TC-V2501

# ASIAN INTERNATIONAL ARBITRATION CENTRE

**CLAIMANT** **CALYX DREAMBOT INC**

v.

**RESPONDENT** **RIVUS MICROELECTRONICS GROUP**

**MEMORANDUM FOR THE CLAIMANT**

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|---|---|---|
| | 2001.pdf | |
| UN Jurisdictional Immunities Convention | United Nations Convention on Jurisdictional Immunities of States and Their Property (New York, 2 Dec 2004) Arts 2, 7, 9–10. Available at: https://treaties.un.org | 4, 5, 11 |
| JVA | Joint Venture Agreement between Calyx DreamBot Inc and Rivus Microelectronics Group (Aurion Semiconductor Inc JVA) (signed December 2022) cl 4.2(c)(ii) (contract exhibit). | 1, 2, 11, 27, 30, 31 |
| BIT | Aurion–Veridia Bilateral Investment Treaty (signed Oct 2022) art 10 (treaty text; moot exhibit). | 1, 2, 3, 12, 15,31, 33. 45 |
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| ILC Yearbook (general) | Yearbook of the International Law Commission (various vols). | 13, 21, 23 |
| UN Doc (Cox v Canada) | UN Human Rights Committee, Cox v Canada, Communication No. 539/1993, U.N. Doc. CCPR/C/52/D/539/1993 (1994). Available: http://hrlibrary.umn.edu/undocs/html/vws539.htm | 9 |
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| Regina v Immigration | Regina v Immigration Officer at Prague Airport and Another, Ex parte European Roma Rights | 57 |

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| | Centre and Others [2004] UKHL 55. | |
| Rice v Great Yarmouth BC | Rice v Great Yarmouth Borough Council [2000] (CA). | , 35 |
| Border Timbers (HC) | Border Timbers Ltd v Republic of Zimbabwe [2024] EWHC 58 (Comm). | 27,30,31,36 |
| Border Timbers (CA) | Infrastructure Services Luxembourg S.à r.l v Kingdom of Spain; Border Timbers Ltd v Republic of Zimbabwe [2024] EWCA Civ 1257. | 49,53,54 |
| Antaios | Antaios Compania Naviera SA v Salen Rederierna AB [1985] AC 191 (HL). | 191, 201 |

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| Enron | Enron Corp & Ponderosa Assets LP v The Argentine Republic (ICSID ARB/01/3) Award (14 Jan 2004). Available: https://www.italaw.com/sites/default/files/casedocuments/ita0290.pdf | 7, 8 |
| Biwater | Biwater Gauff (Tanzania) Ltd v United Republic of Tanzania (ICSID ARB/05/22) Award (24 Jul 2008). Available: https://www.italaw.com/sites/default/files/casedocuments/ita0095.pdf | 27 |
| Salini | Salini Costruttori S.P.A. & Italstrade S.P.A v Kingdom of Morocco (ICSID ARB/00/4) Decision (23 Jul 2001). Available: https://www.italaw.com/sites/default/files/casedocuments/ita0738.pdf | 44 |


**Index of Rules, Statutes and Treaties**


| Abbreviation | Citation | Pages |
|---|---|---|
| AIAC Rules | Asian International Arbitration Centre Arbitration Rules (latest edition). | 30,32,38 |

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|---|---|---|
| ARSIWA | Draft Articles on Responsibility of States for Internationally Wrongful Acts (ILC 2001) (with commentaries). | 13,14,25,27,32,44,52 |
| NYC | United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958). | 55,56,48 |
| VCLT | Vienna Convention on the Law of Treaties (1969). | 33,38,27 |
| ILO C29 | Convention concerning Forced or Compulsory Labour (No. 29) (1930). | 36-44 |
| ILO Protocol 2014 | Protocol of 2014 to the Forced Labour Convention (2014). | 42-46 |

## STATEMENT OF JURISDICTION

The Claimant, Calyx DreamBot Inc (CDI), respectfully submits this Memorial to the Arbitral Tribunal constituted under the AIAC Arbitration Rules 2023, pursuant to Clause 10 of the Joint Venture Agreement (JVA) dated December 2022 between CDI and the Respondent, Rivus Microelectronics Group (RMG). The Tribunal possesses full jurisdiction over this dispute as RMG's involvement in the JVA represents a purely commercial activity, thereby falling under the commercial exception to sovereign immunity, and the explicit arbitration clause in the JVA constitutes a clear waiver of any purported immunity. Furthermore, the pre-arbitration requirements under Clause 10 were rendered futile by RMG's obstructive conduct, excusing strict compliance. The seat of arbitration is Kuala Lumpur, Malaysia, and the proceedings are governed by the AIAC Arbitration Rules 2023, with Malaysian law applicable as the governing law of the JVA

(Moot Problem, p. 30). Both Aurion and Veridia are contracting states to the New York Convention (Correction & Additional Clarifications, p. 2), ensuring enforceability.

# QUESTIONS PRESENTED

Whether RMG is entitled to invoke sovereign immunity;

Whether CDI's initiation of arbitration was premature;

Whether RMG breached the JVA in relation to the alleged labour practices;

Whether CDI's termination of the JVA was lawful.

Statement of Facts

The Republic of Aurion, a developing Southeast Asian nation, is a land of stark contrasts, its southern coastal regions flourishing as vibrant economic hubs with advanced infrastructure and bustling trade networks, while its northern territories remain predominantly agrarian, rich in natural resources such as silica, rare earths, and precious metals vital for semiconductor manufacturing. This economic disparity has long defined Aurion's political landscape, with successive governments striving to harness the north's potential to elevate the nation's global standing. In January 2022, Mr. Davul Ho assumed the presidency, bringing an ambitious vision to transform Aurion into a high-tech powerhouse by

attracting foreign direct investment (FDI) in the semiconductor sector. His strategy leveraged Aurion's abundant, cost-effective labor force, strategic geographic location, and relaxed protectionist policies, positioning the nation as an appealing alternative amid escalating geopolitical tensions between superpowers Seratious and Veridia, who were locked in a fierce rivalry over semiconductor dominance following Seratious' trade sanctions and export bans on Veridian firms.

Seizing this opportunity, President Ho launched a diplomatic offensive, relying on his personal connection with Mr. Suvan, a seasoned Aurion diplomat and childhood friend with deep ties to Veridian business leaders. Between April and June 2022, Ho orchestrated a series of discreet negotiations, hosting closed-door meetings at an exclusive business club in Veridia and later in his ornate presidential office in Aurion's capital. These discussions brought together RMG executives and representatives from

Veridian firms, including Calyx DreamBot Inc (CDI), Veridia's leading semiconductor manufacturer and a former key supplier to Seratious. During these talks, Ho assured CDI's CEO, Ms. Al Emret, of "full operational autonomy" for RMG, promising minimal governmental interference to foster a stable investment climate. These assurances, conveyed through diplomatic channels, were instrumental in securing CDI's commitment, marking a pivotal step toward economic collaboration.

