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**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**In the proceedings between**

# TELEVATIVE INC *[Claimant]*

**VS.**

# THE GOVERMENT OF THE REPUBLIC OF BERISTAN *[Respondent]*

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## MEMORIAL FOR RESPONDENT

# TABLE OF CONTENTS

# LIST OF AUTHORITIES

## LIST OF BOOKS


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# LIST OF ABBREVIATIONS

| | |
|---|---|
| 1. Art. | Article |
| 2. Cl. | Clause |
| 3. ICSID | International Centre for Settlement of Investment Dispute |
| 4. ICSID Convention | Convention on the Settlement of Investment Dispute between States and Nationals of other States |
| 5. JV | Joint Venture |
| 6. JVA | Joint Venture Agreement Between Beritech S.A. and Televative Inc. |
| 7. BIT | Bilateral Investment Treaty |
| 8. Beristan-Opulentia BIT | Treaty Between The Republic of Beristan and the United Federation of Opulentia concerning the Encouragement and Reciprocal Protection of investment. |
| 9. V. | Versus |
| 10. E.g. | Exempli gratia |
| 11. Ibid | ibidem |
| 12. i.e. | *Id est* (that is) |
| 13. U.S.C | United States Code |
| 14. UN | United Nations |
| 15. UNCTAD | United Nations Conference on Trade and Development |
| 16. P/pp | Page/Pages |
| 17. Vol. | Volume |
| 18. No. | Number |
| 19. VCLT | Vienna Convention on Law of treaties |
| 20. FET | Fair and Equitable Treatment |
| 21. Gov. | Government |
| 22. ICJ | International Court of Justice |
| 23. ILC | International Law Commission |
| 24. IP | Intellectual Property |
| 25. Para | Paragraph |
| 26. U.N.T.S | United Nations Treaty Series |
| 27. OUP | Oxford University Press |

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| 28. CUP | Cambridge University Press |
| 29. ILC | International Law Reporter |
| 30. OECD | Organization for Economic Cooperation and Development |
| 31. Sec. | Section |
| 32. USD | United States Dollar |
| 33. UNO | United Nations Organisation |
| 34. FIL | Foreign Investment Law |

# STATEMENT OF FACTS

1. Opulentia and Beristan are the two Contracting Parties under BIT. ***Televative*** (hereafter called as "Claimants") is a successful multinational enterprise that specializes in satellite communications technology and systems. It was incorporated in Opulentia on 30 January 1995.
2. The government of ***Beristan*** (hereafter called as "Respondents") established a company, Beritech S.A., in March 2007. The Beristan Gov. owns a 75% interest in Beritech and rest is owned by wealthy Beristian investors.
3. On ***18 Oct 2007***, Beritech and Televative signed a JVA, and thereafter Televative becomes 40% minority share holder while the Beritech owns rest 60%.
4. Sat-Connect was established for the purpose of developing and deploying a satellite network and accompanying terrestrial systems and gateways that will provide connectivity and communications for users of this system anywhere within the vast expanses of Euphonia. The satellite and communications technology that Sat-Connect will deploy can be used for civilian or military purposes.
5. On ***August 12, 2009***, The Beristan Times published an Art. challenging national security. A highly placed Beristan government official indicated that critical information has been passed from the Sat-Connect project to the Government of Opulentia.[1] Both Televative and Opulentia denied the story.
6. On ***August 21, 2009***, the Chairman of the Sat-Connect board of directors, Michael Smithworth, made a presentation to the directors in which he discussed allegations regarding the August 12$^{th}$ Art.. The content of this meeting is disputed by Claimant.
7. On ***August 27, 2009***, Beritech invoked Cl. 8 of the JVA, to compel a buyout of Televative's interest in the Sat-Connect project. Six directors were present at the meeting and one director, Alice Sharpeton, appointed by Televative, refused to participate in the meeting and left the meeting before its end. Later it was protested by her that she had no prior notice concerning the proposed agenda for the meeting. On 28 August, 2009 Televative was served by a notice from Beritech requiring the former to hand over possession of all Sat-Connect site, facilities and equipment within14 days and to remove all seconded personnel from the project.

[1] First Clarification, Question 178

8. Thereafter, on ***11 September, 2009***, staff from "CWF" the civil engineering section of the Beristian army took over all the sites and facilities of the Sat-Connect project. Personnel associated with Televative were removed from the project sites and were eventually evacuated from the Beristan.
9. Televative was given 14 days to withdraw its seconded staff from all Sat Connect facilities who still remained thereafter were asked by the Civil Work Force to leave the facilities immediately on September 11 2009.[2]
10. On ***September 12, 2009***, Televative submitted a written notice to Beristan of a dispute under the Beristan-Opulentia BIT, in which Televative notified Beristan their desire to settle amicably and failing that, to proceed with arbitration pursuant to Art. 11of the BIT.[3]
11. Televative's total monetary investment in the Sat-Connect project stands at US $47 million.
12. On **19 October, 2009**, Beritech filed a request for arbitration against Televative under Cl. 17 of the JV Agreement. Beritech paid US $47 million into an escrow account which has been made available for Televative. Televative refused to accept this amount and also refused to respond to Beritech's arbitration request.
13. It was Televative's strategic decision not to initiate arbitration under Cl. 17 JVA out of fear of losing its standing in ICSID arbitration.[4]
14. On ***28 October, 2009***, Claimant requested arbitration in accordance with ICSID's Rules of Procedure for the Institution of Conciliation and Arbitration proceedings and notified Government if Beristan. Claimant establishes the jurisdiction under Beristan-Opulentia BIT (Annex 1), to which both the countries are parties.
15. Beristan and Opulentia are ***ICSID Contracting States*** and have ratified the ICSID Convention; also they have ratified the ***Vienna Convention on the Law of Treaties***. Both the countries have long polite yet tense relations.
16. On ***1 November 2009***, the ICSID Secretary General registered for arbitration.

[2] Second Clarification, Question 248.

[3] First Clarification, Question 133.

[4] Second Clarification, Question 256.

