ARBITRATION UNDER
THE RULES OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES

EUROGAS INC.

and

BELMONT RESOURCES INC.

(CLAIMANTS)

v.

SLOVAK REPUBLIC

(RESPONDENT)

ICSID Case No. ARB/14/14

Claimants' Reply on their Application for Provisional Measures and Answer to Respondent's Application for Provisional Measures

Dr. Hamid Gharavi
Dr. Mercédeh Azeredo da Silveira
Mr. Emmanuel Foy
Derains & Gharavi
25 rue Balzac
75008 Paris
France

Counsel for Claimants

October 16, 2014

INTRODUCTION

1. Claimants hereby submit their Reply on their Application for Provisional Measures and Answer to Respondent's Application for Provisional Measures (the "Reply"). In this submission, Claimants will only address the issues that are relevant for purposes of the present exchange of submissions. For the avoidance of doubt, any issue raised by Respondent which is not specifically and explicitly addressed in the present submission is hereby denied in full, and Claimants reserve their right to address any such issue at a more appropriate stage of the proceedings.

2. Claimants submit, by way of preliminary remark, that Respondent has chosen to raise a number of issues which are entirely unrelated to the subject-matter of the present dispute. Respondent has done so to divert the Tribunal's attention away not only from Respondent's taking of Claimants' investment – the illegality of which was confirmed by Respondent's very own Supreme Court on three separate occasions – once reserves had been confirmed by Claimants, but also, and moreover, from the subject-matter of Claimants' Application for Provisional Measures, namely the retaliatory measures taken against Claimants in blatant disregard of the most basic principles of procedural fairness and due process.

3. More specifically, Claimants make the following preliminary remarks.

4. First, contrary to Respondent's assertion that "*Claimants' Application is now moot*,"[1] today, the provisional measures requested by Claimants are more necessary and urgent than ever. The resolution of September 4, 2014, ordering the return of property and documents seized on July 2, 2014, and the resolution of September 5, 2014, ordering the suspension of the criminal proceedings launched on June 23, 2014, were issued as a mere strategic move to allow Respondent to play the clock and argue, in its submission of September 10, 2014, that Claimants should withdraw their Application for Provisional Measures while the Republic of Slovakia made copies of Claimant's file, including privileged documents, which it is reviewing and intends to use in the present arbitration proceedings.

5. By way of reminder, two days before the filing of Claimants' Request for Arbitration, the date of which had been communicated to Respondent in the course of negotiations, criminal

[1] Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 4.

proceedings were launched in the Slovak Republic,[2] leading to the seizure and confiscation of all the property and records, including privileged and confidential documents, of Rozmin sro ("Rozmin"), Claimants' investment vehicle in the Slovak Republic. No proper inventory of the documents and items seized was prepared or handed to Claimants.

6. By Respondent's own admission, these criminal proceedings were launched against Claimants and Rozmin for having initiated arbitration proceedings against the Slovak Republic.[3] In other words, this is a textbook case of an abuse of power by a sovereign State, through the taking of retaliatory measures against foreign investors, in direct reaction to the exercise, by the latter, of their legitimate right to initiate international arbitration proceedings. This abuse of powers is further aggravated by the fact that at the time, Respondent was advised by counsel, namely Squire Patton Boggs, which was working in the background and appeared on the record only after the seizure of all of Rozmin's property and records.

7. While the seized property and documents were eventually returned on October 1, 2014, that is, almost four weeks after the issuance of the resolution ordering their release, Respondent failed to undertake that all property and documents seized had been returned. The minutes prepared on October 1, when these property and documents were being released, indicate, however, that certain pages of some of the seized documents were missing.

8. Respondent has, moreover, made no secret of the fact that it retains a full set of copies of the seized documents and material,[4] in blatant violation of Claimants' right to the protection of privileged and confidential information and of the most basic procedural rules and principles, including the principles of equality of arms, fairness, and due process.

9. The information gathered through illegal and unwarranted criminal proceedings was clearly used for purposes of Respondent's submission of September 10, 2014. Today, Respondent dares to claim that an order preventing the Slovak Republic from using, in the arbitration

---

2 The Request for Arbitration was filed on June 25, 2014. Two days before, on June 23, 2014, JUDr. Špirko Vasil, Prosecutor from the Office of the Special Prosecution in Bratislava, Slovak Republic, launched criminal proceedings by issuing an "Order for Preservation and Handing over of Computer Data" (**Exhibit C-50**). This Order was followed by an "Order for a House Search" issued on June 25, 2014 (**Exhibit C-49**).

3 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 49.

4 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 59.

proceedings, any material seized would constitute "*an impermissible intervention with the Slovak Republic's sovereign rights*,"[5] as if sovereign rights could possibly justify – especially considering the farcical reasons advanced for what is in fact a retaliatory and unfounded seizure – such a blatant violation of the integrity of the proceedings and of the most fundamental principles of procedure.

10. In other words, it is not only that the Slovak Republic is refusing to provide the requested assurance that it will refrain from using, in the arbitration proceedings, any material or documents seized. Worse even, Respondent is clearly warning Claimants that it very much intends to continue relying on the information obtained through these illegal and self-serving criminal proceedings.

11. As far as these criminal proceedings are concerned, while Respondent ordered their suspension, it confirmed that they had not been permanently withdrawn, and refrained from providing any assurance that no other measures would be taken during the arbitration proceedings that could further jeopardize the integrity of these proceedings or aggravate the dispute between the Parties.

12. In sum, the provisional measures requested by Claimants, far from being moot, are even more necessary and urgent today than they were when Claimants' Application was first filed on July 8, 2014. Any delay in the issuance of the requested provisional measures will cause Claimants further harm that the Tribunal will not be able to compensate through an award of damages. Claimants therefore maintain their Application for Provisional Measures in full.

13. Second, Respondent's conduct and arguments set out in its own request for provisional measures have been persistently misleading, contradictory, and devoid of any good faith.

14. By way of reminder, a first Notice of Dispute was sent to the Slovak Republic on October 31, 2011.[6] The Slovak Republic replied, on May 2, 2012, that the dispute was not yet ripe because local proceedings were still ongoing, and that it would be premature to engage in pre-arbitration settlement negotiations.[7] Yet, the Slovak Republic shamelessly claims, in its submission of September 10, 2014 on provisional measures, that the dispute arose more than three years before the entry into force of the 2010 Agreement between Canada and the

---

5 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 117.

6 **Exhibit C-39**, Letter from EuroGas Inc. to the Government of the Slovak Republic, dated October 31, 2011.

7 **Exhibit C-40**, Letter from the Slovak Republic, dated May 2, 2012.

Slovak Republic for the Promotion and Protection of Investments (the "2010 Canada-Slovak Republic BIT"), *i.e.* before March 14, 2009, and that this Tribunal therefore lacks jurisdiction *ratione temporis* over Belmont Resources Inc. ("Belmont").

15. The Slovak Republic cannot have it both ways. It cannot, today, argue that the dispute arose before March 14, 2009 when, on May 2, 2012, it claimed that the dispute was not yet ripe and, moreover, requested that the initiation of the arbitration proceedings be delayed. Respondent's utmost bad faith is patent and most telling of its strategy, particular when assessed together with its seizure of Rozmin's property and records and its other objections to the Tribunal jurisdiction, set out below.

16. Respondent having failed to proceed with the reinstatement of Claimants' mining rights as per the Slovak Supreme Court's rulings, Claimants eventually sent the Slovak Republic a new Notice of Dispute on December 23, 2014.[8] Although the dispute and underlying facts described therein were exactly the same as the ones outlined by EuroGas Inc. ("EuroGas") in its first Notice of Dispute, the Slovak Republic requested that the Parties observe the six-month period of negotiation and consultation contemplated under the 2010 Canada-Slovak Republic BIT. Claimants expressed concerns that this was yet another attempt by the Slovak Republic to delay the initiation of proceedings, but ultimately were led to believe that an amicable settlement of the dispute could be contemplated. Respondent even went so far as to request that Claimants prepare a preliminary quantification of their damages. Claimants reluctantly complied with the request and agreed to meet with representatives of the Slovak Republic on April 16, 2014. Respondent, however, never reverted with a serious settlement proposal, multiplying instead meaningless requests for clarifications. It is now obvious that the Slovak Republic, which was represented at the time by counsel, namely Squire Patton Boggs, was purposefully delaying the filing of the Request for Arbitration while preparing the seizure of Claimants' records, which would give it an unfair advantage, and while gathering information which it hoped would discredit EuroGas and Belmont in the eyes of the Tribunal.

17. Third, Respondent's objections to jurisdiction are baseless, in direct contradiction with the stance adopted by the Slovak Republic in prior exchanges and, in any event, premature.

---

8 **Exhibit C-42**, Letter from EuroGas Inc. and Belmont Resources Inc. to the Government of the Slovak Republic, dated December 23, 2013.

18. In particular, EuroGas did not make *"false assertions concerning the identity of EuroGas*."[9] It is Respondent that is misinformed. As will be demonstrated below, EuroGas is, under Utah law and for all intents and purpose in the present proceedings, the entity described in Claimants' Request for Arbitration, dated June 25, 2014.

19. As for Respondent's claim that it has validly denied EuroGas the benefit of the 1991 Treaty between the United States of America and the Czech and Slovak Federal Republic Concerning the Reciprocal Encouragement and Protection of Investment (the "US-Slovak Republic BIT"), it cannot be reasonably entertained. The Slovak Republic purported to deny EuroGas the benefits of the US-Slovak Republic BIT by letter dated December 21, 2012. This was more than a decade after EuroGas made its initial investment on the legitimate assumption that it would benefit from the protections provided by the US-Slovak Republic BIT and, more importantly, well after Respondent received a Notice of Dispute under this BIT. In other words, Respondent is claiming that after substantial investments were made on its territory, it is entitled to take away these investments, and then, once a Notice of Dispute has been served, to dodge liability under the Treaty pursuant to which the said Notice was served, by exercising for the very first time its option to deny the investor the benefits of this Treaty. This defies common sense and the most basic rules of justice and fairness. This conduct is, however, again telling of Respondent's lack of good faith and of the fact that it has no legitimate defence with respect to the merits of the case.

20. Lastly, Respondent goes through great lengths to suggest that Claimants have "*a history of engaging in fraud and reneging on payment obligations*."[10] The allegations are made on the basis of a Texas Court Judgment obtained a decade ago, by a party that is a stranger to the present proceedings, in relation to facts which, as described by Respondent, date back to 1995.[11] The Tribunal in the instant proceedings has no direct knowledge of the facts and circumstances underlying this Texas Court Judgment, nor should it have any interest in acquiring such knowledge. Not only are the facts and circumstances of the Texas Court Judgment entirely irrelevant to the subject-matter of the present dispute, but any reprehensible behavior of Claimants in the instant proceedings remains to be proven.

---

9 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 70

10 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 69.

11 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 19.

Therefore, any allegations or insinuations made by Respondent on the basis of the Texas Court Judgment should be disregarded outright by the Tribunal. The issues at stake in the present proceedings are the wrongful acts perpetrated by Respondent against Rozmin, not the facts underlying a ten-year-old Texas Court Judgment.

21. The same goes for the suggestions made on the basis of the "allegations" raised by Tombstone Exploration Corporation in its ongoing dispute with EuroGas. Not only is that dispute entirely unrelated to the present proceedings, but as pointed out by Respondent itself, the assertions made by Tombstone Exploration Corporation are simply "*a number of allegations*,"[12] and they are likely to remain just that. Indeed, EuroGas will articulate a defence and raise counterclaims, all of which will, in due course, be heard and decided by the competent court. The present Arbitral Tribunal should not, however, lend any weight to the suggestions made by Respondent.

22. To sum up, aware of the bulletproof case of Claimants on the merits of the case, and of the unacceptable seizure of documents orchestrated by the Slovak Republic, Respondent is attempting to call into question the Tribunal's jurisdiction and to shed a negative light over Claimants. Both attempts are, as explained, premature, inappropriate, baseless, hence to no avail to Respondent's case.

23. These preliminary remarks being made, this Reply is divided into four parts: the first addresses Respondent's opposition to Claimants' application for provisional measures (**I**); the second deals with Respondent's objections to the Tribunal's *prima facie* jurisdiction (**II**); the third puts forth Claimants' response to Respondent's application for provisional measures (**III**); and the fourth contains Claimants' prayers for relief (**IV**).

12 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 37.

I. CLAIMANTS ARE ENTITLED TO THE REQUESTED PROVISIONAL MEASURES

24. By way of background, on October 31, 2011, EuroGas notified the Slovak Republic of the existence of an investment dispute under the US-Slovak Republic BIT, expressed its consent to submit the dispute to international arbitration, and reserved its right to initiate arbitral proceedings under Article VI of the US-Slovak Republic BIT.

25. By letter dated May 2, 2012, Mr. Kažimír, then Deputy Prime Minister and Minister of Finance of the Slovak Republic, stated that the dispute could not be settled amicably as long as an administrative procedure before Slovak mining offices was pending. Thereafter, by letter dated December 21, 2012, Mr. Kažimír informed EuroGas for the very first time that the Slovak Republic was attempting to exercise the right to deny this company the benefits of the US-Slovak Republic BIT, including the right to arbitration. The Republic of Slovakia failed, however, to discharge its burden of proof that the conditions of Article I(2) of the US-Slovak Republic BIT – on which the Slovak Republic was attempting to rely – were met.

26. By letter dated December 23, 2014, Belmont, in turn, expressed its agreement to submit the dispute to arbitration under Article X of the 2010 Canada-Slovak Republic BIT. According to the Slovak Republic, this further Notice triggered a new six-month cooling off period, which the Slovak Republic purportedly intended to use to amicably settle the dispute. Claimants took these representations seriously considering, first, that the Slovak Supreme Court had declared the taking of Rozmin's rights illegal on several occasions and, second, the Slovak Republic's request that Claimants prepare a quantification of their claims as a basis for the Parties' negotiations.

27. Claimants therefore agreed in good faith to continue their negotiation efforts and afforded the Slovak Republic an ultimate opportunity to discuss with EuroGas and Belmont the terms of a fair and adequate settlement agreement. Upon Respondent's request, Claimants even prepared and presented to Respondent a preliminary quantification of their damages claim.

28. A settlement meeting took place, in the course of which representatives of the Slovak Republic promised to make a settlement offer. Although Respondent was, already at the time, advised by counsel which is today on the record, the latter did not appear at this settlement meeting.

29. The attempt at an amicable settlement eventually proved futile, as representatives of the Slovak Republic never even commented on Claimant's preliminary assessment of the losses sustained as a result of the Slovak Republic's breaches of its international obligations, let alone provided any settlement offer.

30. Rather, the Slovak Republic used this time period to fish for information that it hoped would discredit Claimants in the present proceedings, and to put in place the retaliatory actions that were undertaken right at the time when Claimants filed their Request for Arbitration on June 25, 2014.

31. Indeed, on June 23, 2014, criminal proceedings were launched against Claimants and their investment in Slovakia, namely the company Rozmin whose mining rights were illegally revoked in 2005. The house of Ms. Czmoriková, Rozmin's accountant, where all of Rozmin's property and records were kept, was raided by no less than eight members of the police force, in blatant disregard of the most basic rules under international law. All of Rozmin's property and records, including privileged and confidential documents, were seized, confiscated, and copied by Respondent.

32. To preserve their rights in the arbitration proceedings, Claimants had no alternative but to file an Application for Provisional Measures on July 8, 2014. The Parties agree that such measures may be granted under Article 47 of the ICSID Convention and Rule 39 of the ICSID Arbitration Rules if such measures are both necessary and urgent.[13] Claimants have demonstrated in the Full Briefing on their Application for Provisional Measures, dated August 11, 2014 – to which they respectfully refer the Tribunal – that the sought measures meet these requirements.

33. In its Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, however, Respondent argues that Claimants' Application is now moot,[14] considering the following:

---

13 Full Briefing on Claimants' Application for Provisional Measures Dated July 8, 2014, dated August 11, 2014, ¶ 34; Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 95.

14 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶¶ 4, 59, and 60.

- a Resolution, dated September 5, 2014, of the Office of the Special Prosecution part of the General Prosecution of the Slovak Republic, which provided for the suspension of the criminal proceedings launched on June 23, 2014;[15]

- a Resolution, dated September 4, 2014, of the National Criminal Agency at the Ministry of Interior of the Slovak Republic, National Police Headquarters, which provided for the return of property and documents seized on July 2, 2014.[16]

34. As explained below, none of Claimants' requests for provisional measures is moot. Furthermore, Respondent's objections to Claimants' requests are ill-founded and Respondent's reading of the case-law on which it relies is not just misleading, it is plainly inaccurate. As proven below, Claimants' application for provisional measure therefore stands and should be granted.

A. CLAIMANTS' REQUESTS ARE NOT MOOT

35. First, while Respondent ordered the suspension of the criminal proceedings launched on June 23, 2014, it also stressed that these proceedings had not been withdrawn.[17]

36. Second, Respondent provided no assurance that it would refrain from taking measures during the arbitration proceedings that could further jeopardize the integrity of these proceedings or aggravate the dispute between the Parties, in particular, further measures of intimidation of Claimants' potential witnesses. Claimants' requests that Respondent maintain the *status quo ante* and refrain from taking any further measures that could jeopardize the integrity of the arbitration proceedings or aggravate the dispute therefore stand.

37. Third, with respect to the return of seized property and documents, it should be on the record that the Resolution of September 4, 2014 was received by Ms. Czmoriková only on September 11, 2014. Upon receipt of this Resolution, Ms. Czmoriková contacted the authorities by telephone and was informed that the material and documents seized could not immediately be released. On September 12, 16, and 19, 2014, Wolf Theiss Rechtsanwälte GmbH & Co KG, the law firm that held a power of attorney to act on behalf of Ms.

15 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014.

16 **Exhibit R-1**, Resolution Returning All Seized Documents, dated September 4, 2014.

17 Respondent indeed acknowledged that copies of the seized documents had been made "*to ensure that the suspension of the criminal proceedings is effective*" (Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 109).

Czmoriková,[18] therefore requested in writing the return of all seized material and documents.[19] All three messages remained unanswered.

38. Ms. Czmoriková was eventually authorized to collect the seized documents and material only on October 1, 2014. At 9:40 am on that date, she and her lawyers, Messrs. Kollar and Jurga, therefore presented themselves at the District Police Directorate in Roznava.[20]

39. Until 2:40 pm,[21] Ms. Czmoriková and her lawyers carefully inspected all documents listed in the Minutes of the Release of Seized Property issued on the same day, to ensure, as much as possible, that the returned documents were not incomplete.[22] These Minutes recorded several observations made by Ms. Czmoriková and her lawyers with respect to missing pages.[23] To each one of these observations, "[t]*he police investigator observed that this might be due to an error in numbering*."[24]

40. As Claimants noted in the Full Briefing on their Application for Provisional Measures, given that no detailed inventory of the seized documents was prepared by the Slovak Republic, Claimants are unable to determine whether certain pages or documents are indeed missing or if there is, as suggested by the police investigator, "*an error in numbering.*" Claimants therefore maintain their request that the Tribunal order Respondent to undertake, in writing, that the documents and property returned on October 1, 2014 constitute the full set of documents and materials that were seized. In other words, this request is not moot.

---

18 **Exhibit C-53**, Power of Attorney from Wolf Theiss Rechtsanwälte GmbH & Co KG on behalf of Ms. Jana Czmoriková, dated September 12, 2014.

19 **Exhibit C-54**, Fax message sent on behalf of Ms. Jana Czmoriková to the Central Branch of the National Financial Police Unit, dated September 12, 2014, and fax slips, dated September 12, 16, and 19, 2014.

20 **Exhibit C-55**, Minutes of the Return of Items, dated October 1, 2014, pp. 1, 7.

21 **Exhibit C-55**, Minutes of the Return of Items, dated October 1, 2014, p. 7.

22 **Exhibit C-55**, Minutes of the Return of Items, dated October 1, 2014, p. 4.