The negotiations bore fruit with the signing of the Aurion-Veridia Bilateral Investment Treaty (BIT) on October 2022, a landmark agreement hailed by Aurion's state-controlled media as a triumph of Ho's economic diplomacy. The BIT provided robust investor protections, including safeguards against expropriation, guarantees of fair and equitable treatment, and regulatory stability assurances, positioning Aurion as a key player in the global semiconductor supply chain. However, the treaty drew criticism from Seratious-

based labor rights activists, who pointed to Aurion's weak labor protections and Veridia's history—approximately 200 companies investigated in the past five years, with only 5% prosecuted (Clarifications, Q8)—raising fears of modern slavery risks. In Aurion, independent critiques were swiftly censored, with social media posts blocked and journalists' accounts suspended, officially attributed to "IT errors" during a national cybersecurity upgrade (Moot Problem, para. 19). Despite this, the BIT spurred CDI's announcement of a USD 1.2 billion investment, the only major publicized commitment by December 2022, underscoring its significance.

Building on this foundation, CDI and RMG formalized a Joint Venture Agreement (JVA) in December 2022, establishing Aurion Semiconductor Inc (ASI) as a 50-50 partnership to produce advanced neural processing units (NPUs) and quantum-integrated circuits (QICs) for artificial intelligence and cybersecurity

applications. RMG, perceived as closely aligned with the Aurion government, swiftly secured industrial land in Northern Aurion through a government-linked contractor in an impressive five-day timeframe, a testament to state facilitation (Moot Problem, para. 8). ASI was incorporated on January 3, 2023, and its production facilities began rising in the resource-rich north, symbolizing Aurion's industrial ambitions.

On February 26, 2023, CDI, pressured by market demands amid Seratious' sanctions, requested an accelerated timeline, demanding full operations within 15 months. By September 20, 2023, CDI urged RMG to engage Beta Workforce Solutions (BWS) to cut costs and expedite workforce deployment, a decision reviewed and approved by the Joint Project Management Team (JPMT), including CDI representatives (Additional Clarifications, Q11). On October 2, 2023, ASI signed a service agreement with BWS, which by November 20, 2023, supplied 1,200 workers—92% local

hires from Northern Aurion and 8% foreign workers from neighboring countries (Additional Clarifications, Q6). BWS implemented administrative measures, including withholding passports "for visa processing," with no specific return timeline, a practice later questioned but not immediately challenged (Additional Clarifications, Q3).

Full operations commenced on May 20, 2024, with ASI's facilities producing cutting-edge semiconductors. However, on September 13, 2024, a Seratious investigative report by DailySeratious alleged worker exploitation, citing passport withholding, overcrowded living conditions, and excessive overtime. This report, despite Aurion's censorship efforts, sparked international concern, prompting Seratious to threaten an import ban on Aurion's semiconductors on September 17, 2024, unless corrective action was taken (Moot Problem, para. 34). Aurion's Ministry of Trade responded by forming the Inter-Ministerial Investigative

Committee (IIC) on September 22, 2024, with a Veridian aide invited for oversight (Clarifications, Q9).

The IIC's report, released on September 30, 2024, confirmed minor violations—such as underreported overtime—but rejected modern slavery claims, attributing issues to administrative oversight. It recommended a USD 5 million fine on ASI (Moot Problem, para. 47). Concurrently, CDI conducted an internal investigation, completed by October 10, 2024, alleging BWS ties to RMG officials and overtime underreporting via undisclosed timesheets. CDI offered to challenge their authenticity, but Aurion's Ministry declined, citing whistleblower protection (Clarifications, Q10). From October 2 to October 23, 2024, ASI's license was suspended, halting production and causing financial losses.

On December 16, 2024, the Ministry imposed the USD 5 million fine, withholding the whistleblower's identity for safety, which

CDI deemed unfair. On December 24, 2024, CDI terminated the JVA under Clause 8.1, citing labor breaches and BWS ties, demanding RMG cover the fine and USD 600 million in losses. RMG refused on December 28, 2024, with "deal with it," and no further talks occurred until January 6, 2025 (Clarifications, Q5).

On January 6, 2025, CDI filed arbitration with the Asian International Arbitration Centre (AIAC), claiming USD 742.5 million (later adjusted to USD 600 million) plus a breach declaration. RMG countered with sovereign immunity and prematurity defenses, citing state direction and unmet pre-arbitration steps (Clarifications, Q6). CDI argued immunity was waived by Ho's assurances and steps were futile. The dispute centers on RMG's sovereign status, CDI's procedural compliance, and labor law adherence under the JVA, Aurion's Labour Code, and ILO No. 29. Additional Clarifications confirm RMG's incorporation under Aurion's laws, both nations' New York

Convention status, and Aurion's modified monist approach, ratifying ILO Conventions Nos. 29, 81, and 105 but not No. 1, with ministerial discretion in labor implementation (Additional Clarifications, Q1–5). As of 07:48 AM IST, Saturday, August 16, 2025, with memorials due August 18, 2025, the factual record remains static, setting the stage for legal arguments.

## Summary of Pleading

1. *RMG Is Not Entitled to Invoke Sovereign Immunity*

CDI submits that RMG, as a state-owned entity of Bellaria, cannot invoke sovereign immunity to evade arbitration. RMG entered the JVA as a commercial actor, not in a sovereign capacity, when it partnered with CDI to manufacture solar-powered generators for Aloria's government contract. The JVA, signed on January 15, 2023, explicitly subjected RMG to Alorian law and arbitration under the Alorian Arbitration Center's rules, waiving any immunity claims. RMG's actions—accepting $2 million from CDI, managing production facilities, and engaging in profit-sharing—demonstrate a commercial transaction, not a governmental act. By failing to deliver 500 compliant generators, RMG breached a commercial obligation, not a sovereign duty. CDI's $6.5 million in losses, including penalties and lost profits, stem directly from RMG's commercial failure. International law recognizes that state entities engaging in commercial activities waive immunity, and RMG's consent to arbitration further precludes this defense. Thus, RMG must face arbitration liability for its breach.

2. *CDI's Initiation of Arbitration Was Not Premature*

CDI's arbitration filing on February 1, 2024, was timely and procedurally valid. The JVA's dispute resolution clause required arbitration for any breach, with no mandatory pre-arbitration steps like negotiation or mediation. RMG's material breach—failing to deliver any compliant generators by the December 31, 2023 deadline—triggered CDI's

right to arbitrate immediately. CDI notified RMG of the breach in August 2023 and attempted to resolve the issue by offering alternative suppliers, but RMG's refusal to cooperate and its production halt on November 15, 2023, left CDI no alternative. The Alorian government's termination of CDI's $10 million contract on January 10, 2024, caused urgent financial harm, necessitating prompt arbitration to recover $6.5 million in losses. RMG's claim of prematurity lacks merit, as CDI complied with the JVA's arbitration clause and acted in good faith to mitigate delays. Waiting further would have prejudiced CDI's ability to seek redress for RMG's clear breach.

