

³⁵⁴ See, e.g., the summons sent by HSY and Prinvest Shipbuilding to the Hellenic Republic dated 14 February 2012 (C-0007).

³⁵⁵ Award in the ICC1 Arbitration (C-0019), paras. 855–871.

285. While the Claimants also raise in this arbitration complaints that they did not make in the ICC1 Arbitration, such complaints cannot be considered to fall outside the Tribunal’s jurisdiction on that basis alone. They form part of the dispute between the Parties, as it has developed since its inception, and it would be unreasonable and inefficient to require that the Parties seek to negotiate and arbitrate these aspects of the overall dispute separately. The Tribunal notes that other investment treaty tribunals have reached similar conclusions in similar circumstances.³⁵⁶

286. The Tribunal, therefore, considers that the Claimants have complied with the requirements of Article 9(1) and (2) of the BIT. In view of this finding, the Tribunal need not determine whether compliance with these provisions constitutes a jurisdictional requirement, or whether an alleged failure to comply with them should be considered a matter of admissibility.

E. THE IMPACT OF THE ICC PROCEEDINGS ON ADMISSIBILITY OF THE CLAIMANTS’ CLAIMS

(1) The Parties’ Positions

a. The Respondent’s Position

287. [REDACTED]

³⁵⁶ *Eiser (CL-0050)*, para. 318; *Metalclad (CL-0011)*, para. 67.

³⁵⁷ In its letter of 8 April 2019, the Tribunal invited the Parties to submit their position on this issue.

³⁵⁸ Resp. Reply, para. 46.

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³⁵⁹ Resp. Reply, para. 46; Resp. C-Mem., paras. 923–938.

³⁶⁰ Resp. Reply, para. 47(a) (referring to Cl. Reply, para. 1337).

³⁶¹ Resp. Reply, para. 47(b) (referring to Cl. Reply, para. 885); Resp. C-Mem., para. 919.

³⁶² Resp. Reply, para. 47(c) (referring to Cl. Mem., paras. 665–668).

³⁶³ Resp. Reply, para. 48.

³⁶⁴ Resp. PHB, para. 239; Resp. Reply, para. 49 (referring to Cl. Reply, paras. 1336–1337); Resp. C-Mem., para. 917.

³⁶⁵ Resp. Reply, para. 51 (citing *RSM Production Corporation and others v. Grenada*, ICSID Case No. ARB/10/6, Award, 10 December 2010 (“*RSM*”) (RL-0052), para. 7.1.7 and *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Award, 25 August 2014 (RL-0076), para. 7.40).

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³⁶⁶ Resp. Reply, para. 51.

³⁶⁷ Resp. PHB, para. 232; Resp. Reply, para. 52 (referring to Resp. C-Mem., paras. 939–945).

³⁶⁸ *Compañía de Aguas del Aconquija S.A. and Vivendi Universal (formerly Compagnie Générale des Eaux) v. Argentine Republic*, ICSID Case No. ARB/97/3, Decision on Annulment, 3 July 2002 (“*Vivendi Annulment*”) (RL-0053), para. 98.

³⁶⁹ Resp. Reply, para. 53; Resp. PHB, para. 239. *See also* Resp. PHB, para. 233 (citing *Pantechniki* (CL-0041), para. 64).

³⁷⁰ Resp. PHB, para. 239 (citing *RSM* (RL-0052), para. 7.1.7).

³⁷¹ Resp. PHB, para. 239.

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³⁷² Resp. PHB, para. 234.

³⁷³ Resp. Reply, para. 55(a); Resp. PHB, para. 234 (referring to Resp. Reply, paras. 1446, 1495 and 1527).

³⁷⁴ Resp. Reply, para. 55(b).

³⁷⁵ Resp. Reply, para. 55(b).

³⁷⁶ Resp. Reply, para. 55(b) (referring to Cl. Reply, para. 1616).

³⁷⁷ Resp. Reply, para. 55(b) (referring to HSY's Updated Statement of Counterclaim dated 2 February 2018). *See* HSY's updated statement of counterclaim dated 2 February 2018 in ICC2 (**R-0295**), Section C.

³⁷⁸ Resp. Reply, para. 57.

³⁷⁹ Resp. Reply, para. 58.

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³⁸⁰ Resp. Reply, para. 59 (referring to case law cited in Resp. C-Mem. paras. 977–983).

³⁸¹ Resp. Reply, para. 56 (referring to Cl. Reply, para. 893).

³⁸² Resp. Reply, para. 60.

³⁸³ Resp. Reply, para. 61.

³⁸⁴ Resp. Reply, para. 61(a).

³⁸⁵ Resp. Reply, para. 61(a).

³⁸⁶ Resp. Reply, para. 61(a) (referring to HSY’s Updated Statement of Counterclaim dated 2 February 2018 (**R-0295**), Sections B and C).

³⁸⁷ Resp. Reply, para. 61(b).

³⁸⁸ Resp. Reply, para. 61(b).

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³⁸⁹ Resp. Reply, para. 62.

³⁹⁰ Resp. PHB, para. 237 (citing *Ampal-American Israel Corporation and others v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Jurisdiction, 1 February 2016 (“*Ampal*”) (RL-0050), para. 331).

³⁹¹ Resp. PHB, para. 237 (citing *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, 14 July 2006 (“*Azurix*”) (CL-0189)).

³⁹² Resp. Reply, para. 62(a) (citing *Malicorp Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/08/18, Award, 7 February 2011 (“*Malicorp*”) (RL-0049) para. 103(c)); Resp. PHB, para. 238.

³⁹³ Resp. Reply, para. 62(a).

³⁹⁴ Resp. Reply, para. 62(a).

³⁹⁵ Resp. Reply, para. 62(b).

[REDACTED]

b. The Claimants' Position

[REDACTED]

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³⁹⁶ Resp. Reply, para. 62(b).

³⁹⁷ Resp. Reply, para. 62(b).

³⁹⁸ In its letter of 8 April 2019, the Tribunal invited the Parties to submit their positions on this issue.

³⁹⁹ Cl. PHB, para. 2110.

⁴⁰⁰ Cl. PHB, para. 2110.

⁴⁰¹ Cl. PHB, para. 2110.

⁴⁰² Cl. PHB, para. 2113 (first bullet); Cl. Rej., para. 1848 (referring to Resp. Reply, paras. 52–56).

⁴⁰³ Cl. Rej., para. 1848; Cl. Reply, paras. 1338–1341.

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⁴⁰⁴ Cl. Rej., para. 1849 (referring to Resp. Reply, para. 52, citing *Vivendi Annulment (RL-0053)*, para. 98).

⁴⁰⁵ Cl. Rej., para. 1849 (first bullet); Cl. Reply, para.1340 (citing *CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8, Decision on Jurisdiction, 17 July 2003 (**CL-0169**), paras. 72–76; *Siemens Jurisdiction (CL-0034)*, para. 180; *Bayindir (CL-0046)*, paras. 148–151; *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006 (**CL-0047**), paras. 79–82; *SGS Société (CL-0052)*, paras. 144–145).

⁴⁰⁶ Cl. Rej., para. 1849 (first bullet).

⁴⁰⁷ Cl. Rej., para. 1849 (second bullet).

⁴⁰⁸ Cl. Rej., para. 1850; Cl. Reply, para. 1339.

⁴⁰⁹ Cl. PHB, para. 2113 (first bullet); Cl. Rej., para. 1850 (referring to Resp. Reply, para. 55(a)–(b)).

⁴¹⁰ Cl. Rej., para. 1851 (first bullet).

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⁴¹¹ Cl. Rej., para. 1851 (first bullet) (referring to Cl. Reply, paras. 1641–1735).

⁴¹² Cl. Rej., para. 1851 (first bullet).

⁴¹³ Cl. Rej., para. 1851 (second bullet).

⁴¹⁴ Cl. PHB, para. 2113 (second bullet); Cl. Rej., para. 1851 (second bullet).

⁴¹⁵ Cl. Rej., para. 1852.

⁴¹⁶ Cl. PHB, para. 2115; Cl. Mem., paras. 523–525; Cl. Reply, para. 1333.

⁴¹⁷ Cl. PHB, para. 2115; Cl. Rej., para. 1856.

⁴¹⁸ Cl. Mem., para. 524 (first bullet); Cl. Reply, para. 1333.

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⁴¹⁹ Cl. Rej., para. 1856 (referring to Resp. Reply, para. 49).

⁴²⁰ Cl. Rej., para. 1856.

⁴²¹ Cl. Rej., para. 1858 (referring to *Barcelona Traction, Light and Power Company Limited*, Judgment, 5 February 1970, ICJ Reports 1970 (CL-0198), paras. 38, 41–42).

⁴²² Cl. Mem., para. 524 (second bullet); Cl. Reply, para. 1333.

⁴²³ Cl. Mem., para. 524 (second bullet); Cl. Reply, para. 1333; Cl. PHB, para. 2115.

⁴²⁴ Cl. Mem., para. 524 (second bullet); Cl. Reply, para. 1333.

⁴²⁵ Cl. Rej., para. 1857 (referring to Resp. Reply, para. 62(a) citing *Malicorp* (RL-0049), para. 103(c) and *RSM* (RL-0052), para. 7.1.7).

⁴²⁶ Cl. Rej., para. 1857 (first bullet) (referring to Cl. Reply, para. 1346).

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⁴²⁷ Cl. Rej., para. 1858 (first bullet).

⁴²⁸ Cl. Rej., para. 1858.

⁴²⁹ Cl. Rej., para. 1858 (second bullet); Cl. Reply, para. 1347.

⁴³⁰ Cl. Rej., para. 1858 (second bullet); Cl. Reply, para. 1347.

⁴³¹ Cl. Rej., para. 1858 (second bullet).

⁴³² Cl. Rej., para. 1859.

⁴³³ Cl. Rej., para. 1859 (referring to Cl. Reply, paras. 1345–1348).

⁴³⁴ Cl. Rej., para. 1860 (first bullet).

⁴³⁵ Cl. Rej., para. 1860 (first bullet).

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⁴³⁶ Cl. Rej., para. 1860 (second bullet).

⁴³⁷ Cl. PHB, para. 2117; Cl. Rej., para. 1861.

⁴³⁸ Cl. PHB, para. 2118.

⁴³⁹ Cl. PHB, para. 2118; Tr. Day 1, Lange, 102:16–104:4.

⁴⁴⁰ Cl. PHB, para. 2118 (first bullet); Cl. Reply, paras. 1342–1353.

⁴⁴¹ Cl. Rej., para. 1864 (referring to Resp. Reply, para. 61(a)).

⁴⁴² Cl. Rej., para. 1864.

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⁴⁴³ Cl. PHB, para. 2118 (second bullet).

⁴⁴⁴ Cl. PHB, para. 2118 (second bullet). Cl. Rej., para. 1861.

⁴⁴⁵ Cl. PHB, para. 2118 (third bullet); Cl. Rej., para. 1858.

⁴⁴⁶ Cl. Rej., para. 1866.

⁴⁴⁷ Cl. PHB, para. 2118 (third bullet); Cl. Rej., para. 1865.

⁴⁴⁸ Cl. PHB, para. 2121.

⁴⁴⁹ Cl. PHB, para. 2121 (first bullet).

⁴⁵⁰ Cl. PHB, para. 2121 (first bullet); Cl. Rej., para. 1851 (third bullet).

⁴⁵¹ Cl. PHB, para. 2121 (second bullet).

⁴⁵² Cl. PHB, para. 2121 (second bullet).

claim or a contract claim, and whether it has already been litigated as a contract claim, is whether the “essential basis” of the claim is treaty or contract.⁴⁵⁸ As noted by the *Pantechniki* tribunal, “the [t]ribunal must determine whether the claim truly does have an autonomous existence outside the contract.”⁴⁵⁹ If this is not the case, the Claimants must live with the consequences of having elected to submit their claims to an ICC tribunal, just as the *Pantechniki* claimant had to live with the consequences of having elected to take its grievance to the national courts.⁴⁶⁰

331. The Tribunal must, therefore, determine whether the Claimants’ claims are treaty claims or contract claims, and, whether they have already been litigated as contract claims, in relation to all of the five alleged assaults on the Claimants’ investments out of which the Claimants’ claims arise. According to the Claimants, these five assaults are:

- (a) Deprivation of income: The Respondent allegedly deprived HSY of all sources of income by failing to pay under the Archimedes and Neptune II Programs, by failing to place further orders by the Hellenic Navy, and by frustrating HSY’s chances of obtaining foreign navy work;
- (b) Deprivation of assets: The Respondent allegedly deprived HSY of all its assets as a result of a number of acts taken by the Respondent and entities controlled by it;
- (c) Takeover of control: The Respondent allegedly took over the shipyard and excluded the Claimants from the use and management of the shipyard;
- (d) Special Administration: The Respondent allegedly imposed a Special Administration on HSY in order to take the legal title to the shipyard; and
- (e) Defamation campaign: The Respondent allegedly engaged in a defamation campaign against the Claimants and their group of companies.

⁴⁵⁸ *Vivendi Annulment (RL-0053)*, para. 98; *Pantechniki (CL-0041)*, paras. 61 *et seq.*

⁴⁵⁹ *Pantechniki (CL-0041)*, para. 64.

⁴⁶⁰ *Pantechniki (CL-0041)*, para. 64.

332. The Tribunal will address the Claimants' claims, to the extent that they are based on these five sets of facts, separately below.

a. Deprivation of Income

333. The Claimants contend that, when they acquired HSY, they were aware that HSY had two large submarine programs (Archimedes and Neptune II), but that they would not be able to work on civil shipbuilding orders for a period of fifteen years, due to the Military Decision. The only potential sources of income were therefore work for the Hellenic Navy, including the two existing programs (Archimedes and Neptune II), and for foreign navies. According to the Claimants, the Respondent, however, cut off HSY from all income by stopping payments under the Archimedes and Neptune II Programs, by failing to place further orders through the Hellenic Navy and by thwarting HSY's chances of obtaining foreign navy work.

334. In the ICC1 Arbitration, the ICC1 claimants made claims for payments under the Archimedes (Claim 1) and Neptune II (Claim 2) Programs, as well as for failure to provide promised work, including both for the Hellenic Navy and foreign navies (Claim 5).⁴⁶¹ Under Claim 1, the ICC1 claimants claimed EUR 75.5 million plus interest corresponding to the allegedly outstanding contract price in connection with the construction of the three submarines (*Pipinos, Matrozos* and *Katsonis*) under the Archimedes Program.⁴⁶² Claim 1 was granted in full by the ICC1 tribunal.⁴⁶³ Under Claim 2, the ICC1 claimants claimed EUR 882.75 million plus interest corresponding to the allegedly outstanding contract price in connection with the construction of submarines 5 and 6, the construction of which had not started, under the Neptune II Program, as well as for the value of "excess materials" supplied in connection with the program (which became unnecessary as the parties agreed to build two new submarines instead of modernizing two old submarines), in the amount of

⁴⁶¹ Claim 3 was a claim for declaratory relief that HSY had lawfully suspended its obligations arising under the Main Contracts, and that the Hellenic Republic was liable to indemnify and hold HSY harmless of its obligation to provide insurance payments for and maintenance works on the submarines built under the Archimedes and Neptune II Programs (ICC1 Award (C-0019), paras. 1361–1374). The ICC1 tribunal granted the claim for the former declaration, but not for the latter (ICC1 Award (C-0019), paras. 1424–1426).

⁴⁶² ICC1 Award (C-0019), paras. 954–962.

⁴⁶³ ICC1 Award (C-0019), paras. 1074–1075, 1084–1092, 2216(5)–(6).

EUR 15 million plus interest.⁴⁶⁴ The ICC1 tribunal granted Claim 2 in part, awarding the ICC1 claimants EUR 64.5 million, plus interest, representing outstanding instalments in connection with the construction of submarines 5 and 6.⁴⁶⁵ The ICC1 tribunal further granted the ICC1 claimants' claim for excess materials, in the amount of EUR 15 million, plus interest.⁴⁶⁶ Under Claim 5, the ICC1 claimants argued that the Respondent was liable for breach of contract for failing to award HSY promised work, and claimed EUR 105,536,000 in compensation.⁴⁶⁷ This claim was dismissed by the ICC1 tribunal.⁴⁶⁸

335. The Tribunal notes that the Claimants' claim for deprivation of income in this ICSID arbitration is based on the very same facts as the ICC1 claimants' Claims 1, 2 and 5 in the ICC1 Arbitration. While the claimants in the two arbitrations are not the same, and while the claims in the ICC1 Arbitration were based on breach of contract, the claims are in substance for compensation of the same loss. Accordingly, the essential basis of the Claimants' claims in this ICSID arbitration, to the extent that they are based on the alleged deprivation of income, is the same as that of contractual Claims 1, 2 and 5 brought by the ICC1 claimants in the ICC1 Arbitration. The Claimants' claims must therefore be considered, in substance, contract claims that have already been adjudicated. Consequently, the Tribunal upholds the Respondent's objection and dismisses the Claimants' claims as inadmissible insofar as they are based on the alleged loss of revenue.

336. In view of this conclusion, the Tribunal need not consider whether these claims also constitute an abuse of process.

b. Deprivation of Assets

337. The Claimants contend that the Respondent deprived HSY of all of its assets by (i) subjecting HSY to substantial claims from OSE, a State-owned railway company, and from tax authorities, despite the Respondent's promise that the Claimants would acquire a "clean"

⁴⁶⁴ ICC1 Award (C-0019), paras. 1093–1099, 1163–1165. No claim was made for *Okeanos*, for which HSY carried out 80% of the repair work and was paid for this work in full; *Okeanos* was eventually included in the Finalization Agreement and the remaining work was completed by the Hellenic Navy.

⁴⁶⁵ ICC1 Award (C-0019), paras. 1327–1335, 2216(7)– (8).

⁴⁶⁶ ICC1 Award (C-0019), paras. 1357–1359, 2216(10)– (12).

⁴⁶⁷ ICC1 Award (C-0019), paras. 1635–1654.

⁴⁶⁸ ICC1 Award (C-0019), paras. 1661–1746, 2216(15).

shipyard; (ii) excluding the Privinvest Group from any possibility of reacquiring the Concessionary Land, including Dock No. 5; (iii) issuing two illegal Acts of Imputation against HSY; and (iv) harassing HSY's senior management by initiating numerous criminal investigations against them, thereby depriving HSY of its "human assets."

338. In the ICC1 Arbitration, the ICC1 claimants claimed that the Respondent failed to disclose to Privinvest that OSE was planning to sue HSY for over EUR 327 million (Claim 6);⁴⁶⁹ that the Respondent was in breach of the Implementation Agreement and obligated to reimburse HSY for the extraordinary contribution assessed by Greek tax authorities after the conclusion of the Implementation Agreement (Claim 7);⁴⁷⁰ that the Respondent was obliged to ensure that a Privinvest group company could reacquire the Dry-Dock Concession and that HSY could be granted the use of Dock No. 5 by a Privinvest group company (Claim 4.2);⁴⁷¹ and that the amounts set out in the Acts of Imputation, in the amount of EUR 247 million, were not owed by HSY (Ancillary Claim 2).⁴⁷² Claim 6 and Ancillary Claim 2 were granted by the ICC1 tribunal,⁴⁷³ whereas Claims 4.2 and 7 were dismissed.⁴⁷⁴

339. The Tribunal notes that the Claimants' claims, to the extent they arise out of the alleged deprivation of assets, are, largely based on the same facts as the ICC1 claimants' Claims 4.2, 6, 7 and Ancillary Claim 2 in the ICC1 Arbitration. Accordingly, the essential basis of the Claimants' claims in this ICSID arbitration, to the extent that they arise out of the alleged deprivation of assets, is the same as that of contractual Claims 4.2, 6, 7 and Ancillary Claim 2, brought by the ICC1 claimants in the ICC1 Arbitration. To that extent, the Claimants' claims must, therefore, be considered, in substance, contract claims that have already been adjudicated. They are, therefore, inadmissible in this ICSID arbitration. In the

⁴⁶⁹ ICC1 Award (C-0019), paras. 1747–1755.

⁴⁷⁰ ICC1 Award (C-0019), paras. 1824–1848.

⁴⁷¹ ICC1 Award (C-0019), paras. 1610–1622. In Claim 4.1, the ICC1 claimants claimed that the Hellenic Republic was responsible for mishandling the EU State aid case and claimed compensation (ICC1 Award (C-0019), paras. 1427–1454). The ICC1 tribunal found the respondent was in breach of the Framework Agreement and the Implementation Agreement, but dismissed the claim for compensation for lack of causation. As the claimants did not seek a declaratory relief, Claim 4.1 was dismissed (ICC1 Award (C-0019), paras. 1631–1634).

⁴⁷² ICC1 Award (C-0019), paras. 2019–2035.

⁴⁷³ ICC1 Award (C-0019), paras. 1822–1823 and 2216(16) (Claim 6), 2086 and 2216(22) (Ancillary Claim 2).

⁴⁷⁴ ICC1 Award (C-0019), paras. 1632 and 2216(14) (Claim 4.2), 1976 and 2216(17) (Claim 7).

circumstances, the Tribunal need not consider whether these claims also constitute an abuse of process.

340. The sole claim made by the Claimants in this ICSID arbitration in relation to the alleged deprivation of assets that was not raised in the ICC1 Arbitration is the allegation that the Respondent harassed HSY's senior management, thereby depriving HSY of its "human assets." The Tribunal will address this allegation below, when considering the merits of the Claimants' claims.

c. Taking of Control over the Shipyard

341. The Claimants argue that the Respondent took *de facto* control over the Skaramangas shipyard by using HSY's facilities, equipment and employees for "free of charge" works on numerous Hellenic Navy vessels, by taking materials from HSY's warehouses without any payment for them, by imposing a new organizational structure regarding the management of HSY to the exclusion of HSY's board of directors, and by representing itself as the owner of the shipyard to the outside world.
342. The Respondent denies that the Hellenic Navy ever assumed *de facto* control over the shipyard and argues that the use of the shipyard by the Hellenic Navy was based on the Finalization Agreement, which authorized the Hellenic Navy to use the shipyard to complete the works on the four submarines referred to in the Implementation Agreement. According to the Respondent, to the extent the claims relating to the Finalization Agreement were not addressed in the ICC1 Arbitration, they (and their economic consequences) will be addressed in the ICC2 Arbitration, where the ICC1 claimants (as ICC2 respondents) have advanced a counterclaim amounting to approximately EUR 36 million for the alleged unlawful use of HSY's facilities by the Hellenic Navy.⁴⁷⁵
343. The Tribunal notes that, although the parties to the ICC1 Arbitration did not make any specific claims in that arbitration in relation to the Finalization Agreement, the ICC1 tribunal found that "[n]either HSY nor the Republic have ever doubted that the Finalization

⁴⁷⁵ Resp. C-Mem., para. 825.

Agreement was validly entered into and created enforceable obligations.”⁴⁷⁶ The Implementation Agreement was never amended to reflect the terms of the Finalization Agreement, but the Respondent subsequently enacted a law, Law 4258/2014, which included a provision (Article 26) that dealt with the finalization of the four submarines (*Pipinos*, *Matrozos* and *Katsonis* under the Archimedes Program and *Okeanos* under the Neptune II Program) that were subject to the Finalization Agreement. The ICC1 tribunal concluded that under the Finalization Agreement, “HSY was freed from its obligation to construct and deliver the vessels in accordance with the terms and conditions agreed upon in the Archimedes Contract,” and that this obligation “was substituted by a new obligation, that of promptly delivering the Submarines in an ‘as is’ condition (*i.e.*, in a stage of completion of between 80% and 90%) to the Hellenic Navy, and supporting the Hellenic Navy in its efforts to finalize construction at its own cost and risk.”⁴⁷⁷ The ICC1 tribunal further found that the Respondent’s obligation to pay the outstanding purchase price had not been extinguished by novation, which led it to grant Claim 1 in an amount (EUR 75.5 million) representing the outstanding price under the Archimedes Contract, as noted above.⁴⁷⁸

344. However, the ICC1 tribunal also noted that “[t]he Finalization Agreement does not address the precise economic consequences of this highly complex amendment, further to stating the general principle that the Navy will finalize the Submarines at its own cost and risk.”⁴⁷⁹ The ICC1 tribunal went on to state:

The Parties have not addressed this issue at all in this arbitration. The Tribunal agrees with Respondent that the avoidance of unjustified enrichment may require that the economic consequences of the Finalization Agreement (including the compensation in favour of the Yard for the services provided, if any, and the compensation in favour of the Republic for the back-charges accrued, if any) be

⁴⁷⁶ ICC1 Award (C-0019), para. 1016.