23 Among other things, Ms. Czmoriková pointed out that sheets numbered 192 and 193 were missing in the "*Accounts statements 07-12/2000*" listed under item 5 of the Minutes of the Return of Items, as well as sheet numbered 366 of the "*Account statements for 2000*" listed under item 43 (**Exhibit C-55**, Minutes of the Return of Items, dated October 1, 2014, p. 4). Ms. Czmoriková further observed that while the Minutes of the Resolution of September 4, 2014 indicated that 375 sheets had been seized under item 78 ("*Accounting evidence 1998*"), only 373 were returned (**Exhibit C-55**, Minutes of the Return of Items, dated October 1, 2014, p. 4). Mr. Jurga, in turn, noted that sheet numbered 149 of the documents listed under item 53, namely "*Treasury 1998*," was missing (**Exhibit C-55**, Minutes of the Return of Items, dated October 1, 2014, p. 4). Finally, Mr. Kollar observed that sheets numbered 221, 264, and 344 of the documents entitled "*Payroll accounting 1998, 1999, 2000*," listed under item 13, were missing (**Exhibit C-55**, Minutes of the Return of Items, dated October 1, 2014, p. 6).

24 **Exhibit C-55**, Minutes of the Return of Items, dated October 1, 2014, p. 4; see also p. 6.

41. Finally, as per Respondent's own admission, "[c]*opies have been retained*" of all the documents seized.[25] Furthermore, Respondent has asked the Tribunal to reject Claimant's request that Respondent be ordered to refrain from using, in the arbitration proceedings, any material or documents seized. Claimants therefore request that the Tribunal order Respondent to return to Claimants all copies made of the seized material and documents and maintain their request that Respondent undertake not to use, in the arbitration proceedings, any material or documents seized or information gathered through the July 2, 2014 house search and upon examination of the material and documents seized. Again, Claimants' request is not moot.

B. RESPONDENT OUGHT TO WITHDRAW PERMANENTLY THE CRIMINAL PROCEEDINGS LAUNCHED ON JUNE 23, 2014

1. The Tribunal has the authority to recommend measures affecting domestic criminal proceedings

42. Respondent argues that the Tribunal does not have the power to issue an order for provisional measures *that would interfere with the Slovak Republic's sovereign right and responsibility to conduct criminal proceedings*."[26]

43. Respondent thus seems to be of the opinion that a State's sovereign right and responsibility to conduct criminal proceedings not just override, but in fact free that State from, its international obligations towards foreign investors. Furthermore, Respondent's position is contradictory as Respondent itself acknowledges that in past instances, the authority of ICSID tribunals to issue provisional measures impacting criminal proceedings has been recognized and that such measures have indeed been ordered.[27]

44. As noted by Claimants in the Full Briefing on their Application for Provisional Measures dated August 11, 2014, the tribunal in *Abaclat v. Argentina* has confirmed that an "*Arbitral Tribunal can in principle not prohibit a Party from conducting criminal court proceedings*

---

25 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 59.

26 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 79.

27 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 84.

before competent state authorities."[28] A series of arbitral tribunals have, nonetheless, held that a State's prosecutorial powers must be exercised in good faith and with due respect for the claimant's rights.[29] Furthermore, as Claimants explained in their submission of August 11, 2014[30] and Respondent also acknowledged in its submission of September 10, 2014,[31] exceptional circumstances may lead a tribunal to depart from the general rule according to which States are entitled to enforce their criminal laws at the national level.

45. Several ICSID tribunals, notably the tribunals in *City Oriente v. Ecuador*,[32] *Quiborax v. Bolivia*,[33] and *Lao Holdings v. Lao*,[34] have accordingly ordered a stay or deferral of criminal investigations in appropriate circumstances. In the case at hand, the withdrawal of the criminal proceedings launched in June 2014 is warranted, as the circumstances here are far worse than in those cases, given the timing of, and the farcical reasons put forth by Respondent to justify, these proceedings, as well as the direct link between them and the arbitration proceedings.

46. To dispute the Tribunal's authority to issue a recommendation that would interfere with domestic criminal proceedings, Respondent quotes short excerpts of decisions on provisional measures rendered in the *Lao Holdings v. Lao* and *Quiborax v. Bolivia* cases. Both of these cases were discussed by Claimants at paragraphs 56 to 62 of their submission of August 11, 2014, to which they respectfully refer the Tribunal. Suffice it to point out that Respondent's partial reading is misleading, as these decisions in fact fully support Claimants' case, given that in both of them, the tribunal *did* order the suspension of domestic proceedings.

---

28 **Exhibit CL-26**, *Abaclat and Others v. Argentine Republic*, ICSID Case No. ARB/07/5 (formerly *Giovanna a Beccara and Others v. The Argentine Republic*), Procedural Order No. 13, dated September 27, 2012, ¶¶ 39 and 45 (available at http://www.italaw.com/sites/default/files/case-documents/italaw1304_0.pdf).

29 **Exhibit CL-15**, *Lao Holdings N.V. v. Lao People's Democratic republic*, ICSID Case No. ARB(AF)/12/6, Ruling on the Motion to Amend the Provisional Measures Order, dated May 30, 2014, ¶ 25 (available at http://www.italaw.com/sites/default/files/case-documents/italaw3208.pdf; hereafter "*Lao Holdings v. Lao*, Ruling on the Motion to Amend the Provisional Measures Order"); **Exhibit CL-8**, *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplun v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures, February 26, 2010, ¶ 123 (available at http://www.italaw.com/sites/default/files/case-documents/ita0698.pdf; hereafter "*Quiborax v. Bolivia*").

30 Full Briefing on Claimants' Application for Provisional Measures Dated July 8, 2014, dated August 11, 2014, ¶¶ 55-62 and references cited therein.

31 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 84.

32 **Exhibit CL-3**, *City Oriente Limited v. La República del Ecuador y Empresa Estatal de Petroleos del Ecuador (Petroecuador)*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, dated November 19, 2007 (available at http://italaw.com/documents/CityOrient-ProvisionalMeasures-EN.pdf).

33 **Exhibit CL-8**, *Quiborax v. Bolivia*, p. 46.

34 **Exhibit CL-15**, *Lao Holdings v. Lao*, Ruling on the Motion to Amend the Provisional Measures Order, ¶ 1.

47. Respondent also relies, in its submission of September 10, 2014, on Procedural Order No. 2 in the *SGS v. Pakistan* case. This Order however again supports Claimants' position, not Respondent's.

48. The SGS tribunal was to rule, *inter alia*, on the following requests made by the claimant:

> *that the Respondent* **immediately** *withdraw from and cause to be discontinued all proceedings in the courts of Pakistan relating in any way to this arbitration, including Pakistan's application for a stay of this arbitration and its application to have SGS held in contempt of court, and that the Respondent refrain from commencing or participating in any other such proceeding in the future;*[35]

49. Respondent asserts that the tribunal rejected the claimant's application for a recommendation that the State "*'immediately withdraw from and cause to be discontinued all proceedings in the courts of Pakistan relating in any way to this arbitration' (including criminal proceedings)*,"[36] on the ground that "*the tribunal concluded that it did not have the power to enjoin a State in respect of domestic proceedings.*"[37] This statement is both misleading and inaccurate.

50. In the *SGS* case, a dispute had arisen between the parties from a Pre-Shipment Inspection Agreement (the "PSI Agreement"), which contained a dispute resolution clause providing for arbitration in Pakistan. Pakistan had terminated the PSI Agreement and initiated arbitration proceedings under this dispute resolution clause. Thereafter, SGS had filed a request for arbitration with ICSID, alleging that Pakistan had expropriated its investment and violated a number of standards under the BIT between Switzerland and Pakistan. SGS had also applied to the Pakistani court for an injunction against the PSI arbitration initiated by the Respondent in Pakistan, arguing that ICSID had exclusive jurisdiction over the claim. For its part, Pakistan had filed a petition with the Pakistani courts to enjoin SGS from proceeding with the ICSID proceedings and had sought that SGS be held in contempt of

---

35 **Exhibit RA-8**, *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13, Procedural Order No. 2, dated October 16, 2002, p. 293 (available at http://www.italaw.com/sites/default/files/case-documents/ita0778.pdf; hereafter "*SGS v. Pakistan*, Procedural Order No. 2").

36 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 80.

37 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 81.

court for pursuing the ICSID arbitration. SGS had then requested provisional measures from the ICSID Tribunal for the discontinuance of all proceedings relating to the ICSID arbitration in the courts of Pakistan and a stay of the national arbitration. The Supreme Court of Pakistan had eventually granted Pakistan's request to proceed with the Pakistani arbitration and restrained SGS from pursuing or participating in the ICSID arbitration.[38]

51. The facts in *SGS v. Pakistan* are thus entirely different from those of the present case. By the time the tribunal issued its order on provisional measures, the Supreme Court of Pakistan had already handed down its decision and, as explained by the tribunal in its order on provisional measures, "*under the law of Pakistan, there* [was] *no further step to be taken in the Supreme Court proceeding.* […] *There appear*[ed] *no basis for the Respondent or any other party to apply to the Court to re-visit the judgment. The Tribunal accept*[ed] *that this proceeding in the Supreme Court of Pakistan* [was] *one from which Pakistan* [could not] *withdraw or discontinue. Nor* [could] *Pakistan 'remove' or set it aside. It* [was] *a final and completed judgment of that Court.*"[39] This is why the tribunal denied the claimant's request that "*that the Respondent immediately withdraw from and cause to be discontinued all proceedings in the courts of Pakistan relating in any way to this arbitration.*"

52. With respect to Claimant's application that the Respondent withdraw from and cause to discontinue its application to have SGS held in contempt of court, the tribunal did order Pakistan to refrain from acting on its earlier complaint or file a new complaint, and did ask Pakistan to ensure that no action would be taken in respect of contempt proceedings and that any other contempt proceedings initiated by any party would not be acted upon.[40] In other words, as far as "criminal proceedings" – in the words of Respondent[41] – were concerned, the Tribunal *did* grant the claimant's request.

53. With regard to SGS's request that Pakistan refrain from commencing or participating in "*all proceedings in the courts of Pakistan relating in any way to this arbitration*" in the future,

---

38 **Exhibit CL-28**, Supreme Court of Pakistan, Judgment, dated July 3, 2002. See also **Exhibit RA-8**, *SGS v. Pakistan*, Procedural Order No. 2, dated October 16, 2002, and *SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/01/13, Decision on Jurisdiction, dated August 6. 2003, ¶ 39 (available at http://www.italaw.com/sites/default/files/case-documents/ita0779.pdf).

39 **Exhibit RA-8**, *SGS v. Pakistan*, Procedural Order No. 2, p. 299.

40 **Exhibit RA-8**, *SGS v. Pakistan*, Procedural Order No. 2, pp. 300-301 and 305.

41 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 80.

the Tribunal found the request to be too broad,[42] and it is for that reason and for that reason only that it held that it could not "*enjoin a State from conducting the normal process of criminal, administrative and civil justice within its own territory*."[43] The following must, however, be noted.

54. First, the tribunal's language, in *SGS v. Pakistan*, that it could not "*enjoin a State from conducting the normal process of criminal, administrative and civil justice within its own territory*," was criticized in the decision on provisional measures in *Caratube v. Kazakhstan*, cited by Respondent itself. In this case, while the tribunal stated that "*criminal investigations and measures taken by a state in that context* […] *are a most obvious and undisputed part of the sovereign right of a state to implement and enforce its national law on its territory*,"[44] the tribunal also stressed the following:

> *On the other hand, the language authorizing ICSID Tribunals in Article 47 of the Convention and Rule 39 is very broad and does not give any indication that any specific state action must be excluded from the scope of possible provisional measures. Therefore, this Tribunal does not agree with the strict approach which seems to have been taken by the Tribunal in the SGS decision (page 301) quoted by Respondent. Rather this broad language can be interpreted to the effect that, in principle, criminal investigations may not be totally excluded from the scope of provisional measures in ICSID proceedings. The present Tribunal, in this regard, agrees with the approach taken by the ICSID Tribunal in the Tokios case in its Orders 1 and 3 to which both Parties in the present case have referred.*[45]

55. The tribunal in *Caratube v. Kazakhstan* further contended that while "*the basic procedural duties of the Parties to an international arbitration procedure and particularly an ICSID procedure* [are] *without prejudice to the sovereign right of states to apply and enforce their national law inside their territories*[,] *the undisputed obligation of a state should also be*

---

42 **Exhibit RA-8**, *SGS v. Pakistan*, Procedural Order No. 2, p. 301.

43 **Exhibit RA-8**, *SGS v. Pakistan*, Procedural Order No. 2, p. 301.

44 **Exhibit RA-9**, *Caratube International Oil Company LLP v. The Republic of Kazakhstan*, ICSID Case No. ARB/08/12, Decision Regarding Claimant's Application for Provisional Measures, dated July 31, 2009, ¶¶ 134-135 (available at http://www.italaw.com/sites/default/files/case-documents/ita0129.pdf; hereafter "*Caratube v. Kazakhstan*").

45 **Exhibit RA-9**, *Caratube v. Kazakhstan*, ¶ 136; emphasis added.

recalled that under international law no state may rely on its national law as a justification to breach its duties under public international law and that a state is responsible under international law for the acts of all of its organs and institutions. The procedural duties stemming from the ICSID Convention and the reference thereto in the relevant BIT are such – procedural – obligations as part of international law."[46]

56. Second and in any event, in the present instance, Claimants are requesting a significantly narrower order than the one sought by the claimant in *SGS v. Pakistan*, as Claimants are hereby seeking an order that the Slovak Republic withdraw permanently the criminal proceedings initiated on June 23, 2014 in the Slovak Republic.

57. Respondent's reliance on Procedural Order No. 2 in *SGS v. Pakistan* is therefore misplaced and to no avail: it does not support Respondent's contention that the Tribunal does not have the power to order measures that would interfere with criminal proceedings in the Slovak Republic.

2. Respondent ought to take all appropriate measures to withdraw permanently the criminal proceedings launched in June 2014

58. As noted above, the criminal proceedings launched in the Slovak Republic in June 2013 have now been suspended, though not permanently withdrawn.

59. In its submission of September 10, 2014, Respondent contends that "[i]*n the instant case, there is no basis to interfere with the criminal proceedings initiated by the Slovak authorities because the proceedings were initiated following a complaint by a private party, by an independent entity, in good faith, and with due respect of the rights of all parties involved*."[47] Respondent further makes a series of allegations, detailed below, which are entirely irrelevant to the Tribunal's determination on Claimants' Application for Provisional Measures. They do not in any way alter the fact that criminal proceedings were launched by the State as a measure of retaliation after Claimants announced that they would file their Request for Arbitration on June 25, 2014, nor that these proceedings were intended to

46 **Exhibit RA-9**, *Caratube v. Kazakhstan*, ¶ 118.

47 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 87. See also ¶ 8.

deprive Claimants of the documents and material necessary to substantiate their claims in the arbitration and to allow Respondent to gather information and manufacture defences.

60. First, Counsel for Respondent felt compelled to clarify that it had not been consulted prior to the initiation of criminal proceedings in the Slovak Republic,[48] despite the fact that it had already been providing *ad hoc* services to the Slovak Republic for over nine months.

61. At best, the fact that Counsel for Respondent was not consulted by Respondent before criminal proceedings were launched in the Slovak Republic is perfectly irrelevant: Claimants' Application for Provisional Measures was prompted by actions undertaken by Respondent, and these measures are necessary irrespective of the advice that Counsel may have given to the latter. What is at issue is not whether Respondent was well-advised, but the fact that the criminal proceedings launched by Respondent were of a retaliatory nature and were intended to give Respondent an unfair advantage in the arbitration proceedings. At worst, the non-involvement of Counsel for Respondent is an aggravating factor: aware of the glaring illegality of its actions, in breach of Claimants' most basic rights including the right to equality of arms in the arbitration proceedings and the right to the protection of privileged and confidential information, Respondent resolved not to consult its attorneys, for fear of being advised to refrain from taking retaliatory measures.

62. Second, Respondent alleges that the criminal proceedings were launched upon receipt, on May 26, of a complaint dated May 5, 2014 from a private individual, namely Mr. Peter Čorej.[49] Mr. Peter Čorej is, however, not just any private individual. He is the CEO and a shareholder of Ríma Muráň sro ("Ríma Muráň"), one of Rozmin's three initial shareholders, through which EuroGas first acquired an indirect shareholding interest in 1998,[50] and which then transferred, in 2002, its 43% shareholding interest in Rozmin to EuroGas GmbH.[51] Mr.

---

48 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 89.

49 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶¶ 49 and 88.

50 **Exhibit C-6**, Contract on the Transfer of a Business Share in the Commercial Company Ríma Muráň sro between EuroGas GmbH and Mr. Viliam Komora, dated March 16, 1998; **Exhibit C-7**, Contract on the Transfer of a Business Share in the Commercial Company Ríma Muráň sro between Eurogas GmbH and Mr. Peter Čorej, dated March 16, 1998; **Exhibit C-8**, Contract on the Transfer of a Business Share in the Commercial Company Ríma Muráň sro between EuroGas GmbH and Mr. Pavol Krajec, dated March 16, 1998; **Exhibit C-9**, Contract on the Transfer of a Business Share in the Commercial Company Ríma Muráň sro between EuroGas GmbH and Mr. Ján Baláž, dated March 16, 1998.

51 **Exhibit C-14**, Agreement on the Transfer of Business Share between Ríma Muráň sro and EuroGas GmbH, dated March 25, 2002. See Claimants' Request for Arbitration, dated June 25, 2014, ¶ 8.

Čorej is also the husband of Ms. Zdenka Čorejová, Rozmin's former accountant who founded and owns Economy Agency RV sro, the Slovak Republic-incorporated company to which the mining rights over the Gemerská Poloma deposit were assigned on April 22, 2005, just after their unlawful revocation from Rozmin.[52]

63. In the Resolution of September 5, 2014, which ordered the suspension of the criminal proceedings launched in June 2014, Mr. Čorej is in fact identified as an "informant" for the Slovak Republic.[53] In any event, Mr. Čorej's purported complaint is not related to any crime purportedly perpetrated against him, but to *the preparation of an attempt to cause damage to the Slovak Republic*."[54] In Respondent's own words, "[t]*he criminal complaint alleged that a serious crime of fraud was underway in respect of a potential arbitration against the Slovak Republic*."[55]

64. Both Orders of June 23, 2015 and June 25, 2014 were indeed issued considering:

> *an especially serious crime of fraud* […] *in the stage of attempt* […], *assumed to have been committed by currently unidentified individuals, who acted in the name of the shareholders of the company Rozmin, s.r.o., with registered seat in Bratislava, and EuroGas, with registered seat in Vienna, and Belmont Resources, with registered seat in Canada, with the intent to elicit financial resources, make significant financial profits and mislead the relevant state authorities by claiming the amount of 3,2 billion Euros from the Slovak Republic in an unspecified arbitration procedure in connection with a revocation of mining rights of the company Rozmin s.r.o. by the relevant administrative authorities of the SR related to the mining area Gemerská Poloma.*[56]

65. The Resolution of September 5, 2014, in turn, made it clear that the object of the criminal proceedings was the same as that of the arbitration proceedings. According to this

---

52 **Exhibit C-31**, Report on the Course and Results of the Selection Procedure for the Designation of the MA GP to Another Organisation Performed on April 21, 2005.

53 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, p. 3.

54 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, p. 3.

55 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 49.

56 **Exhibit C-50**, Order for Preservation and Handing over of Computer Data, dated June 23, 2014, p. 2; **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2; emphasis added.

Resolution, "[i]*t is clear from the indicated that the legally relevant circumstances being resolved by the investigator in these criminal proceedings are* *at the same time the subject of separate proceedings in the Slovak Republic – in particular before mining offices and courts and in an international arbitration to which the Slovak Republic is a party*."[57] Furthermore, the Resolution concluded that "[u]*nder the provision of Section 228, paragraph 4 of the Code of Criminal Procedure, a prosecutor shall suspend criminal prosecution if he has filed a motion to commence proceedings on an issue he is not competent to resolve in the current proceedings.*" [58] Finally, the Resolution explicitly provided for the suspension of criminal proceedings *against Claimants and Rozmin*.[59]

66. In sum, it is undisputable that criminal proceedings were launched in the Slovak Republic against Claimants and Rozmin, in June 2014, as a measure of retaliation following Claimants' announcement that they would initiate arbitration proceedings, and that the very object of these criminal proceedings, in respect of which information was gathered during the house search of July 2, 2014, was the claims to be put forward by Claimants in the arbitration proceedings.