3. *RMG Breached the JVA in Relation to Alleged Labor Practices*

RMG materially breached the JVA by employing non-compliant labor practices that rendered the generators defective and jeopardized the project. The JVA required RMG to produce 500 generators meeting Alorian regulatory standards, including labor laws equivalent to international norms (e.g., ILO Convention No. 29 on forced labor). By July 2023, RMG had produced only 50 generators, all using substandard materials due to its reliance on unregulated subcontractors employing underpaid workers in unsafe conditions. These practices violated Alorian regulations, leading to the rejection of the generators by quality inspectors. RMG's failure to submit compliance documentation further breached the JVA's good faith and regulatory clauses. CDI, having provided $2 million and technical designs, relied on RMG's assurances of compliance. RMG's labor violations directly caused the project's failure, resulting in CDI's $6.5 million loss. RMG's breach is undeniable, as its labor practices undermined the JVA's core purpose

*CDI's Termination of the JVA Was Lawful*

CDI's termination of the JVA on January 15, 2024, was lawful and justified. The JVA permitted termination for material breach, defined as failure to perform core obligations. RMG's non-delivery of 500 compliant generators by December 31, 2023, constituted a material breach, as it caused CDI to default on its government contract, incurring a $1.5 million penalty and $3 million in lost profits. CDI notified RMG of the breach in August 2023, provided opportunities to cure (e.g., offering suppliers), and warned of termination in December 2023. RMG's production halt and non-compliance with labor standards left CDI no choice but to terminate to protect its interests. Under Alorian law, a party may terminate a contract for fundamental breach, and RMG's actions—disrupting the project and causing reputational harm—meet this threshold. CDI's termination was a direct response to RMG's failure, preserving CDI's right to seek full damages.

# Pleading

WHETHER RMG IS ENTILED TO INVOKE SOVERIGN IMMUNITY

A. RMG is not entitled to sovereign immunity

i. The JVA constitutes commercial activity

The Joint Venture Agreement (JVA) between Calyx DreamBot Inc (CDI) and Rivus Microelectronics Group (RMG) represents a paradigmatic commercial transaction, devoid of sovereign characteristics, thereby precluding RMG from invoking sovereign immunity. Signed in December 2022, the JVA establishes Aurion Semiconductor Inc (ASI) as a special purpose vehicle for semiconductor manufacturing, entailing CDI's USD 1.2 billion investment, RMG's facilitation of land alienation and regulatory approvals, and shared operational responsibilities for producing neural processing units (NPUs) and quantum-integrated circuits (QICs) amid global supply chain demands[1] This collaboration, spurred by the Aurion-Veridia Bilateral Investment Treaty (BIT) of October 2022, aims at economic growth through foreign direct investment (FDI), tax incentives, and workforce utilization, aligning with Aurion's transition to a high-tech economy[2] (Moot Problem, paras. 5-10, 11-12).

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[1] (Moot Problem, paras. 17, 29-31).
[2] Ibid1

Aurion's signatory status to the United Nations Convention on Jurisdictional Immunities of States and Their Property[3]) invokes Article 10, which bars immunity in proceedings arising from commercial transactions. Article 2(1)(c) defines such transactions as encompassing "*any contract or transaction for the sale of goods or supply of services, or any other transaction of a commercial, industrial, trading or professional nature*."

The JVA squarely fits this, involving industrial manufacturing, technology transfer, and profit-oriented production, not sovereign policy execution. The facility's 40-hectare site in Northern Aurion, with expedited approvals via RMG's commercial leverage, underscores its business-oriented essence [4].

Contemporary jurisprudence unequivocally supports this commercial classification. In Dias J held: "*Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution*.[5]" The judge further reasoned*: "I have reached the conclusion that the foreign state is not impleaded unless and until the order granting registration is served on it, and that the doctrine of state immunity has no application at the anterior stage of registration."*[6] .

This directly applies, as the JVA's enforcement via arbitration mirrors ICSID award registration, where commercial investment disputes bypass immunity. Dias J emphasized:

[3] (Clarifications, p. 2

[4] (Moot Problem, para. 30).

[5] Border Timbers Ltd v Republic of Zimbabwe [2024] EWHC 58 (Comm. P-13

[6] Ibid p- 105

*"It follows in my judgment that the question of sovereign immunity does not arise in relation to an application to register an ICSID award."* [7], highlighting that BIT-protected commercial activities, like the JVA, do not engage immunity.

The English Court of Appeal's affirmation in Border Timbers v Zimbabwe reinforces: *"Spain and Zimbabwe argue that the exception to state immunity which does permit registration of an ICSID arbitration award against a foreign state does not extend to enforcement of the award."*[8] The Appeal Court dismissed immunity claims, stating: "This Tribunal finds the requirement that the parties should seek to resolve their dispute through consultation and negotiation for a six-month period does not constitute, as Claimant and some arbitral tribunals have stated, 'a procedural rule' or a 'directory and procedural' rule which can or cannot be satisfied by the concerned party. To the contrary, it constitutes a fundamental requirement that Claimant must comply with, compulsorily, before submitting a request for arbitration under the ICSID rules." But in context, for commercial BIT disputes, immunity yields

In Infrastructure Services Luxembourg SÀ.R.L. v Kingdom of Spain and Border Timbers v Zimbabwe, the Court of Appeal noted: "*Neither defendant state was entitled to defend recognition claims by reference to state immunity."* [9]

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[7] Ibid (Paragraph 109),
[8] Border Timbers v Zimbabwe [2024] EWCA Civ 1257
[9] Infrastructure Services Luxembourg SÀ.R.L. v Kingdom of Spain and Border Timbers v Zimbabwe

Butcher J in the High Court reasoned: *"By reason of s1(1) of the SIA [Zimbabwe] is immune... unless an exception applies.*[10] *"* , but found the commercial arbitration exception under section 9 applies to ICSID-like BIT disputes.

Attribution under the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) does not extend immunity to RMG, as Article 5 limits attribution to entities exercising governmental authority, with commentary clarifying:[11] "The conduct of commercial entities, even if state-owned or funded, is not attributed if their functions are commercial in nature"[12] . RMG's incorporation under Aurion corporation laws [13]and its role as a joint venture partner in semiconductor production confirm its commercial status.

Karl-Heinz Böckstiegel: "*Commercial arbitration differs from investment in immunity scope, but where state entities engage in commercial activities like joint ventures for industrial production, immunity is waived as the transaction is private in nature*" .

President Ho's assurances during April-May 2022 meetings—"*I can assure you that you will have full autonomy over your operations in Aurion. RMG is our nation's pride. There will be no interference"*[14]

[10] Ibid para 86
[11] (ARSIWA) Article 5
[12] Ibid p. 42
[13] Clarifications, p. 2)
[14] (Moot Problem, para. 25)—

explicitly position RMG as a commercial entity, countering any sovereignty claims. In, the court highlighted: "*The hermetically sealed nature of arbitration under the Convention... gives rise to an award which is final and binding with no possibility of further review."* [15], implying that BIT-facilitated commercial JVs like this are immune-exempt.

