EXCERPT FOR PUBLICATION PURSUANT TO ICSID ARBITRATION RULE 48(4)

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

AWARD

Members of the Tribunal
Dr. Veijo Heiskanen, President
Mr. Klaus Reichert, Arbitrator
Professor Brigitte Stern, Arbitrator

Secretary of the Tribunal
Leah W. Njoroge

Date of dispatch to the Parties: 30 June 2023

REPRESENTATION OF THE PARTIES

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I. INTRODUCTION

1. This case involves a dispute between Iskandar Safa and Akram Safa, natural persons having the nationality of Lebanon (the "**Claimants**"), and the Hellenic Republic (the "**Respondent**" or "**Greece**," and together with the Claimants, the "**Parties**").[1]

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 Respondent in relation to the Hellenic Shipyards S.A. ("**HSY**"), a company that owned a shipyard located in Skaramangas, Greece. The Claimants are indirect shareholders of HSY.

4. The Tribunal issued a Decision on Jurisdiction and Liability (the "**Decision**") in this matter on 24 July 2020. In its Decision, the Tribunal decided 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;*

[1] Unless the context otherwise requires and save for the definitions reiterated in paragraphs 1 and 2 of this Award, the Tribunal adopts the abbreviations used in the Decision.

(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.[2]

5. The Tribunal thus found that the Respondent had breached the fair and equitable treatment ("**FET"**) standard in Article 2(3) of the BIT and dismissed all the other claims brought by the Claimants.[3] As to the quantum of the Claimants' claim for compensation, the Tribunal considered that the Claimants had not segregated their claim for compensation due under the FET claim from the other alleged breaches and, as a result, it was not in a position to quantify the Claimants' loss.[4] As envisaged in paragraph 965(h) of the Decision, the Tribunal subsequently provided directions to the Parties regarding further submissions on the quantum of the Claimants' claim that was found to be in breach of the FET standard.[5]

6. This Award contains the Tribunal's decision on quantum and incorporates the Decision as Annex A, which constitutes an integral part of this Award. The Decision sets out the procedural history of this arbitration until 24 July 2020, the factual background to the

[2] *Iskandar Safa and Akram Safa v. Hellenic Republic*, ICSID Case No. ARB/16/20, Decision on Jurisdiction and Liability, 24 July 2020 ("**Decision**"), para. 965.

[3] Decision, para. 965(b).

[4] Decision, para. 966.

[5] Decision, para. 967.

dispute and the submissions made by the Parties regarding jurisdiction and liability. These sections of the Decision are not repeated in this Award. The following Sections deal with the post-Decision procedural history, the Parties' requests for relief and the Parties' arguments in relation to quantum.

II. POST-DECISION PROCEDURAL HISTORY

7. On 28 July 2020, following the issuance of the Decision, the Respondent wrote to the Tribunal stating that it had identified a series of "inaccurate and misleading leaks" of elements of the Decision to the Greek media, and requested that the Tribunal remind the Claimants of their obligations under Section 23 of Procedural Order No. 1, which confirmed, according to the Respondent, that the "terms of the award are to remain confidential unless the parties agree otherwise."

8. On 29 July 2020, the Claimants submitted a response to the Respondent's communication of 28 July 2020, requesting that the Tribunal dismiss the Respondent's complaints concerning the alleged leaks of the Decision. The Claimants argued that (i) they had not published the Decision, nor circulated it to anyone; and (ii) Section 23 of Procedural Order No. 1 only dealt with the publication of awards and decisions by the ICSID Secretariat and "does not establish an obligation on the Parties." The Claimants further noted that in Section 19 of Procedural Order No. 2, the Tribunal had determined that "there is no general obligation of confidentiality in ICSID arbitration, nor specifically in these proceedings […]."

9. By letter dated 3 August 2020, the Tribunal dismissed the Respondent's requests made in its communication of 28 July 2020, finding that Article 48(5) of the ICSID Convention, Rule 48(4) of the ICSID Arbitration Rules and Section 23 of Procedural Order No. 1 concerning the publication of awards, orders and decisions of the Tribunal only apply to the ICSID Secretariat and do not create any obligations for the Parties, and that in the absence of any demonstration by the Respondent that the Claimants had released confidential information, the Tribunal could not grant the Respondent's request.

10. By letter dated 13 August 2020, the Tribunal invited the Parties to confer regarding the establishment of a procedural timetable for the quantum phase of the proceeding and to

submit their joint proposal or their respective positions, if they were unable to agree, by 28 August 2020.

11. On 21 August 2020, the Parties requested that the Tribunal extend the deadline for the submission of their proposals concerning the procedural timetable for the quantum phase. On the same day, the Tribunal approved the Parties' request and extended the deadline for the Parties to submit their proposals regarding the procedural timetable to 2 October 2020.

12. On 11 September 2020, the Respondent requested leave from the Tribunal to provide a copy of the Decision to the European Commission. On the same day, the Tribunal invited the Claimants to submit their observations on the Respondent's request by 15 September 2020.

13. On 14 September 2020, the Claimants requested an extension of time until 28 September 2020 to revert on the Respondent's request. On the same day, the Tribunal approved the Claimants' request and extended the deadline for the Claimants' observations to 25 September 2020.

14. On 25 September 2020, the Claimants informed the Tribunal that they objected to the Respondent's request for permission to provide a copy of the Decision to the European Commission.

15. On 25 September 2020, the Parties informed the Tribunal that they had agreed to extend the deadline for reverting to the Tribunal regarding their proposal for the procedural timetable to 12 October 2020. The Tribunal approved by the Parties' request on 28 September 2020.

16. On 6 October 2020, the Tribunal invited the Respondent to submit observations on the Claimants' objections to the request for permission to provide a copy of the Decision to the European Commission by 13 October 2020.

17. On 12 October 2020, the Respondent submitted its observations on the Claimants' objections to the request for permission to provide a copy of the Decision to the European Commission.

18. On 13 October 2020, the Parties informed the Tribunal that they were unable to reach agreement on the procedural timetable and requested that the Tribunal decide the matter following a written briefing by the Parties, as follows: by 29 October 2020, the Parties were to submit their proposals for the procedural timetable, and by 4 November 2020, the Parties were to file rebuttal submissions responding to the other Party's proposal. The Tribunal approved the Parties' request on 14 October 2020.

19. By letter dated 28 October 2020, the Tribunal granted the Respondent's request for permission to provide a copy of the Decision to the European Commission.

20. On 29 October 2020, pursuant to the briefing schedule regarding the Parties' proposals for the procedural calendar, the Claimants submitted their Proposal for the Procedure in the Quantum Phase, and the Respondent submitted its Submission on the Post-Hearing Procedure, together with two exhibits.

21. On 4 November 2020, the Claimants submitted their Reply Submission together with exhibits, and the Respondent submitted its Rebuttal Submission together with exhibits.

22. On 16 November 2020, the Tribunal issued Procedural Order No. 7 regarding the procedural timetable for the quantum phase and requested that the Parties indicate their preferred hearing dates for the hearing on quantum by 18 November 2020. On 19 November 2020, having received the Parties' comments, the Tribunal informed the Parties that the hearing on quantum would be held on 24 – 25 January 2022.

23. On 29 January 2021, the Claimants submitted their Memorial on Quantum with exhibits, including the Third Expert Report of [redacted] (Exhibit C-0363) ("[redacted]").

24. On 28 May 2021, the Respondent requested an extension of time until 7 June 2021 to file its Counter-Memorial on Quantum, because of difficulties with the availability of some members of the Respondent's legal team. On the same day, the Claimants wrote to the Tribunal, opposing the Respondent's request for an extension of time.

25. By its communication of 28 May 2021, the Tribunal approved the Respondent's request for an extension of time to file the Counter-Memorial on Quantum and also granted a corresponding extension to the deadline for the filing of the Claimants' Reply on Quantum.

26. On 2 June 2021, the Claimants wrote to the Tribunal, expressing its disagreement with the Tribunal's decision to grant the Respondent's request for an extension of time. The next day, the Tribunal invited the Respondent to submit any comments it might have had on the Claimants' communication by 8 June 2021.

27. On 7 June 2021, the Respondent filed its Counter-Memorial on Quantum with exhibits, including the Third Witness Statement of [redacted] (Exhibit R-0339), the Third Expert Report of [redacted] (Exhibit R-0337) ("[redacted]") and the Third Expert Report of [redacted] (Exhibit R-0338) ("[redacted]").

28. On 8 June 2021, the Respondent submitted its comments on the Claimants' communication of 2 June 2021, in which it indicated that it would not object to any extension of time requested by the Claimants subject to the Tribunal granting a corresponding extension of time for a future filing by the Respondent.

29. By letter dated 11 June 2021, the Tribunal issued directions to the Parties concerning the procedure for seeking extensions of time for filing submissions.

30. On 23 June 2021, the Respondent re-submitted its Counter-Memorial on Quantum dated 7 June 2021, the Third Witness Statement of [redacted]t and an updated List of Exhibits, because of a numbering issue with some of the exhibits accompanying the submission.

31. By email dated 30 July 2021, the Parties advised the Tribunal that they had agreed to make changes to the procedural timetable. On 2 August 2021, the Tribunal informed the Parties that it approved the modifications to the procedural timetable as agreed by the Parties and invited the Claimants to submit their Reply on Quantum by 15 September 2021 and the Respondent to submit its Rejoinder on Quantum by 13 December 2021.

32. On 27 August 2021, the Claimants informed the Tribunal that they could not submit the Reply on Quantum by 15 September 2021 because one of the Claimants' quantum experts, [redacted] would no longer be available to act for the Claimants in the quantum phase of the arbitration. The Claimants advised the Tribunal that they would confer with the Respondent to seek agreement on amendments to the procedural calendar and revert to the Tribunal.

33. On 8 September 2021, the Claimants advised the Tribunal that they had not succeeded in reaching agreement with the Respondent concerning a modified procedural timetable and requested for a provisional extension of time until 30 November 2021, to file their Reply on Quantum. The Claimants also requested that the deadline for the Respondent's Rejoinder on Quantum be extended from 13 December 2021 to 28 February 2021 and that the Tribunal vacate the hearing fixed for 24 – 25 January 2022.

34. At the Tribunal's invitation, on 13 September 2021, the Respondent submitted its observations on the Claimants' request of 8 September 2021 to modify the procedural timetable. The Respondent stated that it would be agreeable to the vacation of the hearing dates and also to the Claimants' request for extension of time, provided that the Tribunal order the Claimants to submit written evidence demonstrating [redacted] unavailability. According to the Respondent, new dates for the hearing should only be established after the Claimants filed their Reply on Quantum.

35. On 14 September 2021, the Tribunal granted the Claimants' request for an extension of time until 30 November 2021 to file their Reply on Quantum and vacated the scheduled hearing dates. The Tribunal further ordered that once the Claimants had filed their Reply on Quantum, the Respondent would be given an opportunity to comment on whether the Claimants' new expert had adopted [redacted] evidence or whether he had substituted his own opinion for that of Mr. Smart on any material issues. Thereafter, the Claimants would also comment on the Respondent's comments and the Tribunal would fix the deadline for the Respondent's Rejoinder on Quantum and fix the new hearing dates.

36. On 30 November 2021, the Claimants submitted their Reply on Quantum together with exhibits, including the Expert Report of [redacted] (Exhibit C-0365)

(“[redacted]”) and the Expert Report of [redacted] (Exhibit C-0366) (“[redacted]”).

37. As foreshadowed in its 14 September directions, on 3 December 2021, the Tribunal invited the Respondent to submit its observations on the Claimants’ Reply on Quantum by 14 December 2021, and also invited the Claimants’ response to the Respondent’s comments by 4 January 2022.

38. On 13 December 2021, the Respondent sought clarifications from the Tribunal concerning the deadline for the Respondent’s observations on the Claimants’ Reply on Quantum, which the Tribunal’s communication of 3 December 2021 had mistakenly indicated as being 14 December 2021. On the same day, the Tribunal clarified that the Respondent could file its submission on 15 December 2021.

39. On 15 December 2021, the Respondent filed its Observations on the Claimants’ Reply on Quantum.

40. On 4 January 2022, the Claimants filed their Response to the Respondent’s Observations on the Claimants’ Reply on Quantum.

41. On 11 January 2022, the Tribunal decided to grant the Respondent until 31 May 2022 to file its Rejoinder on Quantum. In the same letter, the Tribunal indicated that it was available to convene the vacated hearing on quantum on 3 – 7 October 2022 and 10 – 11 October 2022 and invited the Parties to indicate their respective availabilities on the proposed dates by 18 January 2022.

42. On 18 January 2022, the Parties confirmed their availability to attend the hearing on quantum on the dates suggested by the Tribunal in its letter of 11 January 2022. On 24 January 2022, the Tribunal confirmed that the hearing on quantum would be held on 4 – 7 October 2022.

43. By ICSID’s letter of 11 April 2022, the Secretary-General informed the Tribunal that Ms. Leah W. Njoroge would soon be out of the office on maternity leave and that Ms. Celeste Mowatt would serve as Secretary of the Tribunal from that date.

44. On 9 May 2022, the Claimants requested permission from the Tribunal to file an additional exhibit to the record, *i.e.*, a judgment by the Supreme Court of the Hellenic Republic dated 23 February 2022. On the same day, the Tribunal invited the Respondent to comment on the Claimants' request by 16 May 2022.

45. On 16 May 2022, the Respondent informed the Tribunal that it did not object to the admission of the judgment of the Supreme Court of the Hellenic Republic dated 23 February 2022 to the record. On 17 May 2022, the Tribunal approved the Claimants' application to submit the additional exhibit, which the Claimants submitted on the same day.

46. On 31 May 2022, the Respondent submitted its Rejoinder on Quantum together with exhibits, including the Fourth Witness Statement of [redacted], the Fourth Expert Report of [redacted] (Exhibit R-0360) [redacted]) and the Fourth Expert Report of [redacted] (Exhibit R-0359) ("[redacted]").

47. On 7 July 2022, the Tribunal proposed that a pre-hearing organizational meeting be held between the President of the Tribunal and the Parties and invited the Parties to indicate their availability by 14 July 2022.

48. On 12 July 2022, the Parties informed the Tribunal that they had agreed that the hearing on quantum be held in person in London and proposed that the pre-hearing organizational meeting take place on 8 September 2022.

49. By letter dated 19 July 2022, ICSID advised the Parties regarding preparations for the hearing on quantum and the pre-hearing organizational meeting.