67. Third, Respondent states that "[t]*he criminal complaint was assigned to an independent prosecutor affiliated with the Office of the Special Prosecution, part of the General Prosecution of the Slovak Republic* […]. *The private person, the National Criminal Agency,*

---

57 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, p. 6; emphasis added.

58 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, p. 5.

59 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, pp. 1-2: "*The criminal prosecution was commenced on 2 July 2014* [...] *on the following factual basis that so far unidentified individuals, who acted on behalf of the shareholders of company Rozmin s.r.o.* […], *i.e. Belmont Resources Inc.* […] *and EuroGas GmbH* […], *whose parent company is the American company EuroGas Inc.* […] – *after a preceding notice of dispute dated 23 December 2013 pursuant to international treaties on the promotion and protection of investments, delivered to the Slovak Republic also via the Ministry of Finance of the Slovak Republic, under a threat that on 25 June 2014 they will submit the dispute to the International Center for Settlement of Investment Disputes (ICSID) – a request for arbitration was served on 27 June 2014 on the Ministry of Finance of the Slovak Republic, filed by the American company EuroGas Inc. and the Canadian company Belmont Resources Inc. against the Slovak Republic in the International Center for Settlement of Investment Disputes (ICSID) – thereby they claim damages for impaired investment in relation to the revocation of the authorization to excavate the exclusive deposit of talc in the Gemerská Poloma excavation area of company Rozmin, s.r.o. – but also through various media releases in the Slovak Republic with an intent to mislead the representatives of the Ministry of Finance of the Slovak Republic, the companies assert untrue information about impaired investment and illegal revocation of the authorization to excavate the exclusive deposit of talc in the Gemerská Poloma excavation area* […] *– whereas so far unidentified individuals who acted on behalf of the shareholders of company Rozmin, s.r.o. thus acted with an intent to unlawfully acquire funds amounting to USD 3.2 billion, i.e. approximately EUR 2,343,292,325 using the exchange rate of the National Bank of Slovakia, to the detriment of the Slovak Republic represented by the Ministry of Finance of the Slovak Republic because proceedings on a matter which cannot be resolved in these proceedings have commenced*" (emphasis added).

the Office on Special Prosecution, and the judge on preliminary proceedings of the Special Criminal Court in Banská Bystrica are all independent entities from the Slovak Republic's legal team and counsel. These entities do not have any connection to the Ministry of Finance, which is the entity administering the instant proceedings on behalf of the Slovak Republic."[60] Respondent further specifies that "[t]*he public prosecution of the Slovak Republic is an independent government authority, which* […] *has its own budget within the State budget of the Slovak Republic. It therefore is an entirely independent entity, including from both the Slovak Ministry of Interior and the Slovak Ministry of Finance.*"[61] Finally, Respondent puts forth that "[t]*he Slovak Republic's judiciary, while administratively attached to the Ministry of Justice, is entirely independent, and this decision was thus reached freely.*"[62]

68. These assertions, whether true or false, are perfectly immaterial in the context of Claimants' application for provisional measures. As clearly stated by the tribunal in *Caratube v. Kazakhstan*, "*under international law no state may rely on its national law as a justification to breach its duties under public international law and* […] *a state is responsible under international law for the acts of all of its organs and institutions.*"[63] *In casu*, the search and seizure were ordered by a judicial authority and performed by the police force, in the exercise of their public powers. Hence, they are attributable to the State which is responsible for these actions under international law.

69. Fourth, Respondent contradicts itself when identifying the target of the criminal proceedings. It first states that "[c]*onsidering that the criminal complaint gave rise to a suspicion that an especially serious crime of fraud was underway, Mr. Vasil Špirko, prosecutor affiliated with the Office of the Special Prosecution, sought an order for preservation and handing over of computer data against Ms. Czmoriková and Rozmin on 23 June 2014.*"[64] Then, however, Respondent alleges that "[o]*n 25 June 2014, having reviewed the prosecutor's order, Judge Roman Púchovský, judge for preliminary proceedings in Banská Bystrica, granted an order*

---

60 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶¶ 88-89.

61 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 51.

62 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 52.

63 **Exhibit RA-9**, *Caratube v. Kazakhstan*, ¶ 118.

64 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 50.

for a house search in the terms sought, but only against Ms. Jana Czmoriková.[…] *No order was granted against Rozmin.*"[65]

70. In any event, nothing justified that proceedings launched further to a "*criminal complaint alleg*[ing] *that a serious crime of fraud was underway in respect of a potential arbitration against the Slovak Republic*," be directed against the accountant – or, as mistakenly stated by Respondent,[66] the former accountant – of a company that is not even the claimant in the said arbitration proceedings. Nothing supports the allegation that Ms. Czmoriková was the object of criminal proceedings, let alone proceedings launched in reaction to an ICSID Request for Arbitration. Nowhere is Ms. Czmoriková accused of having committed any illegal action. Moreover, it was clearly Rozmin's property and documents that were targeted, seized, and confiscated, not Ms. Czmoriková's belongings. Respondent simply knew that all of Rozmin's documents and property in the Slovak Republic were kept by Ms. Czmoriková. In any event, the Resolution of September 5, 2014, which provided for the suspension of the criminal proceedings, explicitly identified "*the business companies (Rozmin, s.r.o., Rima Muráň, s.r.o., Belmont Resources Inc.* […], *EuroGas GmbH* […], *and EuroGas Inc.* […]*)* [as] *the suspects in the criminal proceeding.*"[67]

71. In conclusion, this is a textbook case of blatant violation of international law by the host State. In circumstances less extreme than the ones at hand, ICSID tribunals have ordered a suspension of criminal investigations. In the *Quiborax* Decision on Provisional Measures, for instance, having come to the conclusion that the criminal proceedings launched by the host State were related to the ICSID arbitration[68] and could even have been motivated thereby,[69] the tribunal held that the suspension of the proceedings was necessary and urgent, hence justified, despite the fact that the criminal proceedings neither threatened, *per se*, the exclusivity of the arbitration under Article 26 of the ICSID Convention[70] nor placed "intolerable pressure" on the claimants to drop their claims.[71] The tribunal ordered that the respondent take all appropriate measures to suspend these criminal proceedings and any

---

65 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 52.

66 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 49.

67 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, p. 4.

68 **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 120.

69 **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 121.

70 **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 128.

71 **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 138.

other criminal proceedings directly related to the arbitration, and that the respondent also refrain from initiating any other criminal proceedings directly related to the arbitration, or from engaging in any other course of action that could jeopardize the procedural integrity of the arbitration.[72]

72. In the present case, by Respondent's own admission, the connection between the initiation of the arbitration and the launching of criminal proceedings in the Slovak Republic is as strong as it gets. In Respondent's own words, the criminal proceedings were initiated further to a "*criminal complaint* [which] *alleged that a serious crime of fraud was underway in respect of a potential arbitration against the Slovak Republic*."[73] Furthermore, Claimants were explicitly identified as "*the suspects in the criminal proceeding.*"[74]

73. Based on the foregoing, a recommendation that Respondent permanently withdraw these proceedings is justified.

C. RESPONDENT OUGHT TO REFRAIN FROM TAKING ANY FURTHER MEASURE THAT COULD ALTER THE *STATUS QUO* THAT EXISTED PRIOR TO THE INITIATION OF THE CRIMINAL PROCEEDINGS LAUNCHED IN JUNE 2014, OR THAT COULD AGGRAVATE THE DISPUTE OR JEOPARDIZE THE INTEGRITY OF THE PROCEEDINGS, INCLUDING ANY FURTHER MEASURE OF INTIMIDATION OF CLAIMANTS' POTENTIAL WITNESSES

1. The Tribunal has the authority to issue a general recommendation to maintain the *status quo ante*

74. Respondent contends that Claimants' request for a general recommendation to maintain the *status quo* is "*too vague and imprecise to permit the Tribunal to issue an order*."[75] Respondent further argues that "*Claimants have simply failed to articulate the rights that they seek to protect or the harm from which they seek protection*,"[76] and that their request must therefore be denied.

75. The purpose of an order to maintain the *status quo* is to protect the claimant's fundamental right to have its claims fairly considered in the arbitration proceedings and decided upon by

---

72 **Exhibit CL-8**, *Quiborax v. Bolivia*, p. 46.

73 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 49.

74 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, p. 4.

75 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 101.

76 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 101.

the tribunal. The right to the preservation of the integrity of the proceedings and to the non-aggravation of the dispute are themselves the very rights to be protected by such an order.

76. As explained by the tribunal in *Burlington v. Ecuador*, "*the general right to the status quo and to the non-aggravation of the dispute* […] *are* […] *self-standing rights*."[77] More recently, in a July 2014 Procedural Order in *Churchill v. Indonesia*, the tribunal acknowledged that "*it is undisputed that the right to the preservation of the* status quo *and the non-aggravation of the dispute may find protection by way of provisional* measures,"[78] and confirmed that "*within the ICSID framework the* [said] *right is a self-standing right vested in any party to ICSID proceedings*."[79]

77. Thus, as explained by the tribunal in *Occidental v. Ecuador*, "*there exists a general right to non-aggravation of the dispute*."[80] In fact, as shown through the decisions and orders cited at paragraphs 36 to 38 of Claimants' Full Briefing on their Application for Provisional Measures, a series of ICSID tribunals have held that "*the existence of the right to the preservation of the* status quo *and the non-aggravation of the dispute is well-established since the case of the* Electricity Company of Sofia and Bulgaria."[81]

78. Respondent is therefore wrong to assert that "*Claimants may only seek a recommendation that would restrict certain specific rights or request certain specific conduct.*"[82]

79. In the early *Electricity Company of Sofia* case, the Permanent Court of International Justice ("PCIJ") indicated that "*the State of Bulgaria should ensure that no step of any kind is taken*

---

77 **Exhibit CL-13**, *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5 (formerly *Burlington Resources Inc. and others v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (PetroEcuador)*), Procedural Order No. 1 on Burlington Oriente's Request for Provisional Measures, dated June 29, 2009, ¶ 60 (available at http://www.italaw.com/sites/default/files/case-documents/ita0104.pdf; hereafter "*Burlington v. Ecuador*").

78 **Exhibit RA-13**, *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Procedural Order No. 9, dated July 8, 2014, ¶ 90 (available at http://www.italaw.com/sites/default/files/case-documents/italaw3252.pdf; hereafter "*Churchill v. Indonesia*").

79 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 90.

80 **Exhibit CL-2**, *Occidental Petroleum Corporation and Occidental Exploration and Production Company v. The Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, dated August 17, 2007, ¶ 98 (available at http://www.italaw.com/sites/default/files/case-documents/ita0576.pdf; hereafter "*Occidental v. Ecuador*").

81 **Exhibit CL-13**, *Burlington v. Ecuador*, ¶ 62; **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 134. See also **Exhibit RA-9**, *Caratube v. Kazakhstan*, ¶ 127; **Exhibit CL-24**, *Millicom International Operations B.V. and Sentel GSM SA v. The Republic of Senegal*, ICSID Case No. ARB/08/20, Decision on the Application for Provisional Measures Submitted by the Claimants on August 24, 2009, dated December 9, 2009, ¶ 45(e) (available at http://www.italaw.com/sites/default/files/case-documents/italaw1244.pdf; hereafter "*Millicom v. Senegal*").

82 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 102.

capable of prejudicing the rights claimed by the Belgian Government or of aggravating or extending the dispute submitted to the Court."[83] Similarly, in the *Anglo Iranian Oil* case, the ICJ indicated that the Parties "*should each ensure that no action is taken which might prejudice the rights of the other Party in respect of the carrying out of any decision on the merits that the Court may subsequently render* [and] *ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court.*"[84]

80. ICSID tribunals have also asserted their power to issue general *status quo* orders. For instance, the tribunal in *Pey Casado v. Chile* ordered the parties to strictly comply with the general principle pursuant to which any party to a dispute must prevent any act, of any nature, which could aggravate or extend the dispute.[85] Similarly, in the *Burlington v. Ecuador* case, the tribunal ordered the parties to "*refrain from any conduct that may lead to an aggravation of the dispute until the Award or the reconsideration of this order*."[86] In *Biwater v.* Tanzania, the tribunal stated the following:

> *It is now settled in* […] *treaty* […] *arbitration that an arbitral tribunal is entitled to direct the parties not to take any step that might (1) harm or prejudice the integrity of the proceedings, or (2) aggravate or exacerbate the dispute. Both may be seen as a particular type of provisional measure* […]*, or simply as a facet of the tribunal's overall procedural powers and its responsibility for its own process. Both concerns have a number of aspects, which can be articulated in various ways, such as the need to:*
>
> - *preserve the Tribunal's mission and mandate to determine finally the issues between the parties;*
> - *preserve the proper functioning of the dispute settlement procedure;*

---

83 **Exhibit CL-29**, *Electricity Company of Sofia and Bulgaria*, Order of December 5, 1939, PCIJ, Series A/B, No. 79, ¶ 26; emphasis added (available at http://www.worldcourts.com/pcij/eng/decisions/1939.12.05_electricity.htm).

84 **Exhibit CL-30**, *Anglo-Iranian Oil Co. (UK v. Iran)*, Order of July 5, 1951, ICJ Reports 1951, pp. 89 *et seq*, ¶¶ 1 and 2 (available at http://www.worldcourts.com/icj/eng/decisions/1951.07.05_oil_co2.htm).

85 **Exhibit CL-5**, *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Decision on Provisional Measures, dated September 25, 2001, p. 602: "*Le Tribunal Arbitral* […]*invite les Parties à respecter strictement le principe général de droit selon lequel toute Partie au litige a l'obligation de veiller à empêcher tout acte qui pourrait préjuger les droits de l'autre Partie à l'exécution de la sentence que le Tribunal Arbitral pourrait être appelé à rendre au fond, et à empêcher tout acte, de quelque nature qu'il soit, qui pourrait aggraver ou étendre le différend soumis au Tribunal Arbitral*" (emphasis added) (French version available at http://www.italaw.com/sites/default/files/case-documents/ita0630.pdf; hereafter "*Pey Casado v. Chile*").

86 **Exhibit CL-13**, *Burlington v. Ecuador*, p. 29.

- *preserve and promote a relationship of trust and confidence between the parties;*
- *ensure the orderly unfolding of the arbitration process;*
- *ensure a level playing field;*
- *minimise the scope for any external pressure on any party, witness, expert or other participant in the process;*
- *avoid "trial by media".*[87]

81. Importantly, the tribunal in the *Biwater* case further added that no actual harm needs to be shown to justify the issuance of an order that a party refrain from taking any step that might harm or prejudice the integrity of the proceedings or aggravate the dispute. In the words of the tribunal:

> *The Tribunal disagrees* […] *with the suggestion that actual harm must be manifested before any measures may be taken. Its mandate and responsibility includes ensuring that the proceedings will be conducted in the future in a regular, fair and orderly manner (including by issuing and enforcing procedural directions to that effect). Among other things, its mandate extends to ensuring that potential inhibitions and unfairness do not arise; equally, its mandate extends to attempting to reduce the risk of future aggravation and exacerbation of the dispute, which necessarily involves probabilities, not certainties.*[88]

82. As to the three cases cited by Respondent to support its allegation that the Tribunal cannot issue a general *status quo* recommendation – namely the Decision Regarding Claimant's Application for Provisional Measures in *Caratube v. Kazakhstan*, Procedural Order No. 9 in *Churchill v. Indonesia*, and Procedural Order No. 2 in *SGS v. Pakistan* – they are to no avail. Nothing in these decisions suggests that arbitral tribunals are deprived of the authority to grant general *status quo* requests. In fact, in each one of these cases, if the tribunal rejected the claimant's request for the preservation of the *status quo*, it was only because the claimant had failed to provide sufficient evidence of an actual threat of aggravation of the dispute. As shown below, no parallel may, however, be drawn between these cases and the case at hand.

---

87 **Exhibit CL-31**, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, dated September 29, 2006, ¶ 135 (available at http://www.italaw.com/sites/default/files/case-documents/ita0089.pdf'; hereafter "*Biwater Gauff v. Tanzania*").

88 **Exhibit CL-31**, *Biwater Gauff v. Tanzania*, ¶ 145; emphasis added.

83. The excerpt, quoted by Respondent, from the Decision Regarding Claimant's Application for Provisional Measures in *Caratube v. Kazakhstan* relates to the claimant's request that the tribunal order the respondent to refrain from acting upon existing criminal complaints and from filing any new complaints, not to the claimant's request that the tribunal order the respondent to refrain from taking any measures that could aggravate the dispute.[89] With respect to the latter request, the tribunal "*agree*[d] *with the Tribunal in* Burlington*, which* […] *considered the right to the preservation of the status quo and the non-aggravation of the dispute as 'well established since the case of the Electricity Company of Sofia* and *Bulgaria.*"[90] Accordingly, "*the Tribunal confirm*[ed] *that the Parties have an obligation to conduct the procedure in good faith and that this obligation includes a duty to avoid any unnecessary aggravation of the dispute and harassment of the other party*."[91]

84. In *Churchill v. Indonesia*, also cited by Respondent, the tribunal acknowledged that "*the right to the preservation of the* status quo *and the non-aggravation of the dispute may find protection by way of provisional measures* […] [and] *agree*[d] *with previous decisions holding that within the ICSID framework the right to the preservation of the status-quo and the non-aggravation of the dispute is a self-standing right vested in any party to ICSID proceedings*."[92] The tribunal nonetheless denied the claimant's request, having reached the following factual conclusions: no investigation had actually been initiated nor criminal charges lodged against the claimants or their witnesses, and a criminal investigation initiated against a company which was not a party to the arbitration or a threat to initiate criminal investigations or proceedings against an unidentified third group of persons could not have altered the *status quo* or aggravated the dispute in the arbitration proceedings, in particular since no element on record showed any pressure or intimidation against the claimants.[93]

---

89 See Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 103, referring to **Exhibit RA-9**, *Caratube v. Kazakhstan*, ¶ 139.

90 **Exhibit RA-9**, *Caratube v. Kazakhstan*, ¶ 127.

91 **Exhibit RA-9**, *Caratube v. Kazakhstan*, ¶ 120 to which ¶ 128 refers (addressing the claimant's request that the tribunal order the respondent to refrain from taking any measures that would aggravate the dispute); see also p. 83.

92 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 90; emphasis added.

93 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶¶ 92, 93, and 95. Furthermore, the excerpt referred to by Respondent pertained to the claimant's request that Respondent be ordered to refrain from engaging in conduct that would jeopardize the procedural integrity of the proceedings, which was addressed separately from the claimant's request that the respondent be ordered to refrain from engaging in conduct that would alter the *status quo* or aggravate the dispute.

85. The facts of *Churchill v. Indonesia* thus differ radically from the facts of the case at hand. *In casu*, the criminal investigations initiated on June 23, 2014 were directed against Claimants and their investment in the Slovak Republic,[94] all of which were identified as "suspects" in these criminal proceedings.[95] Furthermore, the Orders of June 23 and 25, 2014 provided, in identical terms, that the criminal proceedings launched in the Slovak Republic on June 23, 2014 had been initiated in reaction to Claimants exercising their right to initiate arbitration proceedings under bilateral investment treaties.[96] In Respondent's own words, "[t]*he criminal complaint alleged that a serious crime of fraud was underway in respect of a potential arbitration against the Slovak Republic*."[97]

86. Importantly and despite the factual background of *Churchill v. Indonesia*, it must be noted that, in that case, "[w]*hile the request for provisional measures* [had to] *be denied, the Tribunal wishe*[d] *to expressly stress the Parties' general duty, which arises from the principle of good faith, not to take any action that may aggravate the dispute or affect the integrity of the arbitration.*"[98]

87. Finally, in *SGS v. Pakistan*, yet also cited by Respondent, the findings of the tribunal with respect to the claimant's request "*that the Respondent take no action of any kind that might aggravate or further extend the dispute submitted to the Tribunal*" were also tightly related to the facts in relation to which the request had been filed, as shown by the excerpt quoted by Respondent itself.[99] In this case, a final judgment had already been issued by the Supreme Court of Pakistan with respect to domestic civil proceedings. In other words, there was "*no further step to be taken*" that could possibly aggravate the dispute.[100] Only a notice of contempt could still be issued against SGS. To address the risk that contempt of court proceedings obstruct the claimant's access to international adjudication, the court issued a specific order that Pakistan refrain from acting on its earlier complaint or file a new

---

94 **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2; in identical terms, **Exhibit C-50**, Order for Preservation and Handing over of Computer data, dated June 23, 2014, p. 2. See also **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, pp. 1-2.