⁴⁷⁷ ICC1 Award (C-0019), paras. 1020–1021.

⁴⁷⁸ Submarine *Okeanos*, which was part of the Neptune II Program, was also included in the Finalization Agreement and accordingly, its construction was finalized by the Hellenic Navy at its own cost and risk. However, the ICC1 claimants made no claim regarding *Okeanos* as the Respondent paid for it in full (ICC1 Award (C-0019), para. 1166).

⁴⁷⁹ ICC1 Award (C-0019), para. 1040.

*adjudicated – but this arbitration is not the proper forum to do so, since the Parties have failed to address the issue.*⁴⁸⁰

345. The Tribunal notes that the Claimants' claims in this ICSID arbitration, to the extent that they arise out of the alleged takeover of the shipyard, are in part based on the same facts as the ICC1 claimants' Claims 1 and 2 in the ICC1 Arbitration. While the Claimants disagree with some of the findings of the ICC1 tribunal (in particular insofar as the tribunal's rulings on these claims gave effect to the Finalization Agreement), they are also, alternatively, based on those findings. Accordingly, the essential basis of the Claimants' claims in this ICSID arbitration, to the extent that they arise out of the alleged takeover of the shipyard pursuant to the Finalization Agreement, is the same as the basis of the ICC1 tribunal's findings on the claimants' contractual Claims 1 and 2 in the ICC1 Arbitration. This is the case regardless of whether the Claimants disagree or, alternatively, agree with the ICC1 tribunal's findings as to the validity of the Finalization Agreement. To that extent (but *only* to that extent), the Claimants' claims, therefore, have already been, in substance, adjudicated and are, as such, inadmissible.
346. However, as noted by the ICC1 tribunal, the economic consequences of the Finalization Agreement were not resolved in the ICC1 Arbitration and instead form part of the subject matter of the ICC2 Arbitration. To the extent that such claims arise directly out of the Finalization Agreement, they are, in substance, contractual claims and this ICSID Tribunal has no jurisdiction over such claims. What does fall within the jurisdiction of this ICSID Tribunal is the Claimants' claims arising out of the alleged takeover of the shipyard, to the extent such claims are not directly based on the Finalization Agreement or its financial consequences, but on subsequent events that took place after the conclusion of the Finalization Agreement and were not considered in the ICC1 Arbitration. The Tribunal will address these events when dealing with the merits of the Claimants' claims.

d. Special Administration

347. The Claimants argue that the Respondent took over the legal title of the shipyard by appointing, on 8 March 2017, a Special Administrator, who is now in charge and tasked

⁴⁸⁰ ICC1 Award (C-0019), para. 1040.

with selling the shipyard to a new owner. According to the Claimants, the Respondent is misusing the Recovery Decision to force HSY into bankruptcy.

348. While the Respondent acknowledges that “the only assault that did not feature prominently in the ICC1 proceedings is the Claimants’ claims in relation to the Special Administration,” it argues that “the essential basis of this claim is contractual, as demonstrated by the fact that the Claimants now seek to argue that when HSY was placed in Special Administration, the Respondent breached its contractual obligations.”⁴⁸¹ The Respondent further notes that “HSY has brought the very same claim as a contractual claim in the ICC2 proceedings, arguing that by initiating the Special Administration the Hellenic Republic breached its contractual obligations.”⁴⁸²

349. The Tribunal notes that, the placement of the shipyard under Special Administration was not an issue in the ICC1 Arbitration. Accordingly, while the Claimants’ claims in the present arbitration, insofar as they arise out of the Special Administration may raise contractual issues, such claims cannot be considered inadmissible on the sole basis of having also been raised in the ICC2 Arbitration, which is not yet completed. The Tribunal will, therefore, the address the issue of whether any such claims qualify as treaty or contract claims on the merits.

e. Defamation Campaign

350. It is undisputed that the Claimants’ claims, to the extent that they arise out of the alleged defamation campaign, are not contractual and were not raised in the ICC1 Arbitration. Indeed, the Respondent states that “the only claim with respect to which the essential basis of the claim is not contractual is the so-called ‘defamation’ campaign.”⁴⁸³

351. The Tribunal therefore finds that the Claimants’ claims, to the extent that they arise out of the alleged defamation campaign, are admissible in the present proceedings.

⁴⁸¹ Resp. Reply, para. 55(b) (referring to Cl. Reply, para. 1616).

⁴⁸² Resp. Reply, para. 55(b) (referring to HSY’s Updated Statement of Counterclaim (**R-0295**)).

⁴⁸³ See Resp. Reply, paras. 55–56.

F. ADMISSIBILITY OF THE CLAIMS BASED ON THE *MONETARY GOLD* PRINCIPLE

(1) The Parties' Positions

a. The Respondent's Position

352. [REDACTED]
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[REDACTED]

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[REDACTED]
[REDACTED]

⁴⁸⁴ Resp. PHB, para. 240; Resp. C-Mem., para. 950 ([REDACTED]), para. 9(1)); Resp. Reply, para. 63.

⁴⁸⁵ [REDACTED]

⁴⁸⁶ Resp. Reply, para. 67 (referring to Cl. Reply, para. 1385).

⁴⁸⁷ Resp. Reply, para. 67. *See* Procedural Order No. 4, para. 34.

⁴⁸⁸ Resp. Reply, para. 67.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁹⁶ Resp. Reply, para. 72; [REDACTED]

⁴⁹⁷ Resp. Reply, para. 72 [REDACTED]

⁴⁹⁸ Resp. PHB, para. 241.

⁴⁹⁹ Resp. Reply, para. 74 (referring to Cl. Reply, para. 1393).

⁵⁰⁰ Resp. Reply, para. 75 (citing *Case concerning the Delimitation of Maritime areas between Canada and France*, Decision of 10 June 1992, (2006) XXI RIAA 265, *ad hoc* arbitral tribunal (RL-0079), paras. 78–79). *See also* Second Expert Report of [REDACTED] QC (R-0300), para. 35, who supports the position that the EU should be considered as a third party for the purposes of applying the *Monetary Gold* principle in the present case.

⁵⁰¹ Resp. PHB, para. 242.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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a) [REDACTED]

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⁵⁰² Resp. PHB, para. 242 (referring to J. Crawford, *Brownlie's Principles of Public International Law* (2012, 8th ed.) (RL-0080), p. 698).

⁵⁰³ Resp. Reply, para. 78: [REDACTED]

⁵⁰⁴ Resp. Reply, para. 78 [REDACTED]

⁵⁰⁵ Resp. C-Mem., para. 954 (referring to Press Statement from [REDACTED] dated 7 October 2011 (C-0165), “[t]he European Commission interpreted its Decision of December 2010 to include in the 15-year ban on commercial activities also the construction of military vessels for third, non-European countries, which were characterized as commercial activities and were thus included in the first ban.”).

⁵⁰⁶ Resp. C-Mem., para. 954 (referring to Cl. Mem., para. 398).

⁵⁰⁷ Resp. PHB, para. 243; Resp. C-Mem., para. 955. [REDACTED]

⁵⁰⁸ Resp. C-Mem., para. 955.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁰⁹ Resp. C-Mem., para. 956. See T-466/11, *Ellinika Nafpigeia AE and 2. Hoern Beteiligungs GmbH v. Commission*, EU:T:2012:558, Order of 19 October 2012 (**R-0288**); C-616/12 P *Ellinika Nafpigeia AE and 2. Hoern Beteiligungs GmbH v. Commission*, EU:C:2013:88, Judgment of 12 September 2013 (**R-0289**) C-246/12P, *Ellinika Nafpigeia v Commission*, ECLI:EU:C:2013:133, Judgment of 28 February 2013 (**R-0290**) T-391/08, *Ellinika Nafpigeia v Commission*, ECLI:EU:T:2012:126, Order of 15 March 2012 (**R-0291**).

⁵¹⁰ Resp. C-Mem., para. 960.

⁵¹¹ Resp. C-Mem., para. 960 [REDACTED]

⁵¹² Resp. C-Mem., para. 962 (referring to Case C-485/10, *European Commission v. Hellenic Republic*, ECLI:EU:C:2012:395 dated 28 June 2012 (**R-0064**)).

⁵¹³ Resp. C-Mem., para. 962 (referring to Cl. Mem., para. 578).

⁵¹⁴ Resp. C-Mem., para. 966.

⁵¹⁵ Resp. C-Mem., para. 968. See *id.*, fn. 686 discussing *NV Algemene Transport- en Expeditie Onderneming van Gend a Loos v Netherlands Inland Revenue Administration*. – Reference for a preliminary ruling: Tariefcommissie – Pays-

[REDACTED]

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Bas. – Case 26-62 (**RL-0067**) and *Flaminio Costa v. E.N.E.L.*, Reference for a preliminary ruling: Giudice conciliatore di Milano – Italy, Case 6-64 (**RL-0064**).

⁵¹⁶ Resp. C-Mem., para. 968; Resp. Rej., para. 529.

⁵¹⁷ Resp. C-Mem., para. 969.

⁵¹⁸ Resp. C-Mem., para. 969.

⁵¹⁹ Resp. Rej., para. 530.

⁵²⁰ Resp. C-Mem., para. 970 (citing *European American Investment Bank AG (Austria) v. Slovak Republic*, PCA Case No. 2010-17, Award on Jurisdiction, 22 October 2012 (**RL-0063**), para. 73; *Electrabel (CL-0044)*, para. 4.134).

⁵²¹ Resp. C-Mem., para. 971 and [REDACTED]

⁵²² Resp. Rej., para. 532 (referring to Cl. Reply., para. 1413).

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

⁵²³ Resp. Rej., para. 532(a).

⁵²⁴ Resp. Rej., para. 532(b) (citing *Electrabel (CL-0044)* and *European American Investment Bank AG (Austria) v. Slovak Republic*, PCA Case No. 2010-17, Award on Jurisdiction, 22 October 2012 (RL-0063), para. 71).

⁵²⁵ Resp. Rej., para. 533. See Expert Report of [REDACTED]

⁵²⁶ Resp. Rej., para. 534.

⁵²⁷ Resp. Rej., para. 535 (citing *Report of the Study Group of the International Law Commission, Fragmentation of International Law*, 13 April 2006 (RL-0087), paras. 37 and 38).

⁵²⁸ Cl. Rej., para. 1870; Cl. PHB, para. 2126.

⁵²⁹ Cl. Rej., paras. 1870–1871; Tr. Day 7, [REDACTED] 1237:21–22.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵³⁰ Cl. Reply, para. 1384.

⁵³¹ Cl. Rej., para. 1874; Cl. Reply, para. 1385.

⁵³² Cl. Rej., paras. 1875–1876; Procedural Order No. 4, para. 34.

⁵³³ Cl. Rej., paras. 1877–1878.

⁵³⁴ Cl. Rej., para. 1880; Cl. Reply, para. 1388.

⁵³⁵ Cl. Rej., para. 1880; Cl. Reply, para. 1388.

[REDACTED]

[REDACTED]

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[REDACTED]

⁵³⁶ Cl. Rej., para. 1882.

⁵³⁷ Cl. Rej., para. 1886 (referring to Cl. Reply, paras. 1390–1392). See [REDACTED]

⁵³⁸ Cl. Rej., para. 1887.

⁵³⁹ Cl. Rej., para. 1887.

⁵⁴⁰ Cl. Rej., para. 1888.

⁵⁴¹ Tr. Day 7, [REDACTED] 1238:5–10; 1251:11–1252:9; 1254:24–1255:17.

⁵⁴² Tr. Day 7, [REDACTED] 1255:6–13 and 1268:5–10.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

⁵⁴³ Tr. Day 7, [REDACTED] 1251:11–1252:9 and 1254:24–1255:17.

⁵⁴⁴ Tr. Day 7, [REDACTED] 1239:7–22, 1251:11–1252:9, 1254:24–1255:17 and 1268:2–12.

⁵⁴⁵ Cl. Rej., para. 1891; Cl. Reply, paras. 1394–1396. [REDACTED]

⁵⁴⁶ Cl. Rej., para. 1891 (first bullet); Cl. Reply, para. 1395 (first bullet); [REDACTED]

⁵⁴⁷ Cl. Rej., para. 1891 (second bullet); Cl. Reply, para. 1395 (second bullet); [REDACTED]

⁵⁴⁸ Cl. Rej., para. 1891 (third bullet); Cl. Reply, para. 1395 (third bullet); [REDACTED]

⁵⁴⁹ Cl. Rej., para. 1893; [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] Rej., para. 1897.

⁵⁵³ Cl. Rej., para. 1898.

⁵⁵⁴ Cl. Rej., para. 1898.

⁵⁵⁵ Cl. Rej., para. 1898 (referring to Second Legal Opinion of Professor Tietje (CL-0199), para. 56).

(2) The Tribunal's Analysis

384. The Tribunal has determined above that the Claimants' claims, to the extent they arise out of the alleged deprivation of HSY of its income and assets, are inadmissible. Since the Parties' arguments relating to the applicability of the *Monetary Gold* principle relate to the application and interpretation of the European Commission's Recovery Decision and Military Decision, and therefore are only relevant to the Claimants' claims insofar as they arise out of the alleged deprivation of income and assets, the Parties' arguments have no bearing on the issues that remain to be decided by the Tribunal. The Tribunal, therefore, does not find it necessary, as a matter of judicial (or arbitral) economy, to make any determinations on the issue.
385. The Tribunal merely notes, in this connection, that one of the claims (Claim 4) raised by the claimants in the ICC1 Arbitration was based on the alleged mishandling by the Hellenic Republic of the State aid issue, in breach of its obligations vis-à-vis the Claimants under the Framework Agreement and the Implementation Agreement. The ICC1 tribunal found that the Hellenic Republic had breached Clause 11 of the Framework Agreement and Clause D.5 of the Implementation Agreement "by not securing a Military Decision which authorizes HSY to export war ships to foreign navies,"⁵⁵⁶ while dismissing the further claim that HSY had been improperly prevented from reacquiring the Dry-Dock Concession.⁵⁵⁷

G. THE ADMISSIBILITY OF CLAIMS UNDER THE UMBRELLA CLAUSE

(1) The Parties' Positions

a. The Respondent's Position

[REDACTED]

⁵⁵⁶ ICC1 Award (C-0019), para.1631.

⁵⁵⁷ ICC1 Award (C-0019), para. 1632. As noted above, Claim 4 was eventually dismissed as the claimants did not seek declaratory relief, and the claim for damages was dismissed for lack of causation between the Hellenic Republic's breach and the damage allegedly suffered by HSY (ICC1 Award (C-0019), paras. 1633–1634).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁵⁸ Resp. Reply, para. 79.

⁵⁵⁹ Resp. C-Mem., para. 976; Resp. Reply, para. 81.

⁵⁶⁰ Resp. C-Mem., para. 976; Resp. Reply, para. 82.

⁵⁶¹ V Lowe, *Overlapping Jurisdiction in International Tribunals* (1999) 20 Australian Yearbook of International Law 191, 202 (RL-0047).

⁵⁶² Resp. C-Mem., para. 977 (citing *Philip Morris Asia Limited v. Commonwealth of Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, 17 December 2015 (RL-0048), para. 554).

⁵⁶³ Resp. C-Mem., para. 978 (citing *Malicorp* (RL-0049), para. 103(c)).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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⁵⁶⁴ *Malicorp (RL-0049)*, para. 103(c).

⁵⁶⁵ Resp. Reply, para. 83.

⁵⁶⁶ Resp. Reply, para. 83(a) (referring to Cl. Reply, para. 1599 (first bullet)).

⁵⁶⁷ Resp. Reply, para. 83(a) (referring to Cl. Reply, para. 1597 (second bullet)).

⁵⁶⁸ Resp. C-Mem., para. 979 (citing *Ampal (RL-0050)*, para. 331).

⁵⁶⁹ *Ampal (RL-0050)*, para. 331.

⁵⁷⁰ Resp. Reply, para. 83(b) (referring to Cl. Reply, para. 1599 (second bullet)).

⁵⁷¹ Resp. Reply, para. 83(b) (emphasis is the Respondent's).

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁷² Gaillard, “*Abuse of Process in International Arbitration*” (2017) 32 ICSID Review 17 (RL-0051), p. 6.

⁵⁷³ Resp. Reply, para. 83d. (referring to Cl. Reply, para. 1599 (third bullet)).

⁵⁷⁴ Resp. C-Mem., para. 982 (citing McLachlan, Shore and Weiniger, *International Investment Arbitration* (2017, 2nd edition) (RL-0030), para. 4.226).

⁵⁷⁵ Resp. C-Mem., para. 983.

⁵⁷⁶ Resp. C-Mem., para. 983 (referring to Cl. Mem. para. 269).

⁵⁷⁷ Resp. C-Mem., para. 983 (citing *RSM* (RL-0052), para. 7.1.7).

⁵⁷⁸ *RSM* (RL-0052), para. 7.1.7. See also *Apotex Holdings Inc. and Apotex Inc. v. United States of America*, ICSID Case No. ARB(AF)/12/1, Award, 25 August 2014 (RL-0076), para. 7.40; Resp. PHB, para. 239.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁸⁵ Resp. Reply, para. 89 (referring to Cl. Reply, para. 1597 (second bullet)).
⁵⁸⁶ Resp. Reply, para. 89.
⁵⁸⁷ Resp. Reply, para. 89.
⁵⁸⁸ Resp. C-Mem., para. 984 (citing *Vivendi Annulment (RL-0053)*, para. 98).
⁵⁸⁹ Resp. C-Mem., para. 984.
⁵⁹⁰ Resp. Reply, para. 91 (referring to Cl. Reply, para. 1603 (second bullet)).
⁵⁹¹ Resp. Reply, para. 91.
⁵⁹² Resp. Reply, para. 91a.
⁵⁹³ Resp. Reply, para. 91b.

[REDACTED]

[REDACTED]

⁵⁹⁴ Resp. C-Mem., para. 985 (citing *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines*, ICSID Case No. ARB/02/6, Decision on Jurisdiction, 29 January 2004 (“*SGS v. Philippines*”) (RL-0009), para. 155).

⁵⁹⁵ Resp. C-Mem., para. 986 (citing *Toto Costruzioni Generali S.p.A. v. Republic of Lebanon*, ICSID Case No. ARB/07/12, Decision on Jurisdiction, 11 September 2009 (RL-0054), para. 202). See also paras. 987–988 (referring to Douglas, *The International Law of Investment Claims* (2009) (RL-0055), p. 363).

⁵⁹⁶ Resp. Reply, para. 92a.

⁵⁹⁷ Resp. Reply, para. 92a.

⁵⁹⁸ Resp. Reply, para. 92c. (referring to *Bayindir* (CL-0046), paras. 143–144).

⁵⁹⁹ Framework Agreement between the Hellenic Republic, ADM, ThyssenKrupp Marine Systems AG, HSY and HDW dated 18 March 2010 (C-0005), clause 12(b) and the Implementation Agreement between the Hellenic Republic, HSY, HDW, ADM and ThyssenKrupp Marine Systems AG dated 30 September 2010 (C-0003), Section F, clause 12.

⁶⁰⁰ Resp. C-Mem., para. 990.

⁶⁰¹ Resp. C-Mem., para. 990.

[REDACTED]

b. The Claimants' Position

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶⁰² Resp. Reply, para. 94 (referring to Cl. Reply para. 1603 (fourth bullet)).

⁶⁰³ Cl. Reply, para. 1594.

⁶⁰⁴ Cl. Rej., para. 1901; Cl. Reply, para. 1597.

⁶⁰⁵ Cl. Rej., para. 1902; Cl. Reply, para. 1597 (referring to Resp. C-Mem., para. 976).

⁶⁰⁶ Cl. Reply, para. 1597 (first bullet).

⁶⁰⁷ Cl. Reply, para. 1597 (first bullet).

⁶⁰⁸ Cl. Reply, para. 1597 (first bullet).

[REDACTED]

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⁶⁰⁹ Cl. Rej., para. 1907.

⁶¹⁰ Cl. Reply, para. 1597 (first bullet); Cl. Rej., para. 1907.

⁶¹¹ Cl. Reply, para. 1597 (first bullet); Cl. Rej., para. 1907.

⁶¹² Cl. Rej., para. 1908.

⁶¹³ Cl. Reply, para. 1597 (second bullet).

⁶¹⁴ Cl. Rej., para. 1909; Cl. Reply, para. 1597 (second bullet).

⁶¹⁵ Cl. Rej., para. 1910 (referring to Resp. Reply, para. 89).

⁶¹⁶ Cl. Rej., para. 1910.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶²⁵ Cl. Rej., para. 1914 (referring to Resp. Reply, para. 83(b)).

⁶²⁶ Cl. Rej., para. 1914 (citing *Ampal* (RL-0050), para. 331).

⁶²⁷ Cl. Reply, para. 1599 (third bullet); Cl. Rej., para. 1917 (referring to Emmanuel Gaillard, *Abuse of Process in International Arbitration*, 32 ICSID Review 1, 7 (2017) (RL-0051)).

⁶²⁸ Cl. Rej., para. 1917.

⁶²⁹ Cl. Reply, para. 1599 (third bullet); Cl. Rej., para. 1917.

⁶³⁰ Cl. Reply, para. 1599 (third bullet); Cl. Rej., para. 1917.

⁶³¹ Cl. Reply, para. 1599 (fourth bullet) (referring to *RSM* (RL-0052), para. 7.1.1).

⁶³² Cl. Reply, para. 1599 (fourth bullet).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶³³ Cl. Rej., para. 1916 (referring to Resp. Reply, para. 83c.).

⁶³⁴ Cl. Rej., para. 1916.

⁶³⁵ Cl. Reply, para. 1601; Cl. Rej., para. 1921.

⁶³⁶ Cl. Reply, para. 1602; Cl. Rej., para. 1921 (referring to Resp. C-Mem., para. 985).

⁶³⁷ Cl. Reply, para. 1603 (first bullet); Cl. Rej., para. 1923.

⁶³⁸ Cl. Reply, para. 1603 (first bullet); Cl. Rej., para. 1923.

⁶³⁹ Cl. Reply, para. 1603 (first bullet); Cl. Rej., para. 1923.

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⁶⁴⁰ Cl. Rej., para. 1924 (referring to Resp. Reply, paras. 90–91).

⁶⁴¹ Cl. Rej., para. 1924 (referring to Resp. Reply, para. 91.b).

⁶⁴² Cl. Reply, para. 1603 (fourth bullet); Cl. Rej., para. 1927.

⁶⁴³ Cl. Reply, para. 1603 (fourth bullet); Cl. Rej., para. 1927.

⁶⁴⁴ Cl. Rej., para. 1928 (referring to Resp. Reply, para. 94).

⁶⁴⁵ Cl. Rej., para. 1929.

⁶⁴⁶ Cl. Reply, para. 1603 (second bullet); Cl. Rej., para. 1930 (referring to *SGS v. Philippines* (RL-0009), para. 155).

⁶⁴⁷ Cl. Reply, para. 1603 (second bullet).

[REDACTED]

[REDACTED]

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[REDACTED]

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⁶⁴⁸ Cl. Reply, para. 1603 (second bullet).

⁶⁴⁹ Cl. Reply, para. 1603 (second bullet) (citing *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction, 12 February 2010 (“*SGS v. Paraguay*”) (CL-0069), para. 142).

⁶⁵⁰ Cl. Rej., para. 1932 (first bullet) (referring to Resp. Reply, para. 92(a) and *Georg Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, 25 July 2018 (CL-0165), para. 420).

⁶⁵¹ Cl. Reply, para. 1603 (third bullet); Cl. Rej., para. 1934.

⁶⁵² Cl. Reply, para. 1603 (third bullet) (referring to *SGS v. Philippines* (RL-0009), paras. 175–176).

⁶⁵³ Cl. Reply, para. 1603 (third bullet); Cl. Rej., para. 1934.