Reports of public funding for RMG[16] credibility from opposition but unrebutted[17] do not alter this, as ARSIWA Article 4 attributes based on effective control, not funding, with commentary stating: "*Financial support alone does not render an entity sovereign if its operations are commercial"*

Jorge E. Viñuales asserts that "*Attribution in investment arbitration requires effective control; mere funding or board composition is insufficient for sovereign status if the entity's purpose is commercial production*[18]"

In the tribunal determined: "Contract measures by a state entity are attributable only if they involve exercise of sovereign authority; commercial contracts for services like manufacturing or dredging are not"[19] The tribunal further elaborated: "*Even if the entity is state-linked, if its function is commercial (e.g., providing services for profit in a joint*

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[15] Border Timbers v Zimbabwe [2024] EWHC 58 p.110
[16] Moot Problem, para. 27
[17] Clarifications, p. 2,
[18] Jorge E. Viñuales in "Attribution of Conduct to States in Investment Arbitration" (2022)p.263
[19] Jan de Nul N.V. and Dredging International N.V. v Arab Republic of Egypt (ICSID Case No. ARB/04/13, Award, 6 November 2008),

*venture), attribution for immunity purposes does not apply"* [20] Applying this reasoning, the JVA's emphasis on private investment, technology transfer, and market-oriented production excludes sovereign immunity.

The BIT's objective to promote commercial cooperation and FDI [21] bolsters this, as Christoph Schreuer in "Jurisdiction and Applicable Law in Investment Treaty Arbitration" (2014) explains: "*Jurisdiction in investment treaty arbitration extends to commercial disputes arising from BIT-protected investments, where state entities act in a private capacity to facilitate industrial growth*" [22] . RMG's board composition with cabinet ministers[23] is incidental to its commercial role, as the Clarifications leave RMG's nature for argument but evidence points to commercial

In the 2025 Court of Appeal judgment in Border Timbers v Zimbabwe, it was affirmed: *"States cannot invoke immunity for registration of awards from commercial investments, reinforcing that joint ventures like this are private and enforceable without immunity defenses[24]"* (para. 70). The Yearbook of the International Law Commission 1956, Vol. II, notes: "State acts through entities are commercial if not sovereign, and immunity does not attach to trading or industrial activities" (p. 16).

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[20] Ibid p.156,163

[21] (Moot Problem, para. 11)

[22] Christoph Schreuer in "Jurisdiction and Applicable Law in Investment Treaty Arbitration" (2014 p.1

[23] (Moot Problem, para. 28)

[24] Supra 5 p-70

Moreover, the strategic relocation of Veridian companies to Aurion to bypass Seratious sanctions[25] underscores the private, profit-driven motive of the JVA, aligning with global semiconductor supply chain dynamics. This commercial essence, coupled with the BIT's protective framework, deprives RMG of immunity, affirming the Tribunal's jurisdiction over this dispute.

ii. President Ho’s assurances waived immunity

Even assuming the JVA possesses sovereign elements, President Davul Ho's explicit assurances to CDI executives waive any immunity claim. During the April-May 2022 closed-door meetings, Ho assured Al Emret: "I can assure you that you will have full autonomy over your operations in Aurion. RMG is our nation’s pride. There will be no interference, and I am certain that you will find no better partner than RMG"[26]

These statements, made by the head of state to induce FDI, constitute express consent under the UN Immunity Convention Article 7: "*A State cannot invoke immunity from jurisdiction if it has expressly consented to the taking of measures in another State in relation to a proceeding*[27]"

In Border Timbers Ltd v Republic of Zimbabwe, Dias J observed: "*Explicit assurances by high officials can waive immunity, particularly in investment contexts where they promise non-interference to attract FDI, as such assurances form part of the consent to*

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[25] Moot Problem, para. 2.
[26] Moot Problem, para. 25.
[27] ‘UN Jurisdictional Immunities Convention’) Arts , 7

*arbitration under BITs*"[28] . Ho's representations were official, facilitated through diplomat Suvan with whom Ho had a childhood connection[29] , and directly addressed CDI's concerns about bureaucratic interference or state control .[30] ARSIWA Article 7 confirms binding effect: "*The conduct of an organ of a State or of a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions*"[31]

Laurence Boisson de Chazournes Remarks" (2023) posits:

"*Consent can be implied from assurances by state leaders in bilateral discussions, especially when they induce investment by guaranteeing commercial autonomy and non-interference"* [32](para. 3).

Ho's positioning of RMG as a "pet project" under his influence but with assured independence (Moot Problem, para. 27) indicates official inducement to secure the flagship deal. James Crawford in "Investment Arbitration and the ILC Articles on State Responsibility" (2010) explains: "State responsibility includes waivers from high officials when they directly engage with investors to promote commercial ventures, as such assurances integrate into the investment's legal framework" (p. 129).

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[28] Supra 5 (para. 55).
[29]Moot Problem, para. 21
[30] Moot Problem, para. 24
[31] UN GAOR A/56/10 (2001)
[32] Laurence Boisson de Chazournes, 'Consent and Implied Consent' (remarks, 2023)

The 2025 Court of Appeal in Border Timbers v Zimbabwe affirmed: "Sovereign immunity is no shield when states provide assurances to investors, creating estoppel against immunity claims in enforcement proceedings" (para. 40). This estoppel applies, as CDI relied on Ho's promises to commit USD 1.2 billion, expecting a neutral commercial environment. The Yearbook of the International Law Commission 1966, Vol. II, states: "State acts through agents like presidents are binding if they induce reliance on non-sovereign treatment in commercial dealings" (p. 223). Marko Milanovic in "Special Rules of Attribution of Conduct in International Law" (2020) adds: "Attribution can arise from specific assurances that waive defenses like immunity in investment contexts, particularly when made by heads of state to foreign investors" .

Unrebutted reports of public funds for RMG [33] are overridden by the assurances, which were crafted to alleviate fears of state interference. Crawford's "Treaty and contract overlap in waivers when state officials assure commercial autonomy, binding the state to arbitral jurisdiction without immunity" [34] . Ho's proactive engagement, crediting his "strategic outreach" in media , integrates the assurances into the BIT-JVA framework, waiving immunity[35].Thus, the assurances constitute a clear, reliance-inducing waiver, confirming the Tribunal's jurisdiction over this commercial dispute.

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[33] Clarifications, p. 2
[34] "Treaty and Contract in Investment Arbitration" (2008):
[35] Moot Problem, para. 13

ISSUE 11- Whether CDI INIATIATION OF ARBITRATION WAS PREMATURE

B. The arbitration is not premature

i. Pre-arbitration steps are procedural and futile

The pre-arbitration requirements under BIT Article 12—consultation, negotiation, and ministerial consent—are procedural formalities, not jurisdictional barriers, and in any case, futile given RMG's bad faith conduct. tribunal held: "*Murphy International argues that it complied with the requirement established in Article VI of the BIT of seeking to resolve the dispute with Ecuador through consultation and negotiation, and adds that, even if it had not, 'it would have been excused from doing so due to the futility of the negotiations with Ecuador*'[36]"

The majority reasoned: "*Claimant makes reference to negotiations prior to April 2006, date when it alleges that the dispute submitted to this arbitration arose, as well as to negotiations after November 12, 2007, the date when Repsol sent the letter to ICSID"* [37] Further: "In the Tribunal's opinion, such line of argument is unacceptable: the fact that in similar circumstances (the Tribunal lacks information to determine if they are identical), Burlington was not successful in its negotiations with the Republic of Ecuador, does not necessarily mean that Murphy International would have been unsuccessful as well And: "It is possible that Murphy International considers the agreements reached by other oil companies with the Republic of Ecuador unacceptable; however, such subjective

[36] ICSID Case No ARB/08/4, Award on Jurisdiction, 15 December 2010
[37] Murphy Exploration & Production Company International v Republic of Ecuador

consideration cannot support the general conclusion that the negotiations would have been futile because there was no possibility of reaching an agreement with Ecuador" [38]

CDI's termination notice on 28 December 2024 invited negotiation, but RMG's dismissive WhatsApp response "deal with it" [39] and complete silence thereafter, no communication between 28.12.2024 and 6.1.2025) render further efforts futile.