50. On 26 July 2022, the Parties confirmed their availability to attend the pre-hearing organizational meeting on 8 September 2022.

51. On 5 August 2022, the Claimants requested permission from the Tribunal to submit three additional exhibits to the record. At the Tribunal's invitation, on 12 August 2022, the Respondent informed the Tribunal that it did not object to the Claimants' request.

52. On 15 August 2022, the Tribunal informed the Parties that the Claimants' application to submit the three additional exhibits to the record had been granted and invited the Claimants to submit the exhibits.

53. On 8 September 2022, the President of the Tribunal held a pre-hearing organizational meeting with the Parties by video conference.

54. On 14 September 2022, the Tribunal issued Procedural Order No. 8 concerning the organization of the hearing on quantum.

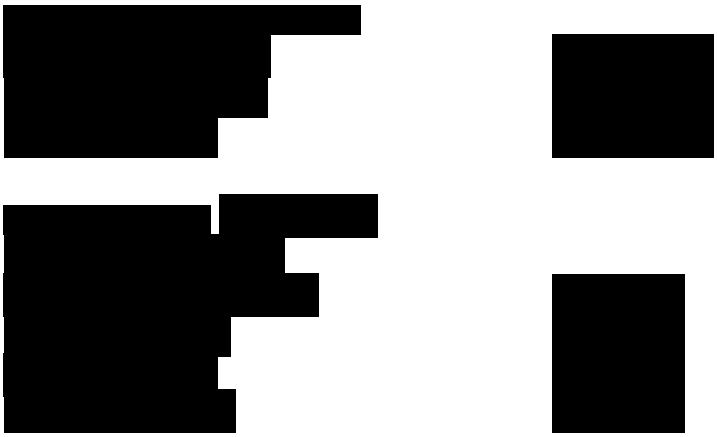
55. The hearing on quantum was held in London at the International Dispute Resolution Centre from 5 – 7 October 2022 (the "**Hearing**"). The following persons were present at the Hearing:

Tribunal:	
Dr. Veijo Heiskanen	President of the Tribunal
Mr. Klaus Reichert	Arbitrator
Professor Brigitte Stern	Arbitrator
ICSID Secretariat:	
Ms. Celeste Mowatt	Secretary of the Tribunal
For the Claimants:	
Dr. Daniel Busse	Busse Disputes
Dr. Sven Lange	Busse Disputes
Ms. Allison Torline	Busse Disputes
Dr. Henriette Sigmund	Busse Disputes
Mr. David Langford	Counsel to Claimants
For the Respondent:	
Prof. Guglielmo Verdirame KC (as he then was)	Twenty Essex
Dr. Jonathan Ketcheson	Twenty Essex
Mr. Adam Strong	Holman Fenwick Willan LLP
Ms. Eirini Roussou	Holman Fenwick Willan LLP
Ms. Ellie Gilbert	Holman Fenwick Willan LLP
Ms. Emmanouela Panopoulou	Legal Councellor of the State
Mr. Dionysios Kolovos	Legal Councellor of the State
Ms. Ourania Mendrinou	Legal Councellor of the State
Ms. Natali-Xristina Samara	Legal Councellor of the State

Other Participants:

Mr. George Fassoulakis	Interpreter
Mr. Theo Kominis	Interpreter
Ms. Maria Pagomenou	Interpreter
Ms. Anne-Marie Stallard	Court Reporter

56. The following experts and witness testified during the Hearing:



57. By letter dated 12 October 2022, the Tribunal sought the Parties' confirmation on whether the deadlines provisionally agreed at the Hearing for corrections to the transcripts, post-hearing briefs and submissions on costs were to be maintained. In the same letter, the Tribunal identified two questions which it requested the Parties to address in their forthcoming post-hearing submissions.

58. On 19 October 2022, the Parties submitted comments in response to the Tribunal's invitation to confirm the deadlines for submission of the corrections to the transcripts, post-hearing briefs and cost submissions. The Respondent requested that the proposed deadlines be extended.

59. In its letter dated 24 October 2022, the Tribunal agreed to extend the deadline for the post-hearing briefs to 16 December 2022 and the deadline for the costs submissions to 5 January 2023 for the first costs submissions and to 12 January 2023 for the second costs submissions.

60. By ICSID's letter of 8 December 2022, the Secretary-General informed the Tribunal that Ms. Leah W. Njoroge had returned from her maternity leave and that she would resume her functions as the Secretary of the Tribunal from that date in replacement of Ms. Mowatt.

61. On 13 December 2022, the Respondent requested leave from the Tribunal to introduce a number of Greek law provisions and an EU Notice into the case record. On the same day, the Tribunal invited the Claimants to comment on the Respondent's request and invited the Parties to confer as to whether the deadline of 15 December 2022 for the filing of their post-hearing briefs should be extended in the circumstances.

62. On 14 December 2022, the Claimants objected to the Respondent's request to submit new documents. On the same day, the Tribunal decided to dismiss the Respondent's request and indicated that it would provide a reasoned decision in due course.

63. On 16 December 2022, the Parties filed their Post-Hearing Briefs on Quantum.

64. On 5 January 2023, the Parties filed their First Submissions on Costs.

65. On 5 January 2023, the Tribunal issued Procedural Order No. 9 providing its reasoning for dismissing the Respondent's request of 13 December 2022 to introduce new evidence.

66. On 12 January 2023, the Parties filed their Second Submissions on Costs.

67. On 18 April 2023, the Tribunal declared the proceeding closed.

III. REQUESTS FOR RELIEF

68. The Claimants requested in their Memorial on Quantum dated 29 January 2021 that the Tribunal render the following award:

> 1. *As compensation: The Hellenic Republic is ordered to pay to Claimants, as joint creditors, compensation for its breach of the BIT in the amount of EUR 154 million;*
>
> 2. *As pre-award interest on compensation: The Hellenic Republic is ordered to pay to Claimants, as joint creditors, interest for the period from 4 April 2014 to 31 December 2020 in the amount of EUR 11 million;*

3. *As further pre-award interest on compensation: The Hellenic Republic is ordered to pay to Claimants, as joint creditors, interest on the amounts awarded to Claimants under No. 1 and No. 2 above at a six-month EURIBOR rate plus 2 percentage points, compounded semi-annually, from 1 January 2021 until the date of the Award;*

4. *As compensation for continuous use: It is determined that the Hellenic Republic owes to Claimants compensation for each month after December 2020 during which the Hellenic Navy keeps using HSY's shipyard.*

5. *As pre- and post-award interest on compensation for continuous use: It is determined that the Hellenic Republic owes to Claimants interest on each monthly compensation payment under No. 4 above, (i) from the first day of each respective month until the date of the award at a six-month EURIBOR rate plus 2 percentage points, compounded semi-annually, and (ii) from the date of the award until full payment by the Hellenic Republic at a rate to be determined by the Tribunal in its discretion, but not below a six-month EURIBOR rate plus two percentage points, compounded semi-annually;*

6. *As moral damages: The Hellenic Republic is ordered to pay to Claimants, as joint creditors, moral damages in an amount to be determined by the Tribunal in its discretion;*

7. *As pre-award interest on moral damages: The Hellenic Republic is ordered to pay to Claimants, as joint creditors, interest on the amount awarded to Claimants under No. 6 above at a six-month EURIBOR rate plus 2 percentage points, compounded semi-annually, from 4 April 2014 until the date of the Award;*

8. *As post-award interest on compensation, moral damages, costs and pre-award interest: The Hellenic Republic is ordered to pay to Claimants, as joint creditors, interest on the amounts awarded to Claimants under No. 1-3 and No. 6-7 above and No. 9 below, at a rate to be determined by the Tribunal in its discretion, but not below a six-month EURIBOR rate plus two percentage points, compounded semi-annually, from the date of the Award until full payment by the Hellenic Republic; and*

9. *As costs: The Hellenic Republic is ordered to pay all of the costs and expenses of these arbitration proceedings, including the fees and expenses of ICSID and those of the members of the Arbitral Tribunal, as well as the fees and expenses of Claimants' external*

legal representatives, inhouse legal costs, and interest, on a full indemnity Basis.[6]

69. The Claimants additionally requested that:

> *The Tribunal may include in its decision an award that*
>
> *Claimants are ordered to effect*
>
> *a. a transfer of* [redacted] *75.1% shareholding in HSY to the Hellenic Republic or to a nominee designated by the Hellenic Republic; and*
>
> *b. a release of all of Privinvest Holding's financial claims against HSY.*
>
> *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.*
>
> *Such an order is of course only appropriate if, at the date of the award, the respective shareholding and financial claims still exist.*[7]

70. The Claimants reserved their right to amend or update their request for relief "in particular so as to reflect the consequences of the Hellenic Republic's continued use of HSY's shipyard beyond December 2020."[8]

71. In their Reply on Quantum dated 30 November 2021, the Claimants modified their request for relief as follows:

> *1. As compensation: The Hellenic Republic is ordered to pay to Claimants, as joint creditors, compensation for its breach of the BIT in the amount of EUR 138,043,603;*
>
> *2. As compensation for continuous use: It is determined that the Hellenic Republic owes to Claimants compensation (including interest) for each month after December 2021 during which the Hellenic Navy keeps using HSY's shipyard.*

[6] Cl. Mem. on Quantum, para. 2469.

[7] Cl. Mem. on Quantum, paras. 2471–2472.

[8] Cl. Mem. on Quantum, para. 2470.

3. *As moral damages: The Hellenic Republic is ordered to pay to Claimants, as joint creditors, moral damages in an amount to be determined by the Tribunal in its discretion;*

4. *As post-award interest on compensation, moral damages and costs: The Hellenic Republic is ordered to pay to Claimants, as joint creditors, interest on the amounts awarded to Claimants under No. 1-3 above and No. 5 below, at a rate to be determined by the Tribunal in its discretion, but not below a six-month EURIBOR rate plus two percentage points, compounded semi-annually, from the date of the Award until full payment by the Hellenic Republic; and*

5. *As costs: The Hellenic Republic is ordered to pay all of the costs and expenses of these arbitration proceedings, including the fees and expenses of ICSID and those of the members of the Arbitral Tribunal, as well as the fees and expenses of Claimants' external legal representatives, in-house legal costs, and interest, on a full indemnity basis.*[9]

72. In their Post-Hearing Brief on Quantum dated 16 December 2022, the Claimants maintained their request for relief as presented in their Reply on Quantum.[10]

73. In its Counter-Memorial on Quantum dated 7 June 2021, the Respondent sought the following relief:

[1] *Dismiss the Claimants' claim for damages.*

[2] *Order the Claimants to pay the totality of the Respondent's legal and expert fees and expenses, as well was all cost of the arbitration, including the fees and expenses of the Tribunal and ICSID (plus interest on the foregoing).*

[3] *Award the Respondent such additional relief as the Tribunal may consider just and appropriate.*[11]

[9] Cl. Reply on Quantum, para. 2789.

[10] Cl. PHB on Quantum, para. 2926.

[11] Resp. C-Mem. on Quantum, para. 200.

74. The Respondent reiterated its request for relief in its Rejoinder on Quantum dated 31 May 2022[12] and also in its Post-Hearing Brief on Quantum dated 16 December 2022.[13]

IV. PARTIES' POSITIONS ON QUANTUM

A. THE CLAIMANTS' POSITION

75. [redacted]

[12] Resp. Rej. on Quantum, para. 234.

[13] Resp. PHB on Quantum, para. 103.

[14] Cl. Mem. on Quantum, para. 2292.

[15] Cl. PHB on Quantum, para. 2794; Cl. Reply on Quantum, para. 2476.

[16] Cl. Mem. on Quantum, para. 2292.

[17] Cl. Reply on Quantum, para. 2487.

[18] Cl. Mem. on Quantum, para. 2297.

[19] Cl. Reply on Quantum, para. 2475.

[redacted]

(1) The Legal Principles Governing Quantum

78. [redacted]

[redacted]

[20] Cl. Reply on Quantum, para. 2482.

[21] Cl. Reply on Quantum, para. 2475.

[22] Cl. Reply on Quantum, para. 2475.

[23] Cl. Mem. on Quantum, para. 2293.

[24] Cl. Mem. on Quantum, paras. 2293–2294.

[25] Cl. Mem. on Quantum, paras. 2293–2294.

[26] Cl. Mem. on Quantum, para. 2294.

[redacted]

[redacted]

a. Framework of the quantum analysis

81. [redacted]

[redacted]

[27] Cl. Reply on Quantum, para. 2476.

[28] Cl. Reply on Quantum, para. 2490.

[29] Cl. Mem. on Quantum, paras. 2310–2316; Cl. PHB on Quantum, para. 2798 (first bullet).

[30] Cl. Mem. on Quantum, para. 2310 (citing *Case Concerning the factory at Chorzów*, PCIJ Series A (No. 17), Judgment on the Merits, 13 September 1928 ("***Chorzów Factory***") (**CL-0099**); Cl. Reply on Quantum, para. 2491 (first bullet)

[31] Cl. Mem. on Quantum, para. 2310.

[32] Cl. Reply on Quantum, para. 2491 (first bullet).

83. [redacted]

[redacted]

[redacted]

86. [redacted]

[33] Cl. Mem. on Quantum, para. 2311.

[34] Cl. Mem. on Quantum, paras. 2311–2313; Cl. Reply on Quantum, para. 2491 (second bullet). *See* Decision, paras. 626–627, 965 (*Cf.* Law 4258/2014 (**C-0011**)).

[35] Cl. Reply on Quantum, para. 2491 (second bullet).

[36] Cl. Mem. on Quantum, para. 2314; Cl. Reply on Quantum, para. 2491 (third bullet). *See* Respondent's Memorial on Preliminary Objections and Counter-Memorial on the Merits dated 30 April 2018, para. 1259.

[37] Cl. Mem. on Quantum, para. 2315.

[38] Cl. Mem. on Quantum, para. 2315; Cl. Reply on Quantum, para. 2491 (fourth bullet).

[39] Cl. Mem. on Quantum, para. 2315; Cl. Reply on Quantum, para. 2491 (fourth bullet).

