

The 2008 Frankfurt Investment Arbitration Moot

Skeleton Memorial Claimants

**TEAM “UNIVERSITY OF ST. GALLEN”
SWITZERLAND**

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**THE 2008 FRANKFURT INVESTMENT ARBITRATION MOOT
IN THE FRANKFURT AM MAIN CHAMBER OF COMMERCE AND
INDUSTRY, GERMANY**

Establishment of Jurisdiction

**PUBLIUS CANIDIUS CRASSUS FILIUS
AND
MIDDLE EAST FINE WINES AND SPIRITS LTD.**

v.

THE KINGDOM OF EGYPT

**either continuing in its existence and represented by Caius Cornelius Gallus,
Praefectus Aegypti, or succeeded by**

THE REPUBLIC OF ROME

represented by the same Caius Cornelius Gallus, Praefectus Aegypti.

2008

SKELETON MEMORIAL FOR THE CLAIMANTS

SUMMARY OF PLEADINGS

The Claimants submit that the Tribunal has jurisdiction and is competent to hear the dispute concerning the protection of the investments of Publius Canidius Crassus Filius (*Crassus Filius*) and the Middle East Fine Wines and Spirits Ltd (*Middle East Ltd.*).

THE TRIBUNAL HAS JURISDICTION *RATIONE PERSONAE*

I. The Tribunal Has Jurisdiction *ratione personae* on the Respondent's Side.

- A. The Kingdom of Egypt is the Respondent as it still exists.
- B. Alternatively, the Republic of Rome is the Respondent as it has succeeded the Kingdom of Egypt.

II. The Tribunal Has Jurisdiction *ratione personae* on the Claimant's Side. The Grain Charter Treaty (GCT) is applicable between the parties.

- A. Legal Standing of the Claimants.
 - 1. Crassus Filius has *ius standi* against the Kingdom of Egypt on the basis of the Bilateral Investment Treaty (BIT) and the GCT.
 - 2. Crassus Filius has *ius standi* against the Republic of Rome on the basis of the BIT and the GCT.
 - 3. Middle East Ltd. has *ius standi* against the Kingdom of Egypt on the basis of the GCT.
 - 4. Middle East Ltd. has *ius standi* against the Republic of Rome on the basis of the GCT and the BIT.
- B. The Grain Charter Treaty (GCT) is applicable to the Republic of Rome.
 - 1. The GCT applies provisionally in accordance with Article 45 (1) of the GCT.

a. The provisional application is not excluded by the domestic law exception of Article 45 (1) of the GCT.

b. The Republic of Rome did not declare non-application according to Article 45 (2) of the GCT.

c. The Respondent is obliged not to defeat the object and purpose of the GCT pursuant to Article 18 of the Vienna Convention on the Law of Treaties.

2. The Respondent cannot object the jurisdiction of the tribunal by declaring non-application based on Article 17 of the GCT.

a. Article 17 of the GCT only relates to the merits and not to jurisdiction.

b. The Respondent did not declare non-application in advance.

c. The prerequisites of Article 17 of the GCT are not fulfilled.

III. The Actions of the Praefectus Aegypti Are Attributable to the Republic of Rome or, alternatively, to the Kingdom of Egypt.

A. The actions of the Praefectus Aegypti are attributable to the Republic of Rome.

1. The actions of the Princeps are attributable to the Republic of Rome according to Article 4 of the International Law Commission's (ILC) Articles on State Responsibility.

2. The actions of the Praefectus Aegypti are attributable to the Republic of Rome according to Article 4 (2) of the ILC's Articles on State Responsibility.

3. Alternatively, the actions of the Praefectus Aegypti are attributable to the Republic of Rome according to Article 8 of the ILC's Articles on State Responsibility because the Praefectus was acting on the instructions of the Republic of Rome.

B. Alternatively, the actions of the Praefectus Aegypti are attributable to the Kingdom of Egypt

C. Alternatively, the actions of the Praefectus Aegypti, which have been attributed to the Kingdom of Egypt are now attributable to the Republic of Rome as it has succeeded the Kingdom of Egypt in its State responsibility.