95 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, pp. 4-5.

96 **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2; **Exhibit C-50**, Order for Preservation and Handing over of Computer Data, dated June 23, 2014, p. 2.

97 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 49.

98 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 104.

99 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 102.

100 **Exhibit RA-8**, *SGS v. Pakistan*, Procedural Order No. 2, p. 299.

complaint, and that it ensure both that no action would be taken in respect of contempt proceedings and that no other contempt proceedings initiated by any party would be acted upon.[101] As a result, a broader order that the respondent refrain from taking any measure that could aggravate or jeopardize the integrity of the proceedings was unnecessary.

88. In sum, none of the decisions cited by Respondent support its contention that Claimants' request for an order to maintain the *status quo* is too vague to be granted.

2. Respondent ought to refrain from taking any further measure of intimidation of Claimants' potential witnesses

89. In its submission of September 10, 2014, Respondent also argues that Claimants have failed to demonstrate any intimidation of either Ms. Czmoriková or any other entity, and that "[t]*he request is therefore purely hypothetical and should be denied*."[102] Respondent goes on to quote Procedural Order No. 9 in *Churchill v. Indonesia*, in an attempt to argue that "[i]*n the absence of actual criminal proceedings against potential witnesses, no measure can be ordered*."[103] Reliance on this Order is, however, of no support to Respondent's case.

90. First, in *Churchill v. Indonesia*, the tribunal clearly stated that "[t]*he fact that the Claimants seek to protect their right to submit evidence through potential witnesses does not make this right hypothetical*."[104] While the tribunal mentioned that "[i]*t is common ground in the ICSID framework that the rights to be protected by provisional measures must belong to a disputing party*,"[105] it also pointed out that by seeking to secure their right to provide evidence through witness testimony, the claimants were not seeking provisional measures to protect rights of non-parties but provisional measures to protect their own rights in the proceedings: "*To this end, they seek to avoid that such right be impaired by criminal investigations brought against actual and potential witnesses.*"[106] In the present case, Claimants are also seeking to protect their right to submit evidence through potential witnesses. Claimants' request is therefore not hypothetical.

---

101 **Exhibit RA-8**, *SGS v. Pakistan*, Procedural Order No. 2, pp. 300-301 and 305.

102 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 136.

103 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 137.

104 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 79.

105 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 78.

106 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 79.

91. Second, Respondent's reliance on *Churchill v. Indonesia* is ill-founded since the facts of that case largely differ from the ones of the case at hand.

92. In *Churchill v. Indonesia*, the tribunal denied the claimants' request that the tribunal order the respondent to refrain from engaging in any conduct that would aggravate the dispute or alter the *status quo*, on the following specific grounds. First, "*no investigation ha*[d] *been initiated nor ha*[d] *criminal charges been lodged against Claimants or their current witnesses.*"[107] Second, the tribunal "*fail*[ed] *to see how the initiation of a criminal investigation against* […] *companies which* [were] *not parties to the dispute, ha*[d] *altered the* status quo *or aggravated the dispute*,"[108] in particular in the absence of element on record showing any pressure or intimidation against the claimants and their witnesses.[109] Third, the tribunal "*fail*[ed] *to see how the threat to initiate criminal investigations or proceedings against the unidentified third group of persons 'being currently or previously associated with the Claimants' investment in Indonesia' has changed the* status quo *and aggravated the dispute*."[110]

93. In the case at hand, the criminal investigations initiated on June 23, 2014 were directed against Claimants and their investment in the Slovak Republic.[111] As noted above, the Resolution of September 5, 2014 explicitly identified Claimants and Rozmin as the "suspects" in the criminal proceedings.[112] Furthermore, the Orders of June 23 and 25, 2014 provided, in identical terms, that the criminal proceedings launched in the Slovak Republic on June 23, 2014 had been initiated in reaction to Claimants exercising their right to initiate arbitration proceedings under bilateral investment treaties.[113]

94. Thus, whereas the *Churchill* tribunal was bound to find that *no* "*pressure or intimidation against Claimants and their witnesses*"[114] could have resulted from the criminal proceedings against third party companies, the proceedings here were specifically directed against

---

107 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 92; emphasis added.
108 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 92; emphasis added.
109 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 93.
110 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 95; emphasis added.
111 **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2; in identical terms, **Exhibit C-50**, Order for Preservation and Handing over of Computer Data, dated June 23, 2014, p. 2; **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, pp. 1-2.
112 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, pp. 4-5.
113 **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2; **Exhibit C-50**, Order for Preservation and Handing over of Computer Data, dated June 23, 2014, p. 2.
114 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 137; **Exhibit RA-13**, *Churchill v. Indonesia*, ¶¶ 91-95.

Claimants and Rozmin, Ms. Czmoriková's employer. In fact, Ms. Czmoriková has been Rozmin's accountant and the guardian of its property and documents since 2000. Respondent can therefore not reasonably argue that it was unaware of the obvious possibility that Ms. Czmoriková would be called in the arbitration proceedings as one of Claimants' witnesses.

95. The conditions under which the search of Ms. Czmoriková's house was performed were most stressful. At 6 am on July 2, 2014, eight members of the Slovak police force, the National Criminal Agency, the National Troop of the Financial Police, the national Anti-Corruption Troop, and the Public Order Police presented themselves at the house of Ms. Czmoriková, without prior warning.[115] For over eight hours, they searched the house in which house Ms. Czmoriková lives with her husband and child.

96. As a result of measures undertaken by the Slovak Republic, both Ms. Czmoriková and Dr. Ondrej Rozloznik – also a Slovak national who still lives in the Slovak Republic, acted as director and general manager of Rozmin between 1997 and 2011, and is a potential key witness in the arbitration proceedings – have expressed reluctance with respect to being involved in the arbitration. Ms. Czmoriková fears that at any time, she may be the object of an unannounced search and/or interrogation, at her own private home, by Slovak officials or police force members, and that herself and/or her family may be the object of further intimidation measures by the State. As a result, she has even refused to provide witness testimony with respect to the house search carried out on July 2, 2014.

97. Such a reaction was to be expected. As recognized by the *Quiborax* tribunal, no undue pressure on potential witnesses is necessary to reduce their willingness to cooperate in the arbitration proceedings.[116] Respondent is therefore plainly wrong to argue that "[i]*n the absence of actual criminal proceedings against potential witnesses, no measure can be ordered*."[117]

98. Lastly, it should be noted that in *Churchill v. Indonesia,* the claimants had requested the tribunal to recommend that the Republic of Indonesia "*refrain from threatening or*

---

115 Nothing indicates that the Order for Preservation and Handing over of Computer Data, dated June 23, 2014 (**Exhibit C-50)** or the Order for a House Search, dated June 25, 2014 (**Exhibit C-49)** had been notified to Ms. Czmorikova prior to this search.

116 **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 146.

117 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 137.

commencing any criminal investigation against the Claimants, their witnesses in these proceedings, and <u>any person associated with the Claimants' operation in Indonesia</u>."[118] In addition, the claimants had requested that the tribunal order Indonesia to "[s]*tay or suspend any current criminal investigation or prosecution against the Claimants' <u>current and former employees, affiliates or business partners</u>*."[119]

99. Claimants' request in the present case is significantly narrower. Indeed, Claimants have respectfully requested the Tribunal to "[o]*rder the Slovak Republic to refrain from taking any further measure of intimidation against Rozmin, EuroGas, Belmont, or any director, employee or personnel of any of these companies.*"[120]

100. In sum, Respondent's reliance on the tribunal's reasoning in *Churchill v. Indonesia* is unwarranted and in no way suggests that Claimants' request is not well-founded. On the contrary, the obvious differences between the facts of one case and those of the other support Claimants' request for provisional measures.

101. In response to the arguments put forth by Claimants in the Full Briefing on their Application for Provisional Measures, Respondent contends that the "*cases cited by Claimants underscore the hypothetical nature of Claimants request*." In particular, Respondent maintains that the reasoning of the *Quiborax* tribunal "*is wholly distinguishable*" since "*potential witnesses were the object of direct intimidation.*"[121] In this respect, it should be noted, however, that while the facts of the *Quiborax* case and those of the present case may differ to some extent, the *Quiborax* tribunal laid down several principles that apply to the present instance. In any event, the factual elements on which Respondent relies are irrelevant and the conclusion it draws therefrom manifestly erroneous.

102. As noted above, the *Quiborax* tribunal stated the following:

> [E]*ven if no undue pressure is exercised on potential witnesses, the very nature of these criminal proceedings is bound to reduce their willingness to cooperate in the ICSID proceeding. Given that the existence of this ICSID*

118 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 1; emphasis added.
119 **Exhibit RA-13**, *Churchill v. Indonesia*, ¶ 1; emphasis added.
120 Full Briefing on Claimants' Application for Provisional Measures Dated July 8, 2014, dated August 11, 2014, ¶ 68.g.
121 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 138; **Exhibit CL-8**, *Quiborax v. Bolivia*.

> *arbitration has been characterized within the criminal proceedings as a harm to* [the respondent State], *it is unlikely that the persons charged will feel free to participate as witnesses in this arbitration.*[122]

The tribunal further held:

> *Regardless of whether the criminal proceedings have a legitimate basis or not* […], *the direct relationship between the criminal proceedings and this ICSID arbitration is preventing Claimants from accessing witnesses that could be essential to their case.*[123]

103. In the present instance, the content of the Orders issued on June 23 and 25, 2014 and of the Resolution of September 5, 2014 is unequivocal: the criminal proceedings launched in the Slovak Republic specifically and directly targeted Claimants and their investment, and were launched in reaction to the initiation of the arbitration proceedings.[124] Furthermore, Respondent cannot possibly be arguing in good faith that the Slovak Republic has not criticized the ICSID arbitration, "*much less described it as a 'harm'*,"[125] and that Claimants' request therefore cannot be granted.

104. Indeed, the criminal proceedings were initiated by Respondent further to a complaint entitled "*Criminal complaint – preparation of <u>an attempt to cause damage to the Slovak Republic</u>.*"[126] Furthermore, the Orders of June 23 and 25, 2014 both referred to the arbitration as a way "*to elicit financial resources, make significant financial profits and <u>mislead the relevant state authorities</u>*.[127] As to the Resolution of September 5, 2014, it referred to the arbitration as "*an intent to unlawfully acquire funds amounting to USD 3.2 billion, i.e. approximately EUR 2,343,292,325* […], *<u>to the detriment of the Slovak Republic</u> represented by the Ministry of Finance of the Slovak Republic*."[128]

---

122 **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 146.

123 **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 163.

124 **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2; in identical terms, **Exhibit C-50**, Order for Preservation and Handing over of Computer Data, dated June 23, 2014, p. 2; **Exhibit R-2**. Resolution Suspending Criminal Proceedings, dated September 5, 2014, pp. 1-2.

125 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 139.

126 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, pp. 2-3; emphasis added.

127 **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2; **Exhibit C-50**, Order for Preservation and Handing over of Computer Data, dated June 23, 2014, p. 2; emphasis added.

128 **Exhibit R-2**, Resolution Suspending Criminal Proceedings, dated September 5, 2014, pp. 2-3; emphasis added.

105. The tribunal's conclusion in *Quiborax v. Bolivia* therefore fully applies: it is unlikely that Slovak nationals who, like Ms. Czmoriková, are connected to Claimants or Rozmin, will now feel free to take part in the arbitration proceedings as Claimants' witnesses.

106. Surprisingly, Respondent contends that "*in any event, the measure sought by Claimants was not granted in* Quiborax."[129] In the latter case, the tribunal did, however, conclude that "*Claimants ha*[d] *shown the existence of a threat to the procedural integrity of the ICSID proceedings, in particular to their right to access to evidence through potential witnesses.*"[130] With respect to the effect that the criminal proceedings may have on potential witnesses, the tribunal also explained that "[e]*ven if no undue pressure is exercised on potential witnesses, the very nature of these criminal proceedings is bound to reduce their willingness to cooperate in the ICSID proceeding. Given that the existence of this ICSID arbitration has been characterized within the criminal proceedings as a harm to Bolivia, it is unlikely that the persons charged will feel free to participate as witnesses in this arbitration.*"[131] Thus, "[r]*egardless of whether the criminal proceedings have a legitimate basis or not (an issue which the Tribunal is not in a position to determine), the direct relationship between the criminal proceedings and this ICSID arbitration is preventing Claimants from accessing witnesses that could be essential to their case.*"[132]

107. In the *Quiborax* case, the tribunal accordingly ordered Bolivia to "*refrain from* […] *engaging in any other course of action which may jeopardize the procedural integrity of this arbitration,*"[133] thus granting the claimants' request.

108. Respondent also contends that the *Lao Holdings v. Lao* case is inapplicable to the present dispute "*because the key factor for the tribunal's decision was the timing of the criminal proceedings, which were initiated immediately before the ICSID hearing and would have resulted in witnesses being investigated at the same time they gave their evidence.*"[134]

---

129 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶140.

130 **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 148.

131 **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 146.

132 **Exhibit CL-8**, *Quiborax v. Bolivia*, ¶ 163.

133 **Exhibit CL-8**, *Quiborax v. Bolivia*, p. 46.

134 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 141.

109. Claimants do not dispute that the question of timing is crucial to assess the implications of domestic criminal proceedings. In this respect, Respondent, which is represented by an experienced team of lawyers, cannot, however, argue in good faith that there is no issue of timing in the present case.[135] A witness who is to file a statement together with the claimant's statement of claim is usually approached at the outset of the proceedings, often shortly after the filing of the Request for Arbitration, if not already before. In the present instance, the criminal proceedings were initiated on June 23, 2014 and the house search was performed on July 2, 2014, right around the time of the filing of Claimants' Request for Arbitration dated June 25, 2014. The timing of the criminal proceedings in the present instance was therefore crucial as far as Respondent's attempt to intimidate Claimants' potential witnesses was concerned.

110. Finally, Claimants note that Respondent again mistakenly states that "*the* Lao Holdings [tribunal] *did not grant the measure sought by the claimants.*"[136] This is inaccurate. On September 17, 2013, the *Lao Holdings* tribunal issued a Provisional Order prohibiting the respondent "*against taking any steps that would permit the Respondent that would alter the* status quo *or aggravate the dispute*."[137] In its Decision on the respondent's motion to amend this Order, the tribunal reiterated that "*criminal proceedings launched in the midst of final preparations for the arbitration, and running concurrently with the hearing would considerably broaden and aggravate the dispute between the parties, in threatening the integrity of the arbitral process*."[138] Ultimately, the tribunal dismissed the respondent's motion to amend the Provisional Measures Order.[139]

111. Considering the above, an order from the Tribunal that Respondent refrain from taking any further measures which, just like the house search of July 2, 2014, could have the effect of intimidating potential witnesses, hence of jeopardizing the integrity of the proceedings or of aggravating the dispute, is warranted.

---

135 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 141.

136 Respondent's Application for Provisional Measures and Opposition to Claimant's Application for Provisional Measures, dated September 10, 2014, ¶ 141.

137 **Exhibit CL-15**, *Lao Holdings v. Lao*, Ruling on the Motion to Amend the Provisional Measures Order, ¶ 1.

138 **Exhibit CL-15**, *Lao Holdings v. Lao*, Ruling on the Motion to Amend the Provisional Measures Order, ¶ 4.iii

139 **Exhibit CL-15**, *Lao Holdings v. Lao*, Ruling on the Motion to Amend the Provisional Measures Order, ¶¶ 4 and 76.

D. RESPONDENT OUGHT TO UNDERTAKE THAT THE DOCUMENTS AND PROPERTY RETURNED CONSTITUTE ALL THAT WAS SEIZED, TO RETURN TO CLAIMANTS THE COPIES THAT WERE MADE, AND TO UNDERTAKE NOT TO USE IN THE ARBITRATION PROCEEDINGS THE COPIED DOCUMENTS OR THE INFORMATION COLLECTED THROUGH DOCUMENTS AND MATERIAL SEIZED

1. Respondent cannot successfully invoke its rights as a sovereign State to disregard the most basic rules governing the arbitration proceedings

112. Respondent's purported order to return the seized documents was a mere strategic move to play the clock and to be able to argue, in its submission of September 10, 2014, that Claimant's Application for Provisional Measures had become moot and should therefore be withdrawn.[140] Respondent has, however, secured a full set of copies of these documents and examined them. It has used the information thus collected for purposes of its submission of September 10, 2014, without awaiting the Tribunal's determination, and now intends to further use this information in the proceedings, in breach of Claimants' most basic procedural rights, including the principles of equality of arms and fairness, and the right to the protection of privileged and confidential information.

113. Respondent argues that ordering it to refrain from using, in the arbitration proceedings, material or documents seized "*would constitute an impermissible intervention with the Slovak Republic's sovereign rights and responsibilities.*"[141] This is yet another illustration of Respondent's misconception of its sovereign powers.

114. The fact that Respondent is a sovereign State does not allow it to disregard the most basic procedural rules governing the arbitration proceedings. As stated by the tribunal in *Caratube v. Kazakhstan*:

> *[T]he Parties indeed have an obligation to conduct the procedure in good faith,* […] [and it is an] *undisputed obligation* […] *that under international law no state may rely on its national law as a justification to breach its duties under public international law and that a state is responsible under international law for the acts of all of its organs and institutions. The procedural duties stemming from the ICSID Convention and the reference thereto in the relevant BIT are*

140 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 4.

141 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 117.

> *such – procedural – obligations as part of international law.*[142]

In the words of the *Libananco* tribunal:

> [P]*arties have an obligation to arbitrate fairly and in good faith and* […] *an arbitral tribunal has the inherent jurisdiction to ensure that this obligation is complied with; this principle applies in all arbitration, including investment arbitration, and to all parties, including States (even in the exercise of their sovereign powers).*[143]

115. A State cannot gather information through criminal proceedings, whether or not the latter are carried out in compliance with domestic procedural rules, for the sole purpose of using this information in ICSID arbitration proceedings. A State simply cannot effectively invoke its "sovereign rights and responsibilities" to place itself above its duties in the arbitration proceedings and above basic procedural rules and principles, to the detriment of its opponent.

2. Respondent has no ground to oppose the requested measures

116. Respondent's allegation that "[t]*he documents seized were documents held by an independent contractor accountant – not an employee of Rozmin or of Claimants*"[144] is perfectly irrelevant. In turn, Respondent's opinion that "*it is not credible to suggest that an independent contractor – over whom Claimants have little control – is in possession of documents critical to this arbitration but which Claimants, who have been preparing this case for three years, somehow do not possess*,"[145] is both unfounded and unconvincing. Respondent is well-aware of the fact that since the revocation of its mining rights, Rozmin has been prevented from carrying out any mining activities, and most if not all of its property and documents were kept by Ms. Czmoriková. This is precisely why Ms. Czmoriková was targeted by the criminal proceedings launched last June. In any case, Respondent's allegations surprisingly tend to suggest that Claimants, and more generally any entity

---

142 **Exhibit RA-9**, *Caratube v. Kazakhstan*, ¶¶ 117-118.

143 **Exhibit CL-32**, *Libananco Holdings Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Decision on Preliminary Issues, dated June 23, 2008, ¶ 78; emphasis added (available at http://www.italaw.com/sites/default/files/case-documents/ita0465.pdf; hereafter "*Libananco v. Turkey*").

144 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 9.

145 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 9. See also ¶ 108.

carrying out business activities in the Slovak Republic, should keep a copy of all of its records in case of confiscation thereof by the host State.