[40] Cl. Mem. on Quantum, para. 2316; Cl. Reply on Quantum, para. 2491 (fifth bullet). *See* Respondent's Memorial on Preliminary Objections and Counter-Memorial on the Merits dated 30 April 2018, para. 1271.

b. Burden and standard of proof

87. [redacted]

c. Estimation of damages

89. [redacted]

[41] Cl. Mem. on Quantum, paras. 2317–2319 (citing *Gemplus S.A., SLP S.A., Gemplus Industrial S.A. de C.V. v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award, 16 June 2010 *(*"***Gemplus v. Mexico***"*) (**CL-0119**), paras. 13–92); Cl. Reply on Quantum, para. 2492; Cl. PHB on Quantum, para. 2798 (second bullet).

[42] Cl. Mem. on Quantum, para. 2319.

[43] Cl. Mem. on Quantum, para. 2320; Cl. Reply on Quantum, para. 2492.

[44] Cl. Reply on Quantum, para. 2493.

[45] Cl. Mem. on Quantum, para. 2321; Cl. PHB on Quantum, para. 2798 (third bullet)

[redacted]

[redacted]

(2) The Assumptions Underlying the "But For" Assessment

91. [redacted]

[redacted]

[46] Cl. Mem. on Quantum, paras. 2322–2325 (citing *Starrett Housing Corporation and others v. Islamic Republic of Iran and others*, IUSCT Case No. 24 (314-24-1), Final Award, 14 August 1987 ("***Starret Housing v. Iran***") (**CL-0106**); *Compañía del Desarrollo de Santa Elena, S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Final Award, 17 February 2000 ("***Santa Elena v. Costa Rica***") (**CL-0108**); *Swisslion DOO Skopje v. Former Yugoslav Republic of Macedonia*, ICSID Case No. ARB/09/16, Award, 6 July 2012 ("***Swisslion v. Macedonia***") (**CL-0220**); Cl. Reply on Quantum, para. 2495.

[47] Cl. Mem. on Quantum, paras. 2322–2325; Cl. Reply on Quantum, para. 2495.

[48] Cl. Reply on Quantum, para. 2496.

[49] Cl. Reply on Quantum, para. 2497.

[50] Cl. Mem. on Quantum, para. 2326.

[51] Cl. Mem. on Quantum, paras. 2326 (first bullet), 2327–2329.

[52] Cl. Mem. on Quantum, para. 2329 (second bullet).

[53] Cl. Reply on Quantum, para. 2503; Cl. Mem. on Quantum, para. 2329 (first bullet) (comparing with Art. 35(1) of Section B and Art. 35(1) of Section C of the Implementation Agreement (**C-0005**) and Greek Civil Code, Art. 288 (**CL-0221**).

[redacted]

[54] Cl. Reply on Quantum, para. 2512.

[55] Cl. Mem. on Quantum, paras. 2326 (second bullet), 2336–2340; Cl. Reply on Quantum, paras. 2514, 2542–2544. *See* Email from First Claimant to [redacted] and [redacted] dated 27 February 2014 (**C-0087**); Letter from [redacted] to First Claimant dated 13 March 2014 (**C-0127**).

[56] Cl. Mem. on Quantum, paras. 2326 (second bullet), 2330-2335; Third [redacted] Report (**C-0363**), para. 3.25.

[57] Cl. Reply on Quantum, paras. 2519–2526.

[58] Cl. Reply on Quantum, paras. 2527–2529.

[59] Cl. Reply on Quantum, paras. 2530–2540.

[60] Cl. Mem. on Quantum, paras. 2343–2357 (referring to ICC1 Award (**C-0019**), paras. 222–223, 240, 1073–1075, 1327, 1329–1334, 2216 (no. 5 and no. 7)).

[61] Cl. Mem. on Quantum, para. 2358.

[62] Cl. Reply on Quantum, para. 2545.

[redacted]

96. [redacted]

[63] Cl. Mem. on Quantum, paras. 2342, 2362–2376.

[64] Cl. Mem. on Quantum, paras. 2345-2353 (citing *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, 7 February 2017 ("***Burlington v. Ecuador***") (**CL-0104**), para. 126).

[65] Cl. Mem. on Quantum, paras. 2354–2356.

[66] Cl. Mem. on Quantum, paras. 2326 (fourth bullet), 2378–2381; Cl. Reply on Quantum, para. 2602.

[67] Cl. Mem. on Quantum, para. 2379; Cl. Reply on Quantum, para. 2602 (first bullet).

[68] Cl. Mem. on Quantum, para. 2380; Cl. Reply on Quantum, para. 2602 (second bullet).

[69] Cl. Reply on Quantum, para. 2623.

[redacted]

[redacted]

(3) HSY's Workload Assuming HSY had Run the Shipyard Itself

98. [redacted]

[70] Cl. Reply on Quantum, para. 2603.

[71] Cl. Mem. on Quantum, paras. 2382–2390; Cl. Reply on Quantum, paras. 2610–2616.

[72] Cl. Reply on Quantum, paras. 2617–2621.

[73] Cl. Reply on Quantum, para. 2626.

[74] Cl. PHB on Quantum, para. 2881 (referring to Resp. C-Mem. on Quantum, paras. 160–170; Resp. Rej. on Quantum, paras. 186–195).

[75] Cl. PHB on Quantum, paras. 2883–2893.

[76] Cl. Mem. on Quantum, para. 2393.

[redacted]

100. [redacted]

[77] Cl. Reply on Quantum, para. 2631; [redacted] paras. 15, 179-180.

[78] Cl. Reply on Quantum, para. 2632; Cl. Mem. on Quantum, paras. 2395–2399.

[79] Cl. Reply on Quantum, para. 2633.

[80] Cl. Reply on Quantum, para. 2634.

[81] Cl. Reply on Quantum, paras. 2635–2637.

[82] Cl. Mem. on Quantum, para. 2406.

[83] Cl. Mem. on Quantum, para. 2406.

[redacted].[84]

[redacted]

[84] Cl. Mem. on Quantum, para. 2400.

[85] Cl. Mem. on Quantum, paras. 2401–2402; Cl. Reply on Quantum, para. 2639.

[86] Cl. Mem. on Quantum, para. 2403.

[87] Cl. Mem. on Quantum, para. 2404.

[88] Cl. Reply on Quantum, paras. 2640-2641.

[89] Cl. Mem. on Quantum, para. 2407 (first to fourth bullets).

[redacted]

[redacted]

[90] Cl. Reply on Quantum, para. 2642.

[91] Cl. Reply on Quantum, para. 2643.

[92] Cl. Mem. on Quantum, paras. 2410–2411.

[93] Cl. Mem. on Quantum, paras. 2410–2411; Cl. Reply on Quantum, para. 2646.

[94] Cl. Reply on Quantum, paras. 2648–2650.

[95] Cl. Reply on Quantum, para. 2651.

[96] Cl. Reply on Quantum, paras. 2652–2653.

[97] Cl. Reply on Quantum, para. 2658.

[98] Cl. Reply on Quantum, para. 2659; [redacted], paras. 207–219.

[99] Cl. Reply on Quantum, paras. 2661–2665.

[redacted]

104. [redacted]

[redacted]

[100] Cl. Reply on Quantum, paras. 2666–2670.

[101] Cl. Reply on Quantum, paras. 2671–2674.

[102] Cl. Mem. on Quantum, paras. 2413–2414; Third [redacted] Report (**C-0363**), para. 6.16; Cl. Reply on Quantum, para. 2676.

[103] Cl. Mem. on Quantum, para. 2413 (first to fourth bullets); Cl. Reply on Quantum, para. 2677.

[104] Cl. Mem. on Quantum, para. 2415.

[105] Cl. Mem. on Quantum, para. 2416.

[106] Cl. Mem. on Quantum, para. 2417.

[107] Cl. Mem. on Quantum, para. 2417 (first and third bullets).

[108] Cl. Mem. on Quantum, para. 2418.

[redacted]

[redacted]

(4) Quantification of the Claimants' Losses

107. [redacted]

[redacted]

[109] Cl. Mem. on Quantum, para. 2421.

[110] Cl. Reply on Quantum, para. 2685; [redacted] Report (**C-0366**), paras. 167–170.

[111] Cl. Reply on Quantum, para. 2680.

[112] Cl. Reply on Quantum, para. 2684; [redacted] Report (**C-0366**), paras. 165–206.

[113] Cl. Mem. on Quantum, para. 2425; Third [redacted] Report (**C-0363**); Cl. Reply on Quantum, para. 2688.

[114] Cl. Mem. on Quantum, para. 2425; Cl. Reply on Quantum, para. 2688.

[115] Cl. Mem. on Quantum, paras. 2426–2427; Cl. Reply on Quantum, para. 2693.

109. [redacted]

[redacted] Cl. Mem. on Quantum, para. 2431; Third [redacted] Report (**C-0363**), para. 7.59; Cl. Reply on Quantum, para. 2695 (first bullet).

[117] Cl. Mem. on Quantum, paras. 2428–2429; Third [redacted] Report (**C-0363**), paras. 7.6–7.73.

[118] Cl. Mem. on Quantum, paras. 2429–2430; Third [redacted] Report (**C-0363**), paras. 7.45–7.58.

[119] Cl. Mem. on Quantum, para. 2433; Third [redacted] Report (**C-0363**), para. 7.61; Cl. Reply on Quantum, para. 2695 (second bullet).

[120] Cl. Mem. on Quantum, para. 2434; Third [redacted] Report (**C-0363**), para. 7.64.

[121] Cl. Mem. on Quantum, paras. 2429 (third bullet), 2435–2443.

[122] Cl. Mem. on Quantum, para. 2446; Cl. Reply on Quantum, para. 2695 (third bullet).

[123] Cl. Mem. on Quantum, para. 2447; Third [redacted] Report (**C-0363**), paras. 3.44, 7.79.

[124] Cl. Mem. on Quantum, para. 2448; Third [redacted] Report (**C-0363**), paras. 3.45, 7.81.

112. [redacted]

[redacted]

[redacted]

[redacted]

[125] Cl. Mem. on Quantum, para. 2449.

[126] Cl. Reply on Quantum, para. 2693.

[127] Cl. Reply on Quantum, para. 2692.

[128] Cl. Reply on Quantum, paras. 2698–2700.

[129] Cl. Reply on Quantum, para. 2698.

[130] Cl. Reply on Quantum, para. 2699.

[131] Cl. Reply on Quantum, para. 2701 (referring to Resp. Counter-Memorial on Quantum, para. 151.2).

[132] Cl. Reply on Quantum, para. 2702 (referring to Resp. Counter-Memorial on Quantum, para. 151.3).

[redacted]

[redacted]

[redacted]

[redacted]

[133] Cl. Reply on Quantum, para. 2703 (referring to Resp. Counter-Memorial on Quantum, para. 152).

[134] Cl. Reply on Quantum, para. 2704 (referring to Resp. Counter-Memorial on Quantum, para. 153).

[135] Cl. Reply on Quantum, para. 2705 (referring to Resp. Counter-Memorial on Quantum, para. 153).

[136] Cl. Reply on Quantum, paras. 2706–2707.

[137] Cl. Reply on Quantum, paras. 2708–2710.

[138] Cl. Reply on Quantum, paras. 2711–2712.

[139] Cl. Reply on Quantum, para. 2713.

[140] Cl. Reply on Quantum, para. 2714.

[141] Cl. Reply on Quantum, para. 2715.

119. [redacted]

[redacted]

[redacted]

122. [redacted]

[redacted]

[142] Cl. Reply on Quantum, para. 2718.
[143] Cl. Reply on Quantum, para. 2719.
[144] Cl. Reply on Quantum, para. 2721.
[145] Cl. Reply on Quantum, para. 2729 (first bullet).
[146] Cl. Reply on Quantum, para. 2729 (second to fourth bullets).
[147] Cl. Reply on Quantum, para. 2730.
[148] Cl. Reply on Quantum, para. 2732.

[redacted]

[redacted]

(5) The Respondent's Breach Caused the Claimants' Loss

125. [redacted]

[149] Cl. Reply on Quantum, para. 2737.

[150] Cl. Reply on Quantum, para. 2738.

[151] Cl. Reply on Quantum, para. 2744.

[152] Cl. Reply on Quantum, para. 2744.

[153] Cl. PHB on Quantum, para. 2916.

[154] Cl. Mem. on Quantum, paras. 2451–2453; Decision, para. 627; Cl. Reply on Quantum, para. 2745; Cl. PHB on Quantum, para. 2918 (second bullet).

[redacted]

(6) The Respondent's Counter-Arguments are Irrelevant

126. [redacted]

[redacted]

[redacted]

[redacted] Cl. Reply on Quantum, para. 2745 (second bullet).

[156] Cl. Mem. on Quantum, para. 2452 (first to fourth bullets); Cl. Reply on Quantum, para. 2745 (third bullet).

[157] Cl. Mem. on Quantum, para. 2454.

[158] Cl. Mem. on Quantum, para. 2455.

[159] Cl. Mem. on Quantum, para. 2455; Cl. Reply on Quantum, paras. 2750–2764; Cl. PHB on Quantum, para. 2920.

[160] Cl. Mem. on Quantum, para. 2456 (first bullet); Cl. Reply on Quantum, paras. 2766–2767; Cl. PHB on Quantum, para. 2921.

[161] Cl. Mem. on Quantum, para. 2456 (second bullet).

[162] Cl. Reply on Quantum, paras. 2768–2771; Cl. PHB on Quantum, para. 2922.

129. [redacted]

(7) The Claimants are Entitled to Moral Damages, Interest and Costs

[redacted]

b. The Claimants are entitled to pre- and post-award interest

132. [redacted]

[163] Cl. Mem. on Quantum, para. 2458; Cl. Reply on Quantum, para. 2772; Cl. PHB on Quantum, para. 2924.

[164] Cl. Mem. on Quantum, paras. 2459–2460; Cl. Reply on Quantum, para. 2774; Cl. PHB on Quantum, para. 2926.

[165] Cl. Mem. on Quantum, paras. 2459, 2461.

[166] Cl. Reply on Quantum, paras. 2777–2784.

[167] Cl. Reply on Quantum, para. 2785; Cl. Mem. on Quantum, para. 2462.

[redacted]

[redacted]

[redacted]

c. The Hellenic Republic is liable for the costs of the arbitration

135. [redacted]

(8) Answers to the Tribunal's Questions

136. [redacted]

[168] Cl. Reply on Quantum, para. 2786; Cl. Mem. on Quantum, paras. 2463 (first bullet), 2464; Third [redacted] Report (**C-0363**), para. 7.82.

[169] Cl. Mem. on Quantum, para. 2464 (second bullet).