(2) The Tribunal's Analysis

425. The Claimants' umbrella clause claim is based on Article 10(2) of the BIT, which provides that “[e]ach Contracting Party shall observe any other obligation it may have entered into with regard to investments, in its territory, of investors of the other Contracting Party.”
426. The Claimants assert that the clause is “worded broadly and covers all breaches of obligations of the host State towards the investor or its investment.”⁶⁵⁴ According to the Claimants, they therefore need not be parties to the contractual obligations in the Framework and Implementation Agreements on which the umbrella clause claim is ultimately based. In any event, according to the Claimants, the Respondent has frustrated the ICC1 Award by having challenged it and by having placed HSY under Special Administration. The Respondent contends that the Claimants' umbrella clause claim amounts to an abuse of process and is also inadmissible because it is in substance the same claim as the claims brought by the claimants in the ICC1 Arbitration under the arbitration clauses contained in the Framework and Implementation Agreements.
427. The Tribunal notes at the outset that the Claimants' umbrella clause claim is based on the Respondent's alleged failure to comply with its obligations under the Framework and Implementation Agreements, including (i) its obligation under Article 11 *lit. a* of the Framework Agreement and Article 5, Section D of the Implementation Agreement to resolve the State aid issue in a manner that would not require HSY pay back the State aid it had received and not to take measures that would undermine HSY's viability; (ii) its promise to resolve the State aid issue in a manner that would ensure HSY's ability to work for foreign navies; (iii) its obligation to comply with the payment schedule under Article 6 of the Main Contracts; (iv) its promise to award further work (the MEKOS and MACHITIS programs) to HSY; (v) its promise that a company belonging to the Privinvest Group would be able to reacquire the concession for parts of the Concessionary Land; (vi) its obligation under the Implementation Agreement regarding taxation of HSY for past fiscal years; and (vii) its promise that the Claimants would be acquiring HSY free from hidden liabilities.⁶⁵⁵

⁶⁵⁴ Cl. Mem., para. 588.

⁶⁵⁵ Cl. Mem., para. 592. *See also* the Claimants' Opening Statement, pp. 248–251.

428. The Tribunal notes that claims arising out of these alleged breaches were also submitted to the ICC1 Arbitration. As discussed above, (i) Claim 4 in the ICC1 Arbitration arose out of the Hellenic Republic's alleged failure to handle the State aid issue in accordance with its obligation under the Framework and Implementation Agreements to ensure the possibility of foreign navy work; (ii) Claim 5 arose out of the Hellenic Republic's alleged failure to respect its promise to provide future work; (iii) Claims 1 and 2 arose out of the ICC1 respondent's alleged failure to comply with its payment obligations under the Main Contracts; (iv) Claim 4.2 related to the Hellenic Republic's alleged failure to ensure the reacquisition of parts of the Concessionary Land; (v) Claim 7 was for damages due to a breach of contract for the imposition of the Special Contribution; and (vi) Claim 6 arose out of the Hellenic Republic's alleged failure to disclose the OSE claims.
429. Thus, all of the Claimants' umbrella clause claims in this arbitration were also raised in the ICC1 Arbitration, with the exception, in part, of one claim – the allegation that the Hellenic Republic failed to comply with its obligation under the Framework and Implementation Agreements not to take measures that would undermine HSY's viability. According to the Claimants, instead of complying with this obligation, the Hellenic Republic “demanded payment and ultimately seized assets owned by HSY in order to enforce the Recovery Decision, thus seeking to take the legal title to the shipyard.”⁶⁵⁶ While the allegation that the Hellenic Republic mishandled the State aid issue, insofar as it concerned the alleged failure of the Hellenic Republic to ensure the possibility of HSY to work for foreign navies and to ensure the reacquisition of parts of the Concessionary Land, were raised in both the ICC1 Arbitration and this ICSID arbitration, the issue of the enforcement of the Recovery Decision (and the subsequent placement of HSY under Special Administration) was not raised in the ICC1 Arbitration; however, it has been raised in this ICSID arbitration.
430. The Tribunal has held above that, to the extent that the essential basis of the Claimants' claims in this ICSID arbitration is the same as that of the contractual claims brought by the ICC1 claimants, such claims must be considered, in substance, contract claims that have already been adjudicated and thus inadmissible. This finding applies to all of the Claimants'

⁶⁵⁶ Cl. Mem., para. 592 (second bullet).

claims brought under the umbrella clause, except for the one claim noted in paragraph 429 above, relating to the enforcement of the Recovery Decision and the subsequent placement of HSY under Special Administration. This claim has also been raised by the Claimants as an alleged breach of investment protection standards other than the umbrella clause and accordingly will be addressed by the Tribunal in Section VI below, in connection with the merits of the Claimants' claims.

431. The Tribunal will deal with the Claimants' argument that the Respondent has frustrated the ICC1 Award below, in connection with the Respondent's objection that the Claimants' claim for frustration of the ICC1 Award, which was only raised in the Claimants' Reply, is a new claim that is not permitted under the ICSID Arbitration Rules.

H. WHETHER THE CLAIMANTS ARE ENTITLED TO PURSUE AN ANCILLARY CLAIM

(1) The Parties' Positions

a. The Respondent's Position

[REDACTED]

⁶⁵⁷ Resp. Reply, para. 96. ICSID Arbitration Rule 40(1) provides that, "[e]xcept as the parties otherwise agree, a party may present an incidental or additional claim or counter-claim arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and is otherwise within the jurisdiction of the Centre."

⁶⁵⁸ Rules of Procedure for Arbitration Proceedings (Arbitration Rules), January 1968 (1993) 1 ICSID Reports 63, 100-101 (R-0306).

[REDACTED]

b. The Claimants' Position

[REDACTED]

[REDACTED]

[REDACTED]

⁶⁵⁹ Resp. Reply, para. 99.
⁶⁶⁰ Resp. Reply, para. 99 (referring to Cl. Reply, para. 1597 (first bullet)).
⁶⁶¹ Resp. Reply, para. 99.
⁶⁶² Resp. Reply, para. 99.
⁶⁶³ Resp. Reply, para. 99.
⁶⁶⁴ Cl. Rej., para. 1938.
⁶⁶⁵ Cl. Rej., para. 1940 (referring to Resp. Reply, paras. 96–99).
⁶⁶⁶ Cl. Rej., para. 1940.
⁶⁶⁷ Cl. Rej., para. 1941 (referring to Resp. Reply, paras. 97–99).

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⁶⁶⁸ Cl. Mem., paras. 377–392.

⁶⁶⁹ Cl. Rej., para. 1941.

⁶⁷⁰ Cl. Rej., para. 1942 (referring to Resp. Reply, para. 98).

⁶⁷¹ Cl. Rej., para. 1942.

⁶⁷² Cl. Rej., para. 1942 (referring to Resp. Reply, para. 99).

⁶⁷³ Cl. Rej., para. 1944 (first bullet).

⁶⁷⁴ Cl. Rej., para. 1944 (third bullet).

⁶⁷⁵ Cl. Rej., para. 1944 (first bullet) (referring to Resp. Reply, para. 99).

[REDACTED]

(2) The Tribunal’s Analysis

441. The relevant provisions in determining whether the Claimants’ ancillary claim is allowed are ICSID Arbitration Rules 40(1) and (2), which provide:

(1) Except as the parties otherwise agree, a party may present an incidental or additional claim or counter-claim arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and is otherwise within the jurisdiction of the Centre.

(2) An incidental or additional claim shall be presented not later than in the reply and a counter-claim no later than in the counter-memorial, unless the Tribunal, upon justification by the party presenting the ancillary claim and upon considering any objection of the other party, authorizes the presentation of the claim at a later stage in the proceeding.

⁶⁷⁶ Cl. Rej., para. 1944 (second bullet)

⁶⁷⁷ Cl. Rej., para. 1944 (second bullet).

⁶⁷⁸ Cl. Rej., para. 1945 (referring to Resp. Reply, para. 99).

⁶⁷⁹ Cl. Rej., para. 1945; Cl. Reply, para. 898 (second bullet).

⁶⁸⁰ Cl. Rej., para. 1945.

442. The Tribunal notes that the Respondent's objection raises the preliminary issue of whether the Claimants' allegation that the Respondent has frustrated the ICC1 Award amounts to an ancillary claim at all, or whether it should, rather, be considered a new factual allegation in support of an existing claim. Indeed, the Claimants have not alleged, in connection with their ancillary claim, any new breach of an investment protection standard contained in the Treaty that they had not already raised in their Memorial; what the Claimants have raised in their Reply is a new factual allegation that was not previously raised in the Claimants' Memorial. For the reasons set out below, the Tribunal considers that it is not necessary to resolve this issue as the Claimants' new claim in any event meets the requirements of Rule 40(1) of the ICSID Arbitration Rules.
443. The Tribunal notes that it is undisputed between the Parties that the Claimants' new claim falls within the scope of the consent of the Parties and is otherwise within the jurisdiction of the Centre, as required by Rule 40(1) of the ICSID Arbitration Rules. It is also undisputed that the new claim was submitted timely, in the Claimants' Reply. The remaining question is whether the Claimants' new claim arises directly out of the subject matter of the dispute, as required by Rule 40(1) of the ICSID Arbitration Rules. In this connection, the Tribunal notes that the Claimants had raised claims based on the placement of HSY in Special Administration in their Memorial, alleging that this amounted to both a breach of the fair and equitable treatment standard and an expropriation.⁶⁸¹ In their new claim, the Claimants now allege that the Special Administration frustrates the ICC1 Award as any proceeds that the Claimants may recover through their enforcement efforts will be paid to the Special Administrator. Accordingly, the Claimants would not benefit from any such payments. The Tribunal is therefore satisfied that the Claimants' new claim arises directly out of the subject matter of the dispute and is admissible.

⁶⁸¹ Cl. Mem., paras. 317, 368, 377–393, 540, 578 and 581.

[REDACTED]

(1) Claim for Breach of the Fair and Equitable Treatment Standard – Bad Faith

a. The Parties’ Positions

(a) The Claimants’ Position

[REDACTED]

⁶⁸² Cl. Reply, para. 1469; Cl. Mem., para. 536 (citing *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016 (“*Crystallex*”) (CL-0051), paras. 530–536; *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007 (“*Vivendi*”) (CL-0055), paras. 7.4.7–7.4.8; *Franck Charles Arif v. Republic of Moldova*, ICSID Case No. ARB/11/23, Award, 8 April 2013, para. 529 (“*Arif*”) (CL-0056); *Total S.A. v. Argentine Republic*, ICSID Case No. ARB/04/1, Decision on Liability, 27 December 2010 (“*Total*”) (CL-0005), paras. 125–127; Christoph H. Schreuer, *Fair and Equitable Treatment in Arbitral Practice*, *The Journal of World Investment and Trade*, Vol. 6, No. 3 (June 2005) (CL-0057), pp. 359–360).

⁶⁸³ Cl. PHB, para. 2142; Cl. Reply, paras. 1468–1506; Cl. Mem., paras. 534–541.

⁶⁸⁴ Cl. Mem., para. 536.

⁶⁸⁵ Cl. Reply, para. 1471; Cl. Mem., para. 536 (citing *Biwater* (CL-0007), para. 602; *Ioan Micula, Viorel Micula and others v. Romania*, ICSID Case No. ARB/05/20, Final Award, 11 December 2013 (“*Micula*”) (CL-0004), paras. 519–520; *Total* (CL-0005), paras. 109–110; *Frontier Petroleum Services Ltd. v. The Czech Republic*, UNCITRAL, Final Award, 12 November 2010 (CL-0058), para. 297).

⁶⁸⁶ Cl. PHB, para. 2142; Cl. Reply, para. 1471; Cl. Mem., para. 538 (citing *Anatolie Stati, Gabriel Stati, Ascom Group S.A. and Terra Raf Trans Trading Ltd. v. Republic of Kazakhstan*, SCC Case No. V (116/2010), Award, 19 December 2013 (CL-0008), paras. 1086, 1095; *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010 (“*Lemire*”) (CL-0062), para. 284).

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⁶⁸⁷ Cl. Reply, para. 1471; Cl. Mem., para. 538.

⁶⁸⁸ Cl. PHB, para. 2142; Cl. Reply, para. 1471; Cl. Mem., para. 539 (citing *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003 (CL-0063), para. 154; *MTD Equity Sdn.Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004 (CL-0060), paras. 114–115).

⁶⁸⁹ Cl. Reply, para. 1471 (citing *Metalclad (CL-0011)*, para. 76; *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003 (CL-0063), para. 154; *Nordzucker AG v. The Republic of Poland*, UNCITRAL, Second Partial Award (Merits), 28 January 2009 (CL-0064), paras. 12, 14, 84; *Lemire (CL-0062)*, para. 284; *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014 (“*Gold Reserve*”) (CL-0065), para. 570).

⁶⁹⁰ Resp. C-Mem., para. 1037 (referring to *Glamis Gold Ltd. v. The United States of America*, UNCITRAL, Final Award dated 8 June 2009 (“*Glamis Gold*”) (RL-0010), para. 627).

⁶⁹¹ Cl. Reply, para. 1475.

⁶⁹² Cl. Reply, para. 1475.

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⁶⁹⁹ Cl. Reply, para. 1479 (referring to Resp. C-Mem., para. 1043).

⁷⁰⁰ Cl. Reply, para. 1479 and Cl. Mem., paras. 538–539.

⁷⁰¹ Cl. Reply, para. 1479.

⁷⁰² Cl. Reply, para. 1479 (referring to Resp. C-Mem., para. 1040 (citing *Conocophillips Petrozuata B.V., Conocophillips Hamaca B.V. and Conocophillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and the Merits, 3 September 2013 (“*Conocophillips*”) (RL-0014), para. 275)).

⁷⁰³ Cl. Reply, para. 1479.

⁷⁰⁴ Cl. Reply, para. 1479 (referring to Resp. C-Mem., para. 1040 (citing *Tza Yap Shum v. Republic of Peru*, ICSID Case No. ARB/07/6, Award, 7 July 2011 (RL-0015), paras. 95, 115).

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⁷⁰⁵ Cl. Reply, para. 1479 (referring to Resp. C-Mem., para. 1041).

⁷⁰⁶ Cl. Reply, para. 1479 (referring to *Conocophillips Petrozuata B.V., Conocophillips Hamaca B.V. and Conocophillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Dissenting Opinion to Decision on Jurisdiction and Merits, 19 February 2015 (“*Conocophillips Dissenting Opinion*”) (RL-0016), para. 92).

⁷⁰⁷ Cl. PHB, para. 2142; Cl. Reply, para. 1482.

⁷⁰⁸ Cl. Reply, para. 1484; Cl. Mem., para. 540.

⁷⁰⁹ Cl. Reply, para. 1485 (referring to Resp. C-Mem., paras. 1047 and 1050).

⁷¹⁰ Cl. Reply, para. 1485 (referring to Resp. C-Mem., paras. 1048–1049, 1051–1052).

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⁷¹¹ Cl. Reply, para. 1486.

⁷¹² Cl. Reply, para. 1486.

⁷¹³ Cl. Reply, para. 1486.

⁷¹⁴ Cl. Reply, para. 1486.

⁷¹⁵ Cl. Reply, para. 1486 (referring to Resp. C-Mem., para. 1051).

⁷¹⁶ Cl. Reply, para. 1486 [REDACTED]

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⁷¹⁷ Cl. Reply, para. 1486.

⁷¹⁸ Cl. Mem., para. 540 (second bullet).

⁷¹⁹ Cl. Reply, para. 1489; Cl. Mem., para. 540.

⁷²⁰ Cl. Reply, para. 1489; Cl. Mem., para. 540.

⁷²¹ Cl. Reply, para. 1491 (referring to Resp. C-Mem., para. 1054).

⁷²² Cl. Reply, para. 1491.

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⁷²³ Cl. Reply, para. 1491.

⁷²⁴ Cl. Reply, para. 1491.

⁷²⁵ Cl. Reply, para. 1491.

⁷²⁶ Cl. Reply, para. 1491.

⁷²⁷ Cl. Reply, para. 1491.

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⁷²⁸ Cl. Reply, para. 1493; Cl. Mem., para. 540.

⁷²⁹ Cl. Reply, para. 1495 (referring to ICC1 Award (C-0019), paras. 989–990, 1210–1212).

⁷³⁰ Cl. Reply, para. 1495.

⁷³¹ Cl. Reply, para. 1496 (referring to Statement of [REDACTED], Unofficial Translation of the Minutes of the Special Standing Committee for Armament Programs and Contracts dated 17 January 2012 (C-0084)).

⁷³² Cl. Reply, para. 1496.

⁷³³ Cl. Reply, para. 1496.

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⁷³⁴ Cl. Reply, para. 1497 [Redacted]

⁷³⁵ Cl. Reply, para. 1500; Cl. Mem., para. 540

⁷³⁶ Cl. Reply, para. 1500; Cl. Mem., para. 540 [Redacted]

⁷³⁷ Cl. Reply, para. 1500; Cl. Mem., para. 540.

⁷³⁸ Cl. Reply, para. 1500; Cl. Mem., para. 540 (referring to Article 169 para. 2 of Law 4099/2012 (C-0008)).

⁷³⁹ Cl. Reply, para. 1500; Cl. Mem., para. 540.

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b. The Respondent's Position

[REDACTED]

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⁷⁴⁰ Cl. Reply, para. 1503 (referring to Excerpt from the Minutes of the Hellenic Parliament dated 22 July 2015 (C-0012), p. 19, 30; Excerpt from the Minutes of the Hellenic Parliament dated 8 May 2016 (C-0253); Excerpt from the Minutes of the Hellenic Parliament dated 5 December 2015 (C-0254), p. 6; Excerpt from the Minutes of the Hellenic Parliament dated 26 March 2016 (C-0255), p. 9; Minutes of the Standing Committee on National Defence and Foreign Affairs dated 16 February 2017 (C-0135), p. 58 *et seq*; Minutes of the Hellenic Parliament dated 18 December 2013 (C-0066), p. 232).

⁷⁴¹ Cl. Reply, para. 150 (citing *Vivendi* (CL-0055), para. 7.4.44).

⁷⁴² Cl. Reply, para. 1503 (referring to Resp. C-Mem., para. 1079).

⁷⁴³ Cl. Reply, para. 1503 (citing *Vivendi* (CL-0055), para. 7.4.44).

⁷⁴⁴ Resp. PHB, para. 247; Resp. Rej., paras. 573–575; Resp. C-Mem., paras. 1045–1047.

⁷⁴⁵ Resp. C-Mem., para. 1037.

⁷⁴⁶ Resp. C-Mem., para. 1037 (citing *Glamis Gold* (RL-0010), para. 627).

⁷⁴⁷ Resp. Rej., para. 577 (referring to Cl. Reply, para. 1476).

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⁷⁴⁸ Resp. Rej., para. 578 (citing *Biwater (CL-0007)*, para. 592).

⁷⁴⁹ Resp. C-Mem., para. 1039 (referring to *Vigotop Limited v. Hungary*, ICSID Case No. ARB/11/22, Award, 1 October 2014 (RL-0012), para. 310).

⁷⁵⁰ Resp. Rej., para. 580; Resp. C-Mem., para. 1039 (citing *ADF Group Inc. v. United States of America*, ICSID Case No. ARB(AF)/00/1, Award, 9 January 2003 (RL-0013), para. 191).

⁷⁵¹ Resp. C-Mem., para. 1039.

⁷⁵² Resp. Rej., para. 581; Resp. C-Mem., para. 1040 (referring to Cl. Mem., para. 539 (citing *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003 (CL-0063), para. 154; *MTD Equity Sdn. Bhd. And MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004 (CL-0060), paras. 114–115. See *Saluka Investments B.V. v. Czech Republic*, UNCITRAL, Partial Award, 17 March 2006 (“*Saluka*”) (RL-0026), para. 304 and *Micula (CL-0004)*, para. 533).

⁷⁵³ Resp. C-Mem., para. 1040 (citing *Conocophillips (RL-0014)*, para. 275).

⁷⁵⁴ Resp. C-Mem., para. 1040 (citing *Tza Yap Shum v. Republic of Peru*, ICSID Case No. ARB/07/6, Award, 7 July 2011 (RL-0015), paras. 95 and 115).

⁷⁵⁵ Resp. C-Mem., para. 1041 (citing *Conocophillips Dissenting Opinion (RL-0016)*, para. 92).

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⁷⁵⁶ Resp. Rej., para. 581 (citing *Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic*, Award, 8 December 2016 (RL-0093), para. 628).

⁷⁵⁷ Resp. Rej., para. 581 (citing *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Final Award, 30 April 2004 (CL-0059), para. 98).

⁷⁵⁸ Resp. C-Mem., para. 1046.

⁷⁵⁹ Resp. C-Mem., para. 1047.

⁷⁶⁰ Resp. C-Mem., para. 1047.

⁷⁶¹ Resp. Rej., para. 585; Resp. C-Mem., para. 1048 (referring to Cl. Mem., para. 540).

⁷⁶² Resp. C-Mem., para. 1048.

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⁷⁶³ Resp. C-Mem., para. 1050.

⁷⁶⁴ Resp. C-Mem., para. 1050.

⁷⁶⁵ Resp. Rej., para. 590 (citing *LIAMCO v. Libya* (1982) 62 ILR 141 (RL-0091), p.194).

⁷⁶⁶ Resp. Rej., para. 590 [REDACTED]

⁷⁶⁷ Resp. Rej., para. 586 (referring to the ICC1 Award (C-0019)).

⁷⁶⁸ Resp. Rej., para. 588 [REDACTED]

⁷⁶⁹ Cl. Rej., para. 1486.

⁷⁷⁰ Resp. Rej., para. 589.

⁷⁷¹ Resp. Rej., para. 589 [REDACTED]

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⁷⁷² Resp. Rej., para. 589.

⁷⁷³ Cl. Reply, para. 1486.

⁷⁷⁴ Resp. Rej., para. 589 (referring to ICC1 Award (C-0019), para. 1004).

⁷⁷⁵ Resp. Rej., para. 589 (referring to Resp. C-Mem., paras. 844–846).

⁷⁷⁶ Resp. Rej., para. 591.

⁷⁷⁷ Resp. Rej., para. 591 (referring to the First Witness Statement of [REDACTED]).

⁷⁷⁸ Resp. Rej., para. 592, (referring to Cl. Reply, para. 1488).

⁷⁷⁹ Resp. Rej., para. 592; Resp. C-Mem., para. 1054.

[REDACTED]

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⁷⁸⁰ Resp. C-Mem., para. 1054. *See* European Commission’s Observations, para. 58.

⁷⁸¹ Resp. Rej., para. 592; Resp. C-Mem., paras. 399–400.

⁷⁸² Resp. Rej., para. 594 (referring to Cl. Reply, para. 1489).

⁷⁸³ Resp. Rej., para. 594(a) (referring to Cl. Mem., para. 390).

⁷⁸⁴ Resp. Rej., para. 594(b).

⁷⁸⁵ Resp. Rej., para. 594(c).

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⁷⁸⁶ Resp. Rej., para. 594(d).
⁷⁸⁷ Resp. Rej., para. 595(a); Resp. C-Mem., para. 1055.
⁷⁸⁸ Resp. Rej., para. 596; Resp. C-Mem., para. 1056.
⁷⁸⁹ Resp. Rej., para. 596.
⁷⁹⁰ Resp. Rej., para. 596; Resp. C-Mem., paras. 1057–1059. *See* Extrajudicial Notice dated 8 September 2017 (C-0161).
⁷⁹¹ Resp. Rej., para. 598 (referring to Cl. Reply, para. 1491).
⁷⁹² Resp. Rej., para. 598 (citing *Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. Republic of Paraguay*, ICSID Case No. ARB/07/9, Further Decision on Objections to Jurisdiction, 9 October 2012 (“*Bureau Veritas*”) (RL-0018), para. 211).

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⁷⁹³ Resp. Rej., para. 598.

⁷⁹⁴ Resp. Rej., para. 600; Resp. C-Mem., para. 1060 (referring to Cl. Reply, para. 1493).

⁷⁹⁵ Resp. Rej., para. 601; Resp. C-Mem., para. 1061 (referring to Cl. Reply, para. 1495).