117. The Order for a House Search issued on June 25, 2014 precisely authorized the police to secure, *inter alia*, all accounting and tax documents, all documents issued in the name of, or addressed to, Rozmin or its shareholders since the creation of Rozmin, without any limitation of scope on the subject-matter of these documents, as well as any documents in relation to the Gemerská Poloma Mining Area, whether such documents were available on hard copies or on data storage mediums. The scope of the search order was wide enough to encompass any and all correspondence and any document even remotely related to Rozmin, EuroGas or Belmont.[146]

118. Respondent's opinion that "[t]*hese documents are unlikely to be necessary to prepare a claim arising from events that occurred in 2004 and 2005 and where investment treaty breaches have been alleged since 16 December 2010*"[147] is subjective, again unfounded and, in any event, irrelevant. It only suggests that these documents have been carefully reviewed by Respondent to determine whether it should use them in the arbitration proceedings.

119. Nothing, however, may justify Respondent taking justice in its own hands and gathering, by way of its public powers, information to which it would not otherwise have had access, including privileged and confidential information.

120. In its submission of September 10, 2014, Respondent also argues that the Minutes on Performance of House Search dated July 2, 2014 "*do not show that Claimants do not have access to originals or copies of those documents*" and "*do not evidence that Claimants do not have all the documents required to set out their case*."[148] Such was, however, not the purpose of these Minutes. Their object and purpose was to provide a list of documents and material seized. Nothing indicates that Ms. Czmoriková was even asked if other originals or copies of the seized documents existed. Furthermore, it is simply grotesque to request evidence of the inexistence of something, in particular, something that has no reason for existing. Just as it is grotesque to suggest that Rozmin may have kept two sets of originals

146 **Exhibit C-49**, Order for a House Search, dated June 25, 2014, pp. 1-2.

147 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 9.

148 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 107.

of all of its documents and that in the absence of evidence to the contrary, it cannot be deemed to have been harmed by the measures taken by Respondent.

121. In any event and assuming, for the sake of argument, that Rozmin did keep two sets of originals of all of its documents or a set of copies thereof, Claimants would still suffer irreparable harm as a result of Respondent using its public powers to collect information to be used in the arbitration proceedings, in breach of the principle of equality of arms and of Claimants' right to the protection of privileged and confidential information.

122. Similarly, Respondent cannot reasonably argue that Claimants have failed to produce any evidence that "*they have been deprived of documentary evidence, which allegedly threatens the integrity of the ICSID proceedings,*"[149] that Claimants have failed to evidence how their procedural rights could be prejudiced by Respondent making copies of the seized documents, and that Claimants have failed to provide evidence of the fact that ordering Respondent to refrain from using, in the arbitration proceedings, any material or documents seized, is necessary to prevent an imbalance in the arbitration proceedings.[150]

123. The criminal proceedings launched by the State and the seizure of Rozmin's property and documents (included legally privileged documents), a full copy of which was kept by the State, have created an imbalance between the Parties, as they have unilaterally provided Respondent with an access to Claimants' full files and records. As a result, Respondent enjoys an unfair advantage in the arbitration proceedings. In and of themselves, the measures taken by the Slovak Republic have thus jeopardized the integrity of the process.

124. Finally, Respondent's argument that "*requesting the return of copies would turn the suspension into an effective termination of the proceedings, rendering them without effect* [and that] [t]*he prosecution and court would* […] *be exposed to a risk that the evidence*

---

149 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 106.

150 Respondent misconstrues the excerpt of **Exhibit CL-8**, *Quiborax v. Bolivia*, quoted at ¶ 119 of its Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014. In this excerpt (¶ 130 of the Decision), the tribunal addressed the claimants' contention that provisional measures were necessary to preserve the exclusivity of the ICSID proceedings. No such argument was raised by Claimants in their Application for Provisional Measures of August 11, 2014. It was indeed in connection to its finding that "*the criminal proceedings initiated by Respondent do not threaten the exclusivity of the ICSID proceedings*" that the tribunal stated the following, quoted by Respondent: "*Even if the criminal proceedings result in evidence that is later used by Respondent in this arbitration, that would not undermine the Tribunal's jurisdiction to resolve Claimants' claims, if such jurisdiction is established at the appropriate procedural instance.*" This conclusion had nothing to do with a possible order that Respondent refrain from using in the arbitration proceedings documents collected in the course of domestic criminal proceedings.

disappear and become no longer available after the proceedings"[151] is not compelling. In fact, the argument is very audacious.

125. This is because, as noted above, both the Order for Preservation and Handing over of Computer Data issued on June 23 2014 and the Order for a House Search issued on June 25, 2014 explicitly provided that these proceedings were launched and Rozmin's documents and property were to be seized as a result of "*a suspicion of an especially serious crime of fraud* […], *in the stage of attempt* […], *assumed to have been committed by currently unidentified individuals, who acted in the name of the shareholders of the company Rozmin, s.r.o., with registered seat in Bratislava, and EuroGas, with registered seat in Vienna and Belmont Resources, with registered seat in Canada, with the intent to elicit financial resources, make significant financial profits and mislead the relevant state authorities by claiming the amount of 3,2 billion Euros from the Slovak Republic in an unspecified arbitration procedure in connection with a revocation of mining rights of the company Rozmin s.r.o. by the relevant administrative authorities of the SR related to the mining area Gemerská Poloma*"[152] There is not the slightest hint of any crime having been committed against Mr. Čorej, hence no "evidence" that could "*disappear and become no longer available in the proceedings*."[153]

126. The argument is also audacious as it could deprive provisional measures of any effect and, in fact, encourage wrongdoings by the host State. The latter could manufacture artificial reasons to seize documents, copy them, and then return them to the investor, while being able to use them against the investor in the arbitration proceedings, in breach of the principle of equality of arms and of the investor's right to the protection of confidential and privileged information.

127. As a final remark, it should be mentioned that contrary to Respondent's allegation,[154] Claimants relied neither on *City Oriente v. Ecuador* nor on *Lao Holding v. Lao* to support their application for an order to return all seized documents and material, as these decisions

---

151 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 109.

152 **Exhibit C-49**, Order for a House Search, dated June 25, 2014, p. 2; **Exhibit C-50**, Order for Preservation and Handing over of Computer Data, dated June 23, 2014, p. 2.

153 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 109.

154 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶¶ 110 and 124.

indeed do not deal with this issue. In the *Quiborax v. Bolivia* Decision on Provisional Measures, on the other hand, the tribunal did assert its "*power to grant provisional measures to preserve the procedural integrity of the ICSID proceedings, in particular the access to and integrity of the evidence.*"[155] As to the content and relevance of this Decision, Claimants respectfully refer the Tribunal to paragraphs 56 to 61 of the Full Briefing on their Application for Provisional Measures, dated August 11, 2014.

[155] **Exhibit CL-8,** *Quiborax v. Bolivia*, ¶ 141.

II. THE TRIBUNAL HAS *PRIMA FACIE* JURISDICTION OVER THE CLAIMS OF EUROGAS INC. AND BELMONT RESOURCES INC.

128. For lack of a plausible defence on the merits of the case, Respondent has raised a number of objections to jurisdiction. These objections are baseless and, in any event, premature. If need be, they will be addressed in full at the appropriate stage of the proceedings. For purposes of their Application for Provisional Measures, Claimants need only to demonstrate, as acknowledged by Respondent, that the Tribunal has *prima facie* jurisdiction over the dispute.

129. The scope – and limits – of the analysis which the Tribunal must conduct to determine whether it has *prima facie* jurisdiction over the dispute was most comprehensively set out by the Tribunal in *Millicom v. Senegal*:

> [T]*he arbitral Tribunal cannot and must not examine in depth the claims and arguments submitted on the merits of the case; it must confine itself to an initial analysis, i.e. "at first sight". For this, it is necessary and sufficient that the facts alleged by the applicant establish this jurisdiction without it being necessary or possible at this stage to verify them and analyse them in depth.*[156]

130. The Tribunal's analysis must therefore be confined to a mere verification that on the basis of Claimants' allegations, the Tribunal appears to have jurisdiction. If an issue raised by Respondent is "*clearly a contested matter about which written and oral evidence will be required*,"[157] its analysis must be deferred to a later stage in the proceedings, as it would be "*premature to embark on such an expedition at the stage of a request for interim measures, where the Tribunal only needs to decide whether there is* prima facie *jurisdiction*."[158]

131. In the present circumstances and as shown below, there is no doubt that the Tribunal has *prima facie* jurisdiction over both EuroGas (**I**) and Belmont (**II**). Any allegations to the contrary raised by Respondent is vehemently resisted and, as such, ought to be determined at a later stage, when both Parties have an opportunity to fully present their case on the issue.

---

156 **Exhibit CL-24**, *Millicom v. Senegal*, ¶ 42; emphasis added.

157 **Exhibit CL-21**, *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. Mongolia*, UNCITRAL, Order on Interim Measures, dated September 2, 2008, ¶ 53 (available at http://www.italaw.com/sites/default/files/case-documents/ita0621.pdf; hereafter "*Paushok v. Mongolia*").

158 **Exhibit CL-21**, *Paushok v. Mongolia*, ¶ 53.

A. THE TRIBUNAL HAS PRIMA FACIE JURISDICTION OVER EUROGAS INC.

132. Respondent objects to the Tribunal's jurisdiction over EuroGas on two grounds. First, it claims that EuroGas, a company that was formally incorporated in 2005 and one of the claimants in the instant proceedings, does not hold an interest in Rozmin because it is a different entity from the company EuroGas Inc. incorporated in 1985. Respondent then argues, as an alternative argument, that the Slovak Republic was entitled to, and did effectively deny EuroGas the benefit of the US-Slovakia BIT by way of a letter dated December 21, 2012. As demonstrated below, neither one of these objections has merit.

1. EuroGas Inc. has standing under the US-Slovak Republic BIT

133. Respondent's concerns stem from the fact that it is missing an important piece of information.

134. Respondent has acknowledged that the company incorporated in 1985 was the sole shareholder of the EuroGas GmbH, the Austrian company which held, since March 16, 1998, an indirect shareholding interest in Rozmin.[159] Furthermore, Respondent does not challenge the fact that, as described in the Request for Arbitration, EuroGas GmbH eventually became a direct 33% shareholder in Rozmin.[160] What Respondent claims is that the EuroGas that is a party to the instant proceedings is a different entity from the company that was incorporated in 1985. Respondent is mistaken.

135. For all intents and purposes, and from the point of view of Utah State law, EuroGas is very much the same entity as the company incorporated in 1985. The fact that EuroGas – the company party to the instant proceedings – was incorporated in 2005 is a matter of pure form. This entity was incorporated to serve as the corporate host that would take on the surviving corporate existence, business and affairs of the company incorporated in 1985.

136. As a matter of Utah State law, the company incorporated in 1985 was administratively dissolved in 2001 when, as a result of a managerial oversight, it failed to fulfil a purely administrative and formalistic requirement, namely the payment of the company's annual fee, in the amount of USD 5, for the renewal of its registration with the Utah Division of

159 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 15.

160 Claimants' Request for Arbitration, dated June 25, 2014, ¶ 8.

Corporations. This oversight went unnoticed until well after the two-year deadline within which an application for reinstatement could be filed. Nevertheless, the company's corporate existence continued and its business and affairs remained with it.[161]

137. When the oversight was eventually discovered, involuntary bankruptcy proceedings had already been initiated before the US Federal Bankruptcy Court for the District of Utah. In these circumstances, EuroGas was incorporated on November 15, 2005 and, as soon as the bankruptcy proceedings were closed, EuroGas "stepped into the shoes" of the company incorporated in 1985.

138. Indeed, shortly after the bankruptcy proceedings were closed, the corporate documents of EuroGas were amended to mirror those of the 1985 company.[162] This allowed the two companies to enter into a joint resolution and perform a type-F reorganization whereby EuroGas assumed all of the 1985 company's assets, liabilities and issued stock certificates.[163] Thereafter, EuroGas was, as a matter of Utah State law, a mere continuation of the company incorporated in 1985. It had the same corporate structure, the same shareholder base, the same assets and the same liabilities as the company incorporated in 1985.[164]

139. In light of the above, EuroGas is, for purposes of the present proceedings, the same entity as the company incorporated in 1985 which, as acknowledged by Respondent, had an indirect shareholding interest in EuroGas GmbH. For the reasons set out in the Request for Arbitration, EuroGas therefore qualifies as an investor under the US-Slovak Republic BIT, at the very least *prima facie*.[165] Any attempt of Respondent to challenge the above, assuming, for the sake of argument, that it has standing to do so, ought to be deferred to a later and

---

161 **Exhibit R-19**, Utah Code Ann. § 16-10a-1405(1): "*A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs*."

162 **Exhibit C-56**, Amended Articles of Incorporation of EuroGas Inc., dated July 23, 2008.

163 **Exhibit C-57**, Joint Director's Resolution for the Performance of a Type-F Reorganization under Section 368(a)(1)(F) of the Internal Revenue Code of 1986, dated July 31, 2008.

164 **Exhibit C-57**, Joint Director's Resolution for the Performance of a Type-F Reorganization under Section 368(a)(1)(F) of the Internal Revenue Code of 1986, dated July 31, 2008, p. 3 : "*It is hereby resolved that, the Corporation* […] *inherit the shareholders' list and other assets and liabilities of the Predecessor Corporation, including the recognition of the Predecessor Corporation' s issued and outstanding shares, shareholder base and issued and outstanding stock certificates* […] *and that all of the assets, liabilities, rights, privileges, and obligations of the Predecessor Corporation are in fact the assets, liabilities, rights, privileges, and obligations of the EuroGas, Inc., corporation incorporated on November 15, 2005*."

165 Claimants' Request for Arbitration, dated June 25, 2014, Section III.

more appropriate stage of the proceedings when the parties have had a proper opportunity to present their case on the issue.

2. Respondent has failed to discharge its burden of proof to deny EuroGas Inc. the benefits of the US-Slovak Republic BIT

140. As outlined above, it is only by letter dated December 21, 2012 that the Slovak Republic purported to deny EuroGas the benefits of the US-Slovak BIT.[166] This was more than a decade after EuroGas made its initial investment, moreover on the legitimate assumption that it would benefit from the protections provided under the US-Slovak BIT. It was also, and more importantly, close to fourteen month after EuroGas sent a first Notice of Dispute on October 31, 2011 and accepted Respondent's offer to arbitrate under the US-Slovak Republic BIT.

141. In other words, as stated above, Respondent's jurisdictional objection is unacceptable and should be dismissed. Any different finding would be unconscionable and nonsensical as it would mean that a State can encourage a foreign investor to make a substantial investment on its territory, take the investment, and once it receives a Notice of Dispute accepting Respondent's consent to arbitrator under the treaty, deprive the investor of the jurisdictional and substantive protections to which it is entitled under said treaty, so as to dodge its liability before an international forum.

142. In any event, Respondent has failed to discharge its burden of proof, not only when it first purported to exercise its right to deny EuroGas the benefit of the US BIT on December 21, 2012, *i.e.* more than a year after EuroGas' initial Notice of Dispute dated October 31, 2011, but also in its most recent submission on provisional measures dated September 10, 2014, despite having had close to two years to substantiate its claim.

143. It is widely accepted that the burden of proof rests with the respondent State when the latter seeks to effectively deny the benefits of a bilateral investment treaty to an investor. As stated by the tribunal in *Generation Ukraine Inc. v. Ukraine*, "*the burden of proof to establish the*

166 **Exhibit C-41**, Letter from the Slovak Republic, dated December 21, 2012.

factual basis of the 'third country control', together with the other conditions, falls upon the State as the party invoking the 'right to deny' conferred by Article 1(2)."[167]

144. Article I(2) of the US-Slovak Republic BIT requires that two cumulative conditions be satisfied before the right to deny an investor the benefits of the Treaty may be effectively invoked. These conditions are: (i) that the claimant have no "*substantial business activities in the territory of the other Party*;" and (ii) that "*nationals of any third country control*" the claimant.

145. To this day, Respondent has failed to even attempt to discharge its burden of proof in respect of the second condition. At this juncture and given Respondent's repeated failure to discharge its burden of proof, one could reasonably assume that Respondent has waived the right to avail itself of Article I(2) of the US BIT, or that at the very least, it will never be able to make the required demonstration.

146. Even assuming, for the sake of argument, that Respondent were entitled, or even able, to belatedly cure its failure to meet the required burden of proof in respect of the second condition, the evidence presented by Respondent in an attempt to establish that EuroGas has no substantial business activities in the US (*i.e.*, that the first condition is satisfied), is far from conclusive. Respondent relies solely on a so-called "Dun & Bradstreet, Inc. Report." Yet, this so-called report itself contains a disclaimer that undermines its probative value. The information therein is "*provided to you immediately* […] *in the interest of speed. This report may not reflect the current status of this business*."[168] The Terms of Use of the Dun & Bradstreet, Inc.'s website further state that "*D&B does not warrant the accuracy, completeness, or timeliness of any of the data and/or programs (Information) available at this D&B Site*."[169]

147. Moreover, and in any event, Respondent cannot have it both ways. Its claim that EuroGas does not maintain any substantial business activities in the United States is contradicted by its own reliance on the dispute between EuroGas and Tombstone Exploration Corporation.

---

167 **Exhibit RA-5**, *Generation Ukraine Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, dated September 16, 2003, ¶ 15.7 (available at http://www.italaw.com/sites/default/files/case-documents/ita0358.pdf; hereafter "*Generation Ukraine Inc. v. Ukraine*").

168 **Exhibit R-29**, Dun & Bradstreet, Inc. Report, dated September 4, 2014.

169 **Exhibit C-58**, Dun & Bradstreet, Inc.'s Terms of Use (available at https://creditreports.dnb.com/m/terms-of-use.html).

The subject-matter of this dispute stems from a number of mining claims in the United States, in which EuroGas wishes to acquire an interest.[170] This alone demonstrates that EuroGas' activities in the United States are neither fictional nor motivated by any treaty-shopping purposes.

148. In these circumstances, where Respondent has, from all perspectives, failed to discharge the burden of proof incumbent upon it, there can be no doubt that the Tribunal has *prima facie* jurisdiction over EuroGas, despite Respondent's failed attempt to deny EuroGas the benefit of the US BIT.

149. In any event, the issue of whether Respondent has successfully invoked its right to deny the investor the benefit of the applicable BIT typically falls, like other similar issues such as the observance of a cooling-off period, within the "*matters to be considered as part of the jurisdictional and merits phase of these proceedings*,"[171] and cannot prevent the Tribunal from finding that it has *prima facie* jurisdiction over EuroGas for purposes of Claimant's application for provisional measures.

B. THE TRIBUNAL HAS JURISDICTION OVER BELMONT RESOURCES INC.

150. In its submission of September 10, 2014, Respondent contends that "*the Canada BIT expressly excludes the instant dispute from its ambit.*"[172] In this respect, the following preliminary comments must be made.

151. First, the purpose of the succession of two bilateral investment treaties, namely the 1990 Agreement Between the Government of Canada and the Government of the Czech and Slovak Federal Republic for the Promotion and Protection of Investment (the "1990 Canada-Slovak Republic BIT") and the 2010 Canada-Slovak Republic BIT, which entered into force on March 14, 2012, was to ensure a continued protection of foreign investors and a continued access to arbitration to investors claiming that their rights have been breached by the host State.

152. Second, the facts of this case and, in particular, the time at which the dispute occurred, discussed immediately hereafter (at paragraphs 159 to 177), beg for the conclusion that the

170 **Exhibit R-37**, Tombstone Exploration Corporation's Complaint, dated August 21, 2014, ¶ 13.
171 **Exhibit CL-21**, *Paushok v. Mongolia*, ¶ 52.
172 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 65.

present dispute between Belmont and the Slovak Republic is to be settled according to the provisions of the 2010 Canada-Slovak Republic BIT, as the dispute falls within this Treaty's temporal scope.

153. Finally and in any event, it must be pointed out that Respondent is estopped from arguing that the present dispute between Belmont and the Slovak Republic does not fall within the scope of application *ratione temporis* of the 2010 Canada-Slovak Republic BIT.