[170] Cl. Mem. on Quantum, para. 2465.

[171] Cl. Reply on Quantum, para. 2785; Cl. Mem. on Quantum, para. 2467.

[172] Cl. Reply on Quantum, para. 2786; Cl. Mem. on Quantum, para. 2463 (second bullet).

[173] Cl. Reply on Quantum, para. 2787.

[174] Cl. Reply on Quantum, para. 2788; Cl. Mem. on Quantum, para. 2468.

[redacted]

137. [redacted]

[redacted]

[redacted]

[redacted]

[175] Letter from the Tribunal to the Parties dated 12 October 2022.

[176] Cl. PHB on Quantum, para. 2898.

[177] Cl. PHB on Quantum, para. 2898.

[178] Cl. PHB on Quantum, para. 2898.

[179] Cl. PHB on Quantum, para. 2899.

[180] Cl. PHB on Quantum, para. 2900.

[181] Cl. PHB on Quantum, para. 2901.

[redacted]

141. [redacted]

[182] Cl. PHB on Quantum, para. 2902.
[183] Cl. PHB on Quantum, para. 2903.
[184] Cl. PHB on Quantum, para. 2904.
[185] Cl. PHB on Quantum, para. 2904.
[186] Cl. PHB on Quantum, para. 2905.
[187] Cl. PHB on Quantum, para. 2906.
[188] Cl. PHB on Quantum, para. 2906.

B. THE RESPONDENT'S POSITION

142. [redacted]

[redacted]

[redacted]

[redacted]

[189] Resp. C-Mem. on Quantum, para. 5.

[190] Resp. C-Mem. on Quantum, para. 5.

[191] Resp. C-Mem. on Quantum, para. 7.

[192] Resp. C-Mem. on Quantum, para. 9.

[193] Resp. C-Mem. on Quantum, paras. 13–15.

[194] Resp. C-Mem. on Quantum, paras. 16–17.

[195] Resp. C-Mem. on Quantum, paras. 18–19.

146. [redacted]

[redacted]

(1) The Claimants' Claim for Damages is Abusive

148. [redacted]

[redacted]

[196] Resp. C-Mem. on Quantum, para. 20.

[197] Resp. C-Mem. on Quantum, para. 21.

[198] Resp. C-Mem. on Quantum, paras. 22–23.

[199] Resp. C-Mem. on Quantum, paras. 24, 26–27 (referring to Decision, para. 335); Resp. Rej. on Quantum, paras. 16.1, 18–23; Resp. PHB on Quantum, para. 37.

[200] Resp. C-Mem. on Quantum, para. 25; Resp. Rej. on Quantum, para. 16.2.

[201] Resp. C-Mem. on Quantum, paras. 25, 33–34.

[202] Resp. C-Mem. on Quantum, para. 29.

[redacted]

151. [redacted]

[203] Resp. C-Mem. on Quantum, para. 30.

[204] Resp. C-Mem. on Quantum, para. 31.

[205] Resp. C-Mem. on Quantum, para. 32.

[206] Resp. C-Mem. on Quantum, para. 32; Cl. Memorial on Jurisdiction, Admissibility and the Merits dated 30 October 2017, paras. 567, 609.

[207] Resp. C-Mem. on Quantum, para. 32.

[208] Resp. C-Mem. on Quantum, paras. 34–35.

[209] Resp. C-Mem. on Quantum, paras. 36, 38.

152. [redacted]

[redacted]

(2) The Relevant Legal Principles

a. Framework for the quantum analysis

154. [redacted]

[redacted]

[210] Resp. C-Mem. on Quantum, para. 37; HSY's Updated Statement of Counterclaim dated 2 February 2018 in ICC2 (**R-0295**), para. 56; Cl. Mem. on Quantum, para. 2389.

[211] Resp. C-Mem. on Quantum, paras. 39–40; Resp. Rej. on Quantum, para. 28.

[212] Resp. Rej. on Quantum, para. 26.

[213] Resp. Rej. on Quantum, para. 36.

[214] Resp. Rej. on Quantum, para. 38.

[215] Resp. Rej. on Quantum, para. 38.1.

[216] Resp. Rej. on Quantum, para. 38.2.

[redacted]

156. [redacted]

157. [redacted]

[redacted]

b. Burden of proof to establish damage caused by the breach of the BIT

159. [redacted]

[217] Resp. Rej. on Quantum, para. 38.2.

[218] Resp. Rej. on Quantum, para. 40.1.

[219] Resp. Rej. on Quantum, para. 40.2.

[220] Resp. Rej. on Quantum, para. 41.

[221] Resp. Rej. on Quantum, para. 42.

[222] Resp. C-Mem. on Quantum, para. 42 (citing *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award, 13 November 2000 ("***SD Myers v. Canada***") (**RL-0100**), para. 316); Resp. Rej. on Quantum, para. 43.

[redacted]

[redacted]

c. The Claimants cannot seek compensation in respect of their claims which have been dismissed

161. [redacted]

d. The Tribunal does not have the power to award damages ex aequo et bono

162. [redacted]

[223] Resp. C-Mem. on Quantum, para. 43; Resp. Rej. on Quantum, para. 44.1.

[224] Resp. C-Mem. on Quantum, para. 44; Resp. Rej. on Quantum, paras. 47.1–47.3.

[225] Resp. C-Mem. on Quantum, para. 45.1.

[226] Resp. C-Mem. on Quantum, para. 45.2; [redacted] (**R-0338**), para. 10.26.

[227] Resp. C-Mem. on Quantum, para. 46 (citing *The Rompetrol Group N.V. v. Romania*, ICSID Case No. ARB/06/3, Award, 6 May 2013 ("***Rompetrol v. Romania***") (**RL-0041**), para. 299(d)).

[228] Resp. C-Mem. on Quantum, paras. 47–55.

[229] Resp. C-Mem. on Quantum, para. 55; ICC1 Award (**C-0019**), para. 1324; Cl. Mem. on Quantum, para. 2342.

[redacted]

(3) The Starting Point for the Tribunal's Damages Analysis

163. [redacted]

[redacted]

(4) The Finalization Agreement

165. [redacted]

[redacted]

[230] Resp. C-Mem. on Quantum, paras. 56–59; Cl. Mem. on Quantum, para. 2323.

[231] Resp. C-Mem. on Quantum, para. 56.

[232] Resp. C-Mem. on Quantum, paras. 60–80; Resp. Rej. on Quantum, para. 70; Resp. PHB on Quantum, paras. 42.1–42.7.

[233] Resp. C-Mem. on Quantum, para. 61; Resp. PHB on Quantum, para. 45.

[234] Resp. C-Mem. on Quantum, para. 82; Resp. Rej. on Quantum, para. 52.

[redacted]

[redacted]

[redacted]

[235] Resp. C-Mem. on Quantum, paras. 83–84; Email from First Claimant to [redacted] and [redacted] dated 27 February 2014 (**C-0087**); Resp. PHB on Quantum, para. 47.1.

[236] Resp. C-Mem. on Quantum, paras. 82, 85; Email from First Claimant to [redacted] and [redacted] dated 27 February 2014 (**C-0087**).

[237] Resp. C-Mem. on Quantum, paras. 87–89; *See* Email from First Claimant to [redacted] and [redacted] dated 27 February 2014 (**C-0087**); HSY's Updated Statement of Counterclaim dated 2 February 2018 in ICC2 (**R-0295**), para. 56; Letter from HSY to Minister Kammenos dated 26 June 2017 (**C-0130**).

[238] Resp. C-Mem. on Quantum, para. 88.

[239] Resp. C-Mem. on Quantum, para. 90.

[240] Resp. C-Mem. on Quantum, para. 91.

169. [redacted]

(5) The Claimants' Case is Based on a Hypothetical Scenario

170. [redacted]

[redacted]

[241] Resp. C-Mem. on Quantum, paras. 92–93.

[242] Resp. C-Mem. on Quantum, para. 94.

[243] Resp. C-Mem. on Quantum, para. 94.

[244] Resp. C-Mem. on Quantum, para. 95.

[245] Resp. C-Mem. on Quantum, para. 96.

172. [redacted]

a. The Claimants' approach to the assessment of damages is fundamentally misconceived

173. [redacted]

[redacted]

[redacted]

[246] Resp. C-Mem. on Quantum, para. 97.

[247] Resp. C-Mem. on Quantum, para. 98.

[248] Resp. C-Mem. on Quantum, paras. 100–101.

[249] Resp. C-Mem. on Quantum, paras. 102–104.

[250] Resp. C-Mem. on Quantum, para. 102.

[251] Resp. C-Mem. on Quantum, paras. 105–108; Resp. Rej. on Quantum, para. 109.

[redacted]

b. HSY would have been loss making even in the Claimants' "hypothetical" scenario

177. [redacted]

[redacted]

[252] Resp. C-Mem. on Quantum, paras. 109–113; Cl. Mem. on Quantum, para. 2326; Decision, paras. 187, 385, 625–626; Press Statement from [redacted] dated 7 October 2011 (**C-0165**).

[253] Resp. C-Mem. on Quantum, paras. 114.1–114.4.

[254] Resp. C-Mem. on Quantum, para. 115.

[255] Resp. C-Mem. on Quantum, paras. 116–120.

[256] Resp. C-Mem. on Quantum, para. 120; Third [redacted] (**R-0338**), paras. 8.24–8.25.

[257] Resp. C-Mem. on Quantum, paras. 122–124; Third [redacted] Report (**R-0363**), para. 7.58.

[258] Resp. C-Mem. on Quantum, paras. 125.1–125.3.

[redacted]

[redacted]

[redacted]

[redacted]

[259] Resp. C-Mem. on Quantum, para. 127; Third [redacted] Report (**R-0338**), paras. 4.25, 6.30.

[260] Resp. C-Mem. on Quantum, para. 128.

[261] Resp. C-Mem. on Quantum, para. 129–130; Third [redacted] Report (**R-0338**), para. 4.24 and Appendix 2.

[262] Resp. C-Mem. on Quantum, para. 131; Resp. Rej. on Quantum, para. 153.

[263] Resp. C-Mem. on Quantum, para. 132; Third [redacted] Report (**R-0363**), Sec. 5; Third [redacted] Report (**R-0337**), paras. 3.1–3.34.

[264] Resp. C-Mem. on Quantum, para. 137; Resp. Rej. on Quantum, paras. 153.1–153.6.

[265] Resp. C-Mem. on Quantum, para. 138.

[redacted]

c. The hypothetical operational income of HSY is not a reasonable proxy for a fee for the use of the shipyard

184. [redacted]

[266] Resp. C-Mem. on Quantum, para. 141.

[267] Resp. C-Mem. on Quantum, paras. 144–145.

[268] Resp. C-Mem. on Quantum, paras. 145.1–145.7; Third [redacted] (**R-0338**), para. 7.77.

[269] Resp. C-Mem. on Quantum, paras. 147–149.

[redacted]

d. The Claimants' position is detached from reality

186. [redacted]

[270] Resp. C-Mem. on Quantum, para. 150; Third [redacted] Report (**C-0363**), paras. 3.39 and 7.61.

[271] Resp. C-Mem. on Quantum, para. 151.

[272] Resp. C-Mem. on Quantum, para. 152; Email from First Claimant to [redacted] and [redacted] dated 27 February 2014 (**C-0087**).

[273] Resp. C-Mem. on Quantum, para. 153.

[274] Resp. C-Mem. on Quantum, para. 153.

[275] Resp. C-Mem. on Quantum, para. 154.

[276] Resp. C-Mem. on Quantum, paras. 155–156.

[redacted]

(6) The Breach of the BIT did not Cause the Claimants any Loss

187. [redacted]

188. [redacted]

[277] Resp. C-Mem. on Quantum, paras. 157–159.

[278] Resp. C-Mem. on Quantum, paras. 163–164, 168–169; Note to Mr. Almunia dated 3 July 2014 (**R-0025**).

[279] Resp. C-Mem. on Quantum, paras. 162–163, 170; Decision, paras. 630–631.

[280] Resp. C-Mem. on Quantum, para. 172.

[281] Resp. C-Mem. on Quantum, para. 173.

[282] Resp. C-Mem. on Quantum, para. 174.

[283] Resp. C-Mem. on Quantum, para. 175.

[redacted]

(7) The Tribunal should Decline to Award any Damages to the Claimants due to their Contributory Fault

190. [redacted]

[284] Resp. C-Mem. on Quantum, para. 177.

[285] Resp. C-Mem. on Quantum, para. 177.

[286] Resp. C-Mem. on Quantum, paras. 180 and 182.

[287] Resp. C-Mem. on Quantum, para. 181.

[288] Resp. C-Mem. on Quantum, para. 183.

[289] Resp. C-Mem. on Quantum, paras. 184–188.

[290] Resp. C-Mem. on Quantum, paras. 189–190.

[291] Resp. C-Mem. on Quantum, para. 191.

[redacted]

[redacted]

[redacted]

(8) The Claimants are not Entitled to Moral Damages

193. [redacted]

[redacted]

292 Resp. C-Mem. on Quantum, para. 191.

293 Resp. C-Mem. on Quantum, para. 192.

294 Resp. C-Mem. on Quantum, para. 193.

295 Resp. C-Mem. on Quantum, para. 195.

296 Resp. C-Mem. on Quantum, paras. 196–197; Resp. Rej. on Quantum, para. 225.

297 Resp. C-Mem. on Quantum, para. 196; Resp. Rej. on Quantum, para. 229.

[redacted]

(9) Answers to the Tribunal's Questions

195. [redacted]

[redacted]

197. [redacted]

[redacted]

[298] Resp. C-Mem. on Quantum, para. 198.
[299] Resp. PHB on Quantum, para. 80.
[300] Resp. PHB on Quantum, para. 80.
[301] Resp. PHB on Quantum, para. 81.
[302] Resp. PHB on Quantum, para. 82.
[303] Resp. PHB on Quantum, para. 82.
[304] Resp. PHB on Quantum, para. 83.

[redacted]

[redacted] [redacted]

[redacted] [redacted]

305 Resp. PHB on Quantum, para. 85.

306 Resp. PHB on Quantum, paras. 85.1–85.2.

307 Resp. PHB on Quantum, para. 88.1.

308 Resp. PHB on Quantum, para. 88.2.

309 Resp. PHB on Quantum, para. 88.3.

310 Resp. PHB on Quantum, para. 89.

311 Resp. PHB on Quantum, para. 90.

201. [redacted]

C. THE TRIBUNAL'S ANALYSIS

202. The scope of the present stage of the proceedings was set out in the Tribunal's Decision, in which the Tribunal determined that the Respondent had breached its obligations under the FET standard of the BIT in connection with the implementation of the Finalization Agreement. According to the Decision, "*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*."[313] This was the sole breach of the Treaty found by the Tribunal; all of the Claimants' remaining claims were dismissed.