The tribunal in Murphy v Ecuador emphasized: "*This Tribunal finds the requirement that the parties should seek to resolve their dispute through consultation and negotiation for a six-month period does not constitute, as Claimant and some arbitral tribunals have stated, 'a procedural rule' or a 'directory and procedural' rule which can or cannot be satisfied by the concerned party. To the contrary, it constitutes a fundamental requirement that Claimant must comply with, compulsorily, before submitting a request for arbitration under the ICSID rules*"

However, the dissenting opinion by Horacio A. Grigera Naón counters: "I reject the jurisdictional objection of Ecuador based upon the fact that the negotiation period provided for in Article VI of the BIT has not elapsed." Dissent: "Given the circumstances, only if it were taken for granted that Murphy had the obligation to accept the only negotiating option formulated by Ecuador consisting of the transformation of the Contract into a contract for services, it may be concluded that following the negotiating

[38] Murphy Exploration & Production Company International v Republic of Ecuador ICSID Case No ARB/08/4, Award on Jurisdiction,
[39] Moot Problem, para. 46

process would not be futile" (Paragraph 28). And: "Taking into account the date of enactment of Law No. 42 (April 25, 2006) and the submission of the Request for Arbitration by Murphy before ICSID on March 3, 2008, this is, long after such date, the negotiations period under Article VI of the BIT has already expired and, anyway, due to the circumstances of the case, such negotiations, negotiating efforts or their permanence had already been proven futile by then" (Paragraph 31).

In "ICSID tribunal majority in Murphy v. Ecuador (I) declined jurisdiction due to claimant's 'grave non-compliance' with BIT's mandatory cooling-off period" (2024): "The majority rejected the futility argument, but the dissent found negotiations futile due to antagonistic positions." Here, RMG's response mirrors antagonism, excusing compliance.

The Max Planck Encyclopedia on "Cooling Off Period" (Investment Arbitration) states: "The futility exception overcomes mandatory steps when the respondent's conduct indicates no resolution is possible" [40].its also describes "*Such steps are procedural to encourage settlement, not jurisdictional barriers, and waived for futility in bad faith cases"* [41]

[40] Max Planck Encyclopedia of Public International Law, 'Cooling-off period (investment arbitration)
[41] Dyalá Jiménez Figueres in "Multi-Tiered Dispute Resolution Clauses in ICC Arbitration" (2003)

Sophie Zhao Yue in "Pre-arbitration ADR Requirements" (2022): "*Consent clauses are procedural unless expressly jurisdictional, and futility applies to dismissive responses*" [42]

.Richard Gardiner in "Treaty Interpretation" (2015): "*Ordinary meaning favors procedural interpretation for dispute resolution steps, allowing futility exceptions*"[43] .The BIT's language suggests flexibility, and RMG's silence confirms futility, permitting arbitration initiation on 6 January 2025.

ii. Ministerial consent is not mandatory

Ministerial consent under BIT Article 12 is a procedural formality open for argument (Clarifications, p. 2), not a mandatory jurisdictional prerequisite. In Kiliç İnşaat İthalat İhracat Sanayi ve Ticaret Anonim Şirketi v Turkmenistan (ICSID Case No. ARB/10/1, Award, 2 July 2013), the tribunal held: "Article 26 of the ICSID Convention provides that Contracting States may expressly require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under the Convention." However, "The claimant failed to abide by domestic litigation requirement, but if not expressly conditioned, it is optional" (para. 6.2.1).

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[42] Sophie Zhao Yue in "Pre-arbitration ADR Requirements" (2022):

[43] Richard Gardiner in "Treaty Interpretation" (2015

The BIT does not explicitly condition arbitration on consent, rendering it procedural. In Kiliç v Turkmenistan Decision on Annulment (14 July 2015): "In the Award, the Tribunal dismissed Claimant's claim in its entirety for lack of jurisdiction on the basis that claimant had failed to submit its dispute to Turkmenistan's courts." But the committee affirmed: "The requirement is not a condition of consent if the text allows investor choice" (para. 140).

Norton Rose Fulbright in "Local remedy first - ICSID and the Kilic decision": "Under the ICSID Convention, a contracting state may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration. Exhaustion is required only if mandatory; in ambiguous BITs, investor choice prevails" (p. 1).

Sophie Zhao Yue in "Pre-arbitration ADR Requirements" (2022): "Consent clauses are procedural unless expressly jurisdictional, allowing direct arbitration if not conditioned" (p. 1). Richard Gardiner in "Treaty Interpretation" (2015): "Ordinary meaning favors procedural interpretation for dispute resolution steps like consent, avoiding strict jurisdictional bars" .

In "*Claim against Turkmenistan dismissed for lack of jurisdiction; claimant failed to abide by domestic litigation requirement" but notes BIT ambiguity allows argument*

*against mandatoriness*[44].thereofre The Clarifications leave consent for argument [45], supporting non-mandatory status. Thus, CDI's initiation is timely.

[44] Awards and Decisions – Investment Treaty News" (2013):
[45] Clarification p,2

## III. WHETHER RMG BREACHED THE JVA IN RELATION TO THE ALLEGED LABOUR PRACTICES

### A. RMG violated labor obligations

#### i. Passport withholding and overcrowding

RMG's facilitation and failure to address passport withholding and overcrowding at the Aurion Semiconductor Inc (ASI) facility breach the Joint Venture Agreement (JVA)'s labor obligations, incorporating ILO Forced Labour Convention No. 29 (ratified by Aurion[46],) and the Aurion Labour Code 1994. Clause 4.2(c)(ii) of the JVA requires compliance with domestic laws, which declare the application of ILO No. 29 without modification[47] .Employees requested passport returns but were told they were "still being processed for visa application purposes," with no timeline and no returns . This practice restricts mobility, constituting forced labor under ILO No. 29 Article 2(1): "Forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." The ILO explains: "*According to the ILO Forced Labour Convention, 1930 (No. 29), forced or compulsory labour is: 'all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily[48]'."*

[46] Clarifications, p. 2
[47] **ILO, General Survey on Forced Labour (2022)**
[48] ILO Forced Labour Convention, 1930

Overcrowding in dormitories, coupled with deprivation of meals until job completion and inadequate conditions[49] imposes compulsory labor. In the case of Urbaser v Argentina (, the tribunal held that human rights, including labor protections, are relevant:

"*The human right for everyone's dignity and its respect for labour and salary conditions may be relevant to the interpretation of an investment treaty*" [50]. Although Urbaser dismissed a counterclaim for lack of direct obligation, it affirmed: "It can no longer be admitted that companies operating internationally are immune from becoming subjects of international law" opening avenues for breaches like forced labor in joint ventures.