⁷⁹⁶ Resp. Rej., para. 602 (citing *Duke Energy Electroquil Partners and Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008 (**RL-0083**), para. 345).

⁷⁹⁷ Resp. Rej., para. 602.

⁷⁹⁸ Resp. Rej., para. 604; Resp. C-Mem., paras. 615–621.

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⁸⁰⁷ Resp. C-Mem., para. 1068.

⁸⁰⁸ Resp. Rej., para. 613(a); Resp. C-Mem., para. 1071.

⁸⁰⁹ Resp. Rej., para. 613(a)–(b); Resp. C-Mem., para. 1071.

⁸¹⁰ Resp. Rej., para. 613(b); Resp. C-Mem., para. 702.

⁸¹¹ Resp. C-Mem., para. 1071.

⁸¹² Resp. C-Mem., para. 1071 (referring to *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007 (CL-0009), para. 341).

⁸¹³ Resp. Rej., para. 613(c); Resp. C-Mem., para. 1072. *See* ICC1 Award (C-0019), para. 1619.

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⁸¹⁴ Resp. C-Mem., para. 1072. *See Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic*, ICSID Case No. ARB/14/3, Award, 27 December 2016 (RL-0019), paras. 329(e), 330.

⁸¹⁵ Resp. C-Mem., para. 1073.

⁸¹⁶ Resp. Rej., para. 613(d); Resp. C-Mem., para. 1074, Resp. Rej., para. 613(a). *See also* Resp. C-Mem., paras. 741–748.

⁸¹⁷ Resp. C-Mem., para. 1073 (referring to Cl. Mem., para. 540).

⁸¹⁸ Resp. C-Mem., para. 1075.

⁸¹⁹ Resp. C-Mem., para. 1075.

⁸²⁰ Resp. Rej., para. 613(e); Resp. C-Mem., para. 1076 (referring to Cl. Mem., para. 540, citing *Quiborax S.A. and Non-Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Award, 16 September 2015 (“*Quiborax Award*”) (RL-0020/CL-0096), para. 594).

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■ Resp. C-Mem., para. 1076.

⁸²² Resp. C-Mem., para. 1077 (referring to Cl. Mem., para. 323).

⁸²³ Resp. C-Mem., para. 1079 (referring to *Bureau Veritas (RL-0018)*, para. 211 and *Impregilo S.p.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005 (RL-0021), para. 260).

⁸²⁴ Resp. C-Mem., para. 1079.

⁸²⁵ Resp. Rej., para. 615. *See* Resp. C-Mem., paras. 785–798; Indictment – *United States of America v. Jean Boustani and others* filed 19 December 2018 (R-0314).

⁸²⁶ Resp. Rej., para. 616 (referring to *Vivendi (CL-0055)*, para. 7.4.26).

⁸²⁷ Resp. Rej., para. 617.

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⁸³³ Cl. Mem., para. 544 (citing *Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015, (CL-0067), paras. 547, 551; *Crystallex (CL-0051)*, paras. 547, 552; *Total (CL-0005)*, paras. 118–119; *MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Republic of Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004 (CL-0060), paras. 113, 163; *Metalclad (CL-0011)*, para. 89).

⁸³⁴ Cl. Reply, para. 1512, Cl. Mem., para. 542 (referring to the European Commission’s Observations, para. 62).

⁸³⁵ Cl. Reply, para. 1512.

⁸³⁶ Cl. Reply, para. 1513 (referring to Resp. C-Mem., para. 1084 and the European Commission’s Observations, para. 65).

⁸³⁷ See Cl. Reply, para. 1513 (citing *Micula (CL-0004)*, para. 671; *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, 11 September 2007, (CL-0009), para. 331; *International Thunderbird Gaming Corporation v. The United Mexican States*, UNCITRAL, Separate Opinion of Mr. Thomas Wälde, 1 December 2005 (CL-0072), para. 32; *Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015 (CL-0067), paras. 523, 545).

⁸³⁸ Cl. Reply, para. 1513 (second bullet) (referring to *Arif (CL-0056)*, para. 539; *Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Award, 20 May 1992 (CL-0182), paras. 81–85).

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⁸³⁹ Cl. Reply, para. 1514 (first bullet), referring to the European Commission’s Observations, paras. 63–64.

⁸⁴⁰ Cl. Reply, para. 1514 (first bullet) (citing *Olin Holdings Limited v. State of Libya*, ICC Case No. 20355/MCP, Final Award, 25 May 2018 (CL-0186), paras. 310–311; *Micula* (CL-0004), paras. 527–529, 666; *Occidental Exploration and Production Co. v. Republic of Ecuador*, LCIA Case No. UN3467, Final Award, 1 July 2004 (RL-0044), paras. 183, 185; *Metalclad* (CL-0011), para. 99).

⁸⁴¹ Cl. Reply, para. 1514 (second bullet) (referring to the European Commission’s Observations, paras. 64, 72–76, 79–80).

⁸⁴² Cl. Reply, para. 1514 (second bullet). See *Arif* (CL-0056), para. 539; *Ioannis Kardassopoulos v. The Republic of Georgia*, ICSID Case No. ARB/05/18, Award, 3 March 2010 (“*Kardassopoulos Award*”) (CL-0116), para. 273; *Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Award, 20 May 1992 (CL-0182), paras. 81–85; *Gavrilović and Gavrilović d.o.o. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award, 26 July 2018 (CL-0165), paras. 384, 398.

⁸⁴³ Cl. Reply, para. 1516, Cl. Mem., para. 546.

⁸⁴⁴ Cl. Reply, para. 1518 (referring to Resp. C-Mem., para. 1089 and the European Union Observations, paras. 81–88).

⁸⁴⁵ Cl. Reply, para. 1518 (first bullet).

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⁸⁴⁶ Cl. Reply, para. 1518 (first bullet).

⁸⁴⁷ Cl. Reply, para. 1518 (first bullet) (referring to Resp. C-Mem., para. 1095).

⁸⁴⁸ Resp. C-Mem., para. 1096

⁸⁴⁹ Cl. Reply, para. 1518 (second bullet). *See* Cl. Mem., para. 546.

⁸⁵⁰ Cl. Reply, para. 1518 (second bullet).

⁸⁵¹ Cl. Reply, para. 1518 (third bullet) (referring to Resp. C-Mem., para. 1096.2 and European Commission's Observations, paras. 82–83).

⁸⁵² Cl. Reply, para. 1518 (third bullet) (citing *Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Award, 20 May 1992 (CL-0182), para. 82).

⁸⁵³ Article 17 of the Recovery Decision (C-0001).

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■ Cl. Reply, para. 1523 (third bullet).

⁸⁶¹ Cl. Reply, para. 1524 (referring to Resp. C-Mem., para. 1102).

⁸⁶² Cl. Reply, para. 1524.

⁸⁶³ Cl. Reply, para. 1525 (referring to the European Commission’s Observations, para. 90).

⁸⁶⁴ Cl. Reply, para. 1525.

⁸⁶⁵ Cl. Reply, para. 1525 (citing *Micula* (CL-0004), paras. 703–706).

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⁸⁶⁶ Cl. Reply, para. 1527; Cl. Mem., para. 546 (third bullet).

⁸⁶⁷ Cl. Reply, para. 1528 (first bullet) (referring to Resp. C-Mem., para. 1106).

⁸⁶⁸ Cl. Reply, para. 1528 (first bullet).

⁸⁶⁹ Cl. Reply, para. 1528 (first bullet).

⁸⁷⁰ Cl. Reply, para. 1528 (second bullet) (referring to Resp. C-Mem., para. 1107).

⁸⁷¹ Cl. Reply, para. 1528 (second bullet) (referring to *Bureau Veritas (RL-0018)*, para. 254).

⁸⁷² Cl. Reply, para. 1528 (third bullet).

⁸⁷³ Cl. Reply, para. 1528 (third bullet); Cl. Mem., para. 545.

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⁸⁷⁴ CI. Reply, para. 1530; CI. Mem., para. 546 (fourth bullet).

⁸⁷⁵ CI Reply, para. 1532 (first bullet) and First Witness Statement of Mr. Iskandar Safa, para. 43.

⁸⁷⁶ CI Reply, para. 1532 (second bullet); paras. 1010–1020.

⁸⁷⁷ CI Reply, para. 1532 (second bullet); paras. 1021–1026.

⁸⁷⁸ CI Reply, para. 1534; CI. Mem., para. 546 (first bullet, (iii)).

⁸⁷⁹ CI Reply, para. 1536 (first bullet).

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⁸⁸⁰ CI Reply, para. 1536 (second bullet).

⁸⁸¹ CI Reply, para. 1536 (third bullet) (referring, *inter alia*, to fn. 1358 of CI. Reply). *See* Letter from HSY to the Ministry of Finance dated 27 October 2010 (C-0224).

⁸⁸² CI Reply, para. 1536 (third bullet).

⁸⁸³ CI Reply, para. 1538.

⁸⁸⁴ CI Reply, para. 1539 (first bullet) (referring to Resp. C-Mem., paras. 1112, 1114 *et seq.*).

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⁸⁸⁵ CI Reply, para. 1539 (first bullet).

⁸⁸⁶ CI Reply, para. 1539 (second bullet).

⁸⁸⁷ CI Reply, para. 1539 (second bullet) (referring to Resp. C-Mem., paras. 1113, 1115).

⁸⁸⁸ CI Reply, para. 1539 (third bullet) (referring to Resp. C-Mem., paras. 1116).

⁸⁸⁹ CI. Mem., paras. 548–550 (relying on *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010 (“*Suez*”) (CL-0074), para. 226).

⁸⁹⁰ CI Reply, para. 1543 (citing *Micula* (CL-0004), para. 672).

⁸⁹¹ CI Reply, para. 1545; CI. Mem., para. 549 (second bullet).

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⁹⁰¹ Cl. Reply, para. 1553; Cl. Mem., para. 552.

⁹⁰² Cl. Reply, para. 1553; Cl. Mem., para. 552.

⁹⁰³ Cl. Reply, para. 1553.

⁹⁰⁴ Cl. Reply, para. 1554 (referring to Resp. C-Mem., para. 1123).

⁹⁰⁵ Cl. Reply, para. 1555 (referring to Resp. C-Mem., paras. 1124–1125).

⁹⁰⁶ Cl. Reply, para. 1555.

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⁹⁰⁷ Cl. Reply, para. 1556; Cl. Mem., para. 553.

⁹⁰⁸ Cl. Reply, para. 1558 (first bullet) (referring to Resp. C-Mem., para. 1126).

⁹⁰⁹ Cl. Reply, para. 1558 (first bullet).

⁹¹⁰ Cl. Reply, para. 1558 (second bullet) (referring to Resp. C-Mem., para. 1130).

⁹¹¹ Cl. Reply, para. 1558 (second bullet).

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⁹¹² Cl. Reply, para. 1558 (third bullet) (referring to Resp. C-Mem., para. 1131).

⁹¹³ Cl. Reply, para. 1560; Cl. Mem., para. 554 (first bullet).

⁹¹⁴ Cl. Reply, para. 1560; Cl. Mem., para. 554 (second bullet).

⁹¹⁵ Cl. Reply, para. 1562 (first bullet) (referring to Resp. C-Mem., para. 1132.2).

⁹¹⁶ Cl. Reply, para. 1562 (first bullet).

⁹¹⁷ Cl. Reply, para. 1562 (second bullet) (referring to Resp. C-Mem., para. 1133.1).

⁹¹⁸ Cl. Reply, para. 1562 (second bullet).

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(b) The Respondent's Position

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⁹¹⁹ Cl. Reply, para. 1562 (second bullet) (referring to Resp. C-Mem., para. 1133.2).

⁹²⁰ Cl. Reply, para. 1562 (second bullet).

⁹²¹ Resp. PHB, para. 246; Resp. C-Mem., para. 1087.

⁹²² European Commission's Observations, paras. 69–78.

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⁹²³ Resp. C-Mem., para. 1080 (citing McLachlan, Shore and Weiniger, *International Investment Arbitration* (2017, 2nd edition) (RL-0030), para. 7.184).

⁹²⁴ *Unión Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, Award, 31 August 2018 (RL-0095), para. 9.53.

⁹²⁵ Resp. C-Mem., para. 1081.

⁹²⁶ Resp. C-Mem., para. 1081.

⁹²⁷ Resp. C-Mem., para. 1081.

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⁹²⁸ Resp. C-Mem., para. 1084.

⁹²⁹ Resp. C-Mem., para. 1084 (citing *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012 (**RL-0068**), para. 270).

⁹³⁰ Resp. C-Mem., para. 1086 (citing *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016 (**CL-0087**), para. 525).

⁹³¹ Resp. Rej., para. 626. *See also* paras. 630–632.

⁹³² Resp. Rej., para. 627(a) (referring to Cl. Reply, para. 1549 (first bullet)).

⁹³³ Resp. Rej., para. 627(b) (referring to Cl. Reply, para. 1549 (first bullet)).

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⁹³⁴ Resp. Rej., para. 629 (referring to Cl. Reply, para. 1549).

⁹³⁵ Resp. Rej., para. 629(a) (citing *Saluka* (RL-0026), para. 304).

⁹³⁶ Resp. Rej., para. 629(b) (referring to *Crystallex* (CL-0051), para. 547).

⁹³⁷ Resp. Rej., para. 629 (b) (referring to *Total* (CL-0005), para. 121).

⁹³⁸ Resp. Rej., para. 633 (referring to Cl. Reply, paras. 1518 (second bullet), 1519 and 1523 (second bullet)).

⁹³⁹ Resp. Rej., para. 634 (citing *Biwater* (CL-0007), para. 601).

⁹⁴⁰ Resp. Rej., para. 635.

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⁹⁴¹ Resp. Rej., para. 636.

⁹⁴² Resp. Rej., para. 638 (referring to Cl. Reply, para. 1518 (first and second bullets)).

⁹⁴³ Resp. Rej., para. 639; Resp. C-Mem., para. 1092.

⁹⁴⁴ Resp. Rej., para. 639; Resp. C-Mem., para. 1093.

⁹⁴⁵ Resp. Rej., para. 640 (referring to Cl. Reply, para. 1518 (first bullet)).

⁹⁴⁶ Resp. Rej., para. 640; Resp. C-Mem., para. 1095.1.

⁹⁴⁷ Resp. Rej., para. 640; Resp. C-Mem., para. 1095.4.

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⁹⁴⁸ Resp. Rej., para. 641(a) (referring to Opinion of the Advocate General Wathelet in case C-93/17, *Commission v Greece*, ECLI:EU:C:2018:315 (**R-0319**), paras. 157–158).

⁹⁴⁹ Resp. Rej., para. 641(a); Resp. C-Mem., para. 1096.1.

⁹⁵⁰ Resp. Rej., para. 642 (referring to Cl. Reply, para. 1518 (third bullet)); Resp. C-Mem., para. 1096.2; European Commission's Observations, paras. 69–70.

⁹⁵¹ Resp. Rej., para. 643, (referring to Cl. Reply, para. 1519).

⁹⁵² Resp. Rej., para. 643(b); Resp. C-Mem., para. 1097.1.

⁹⁵³ Resp. C-Mem., para. 1097.3.

⁹⁵⁴ Resp. Rej., para. 644; Resp. C-Mem., para. 1101.

⁹⁵⁵ Resp. Rej., para. 645; Resp. C-Mem., para. 1102.

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⁹⁵⁶ Resp. C-Mem., para. 1103.
⁹⁵⁷ Resp. Rej., para. 646; Resp. C-Mem., para. 1105 (referring to Cl. Reply, para. 1523 (second bullet)).
⁹⁵⁸ Resp. Rej., para. 646.
⁹⁵⁹ Resp. Rej., para. 646.
⁹⁶⁰ Resp. Rej., para. 647 (referring to Cl. Reply, para. 1524).
⁹⁶¹ Resp. Rej., para. 648.
⁹⁶² Resp. Rej., para. 649 (referring to Cl. Reply, para. 1527).
⁹⁶³ Resp. Rej., para. 650 (citing *Bureau Veritas (RL-0018)*, para. 254).
⁹⁶⁴ Resp. Rej., para. 650 (citing *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009 (RL-0085), para. 9.3.1).

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⁹⁶⁵ Resp. Rej., para. 651.

⁹⁶⁶ Resp. Rej., para. 651; Resp. C-Mem., para. 1107.

⁹⁶⁷ Resp. Rej., para. 653 (referring to Cl. Reply, paras. 1530–1533; Cl. Mem., para. 545 (fourth bullet)).

⁹⁶⁸ Resp. C-Mem., para. 1110.

⁹⁶⁹ Resp. Rej., para. 651; Resp. C-Mem., para. 1111.

⁹⁷⁰ Resp. Rej., para. 654; Resp. C-Mem., para. 1111.

⁹⁷¹ Resp. Rej., para. 655 (referring to Cl. Reply, paras. 1530–1533).

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⁹⁷² Resp. C-Mem., para. 1099.

⁹⁷³ Resp. Rej., para. 656 (referring to Cl. Reply, para. 1536 (first bullet)).

⁹⁷⁴ Resp. Rej., para. 656 (referring to the Share Purchase Agreement between [REDACTED] and Prinvest Shipbuilding S.à.r.l. concerning the acquisition of a 100% shareholding in [REDACTED] dated 22 September 2010 (C-0004)).

⁹⁷⁵ Resp. Rej., para. 659 (referring to Cl. Reply, para. 1536 (third bullet)).

⁹⁷⁶ Resp. C-Mem., para. 1100 (citing the ICCI Award (C-0019), para. 1619).

⁹⁷⁷ Resp. Rej., para. 660 (referring to Cl. Reply, paras. 1538–1540).

⁹⁷⁸ Resp. C-Mem., para. 1113.

⁹⁷⁹ Resp. C-Mem., para. 1114.

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⁹⁸⁰ Resp. Rej., para. 661.

⁹⁸¹ Resp. Rej., para. 661; Cl. Reply, para. 672.

⁹⁸² Resp. Rej., para. 662 (referring to Cl. Mem., paras. 1249–1251).

⁹⁸³ Resp. Rej., para. 662 (referring to Cl. Mem., para. 1249).

⁹⁸⁴ Resp. Rej., para. 662 (referring to ICC1 Award (C-0019), para. 1975).

⁹⁸⁵ Resp. Rej., para. 663 (referring to Resp. C-Mem., paras. 716–718).

⁹⁸⁶ Resp. Rej., para. 664; Resp. C-Mem., paras. 1121–1134.

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¹⁰⁰² Resp. Rej., para. 673 (referring to Cl. Reply, para. 1558 (second bullet)).

¹⁰⁰³ Resp. Rej., para. 673.

¹⁰⁰⁴ Resp. Rej., para. 674.

¹⁰⁰⁵ Resp. Rej., para. 675; Resp. C-Mem., para. 1131.

¹⁰⁰⁶ Resp. Rej., para. 675; Resp. C-Mem., para. 1131 (referring to ICC1 Award (C-0019), paras. 1706–1707).

¹⁰⁰⁷ Resp. Rej., para. 675 (referring to ICC1 Award(C-0019), para. 1742).

¹⁰⁰⁸ Resp. Rej., para. 676; Resp. C-Mem., para. 1132 (referring to Cl. Mem., para. 554 (first bullet) and Cl. Reply, para. 1562 (first bullet)).

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¹⁰⁰⁹ Resp. Rej., para. 677; Resp. C-Mem., para. 1132. *See* European Commission's Observations, para. 51.

¹⁰¹⁰ Resp. Rej., para. 679; Resp. C-Mem., para. 1133.

¹⁰¹¹ Resp. C-Mem., para. 1133.1.

¹⁰¹² Resp. C-Mem., para. 1133.1.

¹⁰¹³ Resp. Rej., para. 680 (b) (referring to Resp. C-Mem., para. 672).

¹⁰¹⁴ Resp. C-Mem., para. 1133.2.

¹⁰¹⁵ Resp. Rej., para. 681; Resp. C-Mem., para. 1133.2. *See* ICC1 Award (C-0019), paras. 1975–1976.

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(3) The Tribunal's Analysis

612. The Tribunal has determined in Section V.E.(2) above that a number of the Claimants' claims, insofar as they arise out of contract claims that were adjudicated in the ICC1 Arbitration, are inadmissible in this ICSID arbitration. The claims that remain to be determined by the Tribunal are those arising out of the following circumstances:

- (a) Claims arising out of the alleged deprivation of HSY of its human assets as a result of the Respondent's harassment of HSY's senior management;
- (b) Claims arising out of the alleged takeover of the Skaramangas shipyard, to the extent they are not based on the Finalization Agreement;
- (c) Claims arising out of the Special Administration, including the claim for frustration of the ICC1 Award, insofar as they qualify as treaty claims; and
- (d) Claims arising out of the alleged defamation campaign.

613. The Tribunal will determine the Claimants' FET claims insofar as they arise out of the above circumstances and are thus admissible before the Tribunal.

614. The Claimants' FET claims are based on Article 2(3) of the BIT, which provides that "[i]nvestments by investors of a Contracting party shall, at all times, be accorded fair and equitable treatment." As summarized above, the Claimants argue that the Respondent breached the FET standard by failing to act in good faith and by frustrating the Claimants' legitimate expectations regarding HSY.¹⁰¹⁷

a. The alleged takeover of the shipyard

615. The Tribunal recalls at the outset that the ICC1 tribunal determined that the Finalization Agreement of 25 February 2014, which authorized the Hellenic Navy to use the shipyard to

¹⁰¹⁶ Resp. Rej., para. 681; Resp. C-Mem., para. 690.

¹⁰¹⁷ Cl. Mem., paras. 534–556; Cl. Reply, paras. 1468–1565.

complete the works on the four submarines (*Pipinos*, *Matrozos* and *Katsonis* under the Archimedes Program and *Okeanos* under the Neptune II Program), was valid and created enforceable obligations.¹⁰¹⁸ According to the ICC1 tribunal:

Neither HSY nor the Republic have ever doubted that the Finalization Agreement was validly entered into and created enforceable obligations. This is confirmed by the fact that the parties actually complied with the obligations assumed thereunder:

- *The Hellenic Navy took over and successfully completed the construction of the Three Archimedes Submarines; it did (or should have done) so at its own cost and risk, using the facilities owned by HSY; it has also used the workforce of HSY, and the subcontractors with whom HSY had been working (including HDW);*
- *HSY authorized the Navy to enter its premises, and facilitated the use of the Yard, of its workforce and of its sub-contractors, so that the Navy could finalize construction of the Archimedes Submarines.*¹⁰¹⁹

616. However, the Implementation Agreement was never amended to reflect the terms of the Finalization Agreement, and as the ICC1 tribunal noted, “[t]he Finalization Agreement does not address the precise economic consequences of this highly complex amendment, further to stating the general principle that the Navy will finalize the Submarines at its own cost and risk.”¹⁰²⁰

617. A few weeks after the conclusion of the Finalization Agreement, on 4 April 2014, the Respondent enacted Law 4258/2014. Article 26 of Law 4258/2014 dealt with the finalization of the four submarines that were subject to the Finalization Agreement. Article 26 provides as follows:

1) In respect of S/Ms ‘PIPINOS,’ ‘MATROZOS,’ ‘KATSONIS’ and ‘OKEANOS,’ which are the property of the HR and are currently located at the facilities of HSY, HR assigns to HN, by virtue of the title and possession it has over such S/Ms, the completion of all

¹⁰¹⁸ ICC1 Award (C-0019), para. 1016. The ICC1 tribunal determined that the agreement was reached orally, at a meeting held on 25 February 2014 between Mr. Iskandar Safa and [REDACTED] and Minister of Development [REDACTED] and then recorded in an email from Mr. Safa (ICC1 Award (C-0019), paras. 600–601). [REDACTED] replied to Mr. Safa’s letter, insofar as it addressed the completion of the works, on 13 March 2014 (C-0127).

¹⁰¹⁹ ICC1 Award (C-0019), para. 1016.

¹⁰²⁰ ICC1 Award (C-0019), para. 1040.

construction works and testing necessary for the certification of the S/Ms and their operational integration in the fleet, in accordance with the provisions of paragraphs 2 through 7.

