

2nd Meeting Brief:

Umbrella clausus:

- demanded articles: J.P.Gaffney, J.L.Loftis: 'The „Effective Ordinary Meaning“ of BITs and the Jurisdiction of Treaty-based Tribunals to her Contract Claims ´ (2007) in 8 Journal of World Investment and Trade 5 at 9-13.
- in our UC there is: "...shall constantly guarantee observance..." not "... shall observe"
 - o it is rather indirect, less strict and less precise obligation
 - o Salini v. Jordan – different wording analysis, para 126
- "obligation" ... CMS Anullment, para. 89..."any obliogation is meant legal obligation"
- International Law rule incorporates the relevant domestic law to assess whether the treaty has been violated.
- Buy-out has sanctional purpose and Televative, bearing in mind the purpose and its possible effect, which at this stage of the development of the project, did not intend to put itself under such a threat. All of its monetary investments and effort would basically go in vain. But the procedure of invocation of B-O cl. was not appropriate and was abusive. The way of materializing of the B-O cl. shows on arbitrariness and abusive intent, which would basically left Televative without any remedy. The arbitration procedure gives rise to bias as the B-O procedure shows on close connection of the Beritech and executive and military forces of Beristan.