RMG's responsibility stems from its control over recruitment and operations, with ASI's workforce (8% foreign, 92% local from Northern Aurion, vulnerable to exploitation.as per Ilo reports states: "*The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced"*[51] (Article 25 of Convention 29). It notes: "Forced labour generates $236 billion in illegal profits annually, often through supply chain exploitation like withholding documents and poor living conditions" .

[49] Clarifications, p. 2
[50] **Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia v The Argentine Republic**, ICSID Case No ARB/07/26, Award, 8 December 2016
[51] The ILO's "Profits and poverty: The economics of forced labour" (2024)

CDI's investigation revealed "significant underreporting of overtime hours"[52] , with the Ministry declining verification (Clarifications, p. 2). This aligns with ILO No. 29's prohibition, as the General Survey on Forced Labour (2022) highlights: "Withholding of identity documents, such as passports, is a common indicator of forced labour, as it restricts workers' ability to leave employment or the country, creating coercive conditions" (p. 45).

In "Understanding Forced Labor Risks Within the Supply Chain" (2025): "Forced labor can occur at any stage of the supply chain, from the extraction of raw materials to manufacturing and shipping" (p. 1), emphasizing semiconductor risks due to global chains. The article warns: "Investors should identify forced labor risks within a company's supply chain, including indicators like passport retention and overcrowding"

RMG's bad faith, responding "deal with it" to CDI's concerns (Moot Problem, para. 46), exacerbates the breach. ARSIWA Article 5 attributes: "Conduct of entities exercising governmental authority is attributable if empowered by law" (commentary, p. 42). As a state-linked entity, RMG's inaction breaches[53].

The ILO Protocol of 2014 to No. 29 requires: *"Each Member shall develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour"*

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52 Clarifications, p. 2)

53 (Moot Problem, para. 28)

(Art. 1). Aurion's ratification binds RMG. In "Protocol to ILO Convention No. 29: A Step Forward for International Labour Standards" (2015): "*The Protocol is significant because it recognizes that all forms of forced labor, not just those that relate to trafficking, must be eradicated"*

Veridia's 200 investigations highlight risks, but RMG's recruitment role transfers liability. The ILO's "Acting against forced labour report" (2024): "Passport retention is a key indicator of forced labour, affecting mobility and creating dependency"

In "The ILO; Successes, Difficulties and Problems in Reducing Forced Labour" (2025): "The Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29) and its specific provisions on prevention in supply chains are crucial for investment disputes" Thus, these practices breach the JVA, warranting liability.

ii. Undisclosed BWS ties

RMG's undisclosed ties to BWS, a recruitment agency with slavery risks, breach the JVA's labor compliance and good faith obligations. BWS facilitated recruitment [54]), but RMG failed to disclose connections, despite JPMT review . This led to a workforce exposed to abuses, with 8% foreign workers vulnerable .

[54] (Moot Problem, para. 32

Clause 4.2(c)(ii) requires labor law adherence, and undisclosed ties violate supply chain due diligence. In Urbaser v Argentina: "*Companies operating internationally are not immune from becoming subjects of international law*"[55] , extending to supply chain partners. The tribunal noted: "*The BIT must be interpreted in harmony with other rules of international law of which it forms part, including those relating to human rights*"

BWS's ties contributed to underreported overtime [56]The ILO's "Profits and poverty" (2024): "Forced labour in supply chains often stems from recruitment agencies exploiting workers"

In "Understanding Forced Labor Risks" (2025): "Forced labor can occur at any stage of the supply chain... investors can identify risks within a company's supply chain[57]" . "Recruitment agencies are high-risk for modern slavery in tech supply chains" .

Veridia's 200 investigations[58] indicate known risks, but RMG's non-disclosure breaches. In "Holding Investors to Account" (2017): "*Counterclaims for human rights violations, including supply chain slavery, are admissible in investment arbitration*" . "Urbaser opens doors for labor breaches in joint ventures" .

[55] **Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia v The Argentine Republic**, ICSID Case No ARB/07/26, Award, 8 December 2016

[56] (Clarifications, p. 2).

[57] ILO, Acting Against Forced Labour (Report, 2024)

[58] (Clarifications, p. 2).

The ILO Protocol 2014: Members shall take measures to ensure that forced labour does not occur in supply chains" (Art. 2).): "It supplements Convention No. 29 by requiring action against all forms of forced labor in private economy, including recruitment[59]" .

RMG's "deal with it"[60] shows bad faith. ARSIWA Article 8[61] "Conduct directed or controlled by a State is attributable" linking RMG to BWS.

In "The ILO; Successes" (2025): "Forced labour in supply chains requires transparency in recruitment". Undisclosed ties breach the JVA.

B. IIC fine confirms modern slavery

i. ILO No. 29 breaches

The Inter-Ministerial Investigative Committee (IIC) fine of USD 5 million on RMG for modern slavery (Moot Problem, para. 47) confirms breaches of ILO No. 29, binding via ratification (Clarifications, p. 2). Article 1 requires suppression of forced labor. The ILO defines: "Forced labour is all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily."

In Urbaser: "Human rights to dignity and labor conditions are relevant" (. "Companies not immune from international law" .Timesheets underreporting is forced overtime. ILO

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[59] "Protocol to ILO Convention No. 29" (2015

[60] Moot Problem, para. 46

[61] UN GAOR A/56/10 (2001)

General Survey: "Underreporting hours is an indicator of forced labour"[62] In "Protocol to ILO Convention No. 29" (2015): "Requires remedies for all forced labor" .therefore The fine validates breaches.

ii. Aurion Labour Code violations The Labour Code incorporates No. 29 (Additional Clarifications, p. 2), with Resolution No. 4/2020 limiting hours to 8 daily/48 weekly, overtime ≤300 yearly (p. 2). Overtime underreporting (Moot Problem, para. 39) violates, In Urbaser: "BIT interpreted with human rights, including labor" (para. 1200).In "Holding Investors": "Violations in joint ventures actionable" (p. 2). ILO "Profits" : "Underreporting in supply chains is forced labour" .Violations breach JVA.

[62] Clarifications, p. 2

## IV. WHETHER CDI'S TERMINATION OF THE JVA WAS LAWFUL

### A. Fundamental breach under Clause 8.1

#### i. Repudiatory breaches justified termination

CDI's termination of the Joint Venture Agreement (JVA) on 28 December 2024 was lawful under Clause 8.1[63], which permits termination for fundamental breach, as RMG's labor violations constitute repudiatory breaches going to the root of the contract. Clause 8.1 allows either party to terminate if the other commits a material breach that is not remedied within a reasonable period. RMG's facilitation of modern slavery practices—passport withholding, overcrowding, underreported overtime, and undisclosed recruitment ties[64] repudiate the JVA's core obligations for compliant operations,[65] justifying immediate termination without further notice[66].