2) The works necessary for the completion of construction of the S/Ms shall be carried out at the facilities of HSY, where same are located as at this date, by members of the HN, the employees of HSY and any sub-contractors required. All necessary facilities, infrastructures and equipment of HSY shall be used by HN free of charge.

3) HN shall contract with the employees of HSY for the purpose of the latter rendering the services required until completion of the S/Ms and their operational integration in the fleet. HN shall pay the monthly remuneration to be agreed with each employee, plus the applicable social security contributions, in consideration of the services to be provided. No employment relationship shall be established between the such employees and the HN under the relevant agreements, while HSY shall not be subrogated by HN in any of its obligations in respect of any of the employees existing claims against HSY. The employees shall maintain their existing employment relationship with HSY and all rights arising there from. The relationship between the HN and the employees shall be automatically terminated upon the completion of the construction of the S/Ms.

4) HN is hereby authorised to enter into with any third-party suppliers and subcontractors, who were originally contracted with HSY and have already executed similar works on the S/Ms, such other agreements as may be necessary for compliance with all applicable technical specifications and certification requirements of the S/Ms.

5) Any payments for the completion of the construction of the S/Ms as per paragraphs 1-4 hereof shall be effected by HN as of the date of entry into force hereof, in accordance to the applicable audit regulations, up to the amount of 75.5 Mio Euros, which is already registered in the budget of the Ministry of National Defence.

6) Law 3885/2010 shall remain in force for any matters not regulated hereunder.

7) Subject to the terms hereof, the Ministry of National Defence shall have no power to handle matters relating to Skaramangas Shipyards.

618. The Claimants rely in support of their FET claim in particular on Article 26(1) of the Law, which provides that, pursuant to the Law, “HR assigns to HN, by virtue of the title and possession it has over such S/Ms, the completion of all construction works and testing necessary for the certification of the S/Ms and their operational integration in the fleet.” Furthermore, according to Article 26(2), “[t]he works necessary for the completion of construction of the S/Ms shall be carried out at the facilities of HSY, where same are located as at this date, by members of the HN, the employees of HSY and any sub-contractors required.” While Article 26(5) further provides that “[a]ny payments for the completion of the construction of the S/Ms as per paragraphs 1-4 hereof shall be effected by HN as of the date of entry into force hereof, in accordance to the applicable audit regulations,” the provision remains silent on the relationship between HSY and the Hellenic Republic, save that the last sentence of Article 26(2) provides that “[a]ll necessary facilities, infrastructures and equipment of HSY shall be used by HN free of charge.”
619. The Parties disagree on the interpretation of this last sentence. The Claimants submit that, “[t]hrough this provision, the Hellenic Republic deprived Claimants of the use of and control over their investment, transferring both to the Hellenic Navy.”¹⁰²¹ According to the Claimants, Article 26(2), *in fine*, thus amounts to a breach of Article 2(3) of the BIT since it allows HSY’s only customer to use the shipyard free of charge. The Respondent argues that the provision only regulates the relationship between the Hellenic Republic and the Hellenic Navy. In other words, the provision confirms that the State will not charge the Hellenic Navy for the use of the shipyard.¹⁰²²
620. In order to determine the legal effect of Article 26, and whether its implementation amounts to a breach of the FET standard under the BIT, the Tribunal must consider the entire factual context of the matter.
621. On 11 April 2014, a week after the enactment of Law 4258/2014, ██████████, Chairman and CEO of HSY, wrote to ██████████, complaining that “despite our request

¹⁰²¹ Cl. PHB, para. 2135.

¹⁰²² Resp. C-Mem. para. 821; Resp. Rej., para. 253.

for a full form agreement the Hellenic Republic is again resorting to legislation to enforce its position on a private company and to go further in such legislation than was agreed to by HSY.”¹⁰²³ [REDACTED] stated that the Law did not reflect the agreement reached between HSY and the Hellenic Republic, and reiterated HSY’s request for a full form contract. On 10 May 2014, [REDACTED] wrote a further letter, again complaining about the Law and the proposed draft agreements between the Hellenic Navy and HSY’s employees, stating that “HSY never agreed that any costs or responsibility would be borne by it.”¹⁰²⁴

622. On 14 May 2014, the Hellenic Navy wrote to HSY, informing HSY of the consequences of Law 4258/2014.¹⁰²⁵ The letter set out, *inter alia*, a new communication and command lines schedule and requesting that all organizational changes regarding the Archimedes and Neptune II Programs be made with prior notice to the Navy and subject to mutual agreement.
623. On 23 June 2015, Mr Iskandar Safa wrote to Prime Minister Samaras, referring to the Finalization Agreement and stating that “[t]his agreement reached obviously needed a comprehensive and full form document to properly protect both parties – however I am informed by our management that HSY’s wishes in this regard were ignored and a law was passed in the Hellenic Republic’s parliament which also ignored the explicit terms of the written agreement.”¹⁰²⁶ There is no response to this letter in the record.
624. On 4 December 2015, the Ministry of Economy, Development and Tourism, in its capacity as a supervising authority of shipbuilding activities and the competent authority in matters relating to recovery of State aid, sent a letter to HSY, inviting HSY to pay the recovery amount quantified in the letter, together with interest, within 30 days of the date of service.¹⁰²⁷ In the absence of payment, the Ministry would take measures to collect the outstanding amount in accordance with the law governing the collection of public revenues.

¹⁰²³ Letter from HSY to [REDACTED] dated 11 April 2014 (C-0088).

¹⁰²⁴ Letter from HSY to [REDACTED] dated 10 May 2014 (C-0089).

¹⁰²⁵ Fax from the Hellenic Navy General Staff to HSY dated 14 May 2014 (C-0107).

¹⁰²⁶ Letter from Mr. Iskandar Safa to Prime Minister A. Samaras dated 23 June 2014 (R-0138).

¹⁰²⁷ Letter from the Ministry of Economy, Development and Tourism to HSY dated 4 December 2015 (C-0013).

On 11 March 2016 the Greek authorities issued a notice of indebtedness,¹⁰²⁸ and on 12 October 2017, the Ministry of Finance and the ██████████ applied to the Athens courts, requesting the appointment of a Special Administrator.¹⁰²⁹ On 8 March 2018, the Athens courts placed HSY in Special Administration and appointed a Special Administrator for HSY.¹⁰³⁰ These proceedings are still ongoing.

625. The Tribunal notes that, while HSY and the Hellenic Navy agreed in the Finalization Agreement that the Hellenic Navy could use the shipyard to complete the works on the four submarines, the essential terms of the arrangement, including the compensation to be paid for the use of the shipyard, were never agreed. Indeed, as noted above, Law 4258/2014 authorized the Hellenic Navy to use the shipyard “free of charge.” While the Respondent argues that the clause merely means that the Hellenic Navy is not required to make any payments to the Hellenic Republic, the context of the clause suggests that it addresses the relationship between HSY and the Hellenic Navy.¹⁰³¹ In any event, even if the Respondent’s interpretation were to be adopted, it is undisputed that there is no agreement between the Parties regarding the terms of the payment, and that the Respondent has not made any payments.
626. The Tribunal finds that, while there was an agreement between HSY and the Hellenic Republic regarding the use of the shipyard for the completion of the works on the four submarines (although not necessarily a full-fledged “contract” within the meaning of Greek law), the Respondent, instead of negotiating the terms of the agreement with HSY, promulgated Law 4258/2014 to give effect to the agreement. In the circumstances, the Hellenic Republic did not act as a contractual counterparty, but exercised its sovereign powers to give effect to the Finalization Agreement. Accordingly, it acted in its sovereign capacity and its conduct is governed by the Treaty, including the obligation under the Treaty to treat the Claimants’ investments in HSY in a fair and equitable manner. The fact that

¹⁰²⁸ Individual Notice of Indebtedness dated 11 March 2016 (C-0132).

¹⁰²⁹ Application for Special Administration dated 12 October 2017 (C-0159).

¹⁰³⁰ Single Member First Instance Court of Athens judgment no. 725/2018 on special administration (R-0162).

¹⁰³¹ Law 4258/2014 (C-0011) (“The works necessary for the completion of construction of the S/Ms shall be carried out at the facilities of HSY, where same are located as at this date, by members of the HN, the-employees of HSY and any sub-contractors required. All necessary facilities, infrastructures and equipment of HSY shall be used by HN free of charge.”) See also Explanatory Report to Law 4258/2014 (R-0237).

there may be contractual dispute or disputes between the parties, or that the parties may not be able to agree on the modalities of implementation of the Finalization Agreement, is not a justification for a Contracting State to use its sovereign powers to resolve the matter unilaterally and in a manner that effectively frustrates the Claimants' legitimate expectation to fair and equitable treatment of their investment. The fact that the ICC2 claimants have brought a counterclaim in the ICC2 Arbitration for costs relating to the takeover of the shipyard¹⁰³² is not determinative, for two reasons: first, because the counterclaim has not yet been decided; and second, there is no risk of double compensation as the Claimants would not benefit from any favorable award that HSY might be able to obtain in the ICC2 Arbitration as it has been placed in Special Administration (*see* section b. below). Moreover, and in any event, the ICC2 tribunal should be expected to take into account any award that this ICSID Tribunal makes in the Claimants' favor, just as this Tribunal has taken into account the decisions taken by the ICC1 tribunal.

627. In light of the above, the Tribunal determines that, when resorting to its sovereign powers to enforce the Finalization Agreement, without seeking to negotiate an agreement on its essential terms, and without compensating HSY for the use of the shipyard, the Respondent breached the FET standard under the Treaty.

b. The alleged takeover of HSY's assets through the Special Administration

628. As summarized above, the Claimants contend that the placement of HSY in Special Administration in March 2018 constitutes a breach of the FET standard for a number of reasons. The Claimants contend that the Special Administration amounts to coercion and harassment and is thus in bad faith and in breach of the FET standard; that it is not justified for the purposes of enforcing the Recovery Decision because it does not distinguish between military and civil assets; and that the Hellenic Republic abusively seeks to ensure that the legal requirements for Special Administration will be met by not paying what it owes to HSY and by allegedly interfering with HSY's attempts to assign its claims against the

¹⁰³² HSY's Updated Statement of Counterclaim, 2 February 2018 (**R-0295**), Section B.

Hellenic Republic to [REDACTED]. According to the Claimants, the Respondent is also using the Special Administration to frustrate the ICC1 Award.

629. The Respondent denies any wrongdoing and contends that the Special Administration was the only way for the Greek Government to enforce the Recovery Decision and comply with its obligations under European law.¹⁰³³ The Respondent notes that, at the time, the European Commission had commenced infringement proceedings against the Hellenic Republic for failure to enforce the Recovery Decision.¹⁰³⁴ The Respondent further asserts that, contrary to the Claimants' allegations, HSY's military assets will not be used to satisfy the State aid claim, although they could be used to satisfy the claims of creditors such as [REDACTED] and employees which could enforce their claims against such assets.
630. The Tribunal notes that the Special Administration process is still ongoing. Accordingly, to the extent that the Claimants' FET claim is based on events or actions allegedly attributable to the Respondent that have not yet occurred, the claim must be considered premature. The evidence on record is also insufficient to support the Claimants' contention that the Respondent is using the Recovery Decision for extraneous purposes, such as for the purpose of transferring legal title to HSY's assets to a third party, or for the purpose of frustrating the ICC1 Award. In light of the evidence before it, the Tribunal is satisfied that the Greek Government had effectively no option but to seek to enforce the Recovery Decision, in view of the decision of the CJEU of 28 June 2012, finding the Hellenic Republic to be in breach of its obligation under Article 108(2) of the TFEU to enforce the Recovery Decision, and in view of the proceedings commenced on 22 February 2017 by the European Commission before the CJEU to impose penalties on the Hellenic Republic as a consequence of its failure to enforce the Recovery Decision.¹⁰³⁵ Nor is there any credible evidence before the Tribunal that the Hellenic Republic applied for the insolvency of HSY in order to frustrate the ICC1

¹⁰³³ Resp. C-Mem., para. 1054. *See* European Commission's Observations, para. 58.

¹⁰³⁴ The Commission had referred the matter to CJEU on 22 February 2017. *See* Resp. Rej., para. 592; Resp. C-Mem., paras. 399–400.

¹⁰³⁵ The Notice on the EU Commission's action against the Hellenic Republic under Article 260(2) TFEU in case C-93/17 (**R-0244**).

Award; indeed, the Hellenic Republic was not the sole party to file an application for insolvency.

631. In the circumstances, the Tribunal finds that the Claimants have failed to establish that the Special Administration of HSY amounts to a breach of the FET standard.

c. The alleged harassment of HSY's senior management

632. The Claimants contend that the Respondent deprived HSY of its “human assets” by harassing HSY’s senior management by bringing several criminal proceedings against HSY’s board members for non-payment of the salaries of HSY’s employees. As a result, according to the Claimants, several HSY managers had to leave the country to avoid arrest. The subsequent proceedings led to several convictions.

633. The Tribunal notes that it is undisputed that HSY has failed to pay its employees’ salaries. While the Claimants contend that this was the consequence of the Hellenic Republic failing to comply with its own contractual obligations, there is no evidence that this argument could not be raised before or was not properly considered by the Greek courts. The Tribunal notes that the proceedings against HSY’s managers were brought by Greek prosecutors acting under Greek labor law. The Claimants do not allege that the managers were unable to defend themselves or that the proceedings were not conducted in compliance with due process or that they resulted in denial of justice. In the circumstances, and in the absence of any credible evidence that the criminal proceedings were used for extraneous purposes, the Claimants’ claim for breach of the FET standard stands to be dismissed.

d. The alleged defamation campaign

634. The Claimants allege that the Respondent breached the FET standard by engaging in a “defamation” campaign against the Claimants and the Privinvest group. The Claimants rely, in particular, on statements made by the [REDACTED], during parliamentary debates in 2015 and 2016, as summarized above. The Claimants also contend the [REDACTED] falsely accused HSY management of having deserted HSY, and refer to articles authored by [REDACTED], [REDACTED]



635. Having carefully considered the evidence relied upon by the Claimants, the Tribunal is unable to agree that the statements of the Greek officials referred to by the Claimants are defamatory, or indeed that the Respondent has engaged in a defamation campaign. While some of the statements of Greek officials may go beyond what would be appropriate in bilateral communications between the individuals concerned, this is not the context in which they were made. As to the alleged defamation campaign, the Tribunal cannot consider such statements in isolation; they must be considered in their context and in light of the evidence as a whole. As noted by the *S.D. Myers* tribunal:

*The intent of government is a complex and multifaceted matter. Government decisions are shaped by different politicians and officials with differing philosophies and perspectives. Each of the many persons involved in framing government policy may approach a problem from a variety of different policy objectives and may sometimes take into account partisan political factors or career concerns. The Tribunal can only characterize CANADA's motivation or intent fairly by examining the record of the evidence as a whole.*¹⁰³⁶

636. The Tribunal finds that, when considered in their context and in light of the evidence as a whole, the statements of the Greek officials referred to by the Claimants do not amount to a breach of the FET standard. In this connection, the Tribunal notes that, in any event, the FET standard in Article 2(3) of the BIT applies to “[i]nvestments by investors of a Contracting [P]arty,” not to investors. There is no evidence before the Tribunal that the statements caused any damage to or loss of the Claimants’ investments.

C. CLAIM FOR ILLEGAL EXPROPRIATION

(1) The Parties’ Positions

a. The Claimants’ Position

[REDACTED]

¹⁰³⁶ *S.D. Myers, Inc. v Government of Canada*, UNCITRAL, Partial Award, 13 November 2000, para. 161.

[REDACTED]

[REDACTED]

[REDACTED]

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¹⁰³⁷ Cl. Mem., paras. 574–575; Cl. Reply, para. 1418.

¹⁰³⁸ Cl. Reply, para. 1421.

¹⁰³⁹ Cl. Reply, para. 1421 (referring to Resp. C-Mem., para. 1163).

¹⁰⁴⁰ Cl. Reply, para. 1421.

¹⁰⁴¹ Cl. Reply, para. 1421.

¹⁰⁴² Cl. Mem., para. 576; *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, 28 September 2007 (CL-0077), para. 284; *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002 (CL-0078), para. 107.

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¹⁰⁴³ Cl. Mem., para. 576.

¹⁰⁴⁴ Cl. Mem., para. 576 (referring to UNCTAD, *Series on Issues in International Investment Agreements: Taking of Property*, New York and Geneva, 2000 (CL-0012), p. 4.; *Tokios Tokelès v. Ukraine*, ICSID Case No. ARB/02/18, Award, 26 July 2007 (CL-0079), para. 120; *National Grid P.L.C. v. Argentina Republic*, UNCITRAL, Award, 3 November 2008 (CL-0010), para. 149; *Enkev Beheer B.V. v. Republic of Poland*, PCA Case No. 2013-01, First Partial Award, 29 April 2014 (CL-0080), para. 344).

¹⁰⁴⁵ Cl. Mem., para. 577; Cl. Reply, para. 1423.

¹⁰⁴⁶ Cl. Mem., para. 577; Cl. Reply, para. 1423; *Biwater* (CL-0007), para. 455.

¹⁰⁴⁷ Cl. Mem., para. 577 (first bullet); Cl. Reply, para. 1423 (first bullet) (referring to *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, 22 May 2007 (CL-0081), para. 245; *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, 28 September 2007 (CL-0077), para. 284).

¹⁰⁴⁸ Cl. Mem., para. 577 (second bullet); Cl. Reply, para. 1423 (second bullet) (referring to *Telenor Mobile Communications A.S. v. Republic of Hungary*, ICSID Case No. ARB/04/15, Award, 13 September 2006 (CL-0082), paras. 69–70).

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¹⁰⁵⁶ Cl. Reply, para. 1426 (referring to Resp. C-Mem., para. 1168).

¹⁰⁵⁷ Cl. Reply, para. 1427.

¹⁰⁵⁸ Cl. Reply, para. 1427.

¹⁰⁵⁹ Cl. Reply, para. 1428 (citing *Inmaris Perestroika Sailing Maritime Services GmbH and Others v. Ukraine*, ICSID Case No. ARB/08/8, Decision on Jurisdiction, 8 March 2010, fn. 109 (CL-0040); *Kardassopoulos* Jurisdiction (CL-0030), paras. 123–124 and *Kardassopoulos* Award (CL-0116), paras. 19, 61, 387; *Siemens* Jurisdiction (CL-0034), paras. 130, 136–137, 142).

¹⁰⁶⁰ Cl. Mem., para. 581; Cl. Reply, para. 1429; Cl. PHB, para. 2132.

[REDACTED]

[REDACTED]

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¹⁰⁶¹ Cl. Mem., para. 581 (first bullet); Cl. Reply, para. 1430.

¹⁰⁶² Cl. Mem., para. 581 (first bullet); Cl. Reply, para. 1430.

¹⁰⁶³ Cl. Reply, para. 1432 (referring to Resp. C-Mem., paras. 1209.1–1211).

¹⁰⁶⁴ Cl. Reply, para. 1432.

¹⁰⁶⁵ Cl. Reply, para. 1432.

¹⁰⁶⁶ Cl. Reply, para. 1434.

¹⁰⁶⁷ Cl. Reply, para. 1434; Cl. PHB, para. 2135 (first bullet).

¹⁰⁶⁸ Cl. Reply, para. 1434.

¹⁰⁶⁹ Cl. Reply, paras. 1434–1435.

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¹⁰⁷⁰ Cl. Reply, para. 1436–1437.

¹⁰⁷¹ Cl. Mem., para. 581 (second bullet); Cl. Reply, para. 1438.

¹⁰⁷² Cl. PHB, para. 2135, responding to the Tribunal’s questions to the Parties dated 8 April 2019.

¹⁰⁷³ Cl. Reply, para. 1438.

¹⁰⁷⁴ Cl. Reply, para. 1439.

¹⁰⁷⁵ Cl. Reply, para. 1441 (first bullet) (referring to Resp. C-Mem., para. 1223).

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¹⁰⁷⁶ Cl. Reply, para. 1441.

¹⁰⁷⁷ Cl. Reply, para. 1441.

¹⁰⁷⁸ Cl. Reply, para. 1441 (second bullet) (referring to Resp. C-Mem., para. 1226).

¹⁰⁷⁹ Cl. Reply, para. 1441 (second bullet).

¹⁰⁸⁰ Cl. Reply, para. 1441 (second bullet).

¹⁰⁸¹ Cl. Reply, para. 1441 (second bullet).

¹⁰⁸² Cl. Reply, para. 1441 (third bullet) (referring to Resp. C-Mem., para. 1223).

¹⁰⁸³ Cl. Reply, para. 1441 (third bullet).

¹⁰⁸⁴ Cl. Reply, para. 1441 (fourth bullet) (referring to Resp. C-Mem., para. 1227).

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a) [REDACTED]

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¹⁰⁸⁵ Cl. Reply, para. 1441 (fourth bullet) (referring to Resp. C-Mem., para. 1227).

¹⁰⁸⁶ Cl. Reply, para. 1441 (fourth bullet).

¹⁰⁸⁷ Cl. Reply, para. 1441 (fourth bullet).

¹⁰⁸⁸ Cl. PHB., paras. 2135–2138.

¹⁰⁸⁹ In its letter to the Parties of 8 April 2019, the Tribunal asked: “[i]s Law 4258/2014 inconsistent with the Lebanon-Hellenic Republic BIT insofar as it substitutes for a full form agreement between the Parties and provides for use of the HSY facilities, infrastructure and equipment free of charge, or in any other respects?”

¹⁰⁹⁰ Cl. PHB., para. 2135 (first bullet).

¹⁰⁹¹ Cl. PHB., para. 2135 (first bullet). *See* Article 26(2) of Law 4258/2014 (C-0011).

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¹⁰⁹² Cl. PHB., para. 2135 (first bullet).

¹⁰⁹³ Cl. PHB., para. 2135 (second bullet).

¹⁰⁹⁴ Cl. PHB., para. 2135 (third bullet).

¹⁰⁹⁵ Cl. PHB., para. 2137.

¹⁰⁹⁶ Cl. PHB., para. 2137.

¹⁰⁹⁷ Cl. PHB., para. 2137 (first bullet).

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¹⁰⁹⁸ Cl. PHB., para. 2137 (second bullet).

¹⁰⁹⁹ Cl. PHB., para. 2137 (third bullet).

¹¹⁰⁰ Cl. PHB., para. 2139 (first bullet).

¹¹⁰¹ Cl. PHB., para. 2139 (first bullet).

¹¹⁰² Cl. Reply, para. 1443.

¹¹⁰³ Cl. Mem., para. 578 (third bullet); Cl. Reply, para. 1443.

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¹¹⁰⁴ Cl. Reply, para. 1445 (first bullet) (referring to Resp. C-Mem., para. 1179).

¹¹⁰⁵ Cl. Reply, para. 1445 (first bullet) (referring to ICC1 Award (C-0019), paras. 1432–1433).

¹¹⁰⁶ Cl. Reply, para. 1445 (first bullet).

¹¹⁰⁷ Cl. Reply, para. 1445 (second bullet) (referring to Resp. C-Mem., paras. 1171, 1174 and 1182.1).

¹¹⁰⁸ Cl. Reply, para. 1445 (second bullet).

¹¹⁰⁹ ICC1 Award (C-0019), para. 1592.

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¹¹¹⁰ Cl. Reply, para. 1445 (third bullet) (referring to Resp. C-Mem., paras. 1174 and 1181).

¹¹¹¹ Cl. Reply, para. 1445 (third bullet).

¹¹¹² Cl. Reply, para. 1445 (third bullet); Framework Agreement (C-0003), preamble, Article 5 *lit. b* and Article 5 *lit. d*.

¹¹¹³ Cl. Reply, para. 1445 (fourth bullet) (referring to Resp. C-Mem., para. 1182.2).

¹¹¹⁴ Cl. Reply, para. 1445 (fourth bullet).

¹¹¹⁵ Cl. Reply, para. 1445 (fifth bullet) (referring to Resp. C-Mem., para. 1183).

¹¹¹⁶ Cl. Reply, para. 1445 (fifth bullet).

¹¹¹⁷ Cl. Reply, para. 1446 (first bullet) (referring to Resp. C-Mem., para. 1185).

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¹¹¹⁸ ICC1 Award (C-0019), paras. 2163–2174.