# SUMMARY OF ARGUMENTS

17. **JURISDICTION.** The dispute arises between Televative and Government of Beristan. The present dispute does not satisfy the requirements for jurisdiction under Art. 25 of the ICSID Convention. The requirements for ICSID jurisdiction are cumulative. The Tribunal only needs to accept one of the Respondent's arguments in order to decide that it does not have jurisdiction over the present dispute. First, in the present matter the dispute is not arising directly out of investment and thus does not satisfy the requisites of ICSID jurisdiction. Second, the JV Agreement (hereafter called as "JVA") comprises of a forum selection Cl., and JVA being a special agreement will override dispute settlement Cl. of Beristan-Opulentia BIT. Third, the claims are purely contractual in nature, so BIT is not competent to govern the present matter. In addition, BIT is not a closed legal system. Fourth, the dispute should be resolved in accordance to Cl. 17 of the JVA, even if the main contract terminates.

18. **MERITS.** First, Claimant has breached the confidentiality provison of JVA under Cl. 4 by leaking information about the Sat-Connect project which included systems used by Beristian-Armed Forces thus, directly implicating the national security of Beristan. Second, Respondent can rely on Cl. 8 of JVA on the basis of Art. 9 of the Beristan-Opulentia BIT. Thus, the buyout does not amount to expropriation. Third, Respondent has offered just compensation and the actions of Respondent are not discriminatory, and do not violate fair and equitable treatment (hereafter called as "FET") or the general principles of international law.

# ARGUMENTS ADVANCED

## PART ONE: JURISDICTION

### I. WHETHER THE TRIBUNAL HAS JURISDICTION IN VIEW OF CL. 17 (DISPUTE SETTLEMENT) OF THE JOINT VENTURE AGREEMENT ("JV AGREEMNT").

19. Respondent respectfully request that this honorable Tribunal declare that it has no jurisdiction over the present dispute, and thereby dismiss all claims against Respondent. The present matter is put forth to resolve the disputes between Televative and the Government of Beristan. The dispute arose when Claimant, leaked confidential information about Sat-Connect to their country' "Opulentia". Respondent in response to the same, decided to buyout Claimant's interests from Sat-Connect on grounds of national security, and filed a case against Televative according to ***Cl. 17 of the JVA***, to which Claimant refused to respond. Thereafter Claimant requested for Arbitration under ICSID.

20. Respondent respectfully challenges the jurisdiction of the present Tribunal in accordance with ***Rules 41 (1) and 41 (6) ICSID Arbitration Rules***. Respondent have raised jurisdictional objections in accordance with Cl. 17 (*Dispute Settlements*) of the JVA. Respondent however will establish that the case at hand falls outside the scope of both of ICSID jurisdiction and of the competence of the present Tribunal. Respondent shall seek to prove that Cl. 17 of the JVA establishes the proper dispute settlement forum.

21. Respondent would like to set forth 4 propositions each of which could be said to be sufficient to command the dismissal of the claim:
    (a) No ICSID arbitration because of the existence of another prior agreement;
    (b) Alternatively, no ICSID arbitration because of waiver;
    (c) Alternatively, no ICSID arbitration because of contractual claims; and
    (d) In the final alternative, ICSID arbitration would at any rate be premature.

## A. THE DISPUTE IN THE PRESENT MATTER SHALL BE RESOLVED IN ACCORDANCE WITH CL. 17 OF THE JV AGREEMENT.

22. On the perusal of Cl. 17 *(Dispute Settlement)* of the JVA[5] it can be inferred that in case of any dispute between the parties to the Agreement, the dispute shall be resolved only by the arbitration under the rules and provisions of the 1959 Arbitration Act of Beristan, as amended.

23. It has also been stated in Cl. 17 of the Agreement, "*Each party waives any objection which it may have now or hereafter to such arbitration proceedings and irrevocably submits to the jurisdiction of the arbitral tribunal constituted for any such dispute*." Therefore both the parties to the Agreement are bound by the agreement to resolve any dispute according to Cl.17. Claimant violated the same and requested for arbitration in accordance with the ICSID Rules and filed a case against the Government of Beristan. Claimant' reliance on ***Art. 11 of the BIT*** is in error as it refers merely to "*disputes with respect to investments*" and this cannot be construed as creating rights for Claimant to submit any contract claims it has with respondent to ICSID arbitration. When the JVA was in negotiation, the parties agreed that any disputes arising out of this relationship should be resolved according to Cl. 17 of the JVA. Once the choice of the forum for dispute resolution has been made, the parties are bound by it.

24. Claimant contends that
    i. The matter falls within the purview of ICSID jurisdiction as the dispute resolution provisions of the JVA are irrelevant; and
    ii. The present claims are brought under the Beristan-Opulentia BIT and are therefore distinct from any contractual claims.

25. The contentions of Claimant are without merit. Respondent state that the essential basis of present claims is contractual in nature. Claimant's allegations are in all instances based on breaches of obligations contractually assumed by the Province.

[5] Record, Annex 3, p 19.

Respondent objects to jurisdiction of this Tribunal on the basis of the Agreement which places all disputes arising between parties, to fall within the exclusive jurisdiction of Cl. 17 and thereby precludes the jurisdiction of ICSID. It should be recalled that ***Art. 25(1)*** *in fine* establishes: "*When the parties have given their consent, no party may withdraw its consent unilaterally,*"

26. Breach by a State of its contractual obligations with aliens constitutes per se a breach of an international obligation, unless there is some such additional element as denial of justice, or expropriation, or breach of treaty, in which case it is that additional element which will constitute the basis for the State's international responsibility.[6] Respondent assert that essentially there was a breach in the contractual obligations by Claimant and there was no extra element present in the case which could constitute basis for the State's international responsibility. Despite Claimant's assertions to the contrary, Respondent state that there is no additional element of expropriation and denial of ***FET***. Respondent emphasizes that it was a legal buyout which was also agreed by Claimant in Cl. 8 of the JVA.

27. Turning over to the context of majority share in the company, Claimant owns a minority share of 40% in the Sat-Connect, while rest of the shares i.e. 60% are owned by Beritech which is a state owned company, owning 75% interests of the same. The Government of Beristan has a controlling stake in Beritech and has the right to make decisions being a majority. Beritech possess more managerial powers of Sat-Connect than Televative which is evident from their right to appoint directors.[7] Beritech being the majority share holder and controlling stakeholder of the company had the right to take the decision to Buyout Claimant' interest from the Sat-Connect on grounds of national security. This cannot amount to denial of FET. Thus Respondent's acts were justified on the grounds of national security.

**EXISTENCE OF FORUM SELECTION CL. IN JV AGREEMENT WAIVES THE ICSID JURISDICTION**

28. Respondent argues that Claimant has clearly made its choice to resolve the dispute by way of arbitration under the Rules and Provisions of the 1959 Arbitration Act of

[6] Jennings and Watts, '*State Responsibility in Case of "Stabilization" Clauses'* p 32.