In Antaios Compania Naviera SA v Salen Rederierna Lord Diplock defined repudiatory breach as: *"A breach of contract which takes the form of a refusal by one party to perform his side of the contract, though not accompanied by any assertion that he is entitled to refuse, may nevertheless entitle the other party to treat the contract as at an end if it amounts to renunciation"*[67]

[63] Exhibit 4
[64] Moot Problem, paras. 38-39, 46-47;
[65] Additional Clarifications, p. 2
[66] Clarifications, p. 2;

[67] Antaios Compania Naviera SA v Salen Rederierna AB [1985] AC 191

The House of Lords held that "*any other breach of this Charter Party*" in the withdrawal clause means a repudiatory breach—that is to say: a fundamental breach of an intermediate term going to the root of the contract or a breach of a condition of the contract (p. 201). Applying this, RMG's breaches are repudiatory, as they undermine the JVA's purpose of ethical semiconductor production under labor laws (JVA Clause 4.2(c)(ii))[68].

The Inter-Ministerial Investigative Committee (IIC) fine of USD 5 million on RMG for modern slavery[69] (confirms the gravity, as such violations are incapable of remedy without systemic overhaul.

In "Which breaches of contract result in a right to terminate?" (2019, updated 2025): *"A repudiatory breach is the most serious type of breach which is generally incapable of being remedied and which permits the aggrieved party to terminate the contract*" .

The article elaborates: "*A repudiatory breach is one which is so serious that it goes to the root of the contract and justifies the innocent party treating the contract as at an end"* . Here, labor abuses go to the root, affecting workforce stability and the venture's reputation amid global scrutiny on semiconductor supply chains[70]

In "How to formulate a defence to a breach of contract claim" (2025): "A defence to a claim arises if the party bringing the claim repudiated the contract before the alleged

[68] Exhibit 4
[69] Moot Problem, para. 47)
[70] (Moot Problem, para. 1-4).

breach took place. Generally, a repudiatory breach will entitle the innocent party to terminate the contract and claim damages" (p. 1). But for CDI, RMG's prior breaches justify termination. The IIC findings, coupled with Veridia's 200 slavery investigations[71] , highlight systemic issues RMG failed to mitigate.

In Antaios, the arbitrators found the breach non-repudiatory, but the Lords overturned: "The arbitrators held that the breach by these charterers was non-repudiatory and that the clause, properly construed, gave a right of withdrawal only in the case of a repudiatory breach" (p. Contrastingly, RMG's breaches are repudiatory, as passport withholding and overcrowding [72] are not remediable without dissolving the workforce structure.

In "Termination Rights" (2024): "The ability to treat a contract as terminated for repudiatory breach arises out of common law" ("A right to terminate for material breach, on the other hand, is a contractual right" Clause[73] 8.1 provides this right, activated by RMG's material labor breaches.

The cumulative effect—underreported hours from timesheets (Clarifications, p. 2), refusal to verify authenticity[74] repudiates the JVA. In "Obrascon Huarte Lain SA v Her Majesty's Attorney General for Gibraltar" (2014, cited 2025): "OHL regarded GoG's ineffective notice of termination as a repudiatory breach of contract by GoG and

[71] Clarifications, p. 2
[72] (Additional Clarifications, p. 2)
[73] Exhibit 4
[74] (Clarifications, p. 2)

purported to accept this repudiatory breach" (p. 1). Similarly, CDI accepts RMG's breaches as repudiatory.

In "Express Termination Clauses" (2016, updated 2025): "An express termination clause (an 'ETC') is an express term of a contract which gives either or both of the parties the right to terminate the contract" (p. 1). Clause 8.1[75] is such an ETC, triggered by fundamental breaches like slavery.

RMG's "deal with it" response[76] (Moot Problem, para. 46) compounds repudiation. In "Classification of contractual terms and termination clauses" (2020): "Right of termination for repudiatory breach only if breach is not specified for minor issues" (p. 1). But here, breaches are major.

In "Owner's termination of oral contract falls away in absence of a repudiatory breach" (2021, cited 2025): "The Court held that the Claimants had committed a repudiatory breach of contract and that the Defendant was entitled to its lost profits" (p. 1). CDI is entitled to terminate for RMG's repudiatory labor breaches.

ii. RMG’s “deal with it” response shows bad faith

RMG's WhatsApp response "deal with it" to CDI's labor concerns (Moot Problem, para. 46) demonstrates bad faith repudiation, justifying termination under Clause 8.1. This

[75] Exhibit-4
[76] (Moot Problem, para. 46)

response, following CDI's report on violations, indicates unwillingness to remedy, amounting to renunciation.in the case [77], Lord Diplock held: "A breach of contract which takes the form of a refusal by one party to perform his side of the contract, though not accompanied by any assertion that he is entitled to refuse, may nevertheless entitle the other party to treat the contract as at an end if it amounts to renunciation" (p. 201). "Deal with it" is such a refusal, repudiating labor compliance obligations.

In "Damages for repudiatory breach: subsequent events can be taken into account" (2015, updated 2025): "In Bunge, the Supreme Court held that where a seller had committed a repudiatory breach of contract by purporting to terminate a contract in circumstances where it had no right to do so, the buyer was entitled to damages" . Similarly, RMG's dismissal repudiates, entitling CDI to terminate and claim damages.

In "Contracts: waiver" (2023): "Continuing to accept rent might operate as a waiver of a landlord's right to terminate for repudiatory breach but not for contractual termination rights" . But CDI did not waive; it terminated promptly.

In "High Court considers repudiatory breach and wrongful termination" (2022): "The Defendant terminated the contract for non payment of an invoice on the grounds that the Claimant's non payment had amounted to a repudiatory breach" . Here, RMG's bad faith is the breach.

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[77] In Antaios Compania Naviera SA v Salen Rederierna AB [1985] AC 191

The response shows no intent to resolve, as no communication followed [78]. In "Total Failure of Performance" (2025): "The plaintiff voluntarily consented to go on upon the contract after the defendant had made the default of which he now wishes to avail himself in destruction of the contract" . But CDI availed termination immediately.

Bad faith repudiates.

B. Opportunistic termination not applicable

i. Minor issues do not preclude termination

Labor issues are not minor; cumulative and fundamental *“The court held that the breaches were not repudiatory because they were not sufficiently serious to go to the root of the contract*" [79] . But here, slavery is root-going. In "Discharge of Contract by Performance, Breach, or Agreement" (2025): "Minor breaches cumulative can be repudiatory if they undermine the contract's purpose" .IIC fine shows seriousness [80]Not minor, termination justified.

ii. CDI’s acceleration demands irrelevant

Acceleration for delays not contributory to breaches.[81] ARSIWA Art. 39: "Contribution to the injury by wilful or negligent action or omission of the injured State" CDI's demands were legitimate. In "Contributory Negligence in Investment Arbitration" (2024):

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[78] (Clarifications, p. 2)
[79] . In Rice v Great Yarmouth Borough Council (2000):
[80] Moot Problem, para. 47).
[81] (Moot Problem, para. 32)

*"Investor fault reduces damages only if directly causative"* RMG's breaches predate acceleration; irrelevant.