203. As summarized above in Section I, the Tribunal found that it was not in a position, at the time of the Decision, to address the quantum of the Claimants' claim arising from the implementation of the Finalization Agreement, for the following reasons:

> *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*

[312] Resp. PHB on Quantum, para. 89.

[313] Decision, para. 965.

> *arising in this case, and then developing alternative calculations for each scenario, could not have been reasonably expected from either Party.*[314]

204. In the circumstances, the Tribunal found it appropriate "*to postpone its decision on quantum to a subsequent phase of the proceedings*."[315] This finding also applied to the Claimants' claim for moral damages, which the Claimants had presented as a case on quantum rather than liability.[316] Accordingly, the scope of the present proceedings is limited to the Tribunal's sole finding of breach of the FET standard under the Treaty, as well as the Claimants' claim for moral damages.

205. As to the subject matter, the Tribunal's Decision was limited to the finding of liability and did not involve any decisions related to quantum. Consequently, while the Tribunal found in the Decision that "*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*," the Claimants must discharge that burden in the present stage of the proceedings. The Claimants must show that they suffered a loss as a result of the Respondent's breach of the Treaty, as well as the quantum of the claimed loss. This is undisputed between the Parties.[317] It also appears undisputed between the Parties, and the Tribunal agrees, that while the Claimants need not prove the quantum of their loss with absolute certainty, they need to prove the fact of loss on the balance of probabilities.[318]

206. The Tribunal recalls, in this connection, that HSY is not a claimant in the present arbitration, and that the Claimants are not shareholders of HSY; their investment in HSY was made through several companies of the Privinvest Group (the composition of which changed over time), of which the Claimants are the ultimate controlling shareholders.[319]

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[314] Decision, para. 966.

[315] Decision, para. 967.

[316] Decision, para. 967.

[317] Cl. PHB on Quantum, para. 2798; Resp. Rej. on Quantum, para. 43.

[318] Cl. PHB on Quantum, para. 2798; Resp. Rej. on Quantum, para. 44.1.

[319] Decision, paras. 246–248.

207. For the purposes of determining whether the Claimants have met their burden of proving that they have suffered a loss, the Tribunal recalls the finding of the PCIJ in the *Chorzów Factory* case:

> *The essential principle contained in the actual notion of an illegal act – a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals – is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.*[320]

208. In order to discharge their burden of proof, the Claimants must therefore show that they would have been better off in the counterfactual scenario in which HSY and the Respondent would have negotiated the essential terms of the Finalization Agreement, including the compensation payable to HSY for the use of the shipyard, than they are in the actual scenario, in which HSY did not benefit from any such payments. Conversely, if the Claimants' situation in the counterfactual scenario would, on a balance of probabilities, have been the same as their current actual situation, the Claimants would not have suffered any loss as a result of the Respondent's breach of the Treaty, and the Claimants' claims must be rejected.

209. The issue of burden of proof arises in the present case in this particular form, *inter alia*, because the claims have not been brought by HSY (which *prima facie* would appear to have suffered a loss as it was not paid for the use of the shipyard), but by indirect shareholders of HSY, the Claimants. This is the principal difference between the present case and the related ICC1 and ICC2 Arbitrations, in which the claims (and the corresponding counterclaims) were brought by the parties to the relevant agreements, including HSY. As noted above, in the ICC2 Arbitration, it is HSY (together with its co-respondents, which do not include the Claimants) that is a party to the arbitration and that has brought (together with its co-respondents) a counterclaim based on the very same event – the "takeover" of the shipyard – from which the Claimants' present claim arises, in the

[320] *Chorzów Factory* (**CL-0099**), p. 28.

amount of EUR 36.9 million.[321] By contrast, in the present case, HSY is not a party to the arbitration, but rather forms the very subject matter of this dispute – it is the Claimants' investment out of which this ICSID arbitration arises.[322]

210. The Claimants have put forward three alternative approaches to the quantification of their alleged loss: (i) alternative profits approach; (ii) market lease approach; and (iii) minimum costs approach. While the Claimants' case appears to be that each of these approaches quantifies the same alleged loss, they produce substantially different quantifications.

211. The Claimants' alternative profits approach is based on the assumption that the Respondent would have agreed to pay compensation in the "but for" scenario based on HSY's hypothetical operational profit if HSY had run the shipyard itself. The approach also assumes that the compensation period "would not have been cut short" by the Special Administration, and that the Respondent would have agreed to bear the costs of reactivating and operating the shipyard. The Claimants argue that HSY's profit in this scenario would have been substantial, as the Claimants would have worked on the Archimedes and Neptune II Programs and would have conducted MRO work on vessels belonging to the Hellenic Navy. On this basis, the Claimants quantify their claim at EUR 109.8 million, plus interest.

212. The Claimants' market lease approach is based on the identification of the leasable areas of the shipyard, which the Claimants have assigned to distinct area categories, and for which they have then identified the lease rates per square meter on the basis of lease rates charged on the open market for similar area categories. This approach also assumes that the relevant time frame for assessing HSY's cash flows extends from 4 April 2014, the date of the breach of the Treaty, until the end of the Hellenic Navy's use of the shipyard, which is still ongoing. Under this approach, the Claimants' claim amounts to EUR 90,618,332, plus interest.

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[321] Resp. C-Mem. on Quantum, para. 25; Resp. Rej. on Quantum, para. 16.2; HSY's Updated Statement of Counterclaim dated 2 February 2018 in ICC2 (**R-0295**), para. 52.

[322] Decision, para. 250 (determining that "the Claimants' shareholding in HSY qualifies as an '*investment*' within the meaning of both Article 25(1) of the BIT and Article 251 of the ICSID Convention.")

213. The Claimants' minimum costs approach is based on HSY's equivalent annual costs of owning and operating the shipyard, including depreciation, market interest on the shareholder loans provided to HSY and credit costs to account for the risk of the Respondent's failure to pay the lease. This approach also assumes that the period of calculation of the Claimants' loss extends from 4 April 2014, the date of the breach, until the end of the Hellenic Navy's use of the shipyard. The Claimants' claim under this approach amounts to EUR 72,151,861, plus interest.

214. The Tribunal notes, at the outset, that each of the Claimants' three approaches is based on the assumption that in the counterfactual "but for" scenario HSY would not have been placed under Special Administration (which actually occurred on 8 March 2018).[323] However, as noted above, although the Tribunal found in the Decision that the Respondent had breached its FET obligation under the Treaty "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 Tribunal dismissed the Claimants' claim that the Special Administration in itself amounted to a breach of the Treaty.[324] The Special Administration therefore cannot be excluded from the "but for" scenario on the basis that it formed part of the wrongful conduct.

215. Moreover, while the Special Administration could, in theory, be excluded from the "but for" scenario if the payments made by the Hellenic Navy pursuant to the Finalization Agreement would have generated sufficient revenue during the period from 4 April 2014 to 8 March 2018 (whatever the methodology used to quantify them) to prevent the placement of HSY into Special Administration, it does not appear, on the balance of probabilities, that this would have been the case. The Tribunal notes that HSY's undischarged State aid alone amounted, as at 4 April 2014, to over EUR 500 million, and debts to third parties amounted to between EUR 67.3 and 75.9 million (the precise amount being disputed between the Parties), composed mainly of liabilities to HSY's workers and

[323] Cl. PHB on Quantum, paras. 2829–2833; Third [redacted] Report (**C-0363**), para. 7.59; [redacted] (**C-0365**), paras. 411, 439.

[324] Decision, paras. 628–631.965.

[redacted].[325] Since these debts had accrued prior to the Respondent's breach of the Treaty, they cannot be excluded from the "but for" scenario, and accordingly HSY would have been required to service or repay them as they became due or, as in the case of the State aid, had already fallen due in April 2014.[326] The Claimants further argue that "HSY's profits from leasing could not have been subjected to recovery of [S]tate aid" as they would have related to HSY's military activities (which were not the subject of the Recovery Decision), and not the civil assets (which were covered by the Recovery Decision).[327] However, the European Commission appears to have taken the view that the fact that State aid could only be recovered from HSY's civil assets would not preclude recourse to insolvency or bankruptcy proceedings, if necessary, and in all probability would have insisted on this position in its dealings with the Greek Government.[328] Accordingly, the Greek Government would have been constrained to apply for placement of HSY into Special Administration also in the "but for" scenario.[329] Indeed, it appears undisputed that HSY would not have been able to generate sufficient revenue to pay off the entirety of the undischarged State aid. HSY's placement into Special Administration thus would in all probability have taken place in any event, regardless of the completion of the Finalization Agreement and the payments made by the Hellenic Navy to HSY thereunder.[330]

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[325] The Parties' quantum experts disagree on the amount of HSY's external debt; *see* [redacted] Report (**C-0365**), p. 36; Fourth [redacted] Report (**R-0360**), para. 4.87.

[326] Decision, para. 100; Commission Decision of 2 July 2008 on the measure C 16/04 (ex NN29/04, CP 71/02 and CP 133/05) implemented by Greece in favor of Hellenic Shipyards (notified under document C (2008)3118) ("**Recovery Decision**") (**C-0001**).

[327] Cl. Mem. on Quantum, para. 2382 *et seq*.

[328] *See* European Commission's Observations, para. 56. ("It follows that, since HSY has not reimbursed the incompatible aid, EU State aid rules require Greece to initiate insolvency proceedings against HSY in order to recover as much as possible of the aid from HSY's assets. In case full recovery of the aid (with interest) is eventually not possible, Greece is also obliged to wind-up HSY and to bring about the definite cessation of HSY's (non-military) activities."

[329] According to Art. 68(1) of Law 4307/2014 (**C-0160**), any company that is "in a general and permanent inability to fulfill its due financial obligations" may be placed into Special Administration"

The First Instance Court of Athens in its decision described Special Administration as an "extraordinary procedure … for the liquidation in operation (sale while in operation and transfer as a group of assets or as individual groups of assets (sectors) to new entities), of heavily indebted businesses," introduced by Law 4307/2014.: *see* Decision No. 725/2018 of the Single-Member First Court of Athens dated 8 March 2018 (**C-0281**), p. 3.

[330] It appears undisputed that, as of the date HSY was placed in Special Administration, the rights of the shareholders in HSY passed in their entirety to the Special Administrator: *see* Legal Opinion of Jakovos E. Venieris (**R-0312**), para. 73.

216. Thus, the proper counterfactual in the present case involves one in which the Finalization Agreement would have been completed to provide for compensation to HSY for the use of the shipyard and in which the Respondent would have made payments to HSY for the use of the shipyard in accordance with the completed Finalization Agreement, either in cash or by way of a set-off against the State aid debt;[331] however, it does not involve the scenario in which HSY would not have been placed into Special Administration.

217. As to HSY's other external debts, including the [redacted] loan and workers' claims, as noted above, these amounted to EUR 67.3 –75.9 million (the amount being disputed between the Parties). Even assuming the revenue from the Finalization Agreement would have been sufficient to allow HSY to service the [redacted] loan so as to exclude or at least reduce the risk of [redacted] joining in the effort to place HSY into Special Administration,[332] this would not have prevented the placement of HSY into similar insolvency or bankruptcy proceedings in circumstances in which it would have been unable to pay off the undischarged State aid, which, as noted above, had already fallen due and substantially exceeded any amount of revenue HSY would have been able to earn under the Finalization Agreement.

218. As to the workers' claims specifically, the Tribunal is unable to accept the Claimants' argument that the Respondent would have assumed responsibility for payment of the workers' claims as part of the Finalization Agreement. These claims, which amounted to some EUR 37.7 million, had accrued between April 2012 and April 2014, during the shutdown of the shipyard, and accordingly it is more likely than not that the Respondent would not have agreed to assume such responsibility, given that these debts had accrued prior to the conclusion of the Finalization Agreement and thus did not relate to the use of the shipyard as from 8 April 2014.

219. However, while the Tribunal is unable to accept the counterfactual scenario on which each of the Claimants' approaches to the quantification of their claim is based, for the reasons

[331] The ICC1 tribunal took the view that the Respondent would be able to set off its State aid claim against any awards made in HSY's favor; *see* ICC1 Award, (**C-0019**), paras. 2060–2067.

[332] Under Law 4307/2014 (**C-0160**), Art. 58.2, at least one of the creditors applying for Special Administration must be a financial institution.

set out below, the Tribunal need not take a view on which one of these three approaches is the appropriate method in the circumstances of this case. The Tribunal notes that each of the three approaches is based on the assumption that the Claimants have in fact suffered a loss. It should be recalled, in this connection, that the Finalization Agreement was concluded between the Respondent and HSY, and not with the Claimants, on the basis of the exchange of letters between Mr. Iskandar Safa, acting on behalf of HSY, and [redacted], acting on behalf of the Respondent.[333] Thus, the Claimants were not a party to the Finalization Agreement, and it is therefore not sufficient for the Claimants, for purposes of discharging their burden of proof, to show that HSY suffered a loss. The Claimants bear the burden of proving that they themselves, separately and independently of HSY, suffered a loss as a result of the Respondent's failure "to negotiate an agreement on its [*i.e.*, the Finalization Agreement's] essential terms, and without compensating HSY for the use of the shipyard," in breach of the BIT.

220. The Claimants argue that "HSY would have passed on the profits earned under the Finalization Agreement to Claimants" in the form of repayment of shareholder loans granted to HSY by Privinvest Holding SAL.[334] According to the Claimants, Privinvest Holding SAL, which is effectively fully owned by the Claimants, in turn would have distributed the funds to Claimants either in the form of dividends or repayment of the shareholder loans owed to the Claimants.[335] The Claimants contend that these loans amounted to EUR 150 million, including the [redacted] in the amount of EUR 131 million.[336]

221. The Tribunal is not convinced that the Claimants have discharged their burden of proof. The Claimants have not shown that HSY would and indeed could have prioritized payments to Privinvest Holding SAL at the expense of HSY's external creditors.