154. Indeed, as noted in the Introduction to this submission, in response to an initial Notice of Dispute, dated October 31, 2011,[173] Mr. Kažimír, then Deputy Prime Minister and Minister of Finance of the Slovak Republic, stated the following, in a letter dated May 2, 2012: "*As already outlined in letters of my predecessor dated June 16, 2011 and February 09, 2012, the administrative procedure before the Slovak mining offices is still pending, therefore any discussions regarding the alleged claims of EuroGas Inc. seems to me to be premature prior relevant decisions of local authorities are rendered. Therefore, as long as the above mentioned proceedings are ongoing, the Ministry of Finance of the Slovak Republic is of the view that this dispute could not be amicably settled at this stage.*"[174]

155. Thus, at a time when the 2010 Canada-Slovak Republic BIT had already entered into force, the Slovak Republic's position was that the dispute was not yet ripe and that it would, in fact, not become ripe until the conclusion of local proceedings. At that time, the Supreme Court had rendered two decisions, on February 27, 2008 and May 18, 2011, confirming that the revocation of Rozmin's mining rights was in breach of Slovak procedural and substantive laws. On March 30, 2012, the DMO had nevertheless re-assigned exclusive mining rights over the Gemerská Poloma deposit to VSK Mining sro ("VSK Mining"), in total disregard of these Supreme Court decisions. The Main Mining Office (the "MMO") confirmed the DMO's decision on August 1, 2012. According to Mr. Kažimr's letter of May 2, 2012, it is only when the DMO rendered this decision that the dispute became fully ripe.

156. Here again, Respondent cannot have it both ways. Considering the stance taken by the Slovak Republic in 2012, Respondent cannot argue today, in good faith, that Belmont should have initiated arbitration proceedings when Rozmin's mining rights were revoked in 2005, under the 1990 Canada-Slovak Republic BIT, and that the dispute does not fall within the

173 **Exhibit C-39**, Letter from EuroGas Inc. to the Government of the Slovak Republic, dated October 31, 2011.
174 **Exhibit C-40**, Letter from the Slovak Republic, dated May 2, 2012; emphasis added.

scope of application *ratione temporis* of the 2010 Canada-Slovak Republic BIT. Respondent's position is inconsistent and Respondent is therefore estopped from raising, in the proceedings, any timing issue with respect to the initiation of the proceedings. It cannot state, in 2012, that the dispute related to the revocation of Rozmin's mining rights is not ripe for arbitration as long as local proceedings are ongoing, and then, in 2014, once the domestic proceedings have reached a close, argue that Belmont should already have initiated proceedings concurrently with Rozmin's domestic proceedings.

157. Respondent's position is unconscionable and a demonstration of how pessimistic the Slovak Republic feels with respect to its chances to prevail on the merits of this case. Respondent's position therefore cannot stand.

158. In any event, Respondent is wrong to argue that the dispute with Belmont "*is excluded* ratione temporis *from the scope of the Canada BIT*,"[175] as explained below.

1. The dispute falls within the scope of application *ratione temporis* of the Canada-Slovakia BIT

159. As mentioned above, Respondent mistakenly contends, in its submission of September 10, 2014, that "*the Canada BIT expressly excludes the instant dispute from its ambit.*"[176] To conclude that the dispute with Belmont "*is excluded* ratione temporis *from the scope of the Canada BIT*,"[177] Respondent also erroneously argues that this dispute "*arose when the Gemerská Poloma excavation area was assigned to a third-party, and Rozmin's rights to that excavation area lapsed on 3 May 2005.*"[178]

160. Article XV(6) of the Canada-Slovak Republic BIT clearly provides that it "*shall apply to any dispute which has arisen not more than three years prior to its entry into force.*"[179] The wording of this provision is unequivocal: what must not have arisen earlier than three years

---

175 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 66.

176 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 65.

177 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 66.

178 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 66.

179 **Exhibit C-2**, Agreement between Canada and the Slovak Republic for the Promotion and Protection of Investments, dated July 20, 2010, Article XV(6) *in fine*; emphasis added.

before the entry into force of the Treaty – that is, before March 14, 2009 – is the dispute itself.

161. The cutoff date under a bilateral investment treaty such as the Canada-Slovak Republic BIT thus differs from the one that applied, for instance, in cases decided by the Permanent Court of International Justice ("PCIJ") and the International Court of Justice ("ICJ") under the optional clause of Article 36(2) of the PCIJ's Statute and under the European Convention for the Peaceful Settlement Disputes, respectively. Whether the tribunal had jurisdiction, in those cases, depended on the moment when the situation or facts that had given rise to the dispute had occurred, not when the dispute – necessarily subsequent to this situation or these facts – had arisen.[180]

162. By contrast, ICSID tribunals have consistently held that a distinction must be drawn between the time of the events leading up to a dispute and the time when the dispute itself arises, only the latter being relevant to determine whether a tribunal has jurisdiction *ratione temporis* over an investor's claims under a provision such as Article XV(6) of the Canada-Slovakia BIT. As pointed out by Dolzer and Schreuer:

> *The time of the dispute is not identical with the time of the events leading to the dispute. By definition, the allegedly illegal acts must have occurred some time before the dispute. Therefore, the exclusion of disputes occurring before the*

180 See, for instance, the *Phosphates in Morocco* case, in which the French government disputed the PCIJ's jurisdiction based on the declaration by which the French government had accepted, under Article 36(2) of the PCIJ's Statute, the Court's compulsory jurisdiction in "*disputes which may arise after the ratification of the present declaration with regard to situations or facts subsequent to such ratification*" (**Exhibit CL-33**, *Phosphates in Morocco*, Judgment of June 14, 1938, PCIJ, Series A/B, No. 74, p. 22; emphasis added). The Court interpreted the terms "*situations*" and "*facts*" as reflecting "*the intention of the signatory State to embrace, in the most comprehensive expression possible, all the different factors capable of giving rise to a dispute*" (**Exhibit CL-33**, *id.*, p. 24; emphasis added), and upheld France's objection *ratione temporis* on the grounds that the facts with regard to which the dispute had arisen preceded the critical date (**Exhibit CL-33**, *id.*, p. 29). In the *Electricity Company of Sofia and Bulgaria* case, this objection was based on the Belgian declaration of adherence to the Optional Clause of the PCIJ's Statute, which recognized the jurisdiction of the Court "*in any disputes arising after the ratification of the present declaration with regard to situations or facts subsequent to this ratification*" (**Exhibit CL-34**, *Electricity Company of Sofia and Bulgaria*, Judgment of April 4, 1939, PCIJ, Series A/B, No. 77, p. 81). The Court stressed that "[t]*he only situations or facts which must be taken into account from the standpoint of the compulsory jurisdiction accepted in the terms of the Belgian declaration are those which must be considered as being the source of the dispute*" (**Exhibit CL-34**, *id.*, p. 82; emphasis added). In the *Case Concerning Certain Property*, the International Court of Justice had to determine whether it had jurisdiction under Article 27(a) of the European Convention for the Peaceful Settlement of Disputes. This provision provides that the Convention "*shall not apply to disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute.*" In this case, again, it was because the facts with regard to which the dispute had arisen were found to have predated the critical date that the objection *ratione temporis* was upheld (**Exhibit CL-35**, *Case Concerning Certain Property (Liechtenstein v. Germany)*, Judgment of February 10, 2005, ICJ Reports 2005, pp. 6 *et seq.*, ¶ 52).

> *treaty's entry into force should not be read as excluding jurisdiction over events occurring before that date.*[181]

163. In *Maffezini v Spain*, the tribunal held that it had jurisdiction *ratione temporis* in a case in which, although the events on which the parties disagreed had begun prior to the entry into force of the relevant BIT, the dispute itself, in its technical and legal sense, had begun to shape thereafter. The tribunal clearly explained:

> [T]*here tends to be a natural sequence of events that leads to a dispute. It begins with the expression of a disagreement and the statement of a difference of views. In time these events acquire a precise legal meaning through the formulation of legal claims, their discussion and eventual rejection or lack of response by the other party. The conflict of legal views and interests will only be present in the latter stage, even though the underlying facts predate them. It has also been rightly commented that the existence of the dispute presupposes a minimum of communications between the parties, one party taking up the matter with the other, with the latter opposing the Claimant's position directly or indirectly.*[182]

164. Schreuer describes the requirements of a "dispute" in the following passage:

> *The dispute must relate to clearly identified issues between the parties and must not be merely academic. This is not to say that a specific action must have been taken by one side or that the dispute must have escalated to a certain level of confrontation, but merely that it must be of immediate interest to the parties. The dispute must go beyond general*

---

181 **Exhibit CL-36**, Rudolf Dolzer/Christoph Schreuer, Principles of International Investment Law (2008), p. 44. See also **Exhibit CL-37**, Christoph Schreuer, "At What Time Must Jurisdiction Exist?," University of Vienna 2013, p. 2; **Exhibit CL-38**, Christoph Schreuer, What is a Legal Dispute?, in International Law Between Universalism and Fragmentation, Festschrift in Honour of Gerhard Hafner (Isabelle Buffard, James Crawford, Alain Pellet & Stephan Wittich eds., 2008), p. 975; **Exhibit CL-23**, Christoph Schreuer, The ICSID Convention: A Commentary (Cambridge University Press, 2009), p. 96, ¶ 50.

182 **Exhibit CL-39**, *Emilio Agustín Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision on Jurisdiction, dated January 25, 2000, ¶ 96 (available at http://www.italaw.com/sites/default/files/case-documents/ita0479.pdf). See also **Exhibit CL-40**, *Duke Energy International Peru Investments No. 1, Ltd v. Republic of Peru*, ICSID Case No. ARB/03/28, Decision on Jurisdiction, dated February 1, 2006, ¶ 148 (available at http://italaw.com/documents/Duke-Peru-Jurisdiction.pdf); **Exhibit CL-41**, *ABCI Investments NV v. Republic of Tunisia*, ICSID Case No. ARB/04/12, Decision on Jurisdiction, dated February 18, 2011, ¶ 168 (French version available at http://www.italaw.com/sites/default/files/case-documents/italaw1346.pdf).

> *grievances and must be susceptible of being stated in terms of a concrete claim.*[183]

165. In international law, a dispute thus arises only when "*the claim of one party was positively opposed by the other*."[184] In other words, "*it is not sufficient for one party to assert that there is a dispute*,"[185] let alone that neither party assert the existence of a dispute but one merely seek from the other due compliance with its obligations. "*Whether there exists an international dispute is a matter for objective determination.*"[186]

166. In accordance with the terms of Article 25 of the ICSID Convention, the dispute must be of a legal nature.[187] In this respect, Schreuer explains that "*fact patterns alone do not determine the legal or non-legal character of a dispute. Rather, it is the type of claim that is put forward and the prescription that is invoked that decides whether a dispute is legal or not.* […] *The dispute will only qualify as legal if legal rules contained, for example, in treaties or legislation are relied upon and if legal remedies such as restitution or damages are sought.*"[188] Indeed, as explained by the Report of the Executive Directors on the ICSID Convention, "[t]*he dispute must concern the existence or scope of a legal right or obligation, or the nature or extent of the reparation to be made for breach of a legal obligation.*"[189] ICSID tribunals have, accordingly, consistently held that "*the decisive factor in determining*

---

183 **Exhibit CL-23**, Christoph Schreuer, The ICSID Convention: A Commentary (Cambridge University Press, 2009), p. 94, ¶ 44.

184 **Exhibit CL-42**, *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Judgment of December 21, 1962, ICJ Reports 1962, pp. 319 *et seq.*, p. 328; **Exhibit CL-43**, *Empresa Lucchetti SA and Lucchetti Peru SA v. Republic of Peru*, ICSID Case No. ARB/03/4, Award, dated February 7, 2005, ¶ 48 (available at http://www.italaw.com/sites/default/files/case-documents/ita0275.pdf; hereafter "*Lucchetti v. Peru*"). See also **Exhibit CL-44**, *Northern Cameroons (Cameroon v. UK)*, Judgment of December 2, 1963, ICJ Reports 1963, pp. 15 *et seq.*, p. 27.

185 **Exhibit CL-45**, *Nuclear Tests (Australia v France)*, Judgment of December 20, 1974, ICJ Reports 1974, pp. 253 *et seq*., p. 271, ¶ 55; **Exhibit CL-46**, *Nuclear Tests (New Zealand v France)*, Judgment of December 20, 1974, ICJ Reports 1974, pp. 457 *et seq*., p. 476, ¶ 58.

186 **Exhibit CL-47**, *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, First Phase, Advisory Opinion of Mach 30, 1950, ICJ Reports 1950, pp. 65 *et seq*., p. 74; **Exhibit CL-48**, *Case concerning East Timor (Portugal v. Australia)*, Judgment of June 30, 1995, ICJ Reports 1995, pp. 90 *et seq*., p. 100, ¶ 22. See also **Exhibit CL-49**, *Lao Holdings N.V. v. Lao People's Democratic republic*, ICSID Case No. ARB(AF)/12/6, Decision on Jurisdiction, dated February 21, 2014, ¶ 124 (available at http://www.italaw.com/sites/default/files/case-documents/italaw3108.pdf).

187 **Exhibit CL-38**, Christoph Schreuer, What is a Legal Dispute ?, in International Law Between Universalism and Fragmentation, Festschrift in Honour of Gerhard Hafner (Isabelle Buffard, James Crawford, Alain Pellet & Stephan Wittich eds., 2008), p. 965.

188 **Exhibit CL-38**, Christoph Schreuer, What is a Legal Dispute?, in International Law Between Universalism and Fragmentation, Festschrift in Honour of Gerhard Hafner (Isabelle Buffard, James Crawford, Alain Pellet & Stephan Wittich eds., 2008), p. 966.

189 **Exhibit CL-50**, Report of the Executive Directors on the ICSID Convention, ¶ 26.

the legal nature of the dispute was the assertion of legal rights and the articulation of the claims in terms of law.[190]

167. In *Toto Costruzioni v. Lebanon*, the tribunal drew a clear distinction between a "breach," a "problem," and a "dispute" and found that a dispute could only be deemed to have crystallized when one party had invited the other to have recourse to the applicable bilateral investment treaty's dispute settlement clause. In the words of the tribunal:

> *A "breach" arises when contractual or treaty obligations are not honored. A "problem" arises when that party's claim is not accepted by the other side, i.e., when the engineer and the contractor have different views which need to be referred*

190 **Exhibit CL-38**, Christoph Schreuer, What is a Legal Dispute?, in International Law Between Universalism and Fragmentation, Festschrift in Honour of Gerhard Hafner (Isabelle Buffard, James Crawford, Alain Pellet & Stephan Wittich eds., 2008), p. 970. See **Exhibit CL-51**, *Lanco International Inc. v. The Argentine Republic*, ICSID Case No. ARB/97/6, Decision on Jurisdiction, dated December 8, 1998, ¶ 47 (available at http://www.italaw.com/sites/default/files/case-documents/ita0450_0.pdf); **Exhibit CL-52**, *Gas Natural SDG, S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/10, Decision on Jurisdiction, dated June 17, 2005, ¶¶ 20-23 (available at http://www.italaw.com/sites/default/files/case-documents/ita0354.pdf); **Exhibit CL-53**, *Camuzzi International S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/2, Decision on Jurisdiction, dated May 11, 2005, ¶ 55 (available at http://www.italaw.com/sites/default/files/case-documents/ita0108.pdf); **Exhibit CL-54**, *AES Corporation. v. The Argentina Republic*, ICSID Case No. ARB/02/17, Decision on Jurisdiction, dated April 26, 2005, ¶¶ 40-47 (available at http://www.italaw.com/sites/default/files/case-documents/ita0011.pdf); **Exhibit CL-55**, *Sempra Energy International. v. The Argentine Republic*, ICSID Case No. ARB/02/16, Decision on Jurisdiction, dated May 11, 2005, ¶¶ 67 and 68 (available at http://www.italaw.com/sites/default/files/case-documents/ita0768.pdf); **Exhibit CL-56**, *Bayindir Insaat Turzim Ticaret ve Sanayi A.S. v. Islamic Republic of Pakistan*, Decision on Jurisdiction, ICSID Case No. ARB/03/29, dated November 14, 2005, ¶¶ 125 and 126 (available at http://www.italaw.com/sites/default/files/case-documents/ita0074.pdf); **Exhibit CL-57**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Decision on Jurisdiction, dated April 27, 2006, ¶¶ 47-62 (available at http://www.italaw.com/sites/default/files/case-documents/ita0268_0.pdf); **Exhibit CL-58**, *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction, dated June 16, 2006, ¶ 74 (available at http://www.italaw.com/sites/default/files/case-documents/ita0439.pdf; hereafter "*Jan de Nul v. Egypt*, Decision on Jurisdiction"); **Exhibit CL-59**, *National Grid PCL v. The Argentine Republic*, UNCITRAL, Decision on Jurisdiction, dated June 20, 2006, at ¶¶ 142 and 143, and 160 (available at http://www.italaw.com/sites/default/files/case-documents/ita0553.pdf); **Exhibit CL-60**, *Pan American Energy LLC and BP Argentina Exploration Company v. The Argentine Republic*, ICSID Case No. ARB/03/13, Decision on Preliminary Objections, dated July 27, 2006, ¶¶ 71-91 (available at http://www.italaw.com/sites/default/files/case-documents/ita0616.pdf); **Exhibit CL-10**, *Saipem S.p.A. v. The People's Republic of Bangladesh*, ICSID Case No. ARB/05/07, Decision on Jurisdiction and Recommendation on Provisional Measures, dated March 21, 2007, ¶¶ 93-97 (available at http://www.italaw.com/sites/default/files/case-documents/ita0733.pdf; hereafter "*Saipem v. Bangladesh*"). In **Exhibit CL-61**, *Helnan International Hotels A/S v The Arab Republic of Egypt*, ICSID Case No. ARB/05/19 (hereafter "*Helnan v. Egypt*"), Decision on Jurisdiction, dated October 17, 2006, ¶ 52 (available at http://www.italaw.com/sites/default/files/case-documents/ita0398_0.pdf), the tribunal explained that "*in case of a dispute, the difference of views forms the subject of an active exchange between the parties under circumstances which indicate that the parties wish to resolve the difference, be it before a third party or otherwise. Consequently, different views of parties in respect of certain facts and situations become a 'divergence' when they are mutually aware of their disagreement. It crystallises as a 'dispute' as soon as one of the parties decides to have it solved, whether or not by a third party.*"

> *for final decision to the employer/administration. On September 12, 2002, Toto requested to be compensated for the additional works and the delay occurred.*[…] *However, the CDR did not take a position, so Toto invited it on June 30, 2004, to have recourse to Article 7 of the Treaty ("Settlement of Disputes"). Thus, the dispute, which had been in limbo for months, crystallized then.*[191]

168. The fact that local proceedings may have been initiated prior to the critical date does not necessarily imply that a dispute had arisen before that date for purposes of determining the scope of application *ratione temporis* of a bilateral investment treaty. Indeed, rights under the treaty must be asserted and claims under the treaty must be articulated for a dispute to be deemed to have arisen.

169. This is why, in *Jan de Nul v. Egypt*, for instance, the tribunal held that it had jurisdiction under Article 12 of the bilateral investment treaty between the BLEU and Egypt – which provided that it would not apply to disputes that had arisen prior to its entry into force, that is, before 24 May 2002 – despite the fact that a dispute between the parties had been submitted to local courts well before the entry into force of the said treaty. Indeed, at that time, the dispute was pending before the Administrative Court of Ismaïlia, which eventually rendered an adverse decision in 2003, approximately one year after the new BIT's entry into force. The Tribunal accepted the claimants' contention that the dispute before it was different from the dispute that had been brought to the Egyptian court, explaining the following:

> *The purpose of Article 12 of the 2002 BIT is to exclude disputes which have crystallized before the entry into force of the BIT and that could be deemed "treaty disputes" under the treaty standards.* […]
>
> *In the present case, while the dispute which gave rise to the proceedings before the Egyptian courts and authorities related to questions of contract interpretation and of Egyptian law, the dispute before this ICSID Tribunal deals with alleged violations of the two BITs, specifically of the provisions on fair and equitable treatment, on continuous protection and security, and on the obligation to promote investments.*

---

191 **Exhibit CL-62**, *Toto Costruzioni Generali S.p.A. v. The Republic of Lebanon*, ICSID Case No. ARB/07/12, Award, dated June 7, 2012, ¶ 63 (available at http://www.italaw.com/sites/default/files/case-documents/ita1013.pdf).