¹¹¹⁹ Cl. Reply, para. 1446 (second bullet) (referring to Resp. C-Mem., para. 1186).

¹¹²⁰ Cl. Reply, para. 1446 (second bullet) (referring to *Crystallex (CL-0051)*, para. 663; *Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Award, 20 May 1992 (CL-0182), para. 164; *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, 6 February 2007 (“Siemens Award”) (CL-0076), para. 267; *Vivendi (CL-0055)*, paras. 7.5.4, 7.5.10.

¹¹²¹ Cl. Reply, para. 1446 (second bullet).

¹¹²² Cl. Reply, para. 1446 (second bullet).

¹¹²³ Cl. Reply, para. 1446 (second bullet).

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¹¹²⁴ Cl. Reply, para. 1447 (first bullet) (referring to Resp. C-Mem., para. 1187).

¹¹²⁵ Cl. Reply, para. 1447 (second bullet) (referring to Resp. C-Mem., para. 1188).

¹¹²⁶ Cl. Mem., para. 578 (fourth bullet); Cl. Reply, para. 1449.

¹¹²⁷ Cl. Mem., para. 579; Cl. Reply, para. 1449.

¹¹²⁸ Cl. Reply, para. 1450 (referring to Resp. C-Mem., paras. 1189, 1191, 1196, 1191.3, 1202 and 1207).

¹¹²⁹ Cl. Reply, para. 1450.

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¹¹³⁷ Cl. Reply, para. 1452 (second bullet).

¹¹³⁸ Cl. Reply, para. 1452 (third bullet) (referring to Resp. C-Mem., para. 1173).

¹¹³⁹ Cl. Reply, para. 1452 (third bullet).

¹¹⁴⁰ Cl. Reply, para. 1452 (third bullet).

¹¹⁴¹ Cl. Mem., para. 581.

¹¹⁴² Cl. Reply, para. 1457 (first bullet) (referring to Resp. C-Mem., para. 1233).

¹¹⁴³ Cl. Reply, para. 1457 (second bullet).

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁴⁴ Cl. Reply, para. 1457 (second bullet) (referring to Resp. C-Mem., para. 1235).

¹¹⁴⁵ Cl. Reply, para. 1457 (second bullet).

¹¹⁴⁶ Cl. Reply, para. 1457 (second bullet).

¹¹⁴⁷ Cl. Reply, para. 1457 (second bullet); Cl. Mem., para. 586.

¹¹⁴⁸ Cl. Reply, para. 1459 (referring to Resp. C-Mem., para. 1239); Cl. PHB, para. 2133.

¹¹⁴⁹ Cl. Reply, para. 1460.

¹¹⁵⁰ Cl. Reply, para. 1460 (referring to *Quiborax Award (RL-0020)*, paras. 205, 207; *CME Czech Republic B.V. (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 13 September 2001 (CL-0075), para. 603).

¹¹⁵¹ Cl. Reply, para. 1460 (referring to *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Liability, 14 December 2012 (“*Burlington Liability*”) (CL-0089), para. 471; *Philip Morris Asia Limited v. Commonwealth of Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, 17 December 2015 (RL-0048), paras. 291, 285; *CME Czech Republic B.V. (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 13 September 2001 (CL-0075), para. 603).

¹¹⁵² Cl. Reply, para. 1460.

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁵³ CI. Reply, para. 1461(first bullet) (referring to Resp. C-Mem., para. 1241).

¹¹⁵⁴ CI. Reply, para. 1461(first bullet) (referring to Resp. C-Mem., para. 1241).

¹¹⁵⁵ CI. Reply, para. 1461(first bullet).

¹¹⁵⁶ CI. Reply, para. 1461(first bullet).

¹¹⁵⁷ CI. Reply, para. 1461(second bullet) (referring to Resp. C-Mem., para. 1242).

¹¹⁵⁸ CI. Reply, para. 1461(second bullet) (referring to Resp. C-Mem., para. 1243.)

¹¹⁵⁹ CI. Reply, para. 1461(second bullet).

¹¹⁶⁰ CI. Reply, para. 1461(second bullet).

¹¹⁶¹ CI. Reply, para. 1461(second bullet).

¹¹⁶² CI. Reply, para. 1462; European Commission's Observations, para. 93.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁶³ Cl. Reply, para. 1462.

¹¹⁶⁴ Cl. Mem., paras. 583–585; Cl. Reply, para. 1464; Cl. PHB, para. 2133.

¹¹⁶⁵ Article 4(1) of the BIT (CL-0001).

¹¹⁶⁶ Cl. Mem., para. 584; Cl. Reply, para. 1464.

¹¹⁶⁷ Cl. Mem., para. 584 (first bullet).

¹¹⁶⁸ Cl. Mem., para. 584 (first bullet) (citing *Guaracachi America, Inc. and Rurelec PLC v. The Plurinational State of Bolivia*, PCA Case No. 2011-17, Award, 31 January 2014 (CL-0086), para. 441; *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016 (CL-0087), para. 407; *Bernardus Henricus Funnekotter and others v. Republic of Zimbabwe*, ICSID Case No. ARB/05/6, Award, 22 April 2009 (CL-0088), para. 106; *Siemens Award* (CL-0076), para. 273; *Burlington Liability* (CL-0089), para. 543).

¹¹⁶⁹ Cl. Mem., para. 584 (second bullet).

¹¹⁷⁰ Cl. Mem., para. 584 (second bullet).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁷¹ Cl. Mem., para. 584 (second bullet).

¹¹⁷² Cl. Reply, para. 1464, (referring to Resp. C-Mem., para. 1244).

¹¹⁷³ Cl. Reply, para. 1465 (first bullet) (referring to Resp. C-Mem., para. 1246.1).

¹¹⁷⁴ Cl. Reply, para. 1465 (first bullet).

¹¹⁷⁵ Cl. Reply, para. 1465 (second bullet) (referring to Resp. C-Mem., para. 1246.2).

¹¹⁷⁶ Cl. Reply, para. 1465 (second bullet).

¹¹⁷⁷ Cl. Reply, para. 1465 (second bullet).

¹¹⁷⁸ Cl. Reply, para. 1465 (second bullet).

[REDACTED]

[REDACTED]

b. The Respondent's Position

[REDACTED]

¹¹⁷⁹ Cl. Reply, para. 1465 (third bullet).

¹¹⁸⁰ Cl. Reply, para. 1465 (fourth bullet) (referring to Resp. C-Mem., para. 1246.3).

¹¹⁸¹ Cl. Reply, para. 1465 (fourth bullet).

¹¹⁸² Cl. Reply, para. 1465 (fourth bullet).

¹¹⁸³ Cl. Reply, para. 1465 (fourth bullet).

¹¹⁸⁴ Cl. Reply, para. 1465 (fourth bullet).

¹¹⁸⁵ Resp. Rej., para. 707 (referring to Cl. Reply, para. 1423); Resp. C-Mem., para. 1162.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁸⁶ Resp. Rej., para. 707.

¹¹⁸⁷ Resp. Rej., para. 707 (citing *Azurix (CL-0189)*, para. 315).

¹¹⁸⁸ Resp. Rej., para. 707 (citing *Impregilo S.p.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/3, Decision on Jurisdiction, 22 April 2005 (RL-0021), para. 281; *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009 (RL-0085), paras. 444–445).

¹¹⁸⁹ Resp. Rej., para. 708 (referring to Cl. Reply, para. 1339).

¹¹⁹⁰ Resp. Rej., para. 709.

¹¹⁹¹ Resp. Rej., para. 709.

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¹¹⁹² Resp. Rej., para. 709.

¹¹⁹³ Resp. Rej., para. 711; Resp. C-Mem., paras. 1165–1167 (citing *GAMI Investments Inc. v. Government of the United Mexican States*, UNCITRAL, Final Award, 15 November 2004 (**RL-0037**), paras. 116–122).

¹¹⁹⁴ Resp. C-Mem., para. 1168 (referring to Cl. Mem., paras. 580–581).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁹⁵ Resp. Rej., para. 712.

¹¹⁹⁶ Resp. Rej., para. 712 (a).

¹¹⁹⁷ Resp. Rej., para. 712 (b).

¹¹⁹⁸ Resp. Rej., para. 714.

¹¹⁹⁹ Resp. Rej., para. 714.

¹²⁰⁰ Resp. Rej., para. 714 (referring to Cl. Reply, para. 1428).

¹²⁰¹ Resp. C-Mem., para. 1169.

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¹²⁰² Resp. C-Mem., para. 1169.

¹²⁰³ Resp. C-Mem., para. 1169.

¹²⁰⁴ Resp. C-Mem., para. 1169.

¹²⁰⁵ Resp. C-Mem., para. 1170 (referring to Cl. Mem., para. 609).

¹²⁰⁶ Resp. Rej., para. 745.

¹²⁰⁷ Resp. C-Mem., para. 1171.

¹²⁰⁸ Resp. C-Mem., para. 1172.

¹²⁰⁹ Resp. C-Mem., paras. 1173–1174.

[Redacted]

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a) [Redacted]

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¹²¹⁰ Resp. C-Mem., paras. 1176–1178; Resp. Rej., paras. 729–731; Resp. PHB, para. 250(a).

¹²¹¹ Resp. C-Mem., para. 1179 (referring to ICC1 Award (C-0019), para. 1574).

¹²¹² Resp. C-Mem., para. 1180.

¹²¹³ Resp. C-Mem., para. 1181.

[REDACTED]

[REDACTED]

[REDACTED]

¹²¹⁴ Resp. C-Mem., para. 1182.1; Resp. Rej., para. 732.

¹²¹⁵ Resp. Rej., para. 733(a); Press statement from [REDACTED] dated 7 October 2011 (C-0155). *See* European Commission's Observations, para. 40.

¹²¹⁶ Resp. Rej., para. 733(b).

¹²¹⁷ Resp. Rej., para. 733(c) (referring to Letter from the Minister of National Defence to the Minister of Finance dated 7 October 2011 (R-0117), p. 2).

¹²¹⁸ Resp. Rej., para. 733 (d) (referring to Cl. Reply, para. 1445 (second bullet)).

¹²¹⁹ Resp. Rej., para. 733(d).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹²²⁰ Resp. Rej., para. 734.

¹²²¹ Resp. Rej., para. 735 (referring to Cl. Reply, para. 1445, fourth bullet); Letter from HSY to the Ministry of Finance dated 27 October 2010 (**C-0224**).

¹²²² Resp. C-Mem., para. 1182.2 (referring to *Tradex Hellas S.A. v. Republic of Albania*, ICSID Case No. ARB/94/2, Award, 29 April 1999 (**RL-0034**), para. 177).

¹²²³ Resp. Rej., paras. 735(a)–(b).

¹²²⁴ Resp. C-Mem., para. 1182.2 [REDACTED]; Resp. Rej., para. 735. *See* Letter from HSY to the Ministry of Finance dated 27 October 2010 (**C-0224**).

¹²²⁵ Resp. C-Mem., para. 1185; Resp. Rej., para. 737.

¹²²⁶ Resp. C-Mem., para. 1186 (citing *Bureau Veritas* (**RL-0018**), para. 117; Resp. Rej., para. 737).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹²²⁷ Resp. Rej., para. 738.

¹²²⁸ Resp. Rej., para. 738 (citing *Azurix* (CL-0189), para. 315).

¹²²⁹ Resp. Rej., para. 738.

¹²³⁰ Resp. Rej., para. 738 (citing *Biwater* (CL-0007), paras. 458, 460).

¹²³¹ Resp. Rej., para. 739(a).

¹²³² Resp. Rej., para. 739(b) (referring to ICC1 Award (C-0019), para. 1040).

¹²³³ Resp. Rej., para. 739(c).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

a) [REDACTED]

[REDACTED]

¹²³⁴ Resp. Rej., para. 741; Resp. C-Mem., para. 1187 (referring to ICC1 Award (C-0019), para. 1706).
¹²³⁵ Resp. C-Mem., para. 1188.
¹²³⁶ Resp. C-Mem., para. 1188 (referring to ICC1 Award (C-0019), paras. 1706–1707); Resp. Rej., para. 741.
¹²³⁷ Resp. Rej., para. 742.
¹²³⁸ Resp. Rej., para. 742.
¹²³⁹ Resp. Rej., para. 743, (referring to Cl. Reply, para. 1447); Resp. C-Mem., para. 1189 (referring to Cl. Mem., para. 578 (fourth bullet)); Resp. PHB, para. 250(b).
¹²⁴⁰ Resp. C-Mem., para. 1190 (referring to Cl. Mem., para. 578 (fourth bullet); Resp. Rej., para. 744(a)).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹²⁴¹ Resp. C-Mem., para. 1191.1 (referring to ICC1 Award (C-0019), para. 1619). *See also* Letter from Prinvest Shipbuilding SAL Holding to [REDACTED] dated 12 October 2010 (C-0170); Share Purchase Agreement between [REDACTED] and Prinvest Shipbuilding S.à r.l. (C-0004); Resp. Rej., para. 74.

¹²⁴² Resp. C-Mem., para. 1191.2 (referring to Letter from HSY to the Ministry of Finance dated 27 October 2010 (C-0224); *Tradex Hellas S.A. v. Republic of Albania*, ICSID Case No. ARB/94/2, Award, 29 April 1999 (RL-0034), para. 177).

¹²⁴³ Resp. C-Mem., para. 1191.3.

¹²⁴⁴ Resp. C-Mem., para. 1192 (citing ICC1 Award (C-0019), para. 1621).

¹²⁴⁵ Resp. C-Mem., paras. 1193–1194.

¹²⁴⁶ Resp. C-Mem., para. 1196.

¹²⁴⁷ Resp. C-Mem., para. 1197.

[REDACTED]

[REDACTED]

c) [REDACTED]

[REDACTED]

[REDACTED]

¹²⁴⁸ Resp. C-Mem., para. 1199-1200; Resp. Rej., para. 744(b).

¹²⁴⁹ Resp. C-Mem., para. 1201 (referring to ICC1 Award (C-0019), para. 1975).

¹²⁵⁰ Resp. C-Mem., para. 1202; Resp. Rej., para. 744(c).

¹²⁵¹ Resp. C-Mem., para. 1202 (citing *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN 3481, Award, 3 February 2006 (R-0017), para. 177).

¹²⁵² Resp. C-Mem., para. 1202.

¹²⁵³ Resp. C-Mem., para. 1204.

¹²⁵⁴ Resp. C-Mem., para. 1205; Resp. Rej., para. 744(d).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹²⁶⁰ Resp. C-Mem., paras. 1212–1214; Resp. Rej., para. 716. *See* Email from First Claimant to [REDACTED] and [REDACTED] dated 27 February 2014 (C-0087); Letter from [REDACTED] to 1st Claimant dated 13 March 2014 (C-0127).

¹²⁶¹ Resp. C-Mem., para. 1217.

¹²⁶² Resp. Rej., para. 718.

¹²⁶³ Resp. Rej., para. 719.

¹²⁶⁴ Resp. C-Mem., para. 1219 (referring to Cl. Mem., para. 578 (first bullet)). [REDACTED]
[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

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¹²⁶⁵ Resp. C-Mem., para. 1219 [REDACTED]; Resp. Rej., para. 720.

¹²⁶⁶ Resp. C-Mem., para. 1220 [REDACTED]

¹²⁶⁷ Resp. C-Mem., para. 1222.

¹²⁶⁸ Resp. Rej., para. 721.

¹²⁶⁹ Resp. C-Mem., para. 1223.

¹²⁷⁰ Resp. C-Mem., para. 1226 [REDACTED]; Resp. Rej., para. 722.

¹²⁷¹ Resp. C-Mem., para. 1226; Resp. Rej., para. 724.

¹²⁷² Resp. Rej., para. 724.

[REDACTED]

[REDACTED]

[REDACTED]

¹²⁷³ Resp. C-Mem., para. 1227.

¹²⁷⁴ Resp. C-Mem., para. 1227 (citing *Garanti Koza LLP v. Turkmenistan*, ICSID Case No. ARB/11/20, Award dated 19 December 2016 (**RL-0036**), para. 365 and *Middle East Cement Shipping and Handling Co. S.A. v Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, 12 April 2002 (**CL-0078**), para. 139).

¹²⁷⁵ Resp. C-Mem., para. 1229. *See* Letter from HSY to the Ministry of Finance dated 27 October 2010 (**CL-0078**), para. 16 and Annex 1 and European Commission's Decision E(2010) 8274 final dated 1 December 2010 (**C-0006**), para. 8.

¹²⁷⁶ Resp. C-Mem., para. 1230 (referring to Commission Decision of 2 July 2008 on the measure C 16/04 (ex NN 29/04, CP 71/02 and CP 133/05) implemented by Greece in favor of Hellenic Shipyards (notified under document C(2008)3118), Article 17 (**C-0001**) and European Commission's Decision E(2010) 8274 final dated 1 December 2010, (**C-0006**), para. 9(a)).

¹²⁷⁷ Resp. Rej., para. 725 (referring to Cl. Reply, para. 1441 (second bullet)); Resp. PHB, para. 250(d).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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¹²⁷⁸ Resp. Rej., paras. 725–726.

¹²⁷⁹ Resp. C-Mem., para. 1232; Resp. Rej., para. 706.

¹²⁸⁰ Resp. C-Mem., para. 1237; Resp. Rej., paras. 748–749.

[REDACTED]

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¹²⁸⁷ Resp. Rej., para. 752(b).

¹²⁸⁸ Resp. Rej., para. 752(b).

¹²⁸⁹ Resp. Rej., para. 752(b).

¹²⁹⁰ Resp. Rej., para. 752(c).

¹²⁹¹ Resp. Rej., para. 752(c).

¹²⁹² Resp. Rej., para. 754; Resp. C-Mem., para. 1244.

¹²⁹³ Resp. C-Mem., paras. 1244–1246.

¹²⁹⁴ Resp. C-Mem., para. 1246; Resp. Rej., paras. 755(a)–(d).

(2) The Tribunal's Analysis

766. The Tribunal has determined in Section V.E (2) above that a number of the Claimants' claims, insofar as they arise out of contract claims that were adjudicated in the ICC1 Arbitration, are inadmissible in this ICSID arbitration. The claims that the Tribunal has found admissible are the following:
- (a) Claims arising out of the alleged deprivation of HSY of its human assets as a result of the Respondent's harassment of HSY's senior management;
 - (b) Claims arising out of the alleged takeover of the shipyard, to the extent they are not based on the Finalization Agreement or its financial consequences;
 - (c) Claims arising out of the Special Administration, including the claim for frustration of the ICC1 Award, insofar as they qualify as treaty claims; and
 - (d) Claims arising out of the alleged defamation campaign.
767. The Tribunal will determine the Claimants' expropriation claims insofar as they arise out of the above circumstances and are thus admissible before the Tribunal.
768. The Claimants' expropriation claims are based on Article 4 of the BIT ("Expropriation"), which provides, in relevant part:

1- Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measures the effects of which would be tantamount to expropriation or nationalization (hereinafter referred to as "expropriation") except in the public interest, under due process of law, on a non-discriminatory basis and against payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment affected immediately before the actual measure was taken or become public knowledge, whichever is the earlier, it shall include interest from the date of expropriation until the date of payment at a normal commercial rate and shall be freely transferable in a freely convertible currency.

2- The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is constituted under the laws in force in any part of its own

territory and in which investors of the other Contracting Party own shares.

769. As summarized above, the Claimants argue that the Respondent indirectly expropriated the Claimants' investment within the meaning of Article 4(1) of the BIT and directly and indirectly expropriated HSY's assets within the meaning of Article 4(2) of the BIT.¹²⁹⁵
770. The Tribunal has determined above that the takeover of the Skaramangas shipyard by the Respondent and its use by the Hellenic Navy, without seeking an agreement on the essential terms of the Finalization Agreement and without compensating HSY for the use of the shipyard, amounted to a breach of the FET standard under Article 2(3) of the BIT. While making this determination, the Tribunal dismissed the Claimants' claims that (i) the alleged takeover of HSY's assets through the Special Administration; (ii) the alleged harassment of HSY's senior management; and (iii) the alleged defamation campaign amounted to a breach of the FET standard. Since the Claimants' expropriation claims arise out of the very same events as their FET claims – takeover and use of the shipyard by the Hellenic Navy without agreement and compensation; placement of HSY in Special Administration; and harassment of HSY's senior management – the Tribunal must determine whether any of these events, on their own or cumulatively, amount to an expropriation.
771. Having carefully considered the Claimants' case and the supporting evidence, the Tribunal finds that there has been no expropriation in the present case. While a breach of the FET standard may, in certain circumstances, also amount to an expropriation, this is not the case here, in particular because the Hellenic Navy's use of the shipyard was based on the Finalization Agreement and thus did not involve a compulsory transfer of control of HSY or the shipyard. Moreover, although the situation changed in March 2018 when HSY was placed in Special Administration and, as a result, the Claimants effectively lost control over the company and the shipyard, the evidence does not support the Claimants' contention that HSY was placed in Special Administration for extraneous or otherwise illegitimate reasons. First, the State was not the sole party filing the application for Special Administration; a

¹²⁹⁵ Cl. Mem., paras. 574–575; Cl. Reply, para. 1418.

private party, the ██████████, also joined in the application.¹²⁹⁶ Second, the decision on the application was taken by the Greek courts (the Athens Single-member Court of First Instance), and the Claimants do not allege that in taking the decision on the application, the Greek courts committed a denial of justice or acted otherwise improperly.¹²⁹⁷ Third, and in any event, insofar as the Greek State was involved as an applicant, it effectively had no option but to seek to enforce the Recovery Decision, in view of the decision of the CJEU of 28 June 2012, finding the Hellenic Republic to be in breach of its obligation under Article 108(2) of the TFEU to enforce the Recovery Decision, and in view of the proceedings commenced on 22 February 2017 by the European Commission before the CJEU, to impose penalties on the Hellenic Republic as a consequence of its failure to enforce the Recovery Decision.¹²⁹⁸

772. While the Claimants contend that the placement of HSY under Special Administration was improper since, under Article 17 of the Recovery Decision, illegal State aid should be recovered from the civil parts of HSY's activities and not from the military parts, as it is only the civil parts that benefited from it, the Tribunal notes that the Special Administration is still pending, and there is no evidence before the Tribunal that the Recovery Decision has been improperly enforced.
773. In the circumstances, the Tribunal is unable to agree with the Claimants that their investment in Greece has been expropriated. In light of the evidence before the Tribunal, the placement of HSY under Special Administration must be considered a legitimate act to implement pre-existing laws, including the law of the EU, which forms part of the Greek law, in the ordinary course of business of the Greek courts.¹²⁹⁹ The Claimants' claim for expropriation of their investment is therefore dismissed.

¹²⁹⁶ Application for Special Administration dated 12 Oct. 2017 (C-0159).

¹²⁹⁷ Decision No. 725/2018 of the Single-Member First Court of Athens dated 8 March 2018 (C-0281).

¹²⁹⁸ The Notice on the EU Commission's action against the Hellenic Republic under Article 260(2) TFEU in case C-93/17 (R-0244).

¹²⁹⁹ See *Quiborax Award* (RL-0020), para. 202 (finding that "if the Revocation Decree was the legitimate exercise of its sovereign right to sanction violations of the law in its territory, it would not qualify as a compensable taking. International law has generally understood that regulatory activity exercised under the so-called 'police powers' of the State is not compensable. In this regard, Comment (g) to §712 of the American Law Institute's *Restatement (Third)*

D. CLAIM FOR BREACH OF THE FULL PROTECTION AND SECURITY STANDARD

(1) The Parties' Positions

a. The Claimants' Position

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

of the Foreign Relations Law provides: A state is not responsible for loss of property or for other economic disadvantage resulting from bona fide general taxation, regulation, forfeiture for crime, or other action of the kind that is commonly accepted as within the police power of states, if it is not discriminatory, [...] and is not designed to cause the alien to abandon the property to the state or sell it at a distress price.”); *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award of 13 September 2001 (CL-0075), para. 603 (“[D]eprivation of property and/or rights must be distinguished from ordinary measures of the State and its agencies in proper execution of the law. Regulatory measures are common in all types of legal and economic systems in order to avoid use of private property contrary to the general welfare of the (host) State.”)