[7] Uncontested Facts, Record, Annex 2, p 16.

Beristan under Cl. 17 of the Agreement. In a leading authority on this issue, ***SGS* v *Pakistan***, Pakistan in its principal submits that under the ICSID Convention and under the principle of ***pacta sunt servanda,*** this Tribunal does not have jurisdiction where the parties have agreed to submit disputes elsewhere. The jurisdiction of ICSID tribunals is limited to the adjudication of disputes that the parties have actually agreed to submit to the Centre and not to an alternative forum.[8] Conversely, if the parties agree to submit their disputes to a forum other than ICSID, ***Art. 26 of the ICSID Convention*** require the ICSID tribunal to respect their agreement.

29. Before confirmation by any other Art. of ICSID, the most important Art. of jurisdiction of ICSID should be satisfied. The general rule that determines the jurisdiction of ICSID, and consequently that of this Tribunal, is established in Art***. 25 of the ICSID Convention***: The essential pre-requisites of the ICSID jurisdiction are:
    i. that there be an "investment" dispute;
    ii. that the host State be an ICSID Contracting State;
    iii. that the investor be a "national of another Contracting State;" and
    iv. that both host State and investor have "consented" to arbitrate before ICSID.

According to the first requisite of ICSID the matter should be a legal dispute directly arising out of an investment. In order for the directness requirement to be satisfied, the dispute and investment must be 'reasonably closely connected.'[9] As ***Professor Schreuer*** notes, 'disputes arising from ancillary or peripheral aspects of the investment operation are likely to give rise to the objection that they do not arise directly from the investment….'[10] In the present matter there is no reasonable connection between the dispute and investment. The root of the dispute lies in the breach of confidentiality Cl. of the JVA and hence does not arise from the investment. In the present matter the dispute arises due to a leak of information by Claimant, which violates Cl. 4 (1) (*Confidentiality*) of the JVA. As a result of which Respondent were forced to take all the steps which Claimant alleges to be in violation of the rights, conferred to them by

[8] Pakistan refers in this regard to Art. 25(1) of the ICSID Convention which states that the Centre's jurisdiction shall only extend to legal disputes "*which the parties to the dispute consent in writing to submit to the Centre*."

[9] Christoph H. Schreuer, *The ICSID Convention: A Commentary* (2001) p 114.

[10] *Ibid.*

Beristan-Opulentia BIT under ***Art.10 (Obligation of Commitments)***. Claimant materially breached the Agreement as according to the Cl. 4(4) of the JVA. In Cl.4 three exceptions have been mentioned where the parties can exceed the essence of the Cl. but none of the exceptions are applicable to Claimant.

**EXTENT OF JV AGREEMENT AND RIGHTS CONFERRED TO THE PARTIES BY THE SAME.**

30. Now moving on to the extent of a contract, it is known that if there is a contract between State and investor, that contract will create its own justifiable rights and duties, the breach of which may give rise either to litigation before host State courts or to arbitration before a tribunal to whose jurisdiction the parties have submitted.[11] There must be something more than a mere breach of contract to constitute a breach of treaty. Of their nature, treaty rights will only respond where there has been an exercise of sovereign authority by the host State affecting the investment. The existence of an exclusive jurisdiction or arbitration Cl. in a contract between host State and investor will be valid and enforceable as regards contract claims, and should be upheld by investment tribunals.

31. Hence, Cl. 17 of the JVA shall be invoked to resolve the dispute, as there was a material breach of the Agreement. In earlier cases, the Tribunal has concluded that it had jurisdiction over those claims whose fundamental basis was in the BIT; in the present matter the dispute between the parties emerged from a relationship defined initially by a contract, and so will be resolved by the contract. The contractual nexus is thus regarded as a closed system within its own proper law.[12] In the present matter both the parties to the JVA decided to a definite legal system as the proper law of their contract, and according to ***Dr. Mann***[13] it shall ensure certainty, equitable

[11] Campbell McLachlan, "*International Investment Arbitration*", Professor, Victoria University of Wellington and Barrister (2007).

[12] Bowett, '*The Proper Law of State Contracts and the Lex Mercatoria: A Reappraisa*l'(1988); A.F.M Maniruzzaman, "*State Contracts in Contemporary International Law: Monist versus Dualist Controversies*" (2001) p 309-28.

[13] *Dr Mann* defended his thesis that: 'To hold the parties to their own choice of a legal system as the proper law of their contract and to judge the existence or non-existence of a "breach" by the law so chosen is imperatively demanded by any legal order which cherishes certainty, equitable treatment, and sound results."

treatment and sound results in every case.[14] So there can be no 'breach' of contract unless there is a breach in the proper law, and no law other than the proper law of contract can establish one.[15]Thus, when municipal law is the proper law of the contract, and the contract is changed according to that law or by virtue of that law, there cannot be any breach of contract in international law.[16]

32. Furthermore, Respondent declares that the BIT is a treaty governing all the transactions between the two countries, and hence is general in nature. JVA was an agreement between the two companies specifically made to govern their relationship and carry on the business accordingly. However, this was not the case with BIT, as it was more general in nature. Hence, the principle of ***generalia specialibus non derogant*** (general words do not derogate from special words) should apply: the specific agreement takes precedence over the general agreement in the BIT.[17] In the instant case, JVA being a specific agreement will prevail over the general agreement i.e. BIT. Concession Agreement defines "the terms of possible specific agreements concluded in relation to the investment."[18] The general provisions of the BIT do not override the contractual jurisdiction Cl. Also, a BIT should be seen as a framework treaty 'to support and supplement, not to override or replace, the actually negotiated investment arrangements made between the investor and the host State'.[19]

31. Addressing Claimant's second contention, all the claims are contractual in nature and Claimant has improperly reformulated them as claims arising under the Beristan-Opulentia BIT. Respondent considers that Claimant takes for granted the highly debatable proposition that contractual breaches result in a violation of the BIT. It is essential to read the umbrella Cl. narrowly; any broad interpretation would render the umbrella Cl. susceptible to almost indefinite expansion. The result would be to make an international obligation out of all the municipal legislative or administrative or

[14] Sir Arthur Watts and Sir Robert Jennings, "*Oppenheim's International Law"* (1992) p 927–931.

[15] Art. 12(1), Harvard Draft Convention on the Responsibility of States (1961).