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[333] Email from First Claimant to [redacted] and [redacted] dated 27 February 2014 (**C-0087**); Letter from [redacted] to First Claimant dated 13 March 2014 (**C-0127**).

[334] Cl. PHB on Quantum, para. 2872.

[335] Cl. PHB on Quantum, para. 2879; Cl. Reply on Quantum, para. 2609.

[336] Cl. PHB on Quantum, para. 2873; Cl. Reply on Quantum, para. 2605. The terms of the [redacted] have not been disclosed, although the Tribunal ordered their disclosure by Procedural Order No. 3.

222. First, it does not appear probable that HSY would have been, as a matter of fact, in a position to repay the shareholder loans to Privinvest Holding SAL, in view of its level of indebtedness and the fact that it had effectively been insolvent since 30 September 2011, as noted by the First Instance Court of Athens in its decision placing HSY under Special Administration; indeed, HSY had failed to publish its financial statements since that date.[337] The Claimants do not appear to argue that HSY would have been in a position to pay any dividends. In the circumstances, and contrary to the Claimants' suggestion, HSY would likely have been unable to refinance any of its external debt.[338]

223. Second, it is also uncertain, as a matter of Greek law, whether HSY could have lawfully made any payments to Privinvest Holding SAL, given that Greek law, like many other systems of corporate governance, requires company directors to act in the interest of the company and prioritize the company's interests over those of the shareholders, and it is unlikely that prioritizing repayment of shareholder loans over external debt would have been in HSY's interest.[339] It also remains uncertain whether Privinvest Holding SAL would have been in a position to pay the corresponding amounts, or any amounts at all, whether in the form of repayment of shareholder loans or dividends, further to the Claimants – even assuming HSY could have made any payments to Privinvest Holding SAL.[340] There is no evidence before the Tribunal as to how any sums of money that might have reached Privinvest Holding SAL would have been recorded in its books, what fiscal consequences, if any, there might have been as a result of such payments, and what other aspects of its financials might have been relevant to the making of a dividend to the Claimants.

224. In view of the above, the Tribunal finds that the Claimants have failed to discharge their burden of proving that they would have received, in the "but for" scenario, any payments

[337] Deloitte Independent Report dated 9 October 2017 (**R-0240**), p. 8; Decision No. 725/2018 of the Single-Member First Court of Athens dated 8 March 2018 (**C-0281**), p. 10.

[338] Tr. Day 2, 148:13-20 [redacted]).

[339] Law 2190/1920, Art. 22 (**R-0376**).

[340] There is limited evidence on the record on the financial position of Privinvest Holding SAL, and its 2020 financial statements, including portions dealing with the shareholder loan to HSY, have been heavily redacted. It is unclear, among other things, whether the shareholder loans are subordinated: *see* Fourth [redacted] Report (**R-0360**), paras. 4.35–4.44.

from HSY, through Privinvest or otherwise. The Claimants have thus failed to prove that they suffered any loss as a result of the Respondent's breach of the Treaty.

225. For the same reasons, the Claimants' claim for moral damages also fails. There is no evidence on the record that the Claimants suffered any moral damage as a result of the Respondent's failure to negotiate the essential terms of the Finalization Agreement and to pay compensation for the use of the shipyard.

V. COSTS

A. THE CLAIMANTS' COST SUBMISSIONS

[redacted]

[341] Cl. First Submission on Costs, para. 2245.

[342] Cl. First Submission on Costs, para. 2231.

[343] Cl. First Submission on Costs, para. 2231.

[redacted]

231. [redacted]

[344] Cl. Update of its First Submission on Costs, para. 2928.

[345] Cl. Update of its First Submission on Costs, para. 2928.

[346] Cl. Second Submission on Costs, paras. 2254–2255; Cl. Comments on Resp. Schedule of Costs Relating to the Quantum Phase, paras. 2943–2944.

[347] Cl. Comments on Resp. Schedule of Costs Relating to the Quantum Phase, para. 2946.

[348] Cl. Comments on Resp. Schedule of Costs Relating to the Quantum Phase, para. 2947.

[redacted]

B. THE RESPONDENT'S COST SUBMISSIONS

232. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[349] Cl. Second Submission on Costs, paras. 2249–2253.

[350] Resp. Rej. on Quantum, para. 233.

[351] Resp. Schedule of Costs, p. 7.

[352] Resp. Written Submissions on Claimants' First Submission on Costs, para. 5.

[353] Resp. Written Submissions on Claimants' First Submission on Costs, para. 2.

[redacted]

C. THE TRIBUNAL'S ANALYSIS

236. The relevant provision is Article 61(2) of the ICSID Convention, which provides:

> *In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.*

237. Article 47 of the ICSID Arbitration Rules further provides that the award shall contain, *inter alia*, "any decision of the Tribunal regarding the cost of the proceeding."

238. It is well established in ICSID arbitration that the provisions quoted above provide the Tribunal with broad discretion to decide how the costs incurred by the Parties in the course of the arbitration are to be allocated.

239. The Parties appear to agree that the applicable principle in the circumstances of this case is that costs should "follow the event," and indeed both Parties request that the Tribunal award their costs of arbitration, including their legal costs and the fees and expenses of the

[354] Resp. Written Submissions on Claimants' First Submission on Costs, para. 2; Resp. Written Submissions on the Claimants' Update of its First Submission on Costs, paras. 2 and 25.

[355] Resp. Written Submissions on Claimants' First Submission on Costs, para. 2.

[356] Resp. Written Submissions on the Claimants' Update of its First Submission on Costs, para. 8.

[357] Resp. Written Submissions on the Claimants' Update of its First Submission on Costs, para. 9.

Tribunal and the ICSID Secretariat. The Tribunal agrees, with the limited exception of the costs of the arbitration, for the reasons set out below.

240. The costs of the arbitration, which include the fees and expenses of the Tribunal, ICSID's administrative fees and direct expenses, amount to (in USD):

Arbitrators' Fees and Expenses	
Dr. Veijo Heiskanen	[redacted]
Mr. Klaus Reichert	[redacted]
Professor Brigitte Stern	[redacted]
ICSID's Administrative Fees	[redacted]
Direct Expenses	[redacted]
Total	[redacted]

241. The above costs have been paid out of the advances made by the Parties in equal parts, except for the lodging fee of USD 25,000.00, which was made by the Claimants only. On this basis, each Party's share of the costs of arbitration amounts to USD [redacted] The Tribunal finds it appropriate that the Parties bear and equally share the fees and expenses of the Tribunal, ICSID's administrative fees and the direct expenses. The remaining balance will be reimbursed to the Parties in proportion to the payments they advanced to ICSID.

242. As to legal costs, the Tribunal agrees that these costs should "follow the event" and accordingly their allocation should reflect the relative success of the Parties. In this connection, the Tribunal notes that, in the first (jurisdictional and liability) phase of the arbitration, most of the Respondent's jurisdictional and admissibility objections were dismissed, whereas the Claimants ultimately prevailed on one of their claims on liability; however, the Claimants' remaining claims were all rejected. In this quantum phase, as determined above, the Respondent ultimately prevailed in full as the Claimants' claims that reached this stage of the proceedings were dismissed in their entirety.

243. As to the reasonableness of the Parties' legal costs, the Tribunal notes that, while the fees and costs of the Claimants' counsel are higher than those of the Respondent's, this seems

to be largely a consequence of the Claimants' counsel's higher hourly rates. In view of the complexity of the case, the Tribunal does not consider that the Claimants' costs are unreasonable.

244. In view of the above considerations, the Tribunal considers it appropriate to (i) grant the Claimants 50% of their legal costs in the liability phase, in the amount of [redacted]; (ii) grant the Respondent 50% of its legal costs in the liability phase, in the amount of [redacted] and [redacted]; and (iii) grant the Respondent's legal costs in their entirety in the quantum phase, in the amount of [redacted] and [redacted], and dismiss the Claimants' claim for legal costs in the quantum phase in their entirety.

245. The Tribunal notes the Parties' agreement, in the first phase of the arbitration, that no interest on costs is due on the cost claims.[358] In view of this agreement, the Tribunal is unable to accept the Claimants' claim of interest on its costs that it raised in the second phase of the arbitration.

VI. AWARD

246. For the reasons set out above, the Tribunal decides as follows:

(a) The Claimants' claim for compensation is dismissed;

(b) The Claimants are ordered to pay the Respondent:

(i) 50% of the legal costs incurred by the Respondent in relation to the liability phase of these proceedings in the amount of GBP 728,361 and [redacted], payable 30 days from the date of this Award; and

(ii) The entirety of the legal costs incurred by the Respondent in relation to the quantum phase of these proceedings in the amount of [redacted] and [redacted], payable 30 days from the date of this Award;

[358] Cl. Update of its First Submission on Costs, para. 2942; Transcript of the Hearing on Jurisdiction and the Merits, Day 9, 4 April 2019, 1893:10–1894:4. The Claimants however claimed interest on costs: *see* Cl. Reply on Quantum, para. 2789(4).

(c) The Respondent is ordered to pay the Claimants 50% of the legal costs incurred by the Claimants in relation to the liability phase of these proceedings in the amount of [redacted], payable 30 days from the date of this Award;

(d) The Parties shall bear and equally share the fees and expenses of the Tribunal and the costs of the ICSID facilities; and

(e) All other requests for relief are denied.

[redacted]

Mr. Klaus Reichert
Arbitrator

Date: JUN 28 2023

Prof. Brigitte Stern
Arbitrator

Date:

Dr. Veijo Heiskanen
President of the Tribunal

Date:

[redacted]

Mr. Klaus Reichert
Arbitrator

Date:

Prof. Brigitte Stern
Arbitrator

Date: JUN 28 2023

Dr. Veijo Heiskanen
President of the Tribunal

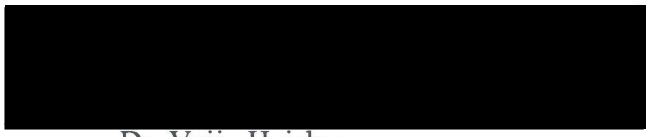
Date:

Mr. Klaus Reichert
Arbitrator

Date:

Prof. Brigitte Stern
Arbitrator

Date:



Dr. Veijo Heiskanen
President of the Tribunal

Date: JUN 2 8 2023

Annex A

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

REPRESENTATION OF THE PARTIES

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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
[redacted]	[redacted]
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	
Mr./Ms. First Name/ Last Name	**Affiliation**
Counsel:	
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Dr. Sven Lange	Busse Disputes Rechtsanwaltsgesellschaft mbH
Ms. Allison Torline	Busse Disputes Rechtsanwaltsgesellschaft mbH
Dr. Manuela France Doughan	Busse Disputes Rechtsanwaltsgesellschaft mbH
Ms. Lisa Heike *(Via Video Conference)*	Busse Disputes Rechtsanwaltsgesellschaft mbH
Ms. Irina Samodelkina *(Via Video Conference)*	Busse Disputes Rechtsanwaltsgesellschaft 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	Privinvest 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

[redacted]	
[redacted]	[redacted]
[redacted]	[redacted]
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[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
Experts:	
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

COURT REPORTER	
Ms. Diana Burden	Independent
Ms. Laurie Carlisle	Independent
Ms. Amanda Taylor	Independent

INTERPRETERS	
Ms. Katerina Apostolaki	Independent
Ms. Maria Houvarda-Louca	Independent
Ms. Nicky Kladouha	Independent

77. On 11 April 2019, the Claimants filed a request for leave to submit new evidence in relation to quantum.

78. On 18 April 2019, the Respondent filed observations on the Claimants' request of 11 April 2019.

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 by16 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; ICC1 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 Privinvest 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 Privinvest Group, the [redacted] and the Hellenic Republic, and the Resulting Agreements

115. [redacted]

116. [redacted]

(3) The Framework Agreement

117. [redacted]

118. [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]

119. [redacted]

(a) [redacted]

(b) [redacted]

(c) [redacted]

(d) [redacted]

(e) [redacted]

[35]Framework 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]

120. [redacted]

(4) The Implementation Agreement

121. [redacted]

122. [redacted]

[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]

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[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.

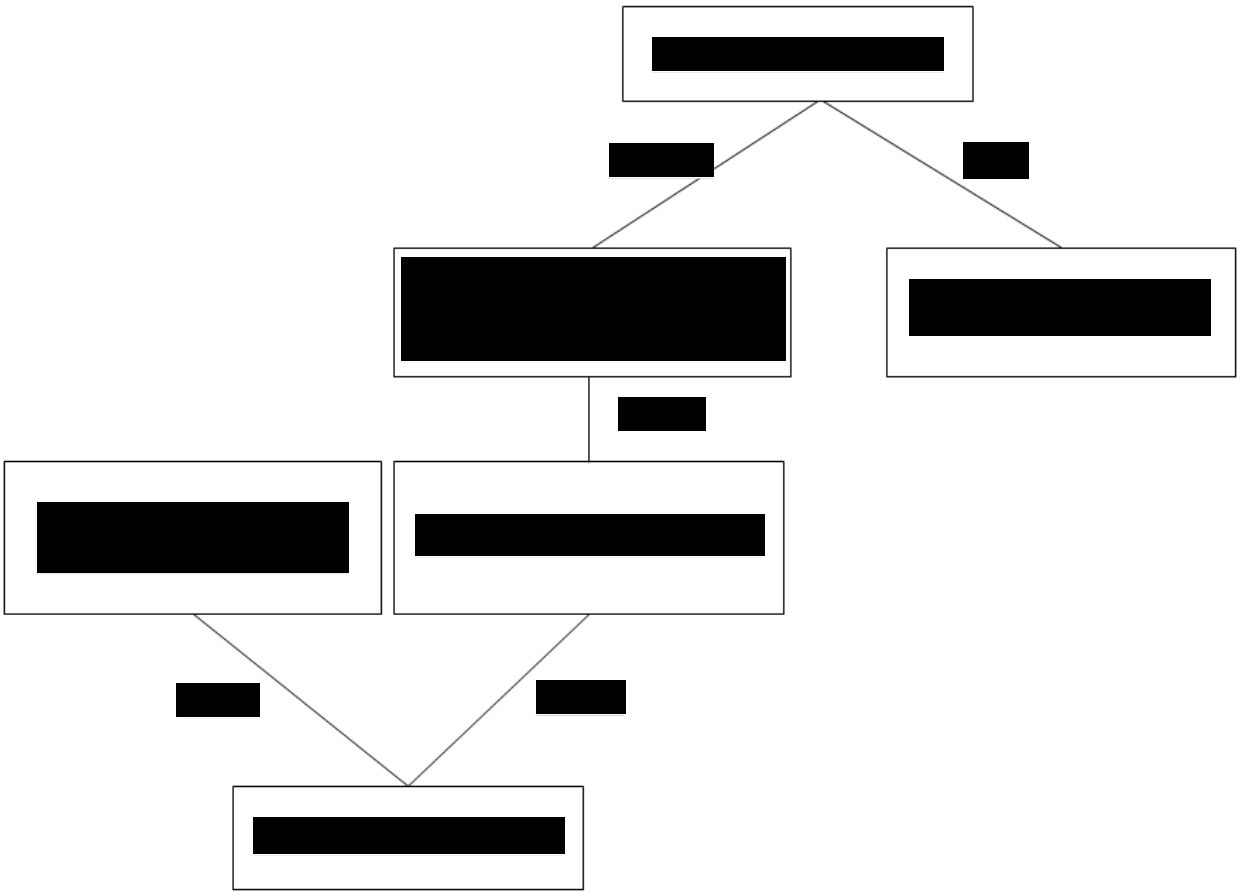
[56] Cl. Mem., para. 305; [redacted].