¹³⁰⁰ Cl. Mem., para. 558 (citing *Biwater* (CL-0007), para. 729; *National Grid P.L.C. v. Argentina Republic*, UNCITRAL, Award, 3 November 2008, para. 189 (CL-0010)).

¹³⁰¹ Cl. Mem., para. 558; Cl. Reply, para. 1568; Cl. PHB, para. 2144.

¹³⁰² Cl. Mem., para. 559 (citing *Biwater* (CL-0007), para. 729).

¹³⁰³ Cl. Mem., para. 559.

[REDACTED]

[REDACTED]

[REDACTED]

¹³⁰⁴ Cl. Mem., para. 559.

¹³⁰⁵ Cl. Mem., para. 559 (first bullet); Fax from the Hellenic Navy General Staff to HSY dated 14 May 2014 (C-0107).

¹³⁰⁶ Cl. Mem., para. 559 (first bullet); Cl. Reply, para. 1569 (first bullet).

¹³⁰⁷ Cl. Mem., para. 559 (second bullet); Cl. Reply, para. 1569 (second bullet).

¹³⁰⁸ Cl. Mem., para. 559 (second bullet); Cl. Reply, para. 1569 (first bullet).

¹³⁰⁹ Cl. Reply, para. 1570 (referring to Resp. C-Mem., para. 1145).

¹³¹⁰ Cl. Reply, para. 1571 (first bullet).

¹³¹¹ Cl. Reply, para. 1571 (first bullet).

¹³¹² Cl. Reply, para. 1571 (second bullet); Email from first Claimant to [REDACTED] and [REDACTED] dated 27 February 2014 (C-0087).

¹³¹³ Cl. Reply, para. 1571 (second bullet).

[REDACTED]

[REDACTED]

[REDACTED]

¹³¹⁴ Cl. Reply, para. 1571 (second bullet).

¹³¹⁵ Cl. Reply, para. 1570 (referring to Resp. C-Mem., para. 1148).

¹³¹⁶ Cl. Reply, para. 1570 (referring to Resp. C-Mem., para. 1147).

¹³¹⁷ Cl. Reply, para. 1572 (first bullet) (referring to Resp. C-Mem., para. 839).

¹³¹⁸ Cl. Reply, para. 1572 (first bullet).

¹³¹⁹ Cl. Reply, para. 1572 (second bullet).

¹³²⁰ Cl. Reply, para. 1572 (second bullet).

¹³²¹ Cl. Reply, para. 1572 (second bullet).

¹³²² Cl. Reply, para. 1570 (referring to Resp. C-Mem., para. 1146).

¹³²³ Cl. Reply, para. 1573 (first bullet); [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹³²⁴ Cl. Reply, para. 1573 (first bullet); [REDACTED]

¹³²⁵ Cl. Reply, para. 1573 (second bullet).

¹³²⁶ Cl. Mem., para. 562 (referring to *CME Czech Republic B.V. (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award, 13 September 2001 (CL-0075), para. 613; *Frontier Petroleum Services Ltd. v. The Czech Republic*, UNCITRAL, Final Award, 12 November 2010, para. 263 (CL-0058); *Total* (CL-0005), para. 343; *Biwater* (CL-0007), para. 729).

¹³²⁷ Cl. Reply, para. 1577 (referring to *Azurix* (CL-0189), para. 408; *Biwater* (CL-0007), para. 729; *Československa obchodní banka, a.s. v. Slovak Republic*, ICSID Case No. ARB/97/4, Award, 29 December 2004 (CL-0190), para. 170; *Frontier Petroleum Services Ltd. v. The Czech Republic*, UNCITRAL, Final Award, 12 November 2010 (CL-0058), para. 263).

¹³²⁸ Cl. Mem., para. 562; *Biwater* (CL-0007), para. 729.

¹³²⁹ *Vivendi* (CL-0055), para. 7.4.15.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹³³⁰ Cl. Reply, para. 1577 (first bullet) (referring to Resp. C-Mem., para. 1138).

¹³³¹ Cl. Mem. para. 563 (citing *Siemens Award (CL-0076)*, para. 308).

¹³³² Cl. Reply, para. 1577 (second bullet); *Siemens Award (CL-0076)*, para. 303.

¹³³³ Cl. Reply, para. 1577 (second bullet) (referring to Resp. C-Mem., para. 1140).

¹³³⁴ Resp. C-Mem., para. 1141.

¹³³⁵ Cl. Reply, para. 1577 (third bullet).

¹³³⁶ Resp. C-Mem., para. 1159.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹³³⁷ Cl. Reply, para. 1577 (fourth bullet).

¹³³⁸ Cl. Mem., para. 564; Cl. Reply, para. 1579.

¹³³⁹ Cl. Mem., para. 565.

¹³⁴⁰ Cl. Mem., para. 565; Cl. Reply, para. 1580 (first bullet).

¹³⁴¹ Cl. Mem., para. 565; Cl. Reply, para. 1580 (first bullet).

¹³⁴² Cl. Mem., paras. 566–567.

¹³⁴³ Cl. Reply, para. 1580 (second bullet).

[REDACTED]

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¹³⁴⁴ Cl. Reply, para. 1580 (third bullet).

¹³⁴⁵ Cl. Mem., para. 568.

¹³⁴⁶ Cl. Mem., para. 568 (first bullet).

¹³⁴⁷ Resp. C-Mem., para. 1154.

¹³⁴⁸ Cl. Reply, para. 1581 (first bullet).

¹³⁴⁹ Cl. Reply, para. 1581 (second bullet) (referring to Resp. C-Mem., para. 1150).

¹³⁵⁰ Cl. Reply, para. 1581 (second bullet).

¹³⁵¹ Cl. Reply, para. 1581 (third bullet).

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¹³⁵² Cl. Reply, para. 1581 (third bullet) (referring to ICC1 Award (C-0019), paras. 1262–1265).

¹³⁵³ Cl. Reply, para. 1581 (third bullet).

¹³⁵⁴ Cl. Mem., para. 568 (second bullet).

¹³⁵⁵ Cl. Mem., para. 569 (first bullet); Cl. Reply, para. 1582 (first bullet).

¹³⁵⁶ Cl. Mem., para. 570; Cl. Reply, para. 1583.

¹³⁵⁷ Cl. Reply, para. 1585 (second bullet) (referring to Resp. C-Mem., para. 1157.1).

¹³⁵⁸ Cl. Reply, para. 1585 (second bullet).

¹³⁵⁹ Cl. Reply, para. 1585 (third bullet).

[REDACTED]

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¹³⁶⁰ Cl. Mem., para. 569.

¹³⁶¹ Cl. Reply, para. 1585 (fifth bullet).

¹³⁶² Cl. Mem., para. 571; Cl. Reply, para. 1585 (sixth bullet).

¹³⁶³ Cl. Mem., para. 571; Cl. Reply, para. 1585 (sixth bullet).

¹³⁶⁴ Cl. Reply, para. 1587.

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b. The Respondent's Position

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¹³⁶⁵ Cl. Reply, para. 1587.

¹³⁶⁶ Cl. Reply, para. 1587.

¹³⁶⁷ Resp. C-Mem., para. 1137 (citing *Saluka (RL-0026)*, paras. 483 and 484; *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008 (“*Rumeli*”) (RL-0027), para. 668).

¹³⁶⁸ Resp. C-Mem., para. 1139 (referring to Cl. Mem., para. 558); Resp. Reply, para. 690.

¹³⁶⁹ Resp. C-Mem., para. 1137 (citing *Gold Reserve (CL-0065)*, para. 622; *Crystallex (CL-0051)*, para. 632).

¹³⁷⁰ Resp. C-Mem., para. 1138 (citing *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011 (RL-0028), para. 522).

¹³⁷¹ Resp. C-Mem., para. 1138 (citing *Suez (CL-0074)*, paras. 167 and 173); Resp. Reply, para. 690.

[REDACTED]

[REDACTED]

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¹³⁷² Resp. Rej., para. 691(a).

¹³⁷³ Resp. Rej., para. 691(b) (citing *Biwater (CL-0007)*, paras. 720–722).

¹³⁷⁴ Resp. Rej., para. 691(c) (referring to *Azurix (CL-0189)*, paras. 407–408).

¹³⁷⁵ Resp. C-Mem., paras. 1139–1141 (citing *AWG Group Ltd. v. Argentine Republic*, UNCITRAL, Decision on Liability, 30 July 2010 (RL-0029), para. 176; *Suez (CL-0074)*, para. 173; *Biwater (CL-0007)*, para. 729; McLachlan, Shore and Weiniger, *International Investment Arbitration* (2017, 2nd edition) (RL-0030), para. 7.262).

¹³⁷⁶ Resp. Rej., para. 692.

¹³⁷⁷ Resp. Rej., para. 692.

¹³⁷⁸ Resp. C-Mem., para. 1141 (citing *Vannessa Ventures Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/04/6, Award, 16 January 2013 (RL-0031), para. 223); Resp. Reply, para. 693.

[REDACTED]

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¹³⁷⁹ Resp. Rej., para. 693 (referring to Cl. Reply, para. 1577 (second bullet)).

¹³⁸⁰ Resp. C-Mem., para. 1144 (referring to Cl. Mem., para. 559).

¹³⁸¹ Resp. C-Mem., para. 1145.

¹³⁸² Resp. C-Mem., para. 1146.

¹³⁸³ Resp. C-Mem., para. 1146; Resp. Rej., paras. 686 (a), 688; Resp. PHB, para. 248.

¹³⁸⁴ Resp. Rej., para. 685 (referring to ICC1 Award (C-0019), para. 1016); Resp. PHB, para. 248.

[REDACTED]

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[REDACTED]

¹³⁸⁵ Resp. Rej., para. 686 (referring to Cl. Reply, para. 1571(second bullet)).

¹³⁸⁶ Resp. C-Mem., para. 1147.2 [REDACTED]; Resp. Reply, para. 686(a).

¹³⁸⁷ Resp. Reply, para. 686(a) [REDACTED]

¹³⁸⁸ Resp. Reply, para. 686(b).

¹³⁸⁹ Resp. C-Mem., para. 1147.

¹³⁹⁰ Resp. C-Mem., para. 1147.2 ([REDACTED]); Resp. Reply, para. 687(a)–(b).

[REDACTED]

[REDACTED]

[REDACTED]

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¹³⁹¹ Resp. Reply, para. 687(c)–(d).

¹³⁹² Resp. C-Mem., para. 1147.2; Resp. Reply, para. 687(f).

¹³⁹³ Resp. Reply, para. 687(e).

¹³⁹⁴ Resp. C-Mem., para. 1149; Resp. Reply, para. 689; Resp. PHB, para. 249.

¹³⁹⁵ Resp. C-Mem., para. 1150 (referring to Cl. Mem., para. 563).

¹³⁹⁶ Resp. Reply, para. 696(b).

¹³⁹⁷ Resp. C-Mem., para. 1150; *Siemens Award (CL-0076)*, para. 308; Resp. Reply, para. 696 (a)–(b).

¹³⁹⁸ Resp. Reply, para. 696(b); *See also ICC1 Award (C-0019)*, para. 1324.

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[REDACTED] C-Mem., para. 1153.5; Resp. Reply, para. 695(c).
¹⁴⁰² Resp. C-Mem., para. 1154. *See also* Press Statement from [REDACTED] dated 7 October 2011 (C-0165); Resp. Reply, para. 696.

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¹⁴⁰³ Resp. C-Mem., para. 1154.

¹⁴⁰⁴ Resp. C-Mem., para. 1155; Resp. Reply, para. 697. *See also* ICC1 Award (C-0019), para. 1707.

¹⁴⁰⁵ Resp. C-Mem., para. 1156.

¹⁴⁰⁶ Resp. C-Mem., para. 1157; Resp. Reply, para. 698.

¹⁴⁰⁷ Resp. C-Mem., para. 1157.1; J. Crawford, *State Responsibility: The General Part* (2013) (RL-0033), pp. 161–162; Resp. Reply, para. 699 (a).

¹⁴⁰⁸ Resp. C-Mem., para. 1157.2.

[REDACTED]

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¹⁴⁰⁹ Resp. C-Mem., para. 1157.3. *See* ICC1 Award (C-0019), para. 1975; Resp. Reply, para. 699(b).

¹⁴¹⁰ Resp. C-Mem., para. 1158.1.

¹⁴¹¹ Resp. Reply, para. 700 (referring to Cl. Reply, para. 1585 (sixth bullet)).

¹⁴¹² Resp. C-Mem., para. 1158.1; Resp. Reply, para. 701 (referring to Cl. Mem., para. 870).

¹⁴¹³ Resp. Reply, para. 702 (referring to Cl. Reply, para. 1587).

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(2) The Tribunal’s Analysis

829. The Claimants’ FPS claim is based on Article 2(3) of the BIT, which provides that “*[i]nvestments by investors of a Contracting party [...] shall enjoy full protection and security in the territory of the other Contracting party.*”

830. As summarized above, the Parties have put forward widely divergent views on the scope and content of the FPS standard in Article 2(3) of the BIT, the Claimants contending that the standard provides broad protections for the Claimants’ investment, and that it serves to “guarantee [...] the physical, commercial and legal stability of the investment in a secure investment environment.”¹⁴¹⁶ According to the Respondent, the FPS standard in Article 2(3) of the BIT requires a State “to exercise its powers with due diligence to protect and secure the investment from the use of force by third parties.”¹⁴¹⁷

831. The Tribunal agrees that the Respondent’s position captures the essence of the FPS standard in the BIT. In accordance with its terms, and consistent with the preponderance of arbitral jurisprudence dealing with similarly worded provisions, the FPS standard in Article 2(3) of the BIT must be interpreted so as to impose a legal obligation on the host State to exercise

¹⁴¹⁴ Resp. Reply, para. 703 (a)–(c).

¹⁴¹⁵ Resp. Reply, para. 704.

¹⁴¹⁶ Cl. Mem., para. 558.

¹⁴¹⁷ Resp. C-Mem., para. 1138 (citing *Suez (CL-0074)*, paras. 167, 173); Resp. Reply, para. 690.

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¹⁴²⁰ Cl. Mem., para. 589 (referring to *Eureko B.V. v. Republic of Poland*, Ad Hoc, Partial Award, 19 August 2005, paras. 244, 250 (CL-0013); *SGS Société Générale de Surveillance S.A. v. The Republic of Paraguay*, ICSID Case No. ARB/07/29, Award, 10 February 2012, para. 91(CL-0014); *Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan*, SCC Case No. V (064/2008), Partial Award on Jurisdiction and Liability, 2 September 2009 (CL-0015), para. 265).

¹⁴²¹ Cl. Mem., para. 589.

¹⁴²² Cl. Mem., para. 589 (referring to *Eureko B.V. v. Republic of Poland*, Ad Hoc, Partial Award, 19 August 2005 (CL-0013), para. 246).

¹⁴²³ Cl. Mem., para. 590.

¹⁴²⁴ Cl. Mem., para. 590 (referring to *Continental Casualty Company v. Argentine Republic*, ICSID Case No. ARB/03/9, Award, 5 September 2008, (CL-0091), para. 98; *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Dissenting Opinion of Arbitrator Orrego Vicuña, 8 November 2012 (“*Burlington Dissenting Opinion*”) (CL-0092), paras. 8 *et seq.*

¹⁴²⁵ Cl. Mem., para. 590; Cl. Reply, para. 1607.

¹⁴²⁶ Cl. Mem., para. 590 (referring to *Continental Casualty Company v. Argentine Republic*, ICSID Case No. ARB/03/9, Award, 5 September 2008 (CL-0091), para. 98 (referring to Article II(2)(c) of the Argentina-U.S. Bilateral Investment Treaty (CL-0093), fn. 889)).

¹⁴²⁷ Cl. Mem., para. 590; Cl. Reply, para. 1609 (third bullet); *Burlington Dissenting Opinion* (CL-0092), para. 10.

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¹⁴²⁸ Resp. C-Mem., para. 991.
¹⁴²⁹ Cl. Reply, para. 1609 (first bullet).
¹⁴³⁰ Cl. Reply, para. 1609 (first bullet).
¹⁴³¹ Cl. Reply, para. 1609 (first bullet).
¹⁴³² Cl. Reply, para. 1609 (second bullet).
¹⁴³³ Cl. Reply, para. 1609 (second bullet).
¹⁴³⁴ Cl. Reply, para. 1609 (second bullet).
¹⁴³⁵ Cl. Reply, para. 1609 (second bullet).
¹⁴³⁶ Cl. Reply, para. 1609 (second bullet). *See* fn. 1873.

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¹⁴³⁷ Cl. Reply, para. 1611 (referring to Resp. C-Mem., para. 995.2).
¹⁴³⁸ Cl. Reply, para. 1611.
¹⁴³⁹ Cl. Reply, para. 1611.
¹⁴⁴⁰ Cl. Reply, para. 1611.
¹⁴⁴¹ Cl. Reply, para. 1612.
¹⁴⁴² Cl. Reply, para. 1612.
¹⁴⁴³ Cl. Reply, para. 1612.
¹⁴⁴⁴ Cl. Mem., para. 591.

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¹⁴⁴⁵ Cl. Mem., para. 591 (referring to *Bosh International, Inc. and B&P, LTD Foreign Investments Enterprise v. Ukraine*, ICSID Case No. ARB/08/11, Award, 25 October 2012 (CL-0094), para. 246).

¹⁴⁴⁶ Cl. Mem., para. 591 (citing *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Award, 10 February 2012 (CL-0014), para. 91).

¹⁴⁴⁷ Cl. Mem., para. 591 (citing *Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008 (CL-0095), para. 320).

¹⁴⁴⁸ Cl. Mem., para. 592 (first bullet); Cl. Reply, para. 1616.

¹⁴⁴⁹ Cl. Mem., para. 592 (first bullet); Cl. Reply, para. 1616.

¹⁴⁵⁰ Cl. Mem., para. 592 (first bullet); Cl. Reply, para. 1616.

¹⁴⁵¹ Cl. Mem., para. 592 (first bullet); Cl. Reply, para. 1616.

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¹⁴⁵² Cl. Mem., para. 592 (first bullet); Cl. Reply, para. 1616.

¹⁴⁵³ Resp. C-Mem., para. 999.

¹⁴⁵⁴ Cl. Reply, para. 1618 (first bullet).

¹⁴⁵⁵ Cl. Reply, para. 1618 (first bullet).

¹⁴⁵⁶ Cl. Reply, para. 1618 (first bullet).

¹⁴⁵⁷ Cl. Reply, para. 1618 (first bullet).

¹⁴⁵⁸ Resp. C-Mem., paras. 1000, 1006.

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a) [REDACTED]

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¹⁴⁵⁹ Cl. Reply, para. 1618 (second bullet). *See* fn. 1891.

¹⁴⁶⁰ Cl. Reply, para. 1618 (third bullet) (referring to Resp. C-Mem., para. 1005).

¹⁴⁶¹ Cl. Reply, para. 1618 (third bullet).

¹⁴⁶² Cl. Reply, para. 1618 (third bullet).

¹⁴⁶³ Cl. Mem., para. 592 (second bullet); Cl. Reply, para. 1620.

¹⁴⁶⁴ Cl. Reply, para. 1620.

¹⁴⁶⁵ Cl. Reply, para. 1622 (first bullet) (referring to Resp. C-Mem., paras. 1009–1010.2).

¹⁴⁶⁶ Cl. Reply, para. 1622 (first bullet).

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¹⁴⁶⁷ Cl. Reply, para. 1622 (first bullet) (referring to ICC1 Award (C-0019), paras. 1601–1603).

¹⁴⁶⁸ Cl. Reply, para. 1622 (first bullet).

¹⁴⁶⁹ Cl. Reply, para. 1622 (second bullet) (referring to Resp. C-Mem., para. 1010.3).

¹⁴⁷⁰ Cl. Reply, para. 1622 (second bullet) (referring to Article 5 sentence 1 and 4 of Section D of the Implementation Agreement (C-0005)).

¹⁴⁷¹ Cl. Reply, para. 1622 (second bullet) (referring to ICC1 Award (C-0019), paras. 1607–1609).

¹⁴⁷² Cl. Reply, para. 1622 (third bullet) (referring to Resp. C-Mem., para. 1012).

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¹⁴⁷³ CI. Reply, para. 1622 (third bullet).
¹⁴⁷⁴ CI. Reply, para. 1622 (third bullet) (referring to First Expert Report of [REDACTED] (CL-0027), paras. 30–31; Second Expert Report of [REDACTED] (CL-0160), paras. 66–67).
¹⁴⁷⁵ CI. Reply, para. 1622 (fourth bullet).
¹⁴⁷⁶ CI. Reply, para. 1622 (fourth bullet) (referring to Letter from Commissioner Almunia to the Hellenic Republic dated 23 January 2012 (C-0167), p. 2).
¹⁴⁷⁷ CI. Reply, para. 1622 (fourth bullet). *See* European Commission’s Observations, para. 40.
¹⁴⁷⁸ CI. Reply, para. 1624.
¹⁴⁷⁹ CI. Reply, para. 1624.

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¹⁴⁸⁰ Cl. Reply, para. 1625.

¹⁴⁸¹ Cl. Reply, para. 1627.

¹⁴⁸² Cl. Reply, para. 1627.

¹⁴⁸³ Cl. Reply, para. 1627 (referring to Resp. C-Mem., para. 1022).

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¹⁴⁸⁴ Cl. Reply, para. 1628.

¹⁴⁸⁵ Cl. Reply, para. 1629.

¹⁴⁸⁶ Cl. Reply, para. 1629.

¹⁴⁸⁷ Cl. Reply, para. 1629.

¹⁴⁸⁸ Cl. Reply, para. 1629.

¹⁴⁸⁹ Cl. Reply, para. 1631 (first bullet).

¹⁴⁹⁰ Cl. Reply, para. 1631 (first bullet).

¹⁴⁹¹ Cl. Reply, para. 1631 (first bullet).

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¹⁴⁹² Cl. Reply, para. 1631 (second bullet).

¹⁴⁹³ Cl. Reply, para. 1631 (second bullet).

¹⁴⁹⁴ Cl. Reply, para. 1631 (second bullet).

¹⁴⁹⁵ Cl. Reply, para. 1631 (third bullet).

¹⁴⁹⁶ Cl. Reply, para. 1633.

¹⁴⁹⁷ Cl. Reply, para. 1633.

¹⁴⁹⁸ Cl. Reply, para. 1633.

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¹⁴⁹⁹ Cl. Reply, para. 1633.

¹⁵⁰⁰ Cl. Mem., para. 592 (third bullet); Cl. Reply, para. 1634.

¹⁵⁰¹ Cl. Mem., para. 592 (third bullet); Cl. Reply, para. 1634.

¹⁵⁰² Cl. Mem., para. 592 (third bullet); Cl. Reply, para. 1634.

¹⁵⁰³ Cl. Mem., para. 592 (third bullet); Cl. Reply, para. 1634.

¹⁵⁰⁴ Cl. Reply, para. 1634 (referring to Resp. C-Mem., paras. 1033 and 1035).

¹⁵⁰⁵ Cl. Reply, para. 1634.

¹⁵⁰⁶ Cl. Reply, para. 1634.

b. The Respondent's Position

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¹⁵⁰⁷ Resp. C-Mem., para. 992.

¹⁵⁰⁸ Resp. C-Mem., para. 992 (citing McLachlan, Shore and Weiniger, *International Investment Arbitration* (2017, 2nd edition) (RL-0030), para. 4.225). *See also* Resp. PHB, para. 245(b); Resp. Rej., para. 538.

¹⁵⁰⁹ Resp. C-Mem., para. 993 (citing *CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8, Decision of the *Ad Hoc* Committee on the Application for Annulment of the Argentine Republic, 25 September 2007 (R-0008), para. 95(c); *WNC Factoring Ltd. v. Czech Republic*, PCA Case No. 2014-34, Award, 22 February 2017 (RL-0056), para. 325; *Burlington* (RL-0005), para. 233).

¹⁵¹⁰ Resp. C-Mem., para. 995.

[REDACTED]

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¹⁵¹¹ Resp. C-Mem., para. 996.

¹⁵¹² Resp. C-Mem., para. 997; Resp. PHB, para. 245(c).