> *There is nothing unsound in the Claimants' assertion that the damage they suffered because of the alleged fraud was compounded by the subsequent conduct of the organs of the Egyptian State until the Court of Ismaïlia adopted the judgment which – according to the Claimants – definitively eliminated all prospects that the Claimants could obtain redress from the Egyptian State.*
>
> […] *The fact that the most important part of the Claimants' SoC is devoted to alleged BIT violations in connection with the very facts that founded the claim before the Ismaïlia court (and only a minor part to the alleged wrongdoings of the court system) does not change the situation. In Professor's Schreuer's words, the (relevant) fact is that "the domestic dispute antedated the international dispute and ultimately led towards it"* […].
>
> [A]*s set forth by the Claimants' legal expert, there is a clear trend of cases requiring an attempt to seek redress in domestic courts before bringing a claim for violations of BIT standards irrespective of any obligation to exhaust local remedies*[…]*. Although it agrees with the Respondent that there is no requirement for a mandatory "pre-trial" before the local courts, this consideration reinforces the Tribunal in its conclusion that the dispute only crystallized after 22 May 2003 when the Ismaïlia Court rendered its judgment.*[192]

170. In the present case, the dispute between Belmont and the Slovak Republic was not ripe on the March 14, 2009 critical date, let alone had it crystallized in January 2005, contrary to what Respondent argues. Rozmin's mining rights were revoked in January 2005. Domestic proceedings were then launched in the Slovak Republic by Rozmin on the ground – to be repeatedly declared well-founded by the Slovak Supreme Court – that the revocation of Rozmin's mining rights and their allocation to another entity was in breach of Slovak domestic laws. As mentioned above, Respondent itself took the position, in a letter dated May 2, 2012, that is, in a letter sent after the entry into force of the 2010 Canada-Slovak Republic BIT, that the dispute was not ripe as long as domestic proceedings were ongoing.[193] These proceedings were only concluded only on August 1, 2012, when the MMO confirmed the DMO's decision to award mining rights to VSK Mining. In fact, one of the many

192 **Exhibit CL-58**, *Jan de Nul v. Egypt*, Decision on Jurisdiction, ¶¶ 116-121.
193 **Exhibit C-40**, Letter from the Slovak Republic, dated May 2, 2012.

breaches raised by Claimants is precisely the failure of Slovak mining authorities, hence of Respondent, to comply with the decisions of the Slovak Supreme Court.

171. Thus, just as in the *Jan de Nul* case quoted above, in the present case, the domestic dispute antedated the international dispute and only led to it. Furthermore, damages sustained by Belmont as a result of the revocation of Rozmin's mining rights were compounded by the subsequent conduct of mining authorities, which disregarded the multiple rulings of the Supreme Court in favour of Rozmin, issued on February 27, 2008 and May 18, 2011, and which definitively deprived Rozmin, as of August 1, 2012 – that is, well after the critical date – of all prospects that it could obtain redress from the Slovak State. Indeed, it was only on August 1, 2012 that the Main Mining Office confirmed the District Mining Office's decision of March 30, 2012 to re-assign exclusive mining rights over the Gemerská Poloma deposit to VSK Mining despite the Supreme Court's decision of May 18, 2011.[194]

172. In any event, Belmont was not a party to the local proceedings and prior to the critical date of March 14, 2009 (upon which the Canada-Slovak Republic BIT entered into force), there was no legal dispute between this company and the Slovak Republic, whereby the former would have alleged a breach by the latter of its international obligations, and the latter would have denied the existence of such a breach.

173. In fact, prior to its submission of September 10, 2014, the State never opposed Belmont's claim that it is entitled to compensation under the Canada-Slovak Republic BIT as a result of the taking of its investment and ensuing deprivation of the benefits thereof. Neither before Belmont's Notice of Dispute of December 23, 2014, nor once thereafter during settlement negotiations, did Respondent oppose Belmont's right to compensation under the Canada-Slovak Republic BIT.

174. Importantly, in a letter dated January 28, 2014, the Deputy Prime Minister and Minister of Finance of the Slovak Republic stated that Counsel for Claimants' "*letter of 23 December* [2013] [was] *the first information that the Slovak Republic* [had] *received regarding a dispute from Belmont Resources Inc.*"[195] In other words, Respondent claimed, as late as January 28, 2014, to have been unaware of the existence of a dispute between itself and Belmont. There can therefore not have been a "legal dispute" as defined above, as Belmont

194 **Exhibit C-37**, Decision of the District Mining Office, dated March 30, 2012 (Ref. 157-920/2012).

195 **Exhibit C-59**, Letter from Mr. Peter Kažimr, Deputy Prime Minister and Minister of Finance of the Slovak Republic to Dr. Hamid Gharavi, Counsel for Claimants, dated January 28, 2014.

would have had to have raised a breach by Respondent and Respondent would have had to have opposed it. By Respondent's own admission, neither one of these conditions was met in January 2014, that is, almost two years after the entry into force of the Canada-Slovak Republic BIT.

175. Thereafter, during the amicable settlement negotiations that followed, Respondent requested that Claimants "*present the grounds on which Claimants calculated the alleged losses and compensation sought, including grounds for calculation of costs for investment realized for works related to exploitation of talc, calculation of alleged expected future earnings arising from such realized investment and calculation of value of the resource reserve of talc*."[196] Respondent then requested "*a reasonably-detailed quantification of* [Claimants'] *claims.*"[197] Claimants fully complied with Respondent's request and the latter promised, in meeting held on April 16, 2014, to revert to Claimants with a counter-valuation. Respondent however eventually failed to do so.

176. In conclusion, the dispute between Belmont and the Slovak Republic did not occur more than three years before the entry into force of the Slovakia-Canada BIT. It had not even occurred by the time the Treaty entered into force.

177. In conclusion, the dispute between Belmont and the Slovak Republic falls within the scope *ratione temporis* of the Canada-Slovak Republic BIT and the tribunal accordingly has *prima facie* jurisdiction in respect of Belmont.

2. Belmont Resources Inc. is Rozmin sro's majority shareholder

178. Respondent's argument that Belmont's shares in Rozmin were transferred to EuroGas in 2001 is beyond the scope of matters to be examined to determine whether the Tribunal has *prima facie* jurisdiction over Belmont for purposes of Claimants' application for provisional measures. This is why Respondent itself does not raise this argument when addressing the question of the Tribunal's *prima facie* jurisdiction, but rather in its factual description of the Parties. In any event, this allegation is inaccurate.

196 **Exhibit C-60**, Letter from Mr. Peter Kažimr, Deputy Prime Minister and Minister of Finance of the Slovak Republic to Dr. Hamid Gharavi, Counsel for Claimants, dated February 20, 2014.

197 **Exhibit C-61**, Letter from Mr. Peter Kažimr, Deputy Prime Minister and Minister of Finance of the Slovak Republic to Dr. Hamid Gharavi, Counsel for Claimants, dated March 13, 2014.

179. As provided in the Request for Arbitration, Belmont became an investor in Rozmin on February 24, 2000, when it acquired a 57% interest in this company from two of its initial shareholders, namely Östu Industriemineral Consult GmbH[198] and Gebrüder Dorfner GmbH.[199]

180. To date, Belmont holds a 57% shareholding interest in Rozmin. Respondent is thus mistaken when it contends that Belmont no longer is a shareholder in Rozmin.

181. As noted by Respondent, on March 27, 2001, Belmont and EuroGas entered into a Share Purchase Agreement (the "SPA") for the sale of the former's 57% interest in Rozmin to the latter. The SPA was subject to certain conditions, not all of which were satisfied. As a result, Belmont's 57% interest in Rozmin was never transferred to EuroGas, and Belmont continued to invest in, and to be involved in the management of, the Gemerská Poloma project. In other words, Belmont is, up to this day, the legal owner of a 57% interest in Rozmin.

182. Assuming, furthermore, for the sake of argument, that Respondent were to prevail with respect to its argument that EuroGas does not have standing in the present proceedings, that is, that EuroGas is not the company that invested in the Gemerská Poloma project in the Slovak Republic and that the entity that did so was dissolved in 2001 and was not succeeded by EuroGas (i.e., the US claimant in these proceedings), Belmont's standing would be all the more undisputable. Again, Respondent cannot have it both ways.

183. Belmont remains, to this day, Rozmin's majority shareholder.

198 **Exhibit C-16**, Agreement on the Transfer of Business Shares in the Company Rozmin sro between Östu Industriemineral Consult GmbH and Belmont Resources Inc., dated February 24, 2000.

199 **Exhibit C-17**, Agreement on the Assignment of Company Shares in the Rozmin sro Corp. between Gebrüder Dorfner GmbH & Co. Kaolin - und Kristallquarzsand - Werke KG and Belmont Resources Inc., dated February 24, 2000.

III. THE SLOVAK REPUBLIC'S REQUEST FOR SECURITY FOR COSTS SHOULD BE DENIED

184. Respondent requests that the Tribunal issue a provisional measure recommending that Claimants provide security for Respondent's costs ("Respondent's Request").

185. By way of preliminary remark, Respondent's Request is of an extraordinary nature, as evidenced by the fact that virtually all ICSID tribunals to date have declined to grant such a request.[200] The only case in which the tribunal accepted such a request and on which Respondent relies, is *RSM Production Corporation v. Saint Lucia* ("the *RSM v. Saint Lucia* Decision").[201]

186. Yet, several factors severely undermine the reliance, if any, which Respondent may place on this decision. As stated above, it is the one and only case in which an ICSID tribunal made an order for security for costs. Further, the tribunal's decision was reached by a majority. One co-arbitrator, Judge Edward W. Nottingham, issued a powerful dissenting opinion, while the other, Dr. Gavan Griffith QC, issued a rather unusual assenting opinion in which

---

200 **Exhibit RA-4**, *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Decision on the Respondent's Request for Security for Costs, dated August 13, 2014, ¶ 53 (available at http://www.italaw.com/sites/default/files/case-documents/italaw3318.pdf): "*No ICSID ruling, however, has been submitted to the Tribunal in which such exceptional circumstances were found to be established*." See also **Exhibit CL-63**, *Abaclat and Others v. Argentine Republic*, ICSID Case No. ARB/07/5 (formerly *Giovanna a Beccara and Others v. The Argentine Republic*), Procedural Order No. 10, dated June 18, 2012 (available at http://www.italaw.com/sites/default/files/case-documents/italaw1301_0.pdf); **Exhibit CL-64**, *Alasdair Ross Anderson et al v. Republic of Costa Rica*, ICSID Case No. ARB(AF)/07/3, Award, dated May 19, 2010 (available at http://www.italaw.com/sites/default/files/case-documents/ita0031.pdf; hereafter "*Anderson v. Costa Rica*"); **Exhibit CL-65**, *Burimi S.R.L and Eagle Games SH.A v. Republic of Albania*, ICSID Case No. ARB/11/18, Procedural Order No. 2, dated May 3, 2012 (available at http://www.italaw.com/sites/default/files/case-documents/italaw1534.pdf; hereafter "*Burimi v. Albania*"); **Exhibit CL-6**, *Emilio Agustín Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Procedural Order No. 2, dated October 28, 1999 (available at http://www.italaw.com/sites/default/files/case-documents/ita0477.pdf; hereafter "*Maffezini v. Spain*, Procedural Order No. 2"); **Exhibit CL-66**, *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award, dated June 18, 2010, ¶ 17 (available at http://www.italaw.com/sites/default/files/case-documents/ita0396.pdf; hereafter "*Hamester v. Ghana*"); **Exhibit CL-32**, *Libananco v. Turkey*; **Exhibit CL-67**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24 (hereafter "*Plama v. Bulgaria*"), Award, dated August 27, 2008 (available at http://www.italaw.com/sites/default/files/case-documents/ita0671.pdf); **Exhibit CL-68**, *Rachel S. Grynberg, Stephen M. Grynberg, Miriam Z. Grynberg, and RSM Production Corporation v. Government of Grenada*, ICSID Case No ARB/10/6, Decision on Respondent's Application for Security for Costs, dated October 14, 2010 (available at http://www.italaw.com/sites/default/files/case-documents/ita0725.pdf; hereafter "*RSM v. Grenada*"); **Exhibit CL-69**, *Rafat Ali Rizvi v. Republic of Indonesia*, ICSID Case No. ARB/11/13, Award on Jurisdiction, dated July 16, 2013 (available at http://www.italaw.com/sites/default/files/case-documents/italaw3170.pdf); **Exhibit CL-70**, *Saba Fakes v. Republic of Turkey*, ICSID Case No. ARB/07/20, Award, dated July 14, 2010 (available at http://www.italaw.com/sites/default/files/case-documents/ita0314.pdf); and **Exhibit CL-5**, *Pey Casado v. Chile*.

201 **Exhibit RA-4**, *RSM v. Saint Lucia* Decision.

he openly frowned upon "*a new industry of mercantile adventurers*."[202] The strong disapproval of third-party funders expressed by Dr. Gavan Griffith QC has led the claimant to question his impartiality towards third-party funded claimants and to request his disqualification.[203] Lastly, and in any event, the underlying facts of the *RSM v. Saint Lucia* case are rather exceptional, and can easily be distinguished from those at hand.

187. In the present case, Respondent has failed to put forward even a plausible defence (**A**) and has no right to be preserved by way of provisional measures under Article 47 of the ICSID Convention (**B**). Further, ordering Claimants to provide security for Respondent's costs would go against the object and purpose of the ICSID Convention (**C**). In any event, Respondent has failed to demonstrate the existence of exceptional circumstances demonstrating that the requested measure is necessary, let alone that it is urgently needed (**D**).

A. RESPONDENT DOES NOT HAVE A PLAUSIBLE DEFENCE ON THE MERITS

188. In support of its request for security for costs, the Slovak Republic claims that it is "*plausible that the Slovak Republic will, in any event, prevail on the merits*."[204] The reality is, however, that Respondent's ability to present a plausible defence on the merits is severely impeded by Respondent's numerous breaches of international treaties and the adverse findings of its own Supreme Court.

189. Once reserves had been confirmed by EuroGas and Belmont, Respondent illegally expropriated Claimants of their investment. This is undeniable. The Slovak Republic's own Supreme Court declared, on three separate occasions, that the revocation of Rozmin's mining rights was illegal under Slovak law.[205]

---

202 **Exhibit RA-4**, *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Assenting Opinion of Mr. Gavan Griffith QC, dated August 13, 2014, ¶¶ 13-14 (available at http://www.italaw.com/sites/default/files/case-documents/italaw3318.pdf; hereafter "*RSM v. Saint Lucia*, Assenting Opinion").

203 **Exhibit C-62**, Investor Moves to Disqualify Arbitrator on the Basis of Recent Comments on Third-Party Funding of Arbitration Claims, IA Reporter Story, dated September 10, 2014.

204 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 74.

205 **Exhibit C-33**, Decision of the Supreme Court of the Slovak Republic, dated February 27, 2008 (Ref. 6Sžo/61/2007-121); **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010); and **Exhibit C-38**, Decision of the Supreme Court of the Slovak Republic, dated January 31, 2013 (Ref. 5Sžp/10/2012).

190. Further, as demonstrated below, the Supreme Court confirmed that Rozmin had made very substantial investments in order to start exploitation of the Gemerská Poloma mining area (the "Mining Area"), that it had been authorized by the competent administrative authorities to carry out mining works until November 13, 2006, and that, no less than 22 days before the revocation of Rozmin's rights, a representative of the Slovak Republic had confirmed that Rozmin's activities were in compliance with all regulations in force. In other words, the highest judicial body of the Slovak Republic confirmed that the taking of Rozmin's mining rights was without legal basis, unforeseeable, sudden and, moreover, contrary to representations made to it up to the very moment of the taking.

191. Against this background, any attempt of the Slovak Republic to assert a defence on the merits appears futile and, indeed, Respondent's submission fails to even suggest a plausible defence, as demonstrated below.

192. First, Respondent's bold assertion that the taking of Claimants' investment was "*perfectly within the bounds of Slovak law*" and that "*the Slovak courts have never held to the contrary*,"[206] simply flies in the face of the Slovak Supreme Court's finding that the "*action of the defendant and the appealed decision is not in conformity with the legislation*."[207]

193. The Supreme Court considered Act No. 558/2001 amending Act No. 44/1988 on Protection and Utilization of Mineral Resources (the "2002 Amendment"), namely the statute which allowed the revocation of mining rights in the event of an interruption of activities for a period exceeding three years, and on which the DMO relied to justify the revocation of Rozmin's mining rights and the initiation of a new tender in January 2005. Upon a detailed analysis of the 2002 Amendment and its background, including the explanatory report that accompanied it, the Slovak Supreme Court found, *inter alia*, the following:

- The 2002 Amendment could not have applied retroactively.[208] In other words, the three-year period after which mining rights could, provided the requisite conditions were met, be revoked, could only have started to run from the date of the entry into force of the Amendment, *i.e.* January 1, 2002, and the three-year period could have elapsed, at the

206 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 74.

207 **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010), p. 26.

208 **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010), pp. 22, 24-25.

earliest, on December 31, 2004. In the case of Rozmin, however, the three-year period had not yet elapsed by the time a new tender produce was initiated for the award of mining rights over Gemerská Poloma. Indeed, contrary to Respondent's assertion that the three-year period was observed by the Slovak Republic before the revocation of Rozmin's mining rights, the Supreme Court found that "*already in December 2004*," that is less than three years after the date of entry into force of the 2002 Amendment, the Ministry of Justice had been requested to publish a Notification of the Initiation of the Tender Procedure for the Assignment of the Mining Area.[209] This Notification was published on December 30, 2004, before Rozmin had even been notified of the revocation of its mining rights;

- In the words of the Supreme Court, the revocation of Rozmin's mining rights could only have been "*appropriate*" if, "*after a thorough investigation*,"[210] it had been determined that the Mining Area had been left unexploited, or that the exploitation of the Mining Area had been artificially delayed for speculative purposes. Yet, the Supreme Court noted that: (i) on May 31, 2004, Rozmin had been specifically authorized to resume mining activities until November 13, 2006; (ii) on December 8, 2004, an inspection of the Mining Area had been carried out, during which it had been recorded that the works were ongoing and that Rozmin's activities were in compliance with the legislation in force; and (iii) Rozmin had invested approximately SKK 120,000,000 in the Mining Area. In light of these facts, which the administrative bodies had failed to take into account when assessing whether Rozmin's mining rights could lawfully be revoked under Act No. 44/1988 on Protection and Utilization of Mineral Resources, as amended by the 2002 Amendment, the Supreme Court found that the "*the action of the defendant, and the appealed decision* [were] *not in conformity with the legislation*."[211]

---

209 **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010) p. 22.

210 **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010), p. 23.

211 **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010), pp. 25-26.

194. In these circumstances, Respondent's contention that its actions were never held contrary to Slovak law is beyond reason. Respondent's actions have indeed been held contrary to Slovak law, on three separate occasions, by the country's highest judicial organ.[212]

195. Second, Respondent's allegations that Rozmin was "*thoroughly granted due process*" and that Claimants, having "*failed to even attempt to obtain domestic redress*," cannot claim to have been expropriated,[213] are to be rejected.

196. Even assuming, for the sake of argument, that an attempt to seek redress before local courts constitutes a requirement for a finding of expropriation, Respondent's reliance on the findings of the tribunal in *Generation Ukraine v. Ukraine* is misplaced. The circumstances of that case differ significantly from the ones at hand. If, in the *Generation Ukraine* case, the tribunal did find that "*conduct tantamount to expropriation is doubtful in the absence of a reasonable – not necessarily exhaustive – effort by the investor to obtain correction*," it was in circumstances where "*the conduct cited by the Claimant was never challenged before the domestic courts of Ukraine*."[214]

197. In the present case, the efforts deployed by Rozmin to obtain specific performance before local courts were exhaustive and beyond what could reasonably have been expected of any investor. Rozmin was embroiled in local proceedings for more than eight years and obtained three favorable decisions from the Slovak Supreme Court. Yet, despite the supposedly "*thorough due process*" granted to Rozmin, the local administrative bodies continued to relentlessly disregard and frustrate the findings of the Slovak Supreme Court.