[57] [redacted]

[redacted]

128. [redacted]

129. [redacted]



[58] [redacted]

[59] [redacted]

[60] Cl. Mem., para. 306.

130. [redacted]

(6) Closing of the Implementation Agreement

131. [redacted]

132. [redacted]

133. [redacted]

134. [redacted]

[61] Cl. Mem., para. 308.

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

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

[64] Cl. Mem., para. 307 ([redacted]

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

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

D. DEVELOPMENTS AFTER THE ACQUISITION

(1) The Privinvest Group Takes Over HSY

135. [redacted]

136. [redacted]

137. [redacted]

138. [redacted]

139. [redacted]

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[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; [redacted]

[76] Resp. C-Mem., para. 791; [redacted]

[77] Resp. C-Mem., para. 792; [redacted]

[78] Resp. C-Mem., para. 793. [redacted]

[79] Resp. C-Mem., para. 794; [redacted]

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

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

(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]

(e) [redacted]

(f) [redacted]

(g) [redacted]

(h) [redacted]

151. [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]

153. [redacted]

154. [redacted]

155. [redacted]

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

[104] [redacted]

[105] [redacted]

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

157. [redacted]

158. [redacted]

159. [redacted]

160. [redacted]

161. [redacted]

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

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

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

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

162. [redacted]

163. [redacted]

164. [redacted]

165. [redacted]

(4) The Special Administration

166. [redacted]

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

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

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

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

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]

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[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]

182.

183.

184.

185.

[156] Cl. Mem., para. 438.

[157]

[158]

[159] Cl. Mem., para. 327;

[160] Cl. Mem., para. 328;

[161] Cl. Mem., para. 329;

[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]

(e) [redacted]

(f) [redacted]

188. [redacted]

189. [redacted]

190. [redacted]

[168] ICC1 Award (**C-0019**).

[169] ICC1 Award (**C-0019**). [redacted]

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

[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]

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

(1) The Parties' Positions

[redacted]

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

[redacted]

210. [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 Privinvest 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.

214.

[199] Resp. C-Mem., para. 881.

[200] Resp. C-Mem., para. 881 (referring to Letter from First Claimant and 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).

[redacted]

[redacted]

[redacted]

216. [redacted]

[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]

[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).

[redacted]

[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]

[230] Cl. Mem., para. 506 (third bullet).

[231] Cl. Mem., para. 507(referring to *Ioannis Kardassopoulos v. Georgia*, ICSID Case No. ARB/05/18, Decision on Jurisdiction, 6 July 2007 ("*Kardassopoulos* Jurisdiction") (**CL-0030**), para. 123; *Hesham Talaat M. Al-Warraq v. The Republic of Indonesia*, UNCITRAL, Final Award, 15 December 2014 (**CL-0031**), para. 514; *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. 231; *CEMEX Caracas Investments B.V. and CEMEX Caracas II Investments B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/15, Decision on Jurisdiction, 30 December 2010 (**CL-0033**), para. 152).

[232] Cl. Mem., para. 507.

[233] Cl. Mem., para. 507 (citing *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Decision on Jurisdiction, 3 August 2004 ("*Siemens* Jurisdiction") (**CL-0034**), para. 137; *Noble Energy Inc. and MachalaPower Cía. Ltd. v. Republic of Ecuador and Consejo Nacional de Electricidad*, ICSID Case No. ARB/05/12, Decision on Jurisdiction, 5 March 2008 (**CL-0035**), para. 77).

[234] Cl. Reply, para. 1297.

[235] Cl. Reply, para. 1296.

[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]

[241] Cl. Reply, para. 1299 (fourth bullet); Share Purchase and Transfer Agreement between Privinvest 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 Privinvest 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 Privinvest 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 Privinvest 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 Privinvest Shipbuilding SAL Holding dated 30 August 2018 (**C-0331**).

[redacted]

[redacted]

[redacted]

[redacted]

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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]

[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]

[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; *Pantechniki S.A. Pantechniki S.A. Contractors & Engineers v. Republic of Albania*, ICSID Case No. ARB/07/21, Award, 30 July 2009 ("*Pantechniki*") (**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 & Staehelin 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**).

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[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).

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(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 incudes:

(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 Privinvest 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 Privinvest 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 Privinvest Shipbuilding SAL Holding dated 30 August 2018 (**C-0331**); Certificate from the Commercial Registry in Beirut regarding Privinvest Holding SAL dated 30 August 2018 (**C-0332**); Share Purchase and Transfer Agreement between Privinvest 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 Privinvest 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 Privinvest 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 Privinvest 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.*

D. THE IMPACT OF THE COOLING-OFF PERIOD ON THE TRIBUNAL'S JURISDICTION

(1) The Parties' Positions

a. The Respondent's Position

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[292] Resp. PHB, para. 230(b); Resp. Reply, para. 11; Resp. C-Mem., para. 898.

[293] Resp. Reply, paras. 15–17 (referring to Cl. Reply, para. 1370; Resp. C-Mem., para. 901.1).

[294] Resp. C-Mem., paras. 902–905 (citing *Murphy Exploration and Production Company International v. Republic of Ecuador*, ICSID Case No. ARB/08/4, Award on Jurisdiction, 15 December 2010 ("*Murphy*") (**RL-0004**), paras. 104, 108 and 149; *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction, 2 June 2010 ("*Burlington*") (**RL-0005**), paras. 312, 340; *Enron Creditors Recovery Corporation (formerly Enron Corporation) and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on Jurisdiction, 14 January 2004 ("*Enron*") (**RL-0006**), para. 195. *See also Kilic Insaat Ithalat Ihracat Sanayi ve Ticaret Anonim Sirketi v. Turkmenistan*, ICSID Case No. ARB/10/1, Award, 2 July 2013 (**RL-0072**), para. 6.2.9).

[295] *See* Cl. Mem., para. 526.

[296] Resp. C-Mem., para. 907.

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[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.

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[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 Privinvest 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]

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[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 purposed 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).

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[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).

b. The Claimants' Position

265. [redacted]

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324 Cl. Rej., paras. 1808–1810; Cl. Reply, para. 1367; Cl. PHB, para. 2125.

325 Cl. Rej., para. 1816.

326 Cl. Reply, para. 1370.

327 Cl. Rej., para. 1818 (fourth bullet).

328 Cl. Rej., para. 1820 (referring to Cl. Reply, para. 1372, citing the following legal authorities: *İçkale İnşaat Limited Şirketi v. Turkmenistan*, ICSID Case No. ARB/10/24, Award, 8 March 2016 (**CL-0175**), para. 244; *SGS Société*

[redacted]

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 Privinvest 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]

[342] Cl. Rej., para. 1832; Cl. Mem., paras. 528–530.

[343] Cl. Mem., para. 528 (citing *SGS Société* (**CL-0052**), paras. 130, 184; *Ronald S. Lauder v. The Czech Republic*, UNCITRAL, Final Award, 3 September 2001 (**CL-0053**), paras. 187, 190; *Biwater* (**CL-0007**), para. 343).

[344] Cl. Reply, para. 1380 (first bullet) (referring to *DRC* (**RL-0007**)).

[345] Cl. Rej., para. 1837 (citing Christoph Schreuer, *Consent to Arbitration*, in: P. Muchlinski et al., The Oxford Handbook of International Investment Law (Oxford 2008) (**CL-0180**), p. 846).

[346] Cl. Rej., para. 1839 (referring to Respondent's assertion discussed at Resp. Reply, para. 45).

[347] Cl. Rej., para. 1840 (first bullet) (discussing *Georgia v. Russian Federation* (**RL-0075**), p. 70).

[348] Cl. Rej., para. 1840 (second bullet).

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(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 Privinvest 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 Privinvest 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.

[redacted]

[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).

[redacted]

[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.

[redacted] [redacted]

[redacted]

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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.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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).

[redacted]

[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]

[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.

[redacted]

[redacted]

[redacted]

[redacted]

[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).

[redacted]

[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.

[redacted]

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[redacted]

[redacted]

[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).

[redacted]

[redacted]

[redacted]

[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).

[redacted]

[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.

[redacted]

[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).

[redacted]

(2) The Tribunal's Analysis

329. The Respondent's case is, in substance, that some of the five "assaults" out of which the Claimants' claims arise are, at least in part, inadmissible because they are based on contract rather than treaty. According to the Respondent, "the only claim with respect to which the essential basis of the claim is not contractual is the so-called 'defamation' campaign."[457] The Claimants deny that any of their claims are essentially contractual and argue that, in any event, the claims are based on treaty, and not on contract, and, therefore have a different legal basis than the claims that the ICC1 claimants pursued in the ICC1 Arbitration.

330. The Tribunal agrees with the *Vivendi* annulment committee and the *Pantechniki* tribunal that the applicable standard for purposes of determining whether a claim constitutes a treaty

[453] Cl. PHB, para. 2121 (second bullet).

[454] Cl. PHB, para. 2122.

[455] Cl. PHB, para. 2122.

[456] Cl. PHB, para. 2122 (first, second and third bullets).

[457] Resp. Reply, para. 56. In its Counter-Memorial (para. 917), the Respondent alleged that "of the four so-called 'assaults' it is really only the complaint relating to the Special Administration procedure that did not feature prominently in the ICC1 Arbitration."

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.

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[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]

[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]

[489] Resp. Reply, para. 68 (referring to Cl. Reply, para. 1387).

[490] Resp. Reply, para. 68.

[491] Resp. Reply, para. 69 (referring to Cl. Reply, para. 1388).

[492] Cl. Reply, para. 1389.

[493] Resp. Reply, para. 70 (referring to Cl. Reply, paras. 1390–1392).

[494] Resp. Reply, para. 71 [redacted]

[495] Resp. Reply, para. 71 (referring to *Larsen v. Hawaiian Kingdom*, PCA Tribunal, Case No. 1999-01, Award, 5 February 2001 ("*Larsen*") (**RL-0077**), para. 11.17; *Chevron Corporation (U.S.A.) and Texaco Petroleum Corporation (U.S.A.) v. Republic of Ecuador* (II), PCA Case No. 2009-23, Third Interim Award on Jurisdiction and Admissibility, 27 February 2012 ("*Chevron*") (**RL-0078**), paras. 4.61 and 4.62).

[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]

a) [redacted]

[redacted]

[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]

[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]

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]

[redacted]

[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]

[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]

[redacted]

[redacted]

[redacted]

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[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]

[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] 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]

[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]

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]

[579] Resp. Reply, para. 83c.

[580] Resp. Reply, paras. 85–86 (referring to Cl. Reply, para. 1597 (third bullet)).

[581] Resp. Reply, paras. 86–87.

[582] Resp. Reply, para. 88; Resp. C-Mem. paras. 514–569.

[583] Resp. Reply, para. 88.

[584] Resp. Reply, para. 88.

[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]

[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]

[redacted]

[redacted]

[redacted]

[redacted]

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]

[617] Cl. Rej., para. 1911; Cl. Reply, para. 1599.

[618] Cl. Reply, para. 1599 (first bullet); Cl. Rej., para. 1912 (referring to *Malicorp* (**RL-0049**), para. 103(b)).

[619] Cl. Reply, para. 1599 (first bullet); Cl. Rej., para. 1912.

[620] Cl. Reply, para. 1599 (first bullet); Cl. Rej., para. 1912.

[621] Cl. Reply, para. 1599 (second bullet); Cl. Rej., para. 1913 (referring to *Ampal* (**RL-0050**)).

[622] Cl. Reply, para. 1599 (second bullet).

[623] Cl. Reply, para. 1599 (second bullet).

[624] Cl. Reply, para. 1599 (second bullet).

[redacted]

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[redacted]

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[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]

[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.

[redacted]

[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]

[redacted]

[redacted]

[redacted]

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]

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[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]

> [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]

[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).

[redacted]

[redacted]

[redacted]

[redacted]

[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.

VI. LIABILITY

A. INTRODUCTION

[redacted]

B. CLAIM FOR BREACH OF THE FAIR AND EQUITABLE TREATMENT STANDARD

[redacted]

[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 Traiding 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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[redacted] Cl. Reply, para. 1476 (citing 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**), p. 360).

694 Cl. Reply, para. 1476 (citing *Crystallex* (**CL-0051**), paras. 530–536; *Lemire* (**CL-0062**), paras. 252–253; 284; *Vivendi* (**CL-0055**), paras. 7.4.7–7.4.8; *Arif* (**CL-0056**), para. 529; *Total* (**CL-0005**), paras. 125–127).

695 Cl. Reply, para. 1477; Resp. C-Mem., para. 1039.

696 Cl. Reply, para. 1477; Resp. C-Mem., para. 1039 (citing *Vigotop Limited v. Hungary*, ICSID Case No. ARB/1/22, Award, 1 October 2014 (**RL-0012**), para. 310).

697 Cl. Reply, para. 1477; 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).

698 Cl. Reply, para. 1477 (citing *Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28 July 2015 (**CL-0067**), para. 557; *Gold Reserve* (**CL-0065**), para. 573; *Frontier Petroleum Services Ltd. v. The Czech Republic*, UNCITRAL, Final Award, 12 November 2010 (**CL-0058**), paras. 297–300; *Vivendi* (**CL-0055**), paras. 7.4.26, 7.4.28, 7.4.44; *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004 (**CL-0059**), para. 98.; *Gold Reserve* (**CL-0065**), para. 573).