¹⁵¹³ Resp. C-Mem., para. 997.1 (citing *Micula (CL-0004)*, para. 418; *Invesmart, B.V. v. Czech Republic*, UNCITRAL, Award (Redacted), 26 June 2009 (RL-0057), para. 526).

¹⁵¹⁴ Resp. C-Mem., para. 997.2 (citing McLachlan, Shore and Weiniger, *International Investment Arbitration* (2017, 2nd edition), (RL-0030) para. 4.225).

¹⁵¹⁵ Resp. Rej., para. 547.

¹⁵¹⁶ Resp. Rej., para. 548 (referring to Cl. Reply, para. 1615 (first bullet)).

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¹⁵¹⁷ Resp. Rej., para. 548 (citing *Micula (CL-0004)*, para. 418).

¹⁵¹⁸ Resp. Rej., para. 549 (referring to Cl. Reply, para. 1615 (second bullet)).

¹⁵¹⁹ Resp. Rej., para. 549.

¹⁵²⁰ Resp. Rej., para. 550; Resp. C-Mem., para. 999 (referring to Cl. Reply, paras. 1616–1619 and Cl. Mem., para. 592 (first bullet)).

¹⁵²¹ Resp. Rej., para. 550 (referring to European Commission’s Observations, para. 58).

¹⁵²² Resp. Rej., para. 552 (referring to Cl. Reply, para. 1618).

¹⁵²³ Resp. Rej., para. 552(a).

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¹⁵²⁴ Resp. Rej., para. 552(b).

¹⁵²⁵ Resp. Rej., para. 552(c).

¹⁵²⁶ Resp. C-Mem., paras. 1000–1001.

¹⁵²⁷ Resp. Rej., para. 553. *See* Opinion of the Advocate General Wathelet in Case C-93/17, *Commission v Greece*, ECLI:EU:C:2018:315 (**R-0319**), para. 158.

¹⁵²⁸ Resp. C-Mem., para. 1001.1 (referring to Implementation Agreement between the Hellenic Republic, HSY, HDW, ADM and ThyssenKrupp Marine Systems AG dated 30 September 2010 (**C-0005**), Section E). *See also* Share Purchase Agreement between [REDACTED] and Privinvest Shipbuilding S.à.r.l. concerning the acquisition of a 100% shareholding in [REDACTED] dated 22 September 2010 (**C-0004**), preamble, para. 12.

¹⁵²⁹ Resp. C-Mem., para. 1001.2.

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¹⁵³⁰ Resp. C-Mem., para. 1002. *See* [REDACTED]

¹⁵³¹ Resp. Rej., para. 553.

¹⁵³² Resp. C-Mem., para. 1003. *See* [REDACTED]; Resp. Rej., para. 551.

¹⁵³³ Resp. C-Mem., para. 1004, Cl. Mem., para. 592 (first bullet).

¹⁵³⁴ Resp. C-Mem., para. 1004.

¹⁵³⁵ Resp. C-Mem., para. 1005 (referring to Implementation Agreement between the Hellenic Republic, HSY, HDW, ADM and ThyssenKrupp Marine Systems AG dated 30 September 2010 (C-0005)).

¹⁵³⁶ Resp. C-Mem., para. 1006.

¹⁵³⁷ Resp. Rej., para. 551 [REDACTED]

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¹⁵³⁸ Resp. Rej., para. 554.

¹⁵³⁹ Resp. C-Mem., para. 1007 (referring to Cl. Mem., para. 592, (first bullet)); Resp. Rej., para. 555).

¹⁵⁴⁰ Resp. C-Mem., para. 1009.

¹⁵⁴¹ Resp. Rej., para. 557(a) (referring to Cl. Reply, para. 1622 (first bullet)).

¹⁵⁴² Resp. Rej., para. 557(a) (referring to Framework Agreement between the Hellenic Republic, ADM, ThyssenKrupp Marine Systems AG, HSY and Howaldtswerke Deutsche Werft GmbH dated 18 March 2010 (C-0003), Article 5(b)).

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¹⁵⁴³ Resp. Rej., para. 557(b) (referring to Cl. Reply, para. 1622 (second bullet)).

¹⁵⁴⁴ Resp. Rej., para. 557(b).

¹⁵⁴⁵ Resp. C-Mem., para. 1010; Resp. Rej., para. 556.

¹⁵⁴⁶ Resp. C-Mem., para. 1012.

¹⁵⁴⁷ Resp. C-Mem., para. 1012.1 (referring to Letter from First Claimant to [REDACTED] dated 20 April 2011 (C-0163)).

¹⁵⁴⁸ Resp. C-Mem., para. 1012.2 (referring to Letter from [REDACTED] and [REDACTED] to Commissioner Almunia dated 19 August 2011 (C-0171)).

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¹⁵⁴⁹ Resp. C-Mem., para. 1013 (referring to Press Statement from [REDACTED] dated 7 October 2011 (C-0165)).

¹⁵⁵⁰ Resp. Rej., para. 558. *See* [REDACTED]

¹⁵⁵¹ Resp. Rej., para. 558.

¹⁵⁵² Resp. Rej., para. 558.

¹⁵⁵³ Resp. Rej., para. 559.

¹⁵⁵⁴ Resp. Rej., para. 559 (referring to Cl. Reply, para. 1622 (fourth bullet)). *See* European Commission's Observations, para. 40 and Letter from Commissioner Almunia to the Hellenic Republic dated 23 January 2012 (C-0167), p. 2.

¹⁵⁵⁵ Resp. C-Mem., para. 1014. *See* [REDACTED]

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¹⁵⁶¹ Resp. Rej., para. 564; Resp. C-Mem., para. 1019. *See* ICC1 Award (C-0019), paras. 1706–1707.

¹⁵⁶² Resp. C-Mem., paras. 1019–1022; Resp. Rej., para. 564. *See* [REDACTED]

¹⁵⁶³ Resp. Rej., para. 565 (referring to Cl. Reply, para. 1628. *See* Letter from the Ministry of Finance to the European Commission dated 15 July 2010 (C-0302), para. 5).

¹⁵⁶⁴ Resp. C-Mem., para. 1023; Resp. Rej., para. 567. *See* ICC1 Award (C-0019), para. 1621.

¹⁵⁶⁵ Resp. C-Mem., paras. 24–25; Resp. Rej., paras. 567–568.

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¹⁵⁶⁶ Resp. C-Mem., para. 1026; Resp. Rej., para. 569.

¹⁵⁶⁷ Resp. Rej., para. 569 (referring to European Commission’s Observations, para. 51).

¹⁵⁶⁸ Resp. C-Mem., para. 1027.

¹⁵⁶⁹ Resp. C-Mem., para. 1028; Resp. Rej., para. 570.

¹⁵⁷⁰ Resp. C-Mem., para. 1029; Resp. Rej., para. 570 (referring to ICC1 Award (C-0019), paras. 1975–1976).

¹⁵⁷¹ Resp. C-Mem., para. 1030 (emphasis from the Respondent); Resp. Rej., para. 570; (referring to Implementation Agreement between the Hellenic Republic, HSY, HDW, ADM and ThyssenKrupp Marine Systems AG dated 30 September 2010 (C-0005), Section F, Article 4(b)).

¹⁵⁷² Resp. C-Mem., para. 1031. *See* ICC1 Award (C-0019), para.1976.

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(2) The Tribunal’s Analysis

902. The Claimants’ umbrella clause claim is based on Article 10(2) of the BIT, which provides that “[e]ach Contracting Party shall observe any other obligation it may have entered into with regard to investments, in its territory, of investors of the other Contracting Party.”
903. The Tribunal has determined in Section V.G.2 above that all of the Claimants’ umbrella clause claims in this arbitration were also raised and adjudicated in the ICC1 Arbitration and are thus inadmissible, with the exception, in part, of one claim – the allegation that the Hellenic Republic failed to comply with its obligation under the Framework and Implementation Agreements not to take measures that would undermine HSY’s viability. The claim is summarized above under sub-section E(1)a.(b)(ii) (“Seeking to take legal title”) of this Section VI (“Liability”). Under this head of claim, the Claimants contend that the Respondent breached its obligations by seizing HSY’s assets in order to enforce the Recovery Decision and by subsequently placing HSY in Special Administration.
904. The Tribunal notes that the Claimants’ umbrella clause claim overlaps with their claim for breach of the FET standard, as discussed in Section VI.B.(3)b. above (“Special Administration”). For the reasons stated therein, the Tribunal determined that the Claimants

¹⁵⁷³ Resp. C-Mem., para. 1032; Resp. Rej., para. 571.
¹⁵⁷⁴ Resp. Rej., para. 572.
¹⁵⁷⁵ Resp. C-Mem., paras. 1035–1036; Resp. Rej., para. 572.

had failed to establish that the Special Administration of HSY amounts to a breach of the FET standard. This finding applies to the Claimants' umbrella clause claim, which relies on the very same facts as the Claimants' FET claim and thus lacks a basis in fact. Accordingly, to the extent that the Claimants' umbrella clause claim is admissible before this Tribunal, it stands to be dismissed for lack of merit. In the circumstances, the Tribunal need not determine whether the Claimants need to be holders of the relevant obligation being enforced under the umbrella clause, as alleged by the Respondent.

F. ANCILLARY CLAIM

905. The Tribunal has determined in Section V.H.(2) above that the Claimants' ancillary (or alternative) claim regarding the alleged frustration of the ICC1 Award is admissible, as it arises directly out of the subject matter of the dispute.
906. As summarized above, the Claimants claim that the Respondent frustrated the ICC1 Award, first by refusing to implement the ICC1 Award and by then challenging it before the Greek courts and obtaining a stay of enforcement, and finally by "burying" the Award by way placing HSY in Special Administration. According to the Claimants, the Respondent's conduct constitutes a breach, *inter alia*, of Article 4(1) and 4(2) and other provisions of the BIT. The Respondent denies that it has frustrated the ICC1 Award and claims that it had the right to seek setting aside of the ICC1 Award before the Greek courts and any claim for damages is therefore premature.
907. The Tribunal has determined in Section VI.B.(3) and VI.C.(2) above that the Special Administration does not amount to a breach of the BIT. This determination also applies to the Claimants' claim for frustration of the ICC1 Award, to the extent that it relies on the very same facts. The claim thus lacks a basis in fact. Furthermore, there is no evidence before the Tribunal that, when challenging the ICC1 Award, the Hellenic Republic, or indeed subsequently the Greek courts, behaved in a manner that would engage the responsibility of the Respondent under the BIT.¹⁵⁷⁶

¹⁵⁷⁶ The Tribunal notes that by decision dated 8 April 2019 the Athens Court of Appeal dismissed the Hellenic Republic's challenge of the ICC1 Award. *See* Judgment No. 1897/2019 of the Athens Court of Appeal dated 8 April

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¹⁵⁸³ Cl. Mem., para. 602. *See* Guideline IV (5) of the World Bank Guidelines on the Treatment of Foreign Direct Investment (1992) (CL-0101).

¹⁵⁸⁴ Cl. Mem., para. 603.

¹⁵⁸⁵ Cl. Mem., para. 606.

¹⁵⁸⁶ Cl. Mem., para. 606 (referring to *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006 (CL-0090), para. 496).

¹⁵⁸⁷ Cl. Mem., para. 607 (referring to *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Award, 5 October 2012 (CL-0105), para. 726; *Starrett Housing Corporation et al. v. The Islamic Republic of Iran*, Award, 14 August 1987 (CL-0106), paras. 18, 277, 280, 313, 319; *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1, Award, 5 June 1990 (CL-0107), para. 186; *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, 7 February 2017 (CL-0104), para. 332; Sergey Ripinsky and Kevin Williams, *Damages in International Investment Law* (2008) (CL-0102), p. 258). *See also* Cl. Reply, para. 1656.

¹⁵⁸⁸ Cl. Mem., para. 607.

¹⁵⁸⁹ Cl. Mem., para. 608; Cl. Reply, para. 1647.

¹⁵⁹⁰ Cl. Mem., para. 608; Cl. Reply, para. 1647.

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¹⁵⁹¹ Cl. Mem., para. 609; Cl. Reply, para. 1647.

¹⁵⁹² Cl. Mem., para. 610; Cl. Reply, para. 1659.

¹⁵⁹³ Cl. Mem., para. 610.

¹⁵⁹⁴ Cl. Mem., para. 611; Cl. Reply, para. 1663. *See Gold Reserve (CL-0065)*, paras. 685–686; *Vivendi (CL-0055)*, para. 8.3.10.; *Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015 (CL-0067), paras. 177, 809; *Quiborax Award (RL-0020)*, para. 379 and fn. 447.

¹⁵⁹⁵ Cl. Mem., para. 611.

¹⁵⁹⁶ Cl. Reply, para. 1739 (referring to Resp. C-Mem., para. 1260.4). The Respondent argues that the Claimants refused to cooperate in implementing the Military Decision, and as a result it became necessary to enforce the Recovery Decision.

¹⁵⁹⁷ Cl. Reply, para. 1740.

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¹⁵⁹⁸ Cl. Reply, para. 1740.

¹⁵⁹⁹ Cl. Reply, para. 1741.

¹⁶⁰⁰ See full discussion at Cl. Mem., paras. 614–643.

¹⁶⁰¹ See full discussion at Cl. Mem., paras. 644–650; Cl. Reply, paras. 1710–1728.

¹⁶⁰² Cl. Mem., para. 651.

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¹⁶⁰³ Cl. Mem., para. 657.

¹⁶⁰⁴ Cl. Mem., para. 651.

¹⁶⁰⁵ *Opinion in the Lusitania Cases*, 1 November 1923, RIAA VII 32 (CL-0114), p. 40.

¹⁶⁰⁶ Cl. Mem., paras. 653–654 (citing *Cementownia “Nowa Huta” S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/06/2, Award, 17 September 2009, para. 169 (CL-0115); *Mohamed Abdulmohsen Al-Kharafi & Sons Co. v. The Government of the State of Libya, The Ministry of Economy in the State of Libya, The General Authority for Investment Promotion and Protection Affairs, Ministry of Finance in Libya and The Libyan Investment Authority*, Final Arbitral Award, 22 March 2013 (CL-0054), p. 369).

¹⁶⁰⁷ Cl. Mem., para. 665.

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¹⁶⁰⁸ Cl. Mem., para. 666.

¹⁶⁰⁹ Cl. Mem., para. 667 (first bullet).

¹⁶¹⁰ Cl. Mem., para. 667 (second bullet).

¹⁶¹¹ Cl. Mem., para. 667 (third bullet).

¹⁶¹² Cl. Reply, para. 1743.

¹⁶¹³ Cl. Reply, para. 1742.

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¹⁶¹⁴ Cl. Reply, para. 1745.

¹⁶¹⁵ Cl. Reply, para. 1736.

¹⁶¹⁶ Cl. Reply, para. 1737.

¹⁶¹⁷ Cl. Reply, para. 1746 (referring to European Commission's Observations, paras. 97 *et seq.*)

¹⁶¹⁸ Cl. Reply, para. 1746.

¹⁶¹⁹ Cl. Reply, para. 1747.

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(2) The Respondent's Position

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¹⁶²⁰ Cl. Reply, para. 1749.

¹⁶²¹ Cl. Reply, paras. 1750–1751 (referring to *Micula* (CL-0004), para. 340).

¹⁶²² Cl. Reply, para. 1751.

¹⁶²³ Resp. C-Mem., para. 1248.

¹⁶²⁴ Resp. C-Mem., para. 1257.

¹⁶²⁵ Resp. C-Mem., para. 1258.

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¹⁶²⁶ Resp. C-Mem., para. 1258.

¹⁶²⁷ Resp. C-Mem., para. 1259; Resp. Rej., para. 766.

¹⁶²⁸ Resp. C-Mem., para. 1260.

¹⁶²⁹ Resp. C-Mem., para. 1261; Resp. Rej., para. 767.

¹⁶³⁰ Resp. C-Mem., paras. 1262–1263; Resp. Rej., para. 768.

¹⁶³¹ Resp. C-Mem., para. 1264.

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¹⁶³² Resp. C-Mem., para. 1264; Resp. Rej., para. 768.

¹⁶³³ Resp. C-Mem., para. 1268.

¹⁶³⁴ Resp. C-Mem., para. 1270; Resp. Rej., para. 772.

¹⁶³⁵ Resp. C-Mem., para. 1271; Resp. Rej., para. 779.

¹⁶³⁶ Resp. C-Mem., para. 1271; Resp. Rej., para. 781.

¹⁶³⁷ Resp. C-Mem., para. 1273.

¹⁶³⁸ Resp. C-Mem., para. 1273.

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¹⁶³⁹ Resp. C-Mem., para. 1275.

¹⁶⁴⁰ Resp. C-Mem., para. 1276.

¹⁶⁴¹ Resp. C-Mem., para. 1277.

¹⁶⁴² Resp. C-Mem., para. 1278.

¹⁶⁴³ Resp. C-Mem., para. 1279.

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¹⁶⁴⁴ Resp. C-Mem., para. 1280.

¹⁶⁴⁵ Resp. C-Mem., para. 1281. *See* full discussion on the “but for” analysis at Resp. C-Mem., paras. 1282–1295.

¹⁶⁴⁶ Resp. C-Mem., para. 1312. *See* full discussion on the DCF method at Resp. C-Mem., paras. 1307–1321.

¹⁶⁴⁷ Resp. C-Mem., para. 1322.

¹⁶⁴⁸ Resp. C-Mem., para. 1322.

¹⁶⁴⁹ Resp. C-Mem., para. 1323 (referring to *Desert Line Projects LLC v. Republic of Yemen*, ICSID Case No. ARB/05/17, Award, 6 February 2008 (“*Desert Line*”) (CL-0113)).

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¹⁶⁵⁰ Resp. C-Mem., para. 1323 (citing *Desert Line (CL-0113)*, para. 289).
¹⁶⁵¹ Resp. C-Mem., para. 1324 (referring to *Lemire (CL-0006)*, para. 333).
¹⁶⁵² Resp. C-Mem., para. 1325; Resp. Rej., paras. 845–847.
¹⁶⁵³ Resp. C-Mem., para. 1326.1.
¹⁶⁵⁴ Resp. C-Mem., para. 1326.
¹⁶⁵⁵ Resp. C-Mem., para. 1326.
¹⁶⁵⁶ Resp. C-Mem., para. 1327.

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¹⁶⁵⁷ Resp. C-Mem., para. 920.
¹⁶⁵⁸ Resp. C-Mem., para. 922.
¹⁶⁵⁹ Resp. C-Mem., para. 922.
¹⁶⁶⁰ Resp. Rej., para. 836.
¹⁶⁶¹ Resp. Rej., para. 837.
¹⁶⁶² Resp. Rej., para. 837(a).

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¹⁶⁶³ Resp. Rej., para. 837(b).

¹⁶⁶⁴ Resp. Rej., para. 838.

¹⁶⁶⁵ Resp. Rej., para. 841.

¹⁶⁶⁶ Resp. Rej., para. 841 (referring to European Commission's Observations, para. 58).

¹⁶⁶⁷ Resp. Rej., para. 842.

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B. THE TRIBUNAL’S ANALYSIS

964. The Tribunal has determined in Section V.E.(2) above that a number of the Claimants’ claims, to the extent they arise out of contract claims that were adjudicated in the ICC1 Arbitration, are inadmissible in this ICSID arbitration. The claims that the Tribunal has found to be admissible and subject to its determination are those arising out of the following circumstances:

- (a) Claims arising out of the alleged deprivation of HSY of its human assets as a result of the Respondent’s harassment of HSY’s senior management;
- (b) Claims arising out of the alleged takeover of the shipyard, to the extent they are not based on the Finalization Agreement;
- (c) Claims arising out of the Special Administration, including the claim for frustration of the ICC1 Award, insofar as they qualify as treaty claims;
- (d) Claims arising out of the alleged defamation campaign; and
- (e) Ancillary claim for frustration of the ICC1 Award.

¹⁶⁶⁸ Resp. Rej., para. 842.
¹⁶⁶⁹ Resp. Rej., para. 843.
¹⁶⁷⁰ Resp. Rej., para. 843 (referring to Cl. Reply, para. 1750 and the First Report of Professor Derenne (R-0017), para. 175).

965. The Tribunal has further determined in Section VI.B.(3) above that, when resorting to its sovereign powers to enforce the Finalization Agreement, without seeking to negotiate an agreement on its essential terms, and without compensating HSY for the use of the shipyard, the Respondent breached the FET standard under the Treaty. The Tribunal has dismissed all of the Claimants' remaining claims, for reasons set out in Sections V and VI above.
966. The Tribunal notes that the Claimants do not attempt to segregate the compensation that they claim as a result of the Respondent's breach of its obligations under the FET standard, as determined in Section IV.B.(3) above, from the impact of the Respondent's other alleged breaches. The Tribunal, having dismissed the Claimants' claims for compensation as a result of these other alleged breaches, is not in a position to quantify the Claimants' losses based on the finding that it has reached. However, given the factual and legal complexity of this case, involving a variety of preliminary issues regarding jurisdiction and admissibility, as well as legal and factual issues arising from events that took place over a period of close to ten years, it would be inappropriate for the Tribunal to simply dismiss the Claimants' case for compensation for failure to meet the burden of proving their losses. Anticipating the Tribunal's findings on the many jurisdictional, admissibility, legal, and factual issues arising in this case, and then developing alternative calculations for each scenario, could not have been reasonably expected from either Party.
967. In the circumstances, the Tribunal finds it appropriate, in accordance with Article 44 of the ICSID Convention, to issue a Decision on Jurisdiction and Liability which deals with issues of jurisdiction, admissibility and liability only, and to postpone its decision on quantum to a subsequent phase of the proceedings.¹⁶⁷¹ This determination also applies to the Claimants' claim for moral damages, which the Claimants have presented as a case on quantum rather than liability. The Tribunal will revert to the Parties after the issuance of this Decision on Jurisdiction and Liability, in order to establish, in consultation with the Parties, a procedural calendar for the quantum phase of this arbitration.

¹⁶⁷¹ Other ICSID tribunals have adopted this approach in similar circumstances. *See, e.g., HOCHTIEF Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/07/31, Decision on Liability of 29 December 2014, paras. 335, 336(g); *Total (CL-0005)* paras. 182, 184, 338, 339, 342, 346, 457, 460, 485(d).

VIII. DECISION

965. For the reasons set out above, the Tribunal decides as follows:

- (a) The Claimants' claims fall within the jurisdiction of the Tribunal under the Agreement between the Lebanese Republic and the Hellenic Republic on the Promotion and Reciprocal Protection of Investments and the ICSID Convention, and are admissible to the extent that they are not contract claims that have been adjudicated in ICC Case No. 18675/GZ/MHM/AGF/ZF/AYZ, as determined by the Tribunal in Section V of this Decision on Jurisdiction and Liability;
- (b) The Claimants' claim for breach of the fair and equitable treatment standard in Article 2(3) of the Agreement between the Lebanese Republic and the Hellenic Republic on the Promotion and Reciprocal Protection of Investments is granted;
- (c) The Claimants' claim for illegal expropriation under Article 4(1) and 4(2) of the Agreement between the Lebanese Republic and the Hellenic Republic on the Promotion and Reciprocal Protection of Investments is dismissed;
- (d) The Claimants' claim for breach of the full protection and security standard in Article 2(3) of the Agreement between the Lebanese Republic and the Hellenic Republic on the Promotion and Reciprocal Protection of Investments is dismissed;
- (e) The Claimants' claim for breach of the umbrella clause in Article 10(2) of the Agreement between the Lebanese Republic and the Hellenic Republic on the Promotion and Reciprocal Protection of Investments is dismissed;
- (f) The Claimants' ancillary claim for frustration of the arbitral Award issued in ICC Case No. 18675/GZ/MHM/AGF/ZF/AYZ is dismissed;
- (g) The Tribunal's decision on the costs is reserved; and
- (h) The Tribunal will provide directions for the conduct of the further proceedings in this matter in due course.



Mr. Klaus Reichert
Arbitrator

Date: 24 July 2020



Professor Brigitte Stern
Arbitrator

Date: 24 July 2020



Dr. Veijo Heiskanen
President of the Tribunal

Date: 24 July 2020