

The 2008 Frankfurt Investment Arbitration Moot

Skeleton Memorial Respondents

**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 RESPONDENTS

THE TRIBUNAL HAS NO JURISDICTION *RATIONE PERSONAE*

I. First Objection: The Tribunal Lacks Jurisdiction *ratione personae* on the Respondent's Side.

- A. The Kingdom of Egypt has ceased to exist.
- B. The Kingdom of Egypt has not been succeeded by the Republic of Rome.
- C. Alternatively, if the Republic of Rome has succeeded the Kingdom of Egypt, liability of the later for in compliance with international obligations is extinguished and the earlier does not become the successor of responsibility.

II. Second Objection: The Tribunal Lacks Jurisdiction *ratione personae* on the Claimant's Side (A) and the Grain Charter Treaty Is not Applicable between the Parties (B).

- A. Lack of standing of the Claimant.
 - 1. Crassus Filius lacks *ius standi* against the Republic of Rome out of the BIT.
 - 2. Crassus Filius lacks *ius standi* against the Kingdom of Egypt out of the BIT since the investment is hold by a national of Punt.
 - 3. Middle East Ltd. lacks *ius standi* out of the BIT against both the Republic of Rome and the Kingdom of Egypt.
 - 4. Crassus Filius lacks *ius standi* against the Kingdom of Egypt out of the GCT and the Republic of Rome lacks *ius standi* in a claim directed to it by Middle East Ltd. out of the GCT.
- B. The Grain Charter Treaty (GCT) is not applicable to the Republic of Rome.
 - 1. The Republic of Rome has not ratified the GCT.
 - 2. The GCT does not apply provisionally.
 - 3. Alternatively, if the GCT is to be applied provisionally by the Republic of Rome, the provisional application of the GCT is not equivalent to its entry into force for the Republic of

Rome.

4. Alternatively, if the GCT is to be applied provisionally by the Republic of Rome, the jurisdiction is denied by the Republic of Rome applying Article 17 of the GCT.

III. Third Objection: The Actions of the Praefectus Aegypti Are not Attributable to any State.

A. The actions of the Praefectus Aegypti are not attributable to the Republic of Rome.

1. The Praefectus Aegypti is not an organ of the Republic of Rome in terms of Article 4 of the International Law Commission's (ILC) Articles on State Responsibility.

2. The Praefectus Aegypti is not a private acting on the instructions of the Republic of Rome in terms of Article 8 of the ILC's Articles on State Responsibility.

B. The actions of the Praefectus Aegypti are not attributable to the Kingdom of Egypt as the Praefectus Aegypti is not an organ of the Kingdom of Egypt in terms of Article 4 of the ILC's Articles on State Responsibility.

C. Alternatively, if the actions are attributable to the Kingdom of Egypt, the Republic of Rome as successor State of the Kingdom of Egypt is not responsible for liability of the predecessor State.

IV. Fourth Objection: The Actions of *publicani* Are not Attributable to any State.

The *publicani* are private people whose actions cannot be attributed to any State. They collect taxes independently and autonomously from the State and they also bear the financial risk of collecting the taxes.

THE TRIBUNAL HAS NO JURISDICTION *RATIONE TEMPORIS*

V. Fifth Objection: Claimants Have not Respected the Waiting Period under the BIT and the GCT and Cannot Import the Dispute Resolution Clause from the Tripartite Treaty of Amity.

A. The Claimants breached factual and temporal requirements of the BIT and the GCT. The letter sent on September 30 BC was not a “cooling-off” letter. Respecting these dispute settlement procedures is essential to find an amicable resolution to the dispute.

B. The Claimants cannot rely on Article 3 of the BIT to import the dispute resolution clauses from the Tripartite Treaty of Amity.

1. Dissimilarity between the object of the BIT and of the Treaty of Amity.

i. Non-identity of content of the considered treaties.

ii. Alternatively, the Treaty of Amity falls under the exceptions of Article 3(3) of the BIT and Article 24 of the GCT and is not covered by the MFN clause.

2. The MFN clauses in the BIT and GCT do not include matters relating to investment dispute settlement.

i. Wording analysis of the MFN clauses.

ii. Application of the MFN clause to jurisdictional issues in the case at hand would be a misinterpretation of the BIT.

iii. The practice of the Respondent in the treatment of foreign investors shows that there is no intention to include the dispute settlement within the scope of the MFN clauses.

iv. Risk of treaty shopping and breach of sovereignty.

THE TRIBUNAL HAS NO JURISDICTION RATIONE MATERIAE

VI. Sixth Objection: The Tribunal Is not Competent to Hear Claims Arising out of the Royal Decree.

A. The alleged violations of the Royal Decree do not rely on a treaty based claim.

1. Alleged violations of the Royal Decree are no violations of international law because the

Royal Decree is a commercial state contract.

2. There is no breach of the BIT because Article 12 of the BIT is not a so-called “Umbrella Clause”.

i. Wording analysis of Article 12 of the BIT.

ii. Article 21 of the GCT excludes taxation measures from the scope of the GCT.

iii. Article 10(1) of the GCT does not cover claims arising out of commercial state contracts.

B. The dispute resolution clauses of the BIT and of the GCT do not cover disputes arising out of the Royal Decree.

VII. Seventh Objection: There Is no Legal Dispute concerning an Investment because the Facts Do not Disclose a *prima facie* Case for Expropriation.

A. The administration *hereditas iacens* of the assets and lands in Alexandria is a time-fixed regulatory measure accorded to the Claimant due to his absence and aimed to take care of the investment. As an instrument of national law it is applied in all comparable or similar cases and is not limited to the Claimant.

B. The revocation of the tax and duties exemption cannot be qualified as an expropriation as the tax exemption itself was not part of the investment. States are free to reduce or increase tax levels since taxation measures are part of the State`s regulation activity.

C. The labor force which has been taken away from the investment by sending the workers to road and dam work is not a measure tantamount to an expropriation. It has to be seen as payment for the services rendered by the administration *hereditas iacens*.

D. The use of the ships for military purposes is a legitimate measure which serves national security interests, particularly in times of crisis.