[16] A.A. Fatouros, "*Government Guarantees to Foreign Investors"* (1962).

[17] *Lanco* v *Argentina*.

[18] *Supra* note 11.

[19] *SGS* v *Philippines* (2004), Para 16–17.

other unilateral measures of a Contracting party. [20] In ***SGS v Pakistan***,[21] the Tribunal voiced its concern that a broad interpretation of an umbrella Cl. would override forum-selection Cl. in investor-state conflicts.

32. Respondent refers to the relation between breach of contract and breach of treaty in the present case, it must be stressed that ***Art. 10 of the BIT*** does not relate directly to breach of a contract. Rather it sets an independent standard and "A state may breach a treaty without breaching a contract, and *vice versa*, and this is certainly true of these provisions of the BIT… It may be said that "mere" breaches of contract, unaccompanied by bad faith or other aggravating circumstances, will rarely amount to a breach of the FET standard …" From the above justification, Respondent concludes that a claimant in similar cases may not invoke as events or facts giving rise to international responsibility the same facts that constitute a breach of contract; international rules are 'independent rules'. Therefore, a State's international responsibility may not be asserted by disguising mere contractual breaches.

33. In the same vein, ***Joy Mining v. Egypt***[22] *also* found that an umbrella Cl. not prominently inserted into a BIT cannot operate to transform a contract claim into a treaty claim, unless there exists a clear violation of the Treaty rights and obligations or a violation of contract rights of such a magnitude as to trigger the Treaty protection. In the instant case, since all of Claimant's cause of action was contractual in nature, it cannot be said to be breach of international law and as argued at length also does not relate to an investment, hence, the Tribunal lacks jurisdiction over the matter.[23]

34. Turning to context of State Responsibility; ***Art. 25 of the "Responsibility of States for internationally wrongful acts***"[24] reads, as relevant, "*Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act: (a) Is the only way for the*

[20] *ibid* Para. 166.

[21] *Ibid* Para. 168.

[22] *Joy Mining Mach. Ltd*. v. *Egypt*, Award on Jurisdiction (2004) Para 81.

[23] *Argentina Republic and BP-Pan American* v *The Argentina Republic*. See the decision in *El Paso* p 82.

[24] Drafts Art. on "*Responsibility of States for Internationally Wrongful Acts*", November 2001.

*State to safeguard an essential interest against a grave and imminent peril…*" in the instant case, it became necessary for Respondent to buyout Claimant's interest from Sat-Connect due to their misconduct which could lead the nation into problems. Although Claimant was provided with 14 days prior notice to leave the project site, failing which they were compelled to evacuate the project sites.[25] Also some of the leaked information was being used by the Beristan armed forces. Hence, Respondent was not left with any other option but to safeguard an essential interest of national security against a grave and imminent peril.

35. Hence, from the above facts it can be concluded that Respondent's act of removal of Claimant was justified on national security grounds, and it did not violate any of the terms of the BIT or principles of general international law or applicable treaties. Their reaction to the conduct of Claimant was out of sheer necessity and was the only option available to Respondent.

36. In addition, according to the dispute settlement Cl. of the JVA, party cannot commence arbitration until ***60 days*** after the notice of intention them to commence arbitration. And then it should be resolved only by arbitration under the rules and provisions of the ***1959 Arbitration Act of Beristan***, as amended. But in the present matter, Claimant submitted a written notice to Beristan of a dispute under the Beristan-Opulentia BIT on ***September 12, 2009***, in which Claimant notified Beristan their desire to settle amicably, and failing that, to proceed with arbitration pursuant to ***Art.11 of BIT***.[26] Further, on ***October 19, 2009*** Beritech filed a request for arbitration against Claimant under Cl. 17 of the JVA, but Claimant refused to respond to Beritech's arbitration request. Finally on ***October 28, 2009*** Claimant requested arbitration in accordance with the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings and notified the Government of Beristan. The condition of 60 days specified in Cl. 17 has been clearly violated, as the request was filed just after 24 days of the notice of intention was served to Beristan, without considering the 60 period.

[25] Uncontested Facts, Record, Annex 2, p 17.

[26] First Clarification, Question 133.

37. If a contract claim has already been submitted to a national court or other arbitral tribunal, then the investor will be precluded from subsequently re-litigating that dispute before an investment tribunal.[27] In the present matter, on ***19 October, 2009*** Beritech filed a request for arbitration against Claimant under Cl. 17 of the JVA. But Claimant refused to respond to Beritech's arbitration request and initiated arbitration in accordance with and notified the Government of Beristan. The Arbitration was commenced by Beritech. Despite Claimant's refusal to participate, the tribunal was constituted and also determined that the seat of the arbitration will be Beristan.[28] Such action on behalf of Claimant can be deemed to be unjustifiable and incorrect.

38. On amalgamation of the facts stated above and laws put forth, Respondent respectfully submits that the claims put forth by Claimant are solely contractual in nature and cannot be reformulated as claims arising under the Beristan-Opulentia BIT. Also the matter does not fulfill the essential pre-requisites of the ICSID jurisdiction, so the matter does not fall within the purview of the jurisdiction of ICSID. In conclusion, the claims of the present matter should be dismissed.

## II. WHETHER THE TRIBUNAL HAS JURISDICTION OVER CLAIMANT'S CONTRACT BASED CLAIMS ARISING UNDER THE JV AGREEMENT BY VIRTUE OF ART. 10 OF THE BERISTAN – OPULENTIA BIT.

39. The Tribunal has no jurisdiction over Claimant's contract based claims arising under JVA by virtue of ***Art.10 of the Beristan-Opulentia*** BIT because the claims are purely contractual in nature. If the language of the Art.10 is taken into consideration it appears susceptible of almost indefinite expansion which is ambiguous.

40. There are two requirements concerning jurisdiction ***ratione materiae***: the dispute must be a legal dispute and it must arise directly out of an investment. Further, there is the

[27] *Supra* note 11.

[28] Second clarification, Questions 118.

requirement that one party must be a State (or one of its constituent subdivisions or agencies), while the other party must be a foreign national.[29]

This dispute arose because Claimant breached the Cl. of confidentiality of the JVA. It has not directly arisen from the investment made by Claimant. They leaked information about the Sat-Connect project to their country. This Sat–Connect project includes systems that are being used by the Beristan armed forces. The services provided by the Sat–Connect were used for defense purposes, so they are very important for national security of Beristan. Beristan trusted Claimant in this project but the Claimant misused this trust. And according to the Cl. 4 of this JVA any breach of this shall be deemed a material breach of the Agreement. Therefore it is evident that the claims are purely contractual in nature so they should be resolved according to the dispute settlement Cl. of the JVA.