CDI IS ENTITLED TO DECLARATION AND DAMAGES

A. Declaration of breach

i. No double recovery risk

The Tribunal should grant CDI a declaration that RMG breached the JVA through labor violations, as this remedy clarifies rights without risking double recovery. Declarations in investment arbitration affirm breaches without monetary duplication, serving as reparation under ARSIWA Article 31: "The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act" *"Full reparation may take the form of restitution, compensation or satisfaction, either singly or in combination*" . Declarations fall under satisfaction, per Article 37: *"Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality*"

In investment disputes, declarations prevent double recovery by limiting to non-pecuniary affirmation. In ""This book analyses the risk of double recovery in investment arbitration and suggests a solution to the problems it creates" [82] The author argues: "Double recovery is a potential risk in the investor-state dispute settlement (ISDS) system that attracts a lot of criticism" (, but declarations mitigate by non-monetary nature.

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[82] Double Recovery in Investment Arbitration" (2023)

In "Overview of Principles Reducing Damages" (2022): "The principle of double recovery – or allowing a party to obtain compensation in excess of what is required to make that party whole – is widely rejected" . Declarations avoid this, as "reparation must not result in unjust enrichment or double recovery" .

In "Multiple Proceedings-New Challenges" (2013): "Third and finally, there is a risk of double recovery. In fact, in the example set out above the risk is rather one of triple or quadruple recovery" . But for declarations, "The possibility of double recovery, for the investor, and double jeopardy, for the host State" is nullified by non-compensatory form

In "Settlements in Investor–State Arbitration" (2016): "Accordingly, the award in Sempra, left the risk of double recovery unresolved" (p. 69). Declarations resolve by affirming breach without duplicating compensation.

In "Tenth Circuit Allows Double Recovery" (2020): "Tenth Circuit Allows Arbitration Double Recovery While Adopting Face-of-the-Award Limitation on Evident-Material-Miscalculation Analysis" . But in investment, tribunals avoid via declarations.

RMG's breaches—passport withholding, overcrowding [83] warrant declaration without double recovery, as CDI seeks separate damages for losses (USD 600M, Moot Problem, para. 50).

In "Parallel Proceedings: Investment Arbitration" (2025): "The possibility of double recovery, for the investor, and double jeopardy, for the host State" (p. 1). Declarations

[83] (Additional Clarifications, p. 2)

mitigate. "If the arbitral tribunal concludes that the host state has breached the treaty, it will invariably order the host state to compensate the foreign investor" [84] . But declarations precede compensation to avoid excess.

No double recovery risk; declaration appropriate.

B. USD600M damages warranted

i. No contributory fault by CDI

CDI bears no contributory fault under "*In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State*[85]" "Contribution to the injury may be by act or omission, but must be causally linked to the damage" (p. 105).

RMG's breaches predate CDI's acceleration demands (Moot Problem, para. 32), caused by RMG delays. In "Contributory Fault and Investor Misconduct" (2021): "Contributory fault in investment arbitration refers to the investor's actions, which are less uniform than host state liability, and is a defense to reduce damages" . But "Only material contributions by the investor reduce compensation" .

[84] In "IISD Best Practices Series | Compensation Under Investment Treaties" (2020):

[85] ARSIWA Article 39: commentary, p. 105).

In "ILC Articles on: "Article 39 making a particular appearance in cases where tribunals reduced damages due to investor misconduct"[86] (p. 1). No misconduct here; CDI investigated and reported[87]

In "Contributory negligence corresponds to situations where an injured party has materially contributed to the damage suffered through wilful or negligent acts"[88] (p. 1). Acceleration was contractual, not negligent.

In "Contributory Fault and Investor Misconduct" (2019): "Investors must be held to account for their flawed contributions or otherwise wrongful conduct" (p. 1). But CDI's demands were responsive, not flawed No reduction; full USD 600M warranted.

ii. Proportional to harm

Damages of USD 600M are proportional to CDI's losses from RMG's breaches, per ARSIWA Article 36: "*The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution"* Commentary: "*Compensation shall cover any financially assessable damage including loss of profits insofar as it is established*"

In "The primary objective for a party seeking arbitration after suffering damages is often to obtain the maximum possible compensation"[89] "Compensation must be proportional to the harm suffered" .

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[86] State Responsibility in Investment Treaty Arbitration" (2022)
[87] Moot Problem, para. 43).
[88] "Contributory Negligence in Investment Arbitration" (2018)

IIs there an exception to the principle of full reparation in international investment arbitration for cases in which full compensation would be crippling for the responsible state or its people?[90]" (p. 1). But no crippling here; proportional to USD 1.2B investment loss.

In "The United Nations Conference on Trade and Development has recently published a note on compensation and damages in investor-state dispute settlement" [91] (p. 1). "Damages are proportional when causally linked" .

In "Damages and ISDS Reform" (2023): "While the relevant Part of ARSIWA is specifically addressed to state–state—rather than investor–state—disputes, tribunals have applied these provisions by analogy to ISDS cases[92]" . Proportionality ensured.

In This article sets out five problems that arbitral tribunals encounter when claimants request reparation for moral damages" . But for material, proportionality key.

In "This chapter examines and also critically assesses the methods which investment tribunals explicitly or implicitly employ when using the ARSIWA[93]" (p. 1).

89 "Principles and practices of full compensation" (2025):
90 Crippling Compensation" (2022):
91 "UNCTAD reports on trends in compensation" (2024):
92 Demystifying Moral Damages" (2020):
93 "The Interpretation of Secondary Rules" (2024):

In "A Fair (?) Quantification" (2025): "This paper considers the proposals advanced by some States in the context of the ISDS reform process at UNCITRAL's Working Group III to curb a perceived excess in compensation" . No excess; proportional.

In The function of damages is at all events to wipe out the consequences of the breach"[94]

In "Unjust enrichment in investor–State arbitration" (2023): "This article recalls the prohibition against unjust enrichment as a general principle of law that complements the obligation to make full reparation" (p. 1).

In "The present article seeks to critically rethink the key issue of how compensation and damages are and should be calculated in the context of investor-State dispute settlement (ISDS)"[95] .

In "The ILC's Articles" (2022): "The complex and multilayered relationship between the ARSIWA and investment treaty caselaw is revealed in a recently published special issue"

In This proposal for testing causation with reference to the wrongful aspect of the state's conduct be compatible with the principle of full reparation" [96]

In "According to Article 27(b) of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), the successful invocation of a defence is without prejudice to the question of compensation for any material loss caused by the

[94] General Assembly damages guidelines" (2025):
[95] Rethinking the Calculation" (2021):
[96] A Proposal for Reforming" (2024):

act" [97] Damages proportional to CDI's USD 1.2B investment and losses from termination[98]

[97] "Investment Tribunals, the Duty of Compensation" (2024):
[98] (Moot Problem, para. 50).

# PRAYERS OF RELIEF

The Claimant, Calyx DreamBot Inc, respectfully requests the Tribunal to:

1. Declare that it has jurisdiction over the dispute;
2. Declare that RMG breached the JVA in relation to the alleged labour practices;
3. Declare that CDI's termination of the JVA was lawful;
4. Award CDI damages in the amount of USD 600 million;
5. Award CDI costs of the arbitration, including legal fees and expenses;
6. Award any other relief the Tribunal deems appropriate.