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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).

[redacted]

[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

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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.

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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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[799] Resp. Rej., para. 606 (referring to Cl. Reply, para. 1497).

[800] Resp. Rej., para. 606 (referring to the European Commission's Observations, para. 40).

[801] Resp. Rej., para. 608 (referring to Cl. Reply, para. 1497).

[802] Resp. Rej., para. 608; Resp. C-Mem., paras. 144–146; 1064.

[803] Resp. Rej., para. 608.

[804] Resp. Rej., para. 609; Resp. C-Mem., para. 1064.

[805] Resp. Rej., para. 610.

[806] Resp. Rej., para. 610; Resp. C-Mem., para. 1065 (referring to ICC1 Award (**C-0019**), para. 1707).

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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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[redacted] 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.

(2) Claim for Breach of the Fair and Equitable Treatment Standard – Legitimate Expectations

a. The Parties' Positions

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[828] Cl. PHB, para. 2143; Cl. Mem., paras. 542–56; Cl. Reply, paras. 1507–1565.

[829] Cl. PHB, para. 2143; Cl. Mem., paras. 543–47; Cl. Reply, paras. 1508–1541.

[830] Cl. PHB, para. 2143; Cl. Mem., paras. 551–55; Cl. Reply, paras. 1552–1564.

[831] Cl. Mem., para. 543 (citing *Total* (**CL-0005**), paras. 117–118; *Lemire* (**CL-0006**), paras. 69–70).

[832] Cl. Mem., para. 544 (citing (**CL-0005**), para. 117; *SGS v. Paraguay* (**CL-0069**), paras. 146–147; *Vivendi* (**CL-0055**), para. 7.3.10).

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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**).

[redacted]

[854] Cl. Reply, para. 1519.

[855] Cl. Reply, para. 1521; Cl. Mem., para. 546 (second bullet).

[856] Cl. Reply, para. 1523 (referring to Resp. C-Mem., paras. 1101–1105 and the European Commission's Observations, paras. 89–92).

[857] Cl. Reply, para. 1523 (first bullet) (referring to Resp. C-Mem., para. 1103).

[858] Cl. Reply, para. 1523 (second bullet) (referring to Resp. C-Mem., para. 1104).

[859] Cl. Reply, para. 1523 (third bullet). *See* Article 5 of Section D of the Implementation Agreement (**C-0005**).

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[redacted] 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] Cl. Reply, para. 1530; Cl. Mem., para. 546 (fourth bullet).

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

[876] Cl Reply, para. 1532 (second bullet); paras. 1010–1020.

[877] Cl Reply, para. 1532 (second bullet); paras. 1021–1026.

[878] Cl Reply, para. 1534; Cl. Mem., para. 546 (first bullet, (iii)).

[879] Cl Reply, para. 1536 (first bullet).

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[880] Cl Reply, para. 1536 (second bullet).

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

[882] Cl Reply, para. 1536 (third bullet).

[883] Cl Reply, para. 1538.

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

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[885] Cl Reply, para. 1539 (first bullet).

[886] Cl Reply, para. 1539 (second bullet).

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

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

[889] Cl. 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] Cl Reply, para. 1543 (citing *Micula* (**CL-0004**), para. 672).

[891] Cl Reply, para. 1545; Cl. Mem., para. 549 (second bullet).

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[892] Cl Reply, para. 1545; Cl. Mem., para. 549 (third bullet).

[893] Cl Reply, para. 1545; Cl. Mem., para. 549 (fourth bullet).

[894] Cl Reply, para. 1545; Cl. Mem., para. 549 (fifth bullet).

[895] Cl Reply, para. 1546 (referring to Resp. C-Mem., paras. 1117.1, 1118).

[896] Cl Reply, paras. 1548–1549 (referring to Resp. C-Mem., para. 1118).

[897] Cl Reply, para. 1549 (first bullet).

[898] Cl Reply, para. 1549 (first bullet) (referring to Resp. C-Mem., para. 1086 citing *Invesmart, B.V. v. Czech Republic*, UNCITRAL, Award (Redacted), 26 June 2009 (**RL-0057**), para. 254; *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016 (**CL 0087**), para. 525; *Reinhard Hans Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/09/20, Award, 16 May 2012 (**RL-0068**), para. 258; *Blusun S.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic*, ICSID Case No. ARB/14/3, Award, 27 December 2016 (**RL-0019**), para. 329).

[899] Cl Reply, para. 1549 (second bullet).

[900] Cl. Reply, para. 1549 (third bullet) (referring to Resp. C-Mem., para. 1120).

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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 Privinvest 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 ICC1 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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[987] Resp. Rej., para. 665; Resp. C-Mem., paras. 1126–1127 (referring to Cl. Mem. para. 552 (second bullet)).

[988] Resp. Rej., para. 666; Resp. C-Mem., paras. 379–395.

[989] Resp. Rej., para. 667; Resp. C-Mem., para. 1124 (referring to Cl. Mem., para. 552 (second bullet)).

[990] Resp. C-Mem., para. 1124.

[991] [redacted]

[992] Resp. Rej., para. 667(a); Resp. C-Mem., para. 1125.

[993] Resp. Rej., para. 667(b).

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994 Resp. Rej., para. 668; Resp. C-Mem., para. 1126.

995 Resp. Rej., para. 669; Resp. C-Mem., para. 1126.

996 Resp. C-Mem., para. 1127.

997 Resp. Rej., para. 670. *See* Letter from the Minister of National Defence to the Minister of Finance dated 7 October 2011 (**R-0117**), p. 2; Resp. C-Mem, paras. 379–395.

998 Resp. Rej., para. 671; Resp. C-Mem., para. 1128.

999 Resp. Rej., para. 671; Resp. C-Mem., para. 1130.

1000 Resp. Rej., para. 672 (referring to Cl. Reply, para. 1558 (second bullet)).

1001 Resp. Rej., para. 672; Resp. C-Mem., paras. 623–647.

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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, [redacted], Chairman and CEO of HSY, wrote to [redacted], 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 [redacted] 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 Agrement. 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 shipyard[1032] 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 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] [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]

[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.

[redacted]

[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 Tokelės 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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[1049] Cl. Mem., para. 577 (third bullet); Cl. Reply, para. 1423 (third bullet) (referring to *Alpha Projektholding GmbH v. Ukraine*, ICSID Case No. ARB/07/16, Award, 8 November 2010 (**CL-0083**), paras. 409–412; *Vincent J. Ryan, Schooner Capital LLC, and Atlantic Investment Partners LLC v. Republic of Poland*, ICSID Case No. ARB(AF)/11/3, Award, 24 November 2015 (**CL-0084**), para. 472).

[1050] Cl. Reply, para. 1424 (referring to Resp. C-Mem., para. 1162).

[1051] Cl. Reply, para. 1424 (referring to Resp. C-Mem., para. 1162).

[1052] Cl. Reply, para. 1424.

[1053] Cl. Reply, para. 1424.

[1054] Cl. Reply, para. 1425 (referring to Resp. C-Mem., paras. 1165–1168).

[1055] Cl. Reply, para. 1425 (referring to Resp. C-Mem., para. 1167).

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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.

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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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[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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1130 Cl. Reply, para. 1452 (referring to Resp. C-Mem., para. 1170).

1131 Cl. Reply, para. 1452 (first bullet) (referring to Resp. C-Mem., para. 1170).

1132 Cl. Reply, para. 1452 (first bullet).

1133 Cl. Reply, para. 1452 (first bullet).

1134 Cl. Reply, para. 1452 (second bullet).

1135 Cl. Reply, para. 1452 (second bullet).

1136 Cl. Reply, para. 1452 (second bullet).

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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).

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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.

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[1153] Cl. Reply, para. 1461(first bullet) (referring to Resp. C-Mem., para. 1241).
[1154] Cl. Reply, para. 1461(first bullet) (referring to Resp. C-Mem., para. 1241).
[1155] Cl. Reply, para. 1461(first bullet).
[1156] Cl. Reply, para. 1461(first bullet).
[1157] Cl. Reply, para. 1461(second bullet) (referring to Resp. C-Mem., para. 1242).
[1158] Cl. Reply, para. 1461(second bullet) (referring to Resp. C-Mem., para. 1243.)
[1159] Cl. Reply, para. 1461(second bullet).
[1160] Cl. Reply, para. 1461(second bullet).
[1161] Cl. Reply, para. 1461(second bullet).
[1162] Cl. Reply, para. 1462; European Commission's Observations, para. 93.

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[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).

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[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).

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b. The Respondent's Position

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[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.

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[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.

[redacted]

[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).

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[^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.

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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.

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[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).

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[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).

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[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).

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a) [redacted]

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[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)).

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1241 Resp. C-Mem., para. 1191.1 (referring to ICC1 Award (**C-0019**), para. 1619). *See also* Letter from Privinvest Shipbuilding SAL Holding to [redacted] dated 12 October 2010 (**C-0170**); Share Purchase Agreement between [redacted] and Privinvest 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.

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c) [redacted]

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[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).

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[1255] Resp. C-Mem., para. 1207; Resp. Rej., para. 744(e).

[1256] Resp. C-Mem., para. 1207 (citing *Quiborax* Award (**RL-0020**), para. 594).

[1257] Resp. C-Mem., para. 1208.

[1258] Resp. C-Mem., paras. 1209–1210; Resp. Rej., para. 715; Resp. PHB, para. 250(c).

[1259] Resp. C-Mem., para. 1211.

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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]

[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.

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[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).

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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.

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[1281] Resp. C-Mem., para. 1239 (citing *Saluka* (**RL-0026**), para. 255).

[1282] Resp. C-Mem., para. 1240 (citing *Koch Minerals Sàrl and Koch Nitrogen International Sàrl v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/19, Award, 30 October 2017 (**RL-0059**), para. 7.20 and *Les Laboratoires Servier, S.A.S., Biofarma, S.A.S. and Arts et Techniques du Progres S.A.S. v. Republic of Poland*, UNCITRAL, Award (Redacted), 14 February 2012 (**RL-0060**), para. 584; Resp. Rej., para. 751).

[1283] Resp. C-Mem., para. 1241.

[1284] Resp. Rej., para. 750; Resp. C-Mem., para. 1242.

[1285] Resp. C-Mem., para. 1243.

[1286] Resp. C-Mem., para. 1243 [redacted]; Resp. Rej., para. 752(a).

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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 [redacted], 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]

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.

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[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).

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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]

[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.

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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.

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[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).

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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).

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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.

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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.

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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.

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[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]

[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.

[redacted]

[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.

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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.

due diligence to protect the investment of a foreign investor against undue interference by third parties.[1418] Whether such protection extends beyond physical protection to legal security is essentially a matter of interpretation of the relevant provision in the applicable treaty. In the present case, the Tribunal need not take a view on the issue as the Claimants do not even allege, nor is there any evidence on the record, that the Respondent failed to protect the Claimants' investment against any undue interference by third parties; as summarized above, the Claimants' case is that it is the Respondent itself that interfered with the Claimants' investment. This is not a category of conduct that the FPS standard in Article 2(3) of the BIT is intended to govern.

832. In light of the above, the Claimants' FPS claim stands to be dismissed.

E. CLAIM FOR BREACH OF THE UMBRELLA CLAUSE

(1) The Parties' Positions

a. The Claimants' Position

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[1418] *See, e.g., Suez* (**CL-0074**), paras. 173, 178 (citing *Saluka* (**RL-0026**), para. 484; *BG Group Plc v. the Argentine Republic* (UNCITRAL), Award (24 December 2007), paras. 323–328; *PSEG Global et al. v. Republic of Turkey* (ICSID Case No. ARB/02/5), Award (19 January 2007) (**CL-0188**), paras. 258–259; *Rumeli* (**RL-0027**), para. 669).

[1419] Cl. Mem., para. 589; Cl. PHB, para. 2145.

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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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[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] Cl. Reply, para. 1622 (third bullet).

[1474] Cl. 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] Cl. Reply, para. 1622 (fourth bullet).

[1476] Cl. Reply, para. 1622 (fourth bullet) (referring to Letter from Commissioner Almunia to the Hellenic Republic dated 23 January 2012 (**C-0167**), p. 2).

[1477] Cl. Reply, para. 1622 (fourth bullet). *See* European Commission's Observations, para. 40.

[1478] Cl. Reply, para. 1624.

[1479] Cl. 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

[redacted]

[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.

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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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[1556] Resp. C-Mem., paras. 1015–1018; Resp. Rej., para. 562.

[1557] Resp. Rej., para. 562.

[1558] Resp. Rej., para. 562(a) (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 (**RL-0008**), para. 95(c)).

[1559] Resp. Rej., para. 562(b).

[1560] Resp. Rej., para. 563.

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896. [redacted]

[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

908. Accordingly, the Claimants' claim that the Respondent frustrated the ICC1 Award is dismissed.

VII. QUANTUM

A. THE PARTIES' POSITIONS

(1) The Claimants' Position

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2019 (**C-0355**). In June 2019, the Hellenic Republic filed an appeal against the decision with the Greek Supreme Court, which suspended the enforcement of the ICC1 Award (Cl. PHB, para. 2084). The matter is still pending.

[1577] Cl. Reply, para. 1638. The Claimants initially claimed EUR 382 million (Cl. Mem., para. 594).

[1578] Cl. Mem., paras. 597–599 (citing *Case Concerning the Factory at Chorzów*, PCIJ Series A (No. 17), Judgment on the Merits, 13 September 1928, p. 47 (**CL-0099**)); Cl. Reply, para. 1643.

[1579] Cl. Mem., para. 600. *See Vivendi* (**CL-0055**), para. 8.2.7.

[1580] Cl. Mem., para. 600.

[1581] Cl. Mem., para. 601.

[1582] *See CMS Gas Transmission Company v. Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005 (**CL-0097**), para. 402.

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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:

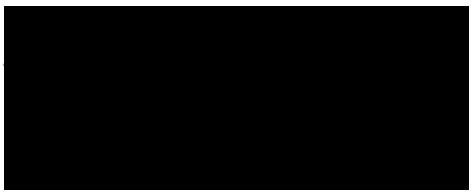
(f) The Claimants' ancillary claim for frustration of the arbitral Award issued in ICC Case No. 18675/GZ/MHM/AGF/ZF/AYZ is dismissed;

(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