41. Even if the Art. 10 is regarded as "***Umbrella Cl.***", even then it doesn't apply to the contractual claims in the instant matter because firstly, these claims are contractual in nature. And secondly they do not arise directly from investment which is one of the main requisite of the ICSID Convention. These claims have arisen because there was breach of confidentiality by Claimant.

42. The ICSID Tribunal in ***CMS v. Argentina***[30] found that the Umbrella Cl. applied to some but not all contractual obligations. In this context one more case should be considered, i.e. ***Joy Mining v Egypt***,[31] which stated "an umbrella Cl. inserted in the Treaty, and not very prominently, could have the effect of transforming all contract disputes into investment disputes under the Treaty, unless of course there would be a clear violation of the Treaty rights and obligations or a violation of contract rights of such a magnitude as to trigger the Treaty protection, which is not the case." In the present case, the contractual claims are not transforming into claims under Treaty.

43. In the present case the claims are purely contractual in nature which cannot be governed by the BIT. The Umbrella Cl. is a treaty provision found in many BITs that requires

[29] Dr Chittharanjan Felix Amerasinghe, *Jurisdiction Rationae Personae Under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States* , (1974) 47 British YB Intl L 227.

[30] *CMS Gas Transmission Co.* v. *Argentina.*

[31] *Supra* note 22.

each Contracting State to observe all investment obligations it has assumed with respect to investors from the other Contracting State[32]. But in the present dispute Claimant has improperly reformulated them as claims arising under Beristan–Opulentia BIT. Moreover, Claimant has breached the Cl. of confidentiality by leaking information about Sat-Connect project including information about technology, systems, IP and encryption to be used and other trade secrets to the Gov. of Opulentia. Therefore, it can be easily inferred that there these claims arise from the JVA.

44. The connection between the Contract and the Treaty is the missing link. This might be perfectly different in other cases where that link is found to exist, but certainly it is not the case here[33]. Similarly, in this case there is difference between the claims under contact and treaty. Claimant leaked the information about the Sat-Connect to the Gov. of Opulentia. It will definitely hamper the national security of the Beristan since the Sat-Connect project included the systems that were being used by the Beristan armed forces. It is clearly implicit that this project was very important because of security reasons. Therefore the removal of personnel of the Claimant was very necessary and justified for the Beristan. And a state can take necessary essential steps for its protection and security under principle of state sovereignty in CIL. CIL rules have profound implications for the operation of the international investment arbitration mechanism. Actually, CIL rules have been applied frequently in ICSID cases.[34] In the case ***AAP Ltd* v *Republic of Sri Lanka*** [35] it was held that the BIT is not a self–contained closed legal system limited to provide for substantive material rules of direct applicability, but it has to be envisaged within a wider juridical context in which rules from other sources are integrated through implied incorporation methods, or by direct reference to certain supplementary rules, whether of international law character or of domestic law nature. From above statement it can be inferred that the BIT is not a closed legal system and is limited, so the honorable Tribunal has no jurisdiction over Claimant's contract based claims arising under JVA by the virtue of Art. 10 of the Beristan-Opulentia BIT. Moreover these claims are arising under the JVA; therefore if

[32] Judith Gill., *Contractual Claims and Bilateral Investment Treaties: A Comparative Review of the SGS Cases*, (2004) .

[33] *Supra,* note 30.

[34] *Supra* note 14, p 612–614.

[35] *AAP Ltd* v *Republic of Sri Lanka* (1990).

any conflict arises it should be governed by the dispute settlement Cl. given in the agreement.

## A. CL. 17 (DISPUTE SETTLEMENT) WILL GOVERN THE MATTER EVEN IF THE JV AGREEMENT IS TERMINATED.

45. The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration Cl. which forms part of a contract shall be treated as an agreement independent of the other terms of contract.[36]

46. Thus, even if the main contractual agreement terminates the dispute settlement Cl. will exist according to ***Doctrine of Separability***. This doctrine provides that an arbitration Cl. within a contract is distinct from the main contract, and therefore continues to be valid even if the main contract is void. The doctrine conforms with the intention of the parties and acts to keep the dispute within the tribunal by allowing it to rule on the validity of the main contract. *An arbitration Cl. is an agreement is, in effect, a separate contract severable from the wider contract of which it forms part*.[37] Therefore even if Claimant terminates the JVA then also the arbitration Cl. is valid. Therefore, Claimant was wrong on his part in not responding to the notice of arbitration.

47. Both the parties i.e. investor and the contracting state consented to the JVA so now Claimant cannot state that the dispute settlement Cl. of the JVA is irrelevant. Since the claims are contract based the dispute settlement Cl. of this agreement is most appropriate for this case. Moreover, on ***October 19, 2009*** Beritech filed a request for arbitration against Claimant under Cl. 17 of the JVA.[38] Claimant had not yet responded to this notice of arbitration. Claimant should respond to Respondent's notice of arbitration in a separate arbitration proceedings that was already been commenced pursuant to the dispute settlement Cl. in the JVA. It was Claimant's strategic decision not to initiate arbitration under Cl. 17 of the JVA out of fear to lose its standing in

[36] Art.16(1) of UNCITRAL Model Law

[37] *Ferris & Anor* v. *Plaister & Anor* (1994)

[38] Uncontested fact, Record, Annex 2, p18

ICSID arbitration.[39] Therefore, the honorable Tribunal has no jurisdiction over the present dispute according to Claimant's contract based claim arising under JVA by the virtue of Art.10 of the BIT.

48. Under general international law, it is unclear whether a state breaching a contract with an investor qualifies *per se* as a violation of an international obligation.[40] It is submitted that though the BIT was signed between the two contracting states but the claims arising from contract can't be resolved under the treaty. Such a breach should be treated as domestic commercial matter. Therefore it is submitted that the Umbrella Cl. is of indefinite expansion which makes it ambiguous. Moreover, it covers the contractual claims or not depends on case to case which are certainly not in this case. According to the ***Art.16 (1) of UNCITRAL Model law*** the arbitration Cl. exist even if the main contract is null or void. Thus even if Claimant terminates the JVA the dispute settlement Cl. should be followed.