IV. The Actions of the *publicani* Are Attributable to the Republic of Rome or, alternatively, to the Kingdom of Egypt.

A. The actions of the *publicani* are attributable to the Republic of Rome.

1. Directives and actions of the Praefectus Aegypti are attributable to the Republic of Rome according to Article 4 and Article 8 of the ILC's Articles on State Responsibility.

2. The collection of taxes outsourced to the *publicani* is a public exercise in terms of Article 5 of the ILC's Articles on State Responsibility and therefore are attributable to the Republic of Rome.

B. Alternatively, the actions of the *publicani* are attributable to the Kingdom of Egypt.

C. Alternatively, the actions of the *publicani*, which have been attributed to the Kingdom of Egypt are now attributable to the Republic of Rome as it has succeeded the Kingdom of Egypt in its State responsibility.

THE TRIBUNAL HAS JURISDICTION *RATIONE TEMPORIS*

V. The Claim Has Been Submitted to Arbitration in a Timely Manner.

A. Claimants Request for Arbitration Was Timely under Article 26 (2) of the GCT.

1. Request for amicable settlement was submitted to the respondent.

2. Request for amicable settlement related to the claims formulated in the request for arbitration.

3. Claimants respected the GCT three months waiting period.

B. Respondent cannot invoke the waiting periods set forth in Article 9 of the BIT and Article 26 (2) of the GCT since these provisions are procedural and not jurisdictional requirements.

C. Article 3 of the BIT and Article 10 of the GCT allow the Claimants to import the ICSID Additional Facility Arbitration clause of the Tripartite Treaty of Amity, which does not contain a waiting period.

1. The dispute resolution clause from the Tripartite Treaty of Amity is more favorable to the Claimants than the BIT and the GCT waiting periods.

2. The Tripartite Treaty of Amity dispute settlement clause falls within the Scope of the BIT and the GCT most favored nation clauses as they relate to the same subject-matter (*ejusdem generis* principle).

a. Interpretation of Article 3 of the BIT and Article 10 of the GCT shows that Claimants are entitled to import the Tripartite Treaty of Amity dispute settlement clause.

i. BIT and GCT MFN clauses have to be read to include dispute settlement within the scope of the BIT and the GCT MFN clauses.

ii. The Contracting Parties intended to include dispute settlement mechanisms within the scope of the BIT and GCT MFN clauses.

b. No overriding public policy considerations or treaty-shopping concerns are present in the instant case.

3. Alternatively, Article 3 of the BIT allows the Claimants to import the three months waiting period of Article 26 of the GCT.

THE TRIBUNAL HAS JURISDICTION *RATIONE MATERIAE*

VI. The Tribunal is Competent to Hear Claims in Connection with the Breach of the Royal Decree.

A. The breach of the Royal Decree falls within the scope of the substantive provisions of the BIT and the GCT since it is not of commercial or contractual nature.

B. Alternatively, the umbrella clauses set forth in Article 10 (1) of the GCT and Article 12 (2) of the BIT make a breach of the Royal Decree equal to a violation of the respective treaties themselves.

1. According to Article 10 (1) of the GCT the Respondent is obliged to observe “any obligation it has entered into”, including the Royal Decree.

a. Interpretation of Article 10 (1) of the GCT.

b. Respondent did not opt-out of the umbrella clause.

c. Benefits under the Royal Decree are not mere taxation measures.

2. According to Article 12 (2) of the BIT the Respondent is obliged to accord the “Application of Other Rules” when they are more favorable.

C. The breach of the Royal Decree falls within the scope of the BIT dispute settlement clauses.

VII. The Instant Case Is a Legal Dispute Arising in Connection with the Expropriation of the Lands and Assets of the Wine Business in Alexandria and Breach of the Respondent’s Obligations under the Royal Decree.

A. The following actions constitute an expropriation:

1. The administration *hereditas iacens* of the Claimant’s land and assets in Alexandria.

2. Taking the workers from the farm south of Giza.

3. The requisition of the Claimant’s ships on the Nile for military use.

4. The revocation of all rights granted under the Royal Decree.

B. The Respondent's revocation of the benefits granted under the Royal Decree constitutes a breach of contractual obligations.