**CONCLUSION ON JURISDICTION**

The Tribunal is requested to find that it has no jurisdiction over the present dispute. Firstly, the dispute does not fulfill the essential pre-requisites of the ICSID jurisdiction, as it is not arising directly out of investment. Secondly, the JVA being a special agreement will override the Beristan-Opulentia BIT, which is general in nature. Thirdly, the claims are purely contractual in nature so BIT is not applicable. Lastly, the dispute settlement clause exists even if the main agreement is terminated, so the present dispute should be resolved according to JVA.

## III. WHETHER MATERIALLY BREACHED THE JV AGREEMENT BY PREVENTING CLAIMANT FROM COMPLETING ITS CONTRACTUAL DUTIES AND IMPROPERLY INVOKING CL. 8 (BUYOUT) OF THE JV AGREEMENT.

49. The meaning of "*material*" depends more on the parties and their characterization of the terms rather than automatically amounting to a fundamental/repudiatory breach. A

[39] Second Clarification, Question 256.
[40] *Supra* note 14 p 927.

breach is committed where a party without lawful excuse fails or refuses to perform what is due from him under the contract, performs defectively or incapacitates himself from performing. The general principle of correct behaviour in commercial praxis and implies the *bona fide* is a requirement for the efficacy of the whole system.

50. Respondent asserts that Claimant leaked information from the Sat-Connect project to the Gov. of Opulentia. Respondent further asserts that the advanced satellite and telecommunications technology of the Sat-Connect project, which included systems that are being used by the Beristan armed forces, directly implicate the national security of Beristan. Respondent argues that Claimant's removal from the Sat-Connect project was justified on national security grounds.

51. The respondent relies on Art. 4 of the JVA, which says that "*All matters relating to this Agreement and the Sat-Connect project, including all Confidential Information, shall be treated by each of the parties, including the JV company Sat-Connect, as confidential*…..".

52. Claimant breached the confidentiality provision of that Agreement (Cl. 4) by leaking information about the Sat-Connect project including information about the technology, systems, intellectual property and encryption to be used and other trade secrets—to the Gov. of Opulentia. Any breach of this Cl. 4 is deemed to be material breach of the Agreement.

53. Beritech was entitled to rely on Cl. 8 of the JV Agreement (***Buyout***) on account of breach of Cl. 4 of the JV agreement thus entitling it to invoke Cl. 8 as it raised alarming security concerns in the Respondent State. Thus Respondent has not breached the JVA as alleged by Claimant. Respondent was justified in the act of buyout of Claimant's interests in Sat-Connect project in order to safeguard national security.

54. Hence, Respondent is entitled to invoke Cl. 8 of the JVA in case of breach if the Confidentiality under Cl. 4 JVA by relying on Art. 9 of the Beristan-Opulentia BIT. Claimant has materially breached the JVA Cl. 4 which compelled Respondent to invoke Cl. 8 in order to protect its essential security.

## IV. WHETHER RESPONDENT' ACTIONS OR OMISSIONS AMOUNT TO EXPROPRIATION, DISCRIMINATION, A VIOLATION OF FAIR AND EQUITABLE TREATMENT, OR VIOLATE GENERAL INTERNATIONAL LAW OR APPLICABLE TREATIES

### A. RESPONDENT HAS NOT EXPROPRIATED CLAIMANT'S PROPERTY

55. The buyout of Claimant's interest in the JV does not amount to expropriation. Respondent contends that Beritech has very correctly invoked Cl. 8 of the JVA. Under Cl. 8 of JVA:

> *"If at any time Televative commits a material breach of any provision of this Agreement, Beritech shall be entitled to purchase all of the Televative's interest in this Agreement. Under such circumstances, Televative's interest in this Agreement shall be valued as its monetary investment in the Sat-Connect project during the period from the execution of this Agreement until the date of buyout."*

56. Respondent states that Cl. 8 of the JVA has been rightly invoked as there is a material breach of the (Cl. 4) of JVA by Claimant'. Also, they have not violated Art. 4 of the Beristan-Opulentia BIT as Art. 4(2) implicit that:

> "Investments of investors of one of the Contracting Parties shall not be directly or indirectly nationalized, expropriated.....except for public purposes, or national interest, against immediate full and effective compensation, and on non-discriminatory basis and in conformity with all the legal provisions and procedures."

57. Further, Respondent asserts that Claimant had leaked information about the Sat-Connect project-including information about the technology, systems, IP and encryption to be used and other trade secrets to the Gov. of Opulentia.

58. In addition, this breach of Confidentiality raised a national security concern which compelled Respondent to buyout Claimant's interest in Sat-Connect. Therefore, the acts were justified on the grounds of national security.

59. The buyout neither disproportionately affected Claimant nor interfered with Claimant legitimate expectation as just and fair compensation was offered against it. Respondent had paid USD 47 million into the escrow account, which has been made available for Claimant.[41] Hence, the buyout was non-discriminatory and was taken as a measure for public benefit in accordance with the applicable laws and the Beristan-Opulentia BIT. The buyout does not amount to violation of Art. 4(2) of Beristan-Opulentia BIT.

## B. RESPONDENT HAS NOT VIOLATED FET AND HAS NOT ACTED DISCRIMINATELY AGAINST THE GENERAL PRINCIPLES OF INTERNATIONAL LAW.

60. Respondent asserts that they have acted in a fair and equitable manner and the allegations made by Claimant are false. Claimant allegation that Respondent has been arbitrary in removal of Claimant is wrong.

61. Also, Claimant was served with 14 days prior notice to withdraw its seconded staff from all Sat Connect facilities. Moreover, the Televative's personnel left Beristan voluntarily and not out of any compulsion.[42] Thus, the allegation of Claimant that Respondent did not served notice for the buyout is false.

[41] Uncontested Facts, Record, Annex 2, p. 18

[42] Second Clarification, Question 204

62. Claimant's allegations that the removal of the Televative's seconded personnel was discriminatory and to favour local Beristan personnel is false. It was done with good faith to curtail the danger that the leak of Confidentiality has caused. The expelled personnel were employees of Claimant.[43]

63. Claimant's allegation that they were not given any opportunity to prove the charges false is with no basis. Claimant breached the Confidentiality provision by leaking the technology systems, and the intellectual property involved in the Sat-Connect project which raised a national security concern and posed a serious threat to the Respondent's State security.[44] Under such circumstances it was essential on the part of Respondent to take back all the control of the Claimant over the Sat-Connect Project.

64. Despite Claimant's assertions to the contrary, the buyout of Claimant's property was made after the Sat-Connect Board Meeting on ***27th August 2009***. Majority of the Board of Directors' approved the same and voted to suspend Claimant's shares in the JV.[45]Also, it is pertinent to note here that Claimant was given proper notice before 14 days of the buyout. Furthermore, subsequent to the meeting, the Board of directors submitted Televative's shares in the Sat-Connect joint venture and promptly offered the compensation amount to Claimant but the Claimant' refused to take the compensation.[46]

65. Respondent is only liable to pay compensation for the buyout and not for any future benefits. According to Foreign Investment Law (hereafter called as "FIL")-

> "1. Foreign investments may not be nationalised, expropriated or subjected to any measures which have the same consequences as nationalization (henceforth, expropriation), except for the cases where such expropriation is carried out for public interests in compliance with the appropriate legal procedure and carried out without discrimination with the payment of immediate, adequate and efficient compensation.

[43] First Clarification, Question 160.
[44] First Clarification, Question 178.

[45] First Clarification, Question 138.

[46] Record, Annex, Uncontested Facts [18].

Respondent had invoked the buyout provision for public purpose and offered Claimant a just, prompt and effective compensation. Hence, Respondent has acted non-discriminately and the act of buyout is complied with the appropriate legal procedure.

66. In *MTD*, the tribunal stated that: "In their ordinary meaning, the terms "fair" and "equitable" mean "just", "even handed", "unbiased" "legitimate." On the basis of such and similar definitions, one cannot say more than the tribunal did in *S.D. Myers* by stating that an infringement of the standard requires "treatment in such an unjust or arbitrary manner that the treatment rises to a level that is unacceptable from an international perspective. Respondent had been just, unbiased and legitimate enough in performing its duty of protection of their nation and its actions are completely acceptable from an international perspective.

67. So, it is proved that the buyout was not expropriation and was for public purpose and if at all it was expropriation, it was legal, in accordance with FET, general Principles of International law and non discriminatory.

68. Respondent have not violated any of the Beristan-Opulentia BIT provisions or the general principles of international law. Respondent has ensured Claimant FET and had paid just and fair compensation for the buyout. So, the buyout was lawful and proper and do not amount to expropriation.

## V. WHETHER RESPONDENT IS ENTITLED TO RELY ON ART 9 (ESSENTIAL SECURITY) OF THE BERISTAN OPULENTIA BIT AS A DEFENSE TO CLAIMANT'S CLAIM

### A. CLAIMANT HAS BREACHED THE CONFIDENTIALITY PROVISION IN JV AGREEMENT THUS VIOLATING INTERNATIONAL STANDARDS OF GOOD FAITH AND FAIR DEALINGS

69. On August 12, 2009, The Beristan Times published an Art. in which a highly placed Beristan government official raised national security concerns by revealing that the Sat-

Connect project had been compromised due to leaks by Televative personnel who had been seconded to the project. The official indicated it was believed that critical information from the Sat-Connect project had been passed to the Government of Opulentia.

70. Respondent alleges that Claimant leaked information from the Sat-Connect project to the Government of Opulentia. Respondent further asserts that the advanced satellite and telecommunications technology of the Sat-Connect project, which included systems that are being used by the Beristan armed forces, directly implicate the national security of Beristan. Respondent argues that Claimant's removal from the Sat-Connect project was justified on national security grounds.

71. The satellite and communications technology that Sat-Connect will deploy can be used for civilian or military purposes. Several segments of the Beristan armed forces will use the Sat-Connect system.

72. Beritech is thus entitled to rely on Cl. 8 of the JVA (*Buyout*) because Claimant breached the confidentiality provision of that Agreement (Cl. 4) by leaking information about the Sat-Connect project—including information about the technology, systems, intellectual property and encryption to be used and other trade secrets—to the Government of Opulentia.

73. The meaning of "*material*" depends more on the parties and their characterization of the terms. Thus JV agreement has clearly defined what according to them, is a material breach. Cl. 4 of the JV Agreement embodies the principle of Confidentiality that "*All matters relating to this Agreement and the Sat-Connect project, including all Confidential Information, shall be treated by each of the parties, shall be treated by each of the parties,... as confidential...*" Any breach of this Cl. 4 shall be deemed a material breach of the Agreement. Thus entitling Respondents to invoke Cl. 8 (*Buyout*) of the JVA.

74. Parties to international business transactions must act in accordance with good faith and fair dealing in international trade. This standard applies to the negotiation, formation, performance and interpretation of international contracts. These standards have been blatantly breached and forced the Respondents to take the said actions.

75. The standards and requirements imposed on the parties by this Principle vary depending on the individual circumstances involved, such as the trade sector in which the parties are operating, their size and degree of professional sophistication, and the nature and duration of the contract.[47]The JV Company was formed for the development of highly sensitive technology that would be used for military purposes. The actions of the Claimant were way further from any accepted standard of good faith and fair dealings. The Claimants have leaked critical information, thus endangering essential security of the host country.

76. In its most common sense, the principle refers to private contracts, stressing that contained Clauses are law between the parties, and implies that non-fulfilment of respective obligations is a breach of the pact. The general principle of correct behaviour in commercial praxis — and implies the *bona fide* — is a requirement for the efficacy of the whole system, so the eventual disorder is sometimes punished by the law of some systems even without any direct penalty incurred by any of the parties.

77. With reference to international agreements, "every treaty in force is binding upon the parties to it and must be performed by them in good faith". The customary Law of Treaties, as codified in the Vienna Convention, proclaimed in Art. 26, under the title *Pacta sunt servanda* that "*Every treaty in force is biding upon the parties to it and must be performed by them in good faith.*" This entitles states to require that obligations be respected and to rely upon the obligations being respected. Thus the respondents have a right to expect that the claimants abide by the essential Cl.s in the JVA. This fundamental provision is applicable to the determination whether there has been violation of that principle, and in particular, whether material breaches of treaty obligations have been committed. Moreover, certain provisions of Customary law in the Vienna Convention are relevant, such as Art. 60, which gives precise definition breach of contracts. In the present case, claimants have breach the confidentiality provision thus violating the general principles of good faith and fair dealing. And it is clear from the language of Cl. 4 of JVA that the parties consider the technology created by Sat Connect to be kept a secret as a matter of utmost importance. Hence making Cl. 4 a material Cl. violation of which is grave enough to invoke Cl. 8 (*Buyout*).

[47] UNIDROIT "Principle of International Commercial Contract", Art 1.7(2004)

## C. WHETHER THE DEFENSE OF STATE OF NECESSITY EXISTS WITH THE RESPONDENT

78. The term '***State of Necessity***' under international law describes a situation in the presence of which a state is excused from performing an international obligation. Such situation is generally believed to be an actual threat or a prospective peril to a state's essential interest. From an operative point of view, a state of necessity has the ability to change to a legitimate action a conduct that would otherwise be considered wrongful.

79. Art. 9 of the BIT is concerning the essential security which the respondents claim to have been threatened by the acts of the Claimant. Art. 9 reads as under:

"*Nothing in this Treaty shall be construed:*

*1. to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or*

2. *to preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or for the protection of its own essential security*"

80. Respondent assert that Art. 9's "essential security interests" element encompasses economic and political interests, as well as national military defence interests.

81. In international law, a state of necessity is marked by certain characteristics that must be present in order for a State to invoke this defence. As articulated by Roberto Ago, one of the mentors of the Draft Articles on State Responsibility, a state of necessity is identified by those conditions in which a State is threatened by a serious danger to its existence, to its political or economic survival, to the possibility of maintaining its essential services in operation, to the preservation of its internal peace, or to the survival

of part of its territory.[48] In other words, the State must be dealing with interests that are essential or particularly important.[49]

82. Respondent argues that because Art. 9 is a self-judging provision, it is for the State to make a good faith determination as to what measures are necessary for the maintenance of public order, or the protection of its essential security interests.

83. The interest subject to protection also must be essential for the State. What qualifies as an "essential" interest is not limited to those interests referring to the State's existence. As evidence demonstrates, economic, financial or those interests related to the protection of the State against any danger seriously compromising its internal or external situation, are also considered essential interests. Julio Barboza affirmed that the threat to an essential interest would be identified by considering, among other things, "a serious threat against the existence of the State, against its political or economic survival, against the maintenance of its essential services and operational possibilities, or against the conservation of internal peace or its territory's ecology."[50]

84. The international obligation at issue must allow invocation of the state of necessity. The inclusion of an Art. authorizing the state of necessity in a Bilateral Investment Treaty constitutes the acceptance, in the relations between States, of the possibility that one of them may invoke the state of necessity

85. If the tribunal found that a state of necessity existed under Art. 9, then the tribunal would not need to evaluate BIT violations during the period of necessity. Art. 9, in short, would preclude all violations of the States BIT, and thus, any compensation flowing from such violations.

86. Art. 25 of the Articles of the International Law Commission (ILC) on State Responsibility[51] adequately reflect the state of customary international law on the question of necessity. Under that Art.:

[48] United Nations, Report A/CN.4/318/ADD.5, p. 3.

[49] United Nations, "*Report of the International Law Commission on the work"* performed during its 32nd session, p. 87

[50] *LG&E Energy Corp and ors* v *Argentina*, Decision on Liability, ICSID Case No ARB 02/1; IIC 152 (2006); (2007) 46 ILM 36

[51] *Supra* note 24

i. Necessity may not be invoked by a state as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that state unless the act:

a) is the only way for the State to safeguard an essential interest against a grave and imminent peril; and

b) does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole.

ii. In any case, necessity may not be invoked by a State as a ground for precluding wrongfulness if:

a) the international obligation in question excludes the possibility of invoking necessity; or

b) the State has contributed to the situation of necessity.

c) The Commission, in its Commentary, indicated that one should not, reduce an essential interest to a matter only of the existence of the state and that the whole question was, ultimately, to be judged in the light of the particular case.

d) On balance, state practice and judicial decisions support the view that necessity may constitute a circumstance precluding wrongfulness under certain very limited condition, and this view is embodied in Art. 25. In the present case, the acts of the Claimant necessitated invocation of Cl. 9 for it interfered with national security of Respondent state. The cases show that necessity has been invoked to preclude wrongfulness of acts contrary to a broad range of obligation, whether customary or conventional in origin. It has been invoked to protect a wide variety of interests, including safeguarding the environment, preserving the very existence of the state and its people in time of public emergency, or ensuring the safety of a civilian population. The claimants have leaked information of the Sat Connect project, which included systems that are being used by the Beristan armed forces, directly implicating the national security of Beristan.

e) The first condition, set out in Para (1) (a), is that necessity may only be invoked to safeguard an essential interest from a grave and imminent peril. The extent to which a

given interest is "essential" depends on all the circumstances, and cannot be prejudged. It extends to particular interests of the state and its people, as well as of the international community as a whole. Whatever the interest may be, however, it is only when it is threatened by a grave and imminent peril that this condition is satisfied. Claimant's removal form the Sat Connect project was justified on national security grounds.

f) In the Gabcikovo-Nagymaros Project case the court noted that the invoking State could not be the sole judge of the necessity, but a measure of uncertainty about the future does not necessarily disqualify a State form invoking necessity, if the peril is clearly established on the basis of the evidence reasonably available at the time. There was an apparent danger given the facts that the Beristan armed force used the technology that was allegedly leaked thus there was imminent peril existing before the Respondents.

g) Thus given Art. 25 of ILC on State of necessity, the respondent are entitled to rely on Art. 9 (Essential Security) of the Beristan Opulentia BIT as a defence to Claimant's Claim in order to safeguard their interest, address its national security concerns and protection of their essential security.

# CONCLUSION ON MERITS

Respondent is entitled to rely on Cl. 8 of the JVA because Claimant has breached the confidentiality provision of the JVA by leaking information about the Sat-Connect Project. Respondent has not expropriated Claimant's property as the buyout was consented by Claimant in JVA in case of breach of any provision of JVA. It is the basic of the Government of Beristan to protect its nation from any security threat and thus the actions taken by Respondent were completely justified.

# REQUEST FOR RELIEF

In light of all the above, Respondent respectfully requests this Tribunal to adjudge the following:

1) That this Tribunal does not have jurisdiction over this dispute;

2) That Claimant's allegations of contractual and international breaches by Respondent are meritless;

3) That Respondent's action or omissions did not amount to expropriation, discrimination, and violation of FET and general international law;

4) That this arbitration is subsequently dismissed.

RESPECTFULLY SUBMITTED ON 19th SEPTEMBER 2010

BY

-------/s/----------

Team Badawi

On Behalf of Respondent

The Government of the Republic of Beristan.