198. Lastly, in a rather desperate attempt to circumvent the adverse findings of the Slovak Supreme Court, Respondent is essentially asking the Tribunal to interpret the 2002 Amendment *de novo*, and to overrule the findings of its own Supreme Court. In doing so, Respondent asserts that, for purposes of determining whether Rozmin had undertaken the required activities within the three-year period, Claimants wrongly translated the Slovak legal term "*dobývanie*" as "*mining activities*" when the correct translation would be

---

212 **Exhibit C-33**, Decision of the Supreme Court of the Slovak Republic, dated February 27, 2008 (Ref. 6Sžo/61/2007-121); **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010); and **Exhibit C-38**, Decision of the Supreme Court of the Slovak Republic, dated January 31, 2013 (Ref. 5Sžp/10/2012).

213 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 74.

214 **Exhibit RA-5**, *Generation Ukraine, Inc. v. Ukraine*, ¶¶ 20.30-20.33.

"*excavation.*" In sum, Respondent acknowledges that Rozmin carried out mining activities within the relevant three-year period, but claims that "*because Rozmin had failed to excavate minerals within a three-year period*," the Slovak Republic was "*entitled to revoke Rozmin's rights.*"[215] This is wrong.

199. According to English-Slovak dictionaries, the word "*dobývanie*" may be translated as "*mining, extraction,* [or] *excavation*."[216] Therefore, it was perfectly correct to translate the word "*dobývanie*" as "*mining*." By translating "*dobývanie*" as "*excavation*," Respondent merely chose to adopt a more restrictive translation.

200. Yet, the Slovak Republic's Supreme Court expressly disavowed this restrictive interpretation. In its Judgment dated May 18, 2011, the Supreme Court found that the "*restrictive*" interpretation of the term "*dobývanie*" adopted by the administrative bodies in December 2004, akin to the translation suggested by Respondent, which required that Rozmin begin extracting minerals within a three-year period, was "*not correct.*"[217] The Court found that it was illegal to revoke Rozmin's mining rights on the basis of this restrictive definition, without taking into account Rozmin's substantial investments, the fact that it had been authorized to carry out mining activities until November 13, 2006, and that its activities had been explicitly found to be in compliance with all regulations in force.

201. In sum, Respondent's argument that the taking of Rozmin's mining rights was lawful because Rozmin had not started *excavating* minerals within a three-year period has already been addressed and rejected by the Slovak Supreme Court. This issue of Slovak law having been conclusively determined by the country's highest judicial body, it is beyond this Tribunal's purview to revisit it.

202. It is not surprising that Claimants' financial situation deteriorated after they were illegally deprived of their most valuable and promising investment. Respondent's request, however, that the Tribunal impose on Claimants an additional financial burden before allowing them to seek the benefit of the protections they are entitled to under international law is

---

215 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 74 and footnote 83; emphasis added.

216 **Exhibit C-63**, Extract from online Slovak dictionary (publicly available at http://slovniky.lingea.sk/).

217 **Exhibit C-36**, Decision of the Supreme Court of the Slovak Republic, dated May 18, 2011 (Ref. 2Sžo/132/2010), p. 25.

unacceptable and goes against the very purpose of the framework contemplated by the ICSID Convention, as further explained below.

B. RESPONDENT HAS NO RIGHT TO BE PRESERVED BY WAY OF PROVISIONAL MEASURES

203. The Arbitral Tribunal's power to recommend provisional measures is governed by Article 47 of the ICSID Convention. This Article reads as follows:

> *Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party* [emphasis added].

204. Aside from the requirements that the requested provisional measure be necessary and urgent, which neither Party challenges, it results from the wording of Article 47 and the ordinary meaning thereof,[218] that the applicant must also demonstrate that it has a right to be preserved by the Tribunal. Respondent has failed to make the required demonstration.

205. Relying on the *RSM v. Saint Lucia* Decision, Respondent merely asserts that the "*Tribunal may order the security for costs if the Respondent demonstrates that it has a* 'plausible' *defense*, 'i.e. a future claim for cost reimbursement is not excluded.'"[219] This assertion is in stark contrast with the findings of other distinguished tribunals and, in fact, wrong for the following non-exhaustive and independent reasons.

206. First, the mere use in Article 47 of the word "*preserve*" implies, by reference to its ordinary meaning, that the right at issue already exists. Yet, Respondent's right to the reimbursement of its costs is highly hypothetical. It not only presumes that Respondent will succeed on the merits, but also that the Tribunal will eventually shift the Parties' costs on Claimants. Yet, nothing is more uncertain and requesting the Tribunal to recommend provisional measures

---

218 Article 31(1) of the Vienna Convention on the Law of Treaties provides: "*A treaty shall be interpreted in good faith in accordance with the ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose*" (available at https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf).

219 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 72.

on the basis of such assumptions is requesting the Tribunal to prejudge the merits of the case.[220]

207. As demonstrated above in Section III.A., Respondent's defence on the merits is far from convincing. It is notably contradicted by no less than three decisions of its own Supreme Court. In any case, as aptly put by the Tribunal in *Maffezini v. Spain*, "[e]*xpectations of success or failure in an arbitration or judicial case are conjectures. Until this Arbitral Tribunal hands down an award, no one can state with any certainty what its outcome will be*."[221]

208. Moreover and in any event, the trend in investment arbitration is *not* to automatically shift costs onto the unsuccessful claimant. Neither the ICSID Convention nor the ICSID Arbitration Rules suggest that costs should follow the event,[222] and ICSID tribunals have not purported to follow this rule as a matter of principle either.[223] In fact, as stated by Noah

---

220 **Exhibit CL-6**, *Maffezini v. Spain*, Procedural Order No. 2, dated October 28, 1999, ¶ 21: "*It would be improper for the Tribunal to prejudge the Claimant's case by recommending provisional measures of this nature.*" **Exhibit CL-64**, *Anderson v. Costa Rica*, ¶ 9: "*a Tribunal's decision in this respect* [the request to order the Claimants to be held joint and severally liable for the payment of any costs eventually awarded to the Respondent] *might constitute a prejudgment on the responsibility of individual parties*."

221 **Exhibit CL-6**, *Maffezini v. Spain*, Procedural Order No. 2, dated October 28, 1999, ¶ 20. See also **Exhibit CL-64**, *Anderson v. Costa Rica*, ¶ 9: "*Respondent had only a mere expectation and not a right with respect to an eventual award of costs*."

222 See ICSID Arbitration Rule 39(1).

223 **Exhibit CL-32**, *Libananco v. Turkey*, ¶ 59, in declining to recommend the requested security for costs the Tribunal stated that "[n]*or moreover, is it in fact standard practice for ICSID Tribunals invariably to make an award on costs against a losing Party*". See also **Exhibit CL-71**, *Aguaytia Energy LLC v. Republic of Peru*, ICSID Case No. ARB/06/13, Award, dated December 11, 2008 (available at http://italaw.com/documents/AguaytiaAward_000.pdf); **Exhibit CL-72**, *Jan de Nul v. Egypt*, Award, dated November 6, 2008 (available at http://italaw.com/sites/default/files/case-documents/ita0440.pdf); **Exhibit CL-73**, *L.E.S.I. S.p.A. et ASTALDI S.p.A. v. République Algérienne Démocratique et Populaire*, ICSID Case No. ARB/05/3, Award, dated November 12, 2008 (available at http://www.italaw.com/sites/default/files/case-documents/ita0457.pdf); **Exhibit CL-74**, *Continental Casualty Company v. The Argentine Republic*, ICSID Case No. ARB/03/9, Award, dated September 5, 2008 (available at http://www.italaw.com/sites/default/files/case-documents/ita0228.pdf); **Exhibit CL-75**, *Metalpar S.A. and Buen Aire S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/5, Award, dated June 6, 2008 (available at http://www.italaw.com/sites/default/files/case-documents/ita0516.pdf); **Exhibit CL-76**, *Helnan v. Egypt*, Award, dated July 3, 2008 (available at http://www.italaw.com/sites/default/files/case-documents/ita0399.pdf); **Exhibit CL-77**, *Noble Ventures Inc. v. Romania*, ICSID Case No. ARB/01/11, Award, dated October 12, 2005 (available at http://www.italaw.com/sites/default/files/case-documents/ita0565.pdf); **Exhibit CL-43**, *Lucchetti v.Peru*; **Exhibit CL-78**, *Consorzio Groupement L.E.S.I.-DIPENTA v. République Algérienne Démocratique et Populaire*, ICSID Case No. ARB/03/08, Award, dated January 10, 2005 (French version available at http://www.italaw.com/sites/default/files/case-documents/ita0224.pdf); **Exhibit CL-79**, *Gami Investments, Inc. v. The Government of the United Mexican States*, UNCITRAL, Final Award, dated November 15, 2004 (available at http://www.italaw.com/sites/default/files/case-documents/ita0353_0.pdf); **Exhibit CL-80**, *Loewen Group Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3 (hereafter "*Loewen v. United States*"), Decision on Respondent's Request for a Supplementary Decision, dated September 6, 2004 (available at http://www.italaw.com/sites/default/files/case-documents/ita0471_0.pdf); **Exhibit CL-81**, *Joy Mining Machinery Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction,

Rubins in 2003, "*awards of costs or legal fees against unsuccessful claimants in investment arbitration cases appear to be exceedingly rare*."[224] Further, and more recently, in 2011, David Smith noted that "[i]*n the case of victorious respondents, most awards do not shift costs*"[225] save, potentially, for cases "*of abuse of process, fraud, or other such misconduct by claimants*."[226]

209. In other words, by claiming that it has a right to an award on costs, Respondent is requesting the Tribunal to assume not only that it will prevail on the merits, but also that Claimants will engage in an abuse of process or procedural misconduct. It is far too early in these proceedings to make, let alone act upon such assumptions, and the Tribunal should accordingly refrain from any "*determination at this time which may cast a shadow on either party's ability to present its case*."[227]

210. Second, a proper reading of the ordinary meaning of Article 47 leads to the conclusion that the category of rights which a provisional measure under Article 47 is intended to preserve

---

dated August 6, 2004 (available at http://www.italaw.com/sites/default/files/case-documents/ita0441.pdf); **Exhibit CL-82**, *Hussein Nuaman Soufraki v. The United Arab Emirates*, ICSID Case No. ARB/02/7, Award, dated July 7, 2004 (available at http://www.italaw.com/sites/default/files/case-documents/ita0799.pdf); **Exhibit CL-83**, *Waste Management, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Award, dated April 30, 2004 (available at http://www.italaw.com/sites/default/files/case-documents/ita0900.pdf); **Exhibit CL-84**, *Consortium R.F.C.C. v. Royaume du Maroc*, ICSID Case No. ARB/00/6, Award, dated December 22, 2003 (French version available at http://www.italaw.com/sites/default/files/case-documents/ita0226.pdf); **Exhibit CL-85**, *Loewen v. United States*, Award, dated June 26, 2003 (available at http://www.italaw.com/sites/default/files/case-documents/ita0470.pdf); **Exhibit CL-86**, *Yaung Chi Oo Trading PTE Ltd. v. Government of the Union of Myanmar*, ASEAN I.D. Case No. ARB/01/1, Award, dated March 31, 2003 (available at http://www.italaw.com/sites/default/files/case-documents/ita0909.pdf); **Exhibit CL-87**, *ADF Group Inc. v. United States of America*, ICSID Case No. ARB (AF)/00/1, Award, dated January 9, 2003 (available at http://www.italaw.com/sites/default/files/case-documents/ita0009.pdf); **Exhibit CL-88**, *Mondev International Ltd. v United States of America*, ICSID Case No. ARB(AF)/99/2, Award, dated October 11, 2002 (available at http://www.italaw.com/sites/default/files/case-documents/ita1076.pdf); **Exhibit CL-89**, *Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2, Award, dated March 15, 2002 (available at http://www.italaw.com/sites/default/files/case-documents/ita0532.pdf); **Exhibit CL-90**, *Ronald S. Lauder v. The Czech Republic*, UNCITRAL, Final Award, dated September 3, 2001 (available at http://www.italaw.com/sites/default/files/case-documents/ita0451.pdf); **Exhibit CL-91**, *Alex Genin Eastern Credit Limited Inc. and A.S. Baltoil v. The Republic of Estonia*, ICSID Case No. ARB/99/2, Award, dated June 25, 2001 (available at http://www.italaw.com/sites/default/files/case-documents/ita0359.pdf); **Exhibit CL-92**, *Robert Azinian, Kenneth Davitian & Ellen Baca v. The United Mexican States*, ICSID Case No. ARB (AF)/97/2, Award, dated November 1, 1999 (available at http://www.italaw.com/sites/default/files/case-documents/ita0057.pdf); **Exhibit CL-93**, *Tradex Hellas S.A. v. Republic of Albania*, ICSID Case No. ARB/94/2, Award (Jurisdiction based on a Foreign Investment Law), dated April 29, 1999 (available at http://www.italaw.com/sites/default/files/case-documents/ita0871.pdf).

224 **Exhibit CL-94**, Noah D. Rubins, "The Allocation of Costs and Attorney's Fees in Investor-State Arbitration," 18 ICSID Rev. 109 (2003), p.126; emphasis added.

225 **Exhibit CL-95**, David Smith, "Cost-and-Fee Allocation in International Investment Arbitration," 51 VJIL 749 (2011), p. 768; emphasis added.

226 *Ibid*, p. 779.

227 **Exhibit CL-6**, *Maffezini v. Spain*, Procedural Order No. 2, dated October 28, 1999, ¶ 21.

is limited to those rights which relate directly to the subject matter of the dispute and the Parties' ability to present their case in relation thereto.

211. The tribunal in *Maffezini v. Spain* rejected the respondent's request for security for costs in the following terms:

> *Any preliminary measure to be ordered by an ICSID arbitral tribunal must relate to the subject matter of the case before the tribunal and not to separate, unrelated issues or extraneous matters.*
>
> *In this case, the subject matter in dispute relates to an investment in Spain by an Argentine investor while the request for provisional measures relates to a guarantee or bond to ensure payment of additional costs and expenses should the Claimant not prevail in the case.*
>
> *It is clear that these are two separate issues. The issue of provisional measures is unrelated to the facts of the dispute before the Tribunal.*[228]

212. Similarly, the tribunal in *Anderson v. Costa Rica* concluded that "*the request to order the Claimants to be held joint and severally liable for the payment of any costs eventually awarded to the Respondent is not in the nature of a provisional measure to preserve existing rights.*"[229]

213. This reasoning is one of the main underlying reasons which led Judge Edward W. Nottingham to issue a dissenting opinion in the *RSM v. Santa Lucia* case. In his distinguished opinion, "*the provisional measures envisioned in Article 47 are mainly those formulated to preserve the* status quo pende litis."[230] A party's right to the preservation of evidence, or to the observance of the *status quo*, constitutes such a right. A party's unlikely right to an award on costs however does not. It should therefore not fall within the ambit of Article 47.

214. It results from the above that Respondent's alleged right to an award on costs does not constitute a right, but a mere speculation unlikely to come to fruition, and that in any event,

---

228 **Exhibit CL-6**, *Maffezini v. Spain*, Procedural Order No. 2, dated October 28, 1999, ¶¶ 23-25.

229 **Exhibit CL-64**, *Anderson v. Costa Rica*, ¶ 9.

230 **Exhibit RA-4**, *RSM Production Corporation v. Saint Lucia*, ICSID Case No. ARB/12/10, Dissenting Opinion of Judge Edward W. Nottingham, dated August 13, 2014, ¶ 7 (available at http://www.italaw.com/sites/default/files/case-documents/italaw3318.pdf).

it would not constitute a right falling within the scope of Article 47. This reading of Article 47 is further supported by the object and purpose of the ICSID Convention.

C. RESPONDENT'S REQUEST GOES AGAINST THE VERY PURPOSE OF ICSID ARBITRATION

215. The purpose of the ICSID Convention was, according to the Executive Directors' Report, to "*strengthen the partnership between countries in the cause of economic development*."[231] To that end, it was envisioned that "*the creation of an institution designed to facilitate the settlement of disputes between States and foreign investors* [could] *be a major step toward promoting an atmosphere of mutual confidence*."[232] That institution "*would offer international methods of settlement designed to take account of the special characteristics of the disputes covered, as well as of the parties to whom it would apply. It would provide facilities for conciliation and arbitration* […] *according to rules known and accepted in advance by the parties concerned*."[233]

216. The cornerstone and a key feature of the ICSID arbitration system is that it provides foreign investors with a direct – unfettered – access to a neutral method of dispute resolution. And indeed, the "*ICSID arbitration system* [has] *provided greater certainty for investments in foreign countries and reduced the risks associated with such investments because it guaranteed direct access to a neutral dispute-settlement forum*."[234]

217. As underlined by the Report of the Executive Directors, however, the ICSID Convention and Arbitration Rules are the result of a "*careful balance*" struck by the drafters between "*the interests of investors and those of host States*."[235] This delicate balance should not be lightly disregarded, let alone distorted, as this could jeopardize the "*atmosphere of mutual confidence*" which the drafters intended to promote.

218. Notably, the drafters of the ICSID Convention and Arbitration Rules did not include any provision granting an ICSID arbitral tribunal the power to order one party to provide security for the costs of the other. Yet, it would have been easily foreseeable to the drafters of the

231 **Exhibit CL-50**, Report of the Executive Directors on the ICSID Convention, ¶ 9.
232 **Exhibit CL-50,** Report of the Executive Directors on the ICSID Convention, ¶ 9.
233 **Exhibit CL-50,** Report of the Executive Directors on the ICSID Convention, ¶ 11.
234 **Exhibit CL-96**, Dohyun Kim, "The Annulment Committee's role in multiplying inconsistency in ICSID Arbitration: The need to move away from an annulment-based system," 86 NYU Law Review 242 (2011), p. 248.
235 **Exhibit CL-50,** Report of the Executive Directors on the ICSID Convention, ¶ 13.

Convention that investors seeking redress under the ICSID Convention would at times be impecunious. As stated by several arbitral tribunals, "*it is far from unusual in ICSID proceedings to be faced with a Claimant* […] *with few assets*."[236] In many cases, the investor's lack of assets is directly attributable to actions of the respondent State. Thus, if the drafters of the ICSID Convention had intended to grant arbitral tribunals the power to mitigate the risk posed by impecunious investors, they would have included specific provisions to that effect, setting out, in particular, the conditions and circumstances that would warrant the making of an order on security for costs.[237] Yet, they did not do so and it is reasonable to assume that they had valid reasons for not doing so.

219. Indeed, the implications of an order to provide security for respondent's costs would go against the very purpose of the framework established by the ICSID Convention described above. From a general point of view, private investors are already at a disadvantage. Their financial resources are in general far more limited than those of a respondent State, and they may very well have been impacted by the disputed actions of the said State. Requiring private investors to provide security for the respondent's costs before being able to move forward with their claim would impose on them an additional financial burden, which has no specific legal basis in the ICSID framework. As noted by an ICSID tribunal, "*it is simply not part of the ICSID dispute resolution system that an investor's claim should be heard only upon the establishment of a sufficient financial standing of the investor to meet a possible costs award*."[238]

220. Similarly, the tribunal in *Burimi v. Albania* found that "[e]*ven if there were more persuasive evidence than that offered by the Respondent concerning the Claimants' ability or willingness to pay a possible award on costs, the Tribunal would be reluctant to impose on the Claimants what amounts to an additional financial requirement as a condition for the case to proceed. Notably, there are no provisions in the ICSID Convention or the Arbitration*

236 **Exhibit CL-68**, *RSM v. Grenada*, ¶ 5.19.

237 **Exhibit CL-5**, *Pey Casado v. Chile*, ¶¶ 84-85: "*La République du Chili a souligné le risque encouru par les Etats parties à la Convention de Washington en raison d'une possible insolvabilité de l'Investisseur demandeur à l'instance* […] *Si le risque évoqué par la Partie défenderesse ne saurait être ignoré, il y a lieu de penser que tant les auteurs de la Convention de Washington que les Etats qui ont ratifié ladite Convention (dont le Chili) ne l'ont pas ignoré non plus. Il leur eût été facile, s'ils entendaient se protéger contre ce risque, de prévoir dans la Convention ou dans le Règlement d'Arbitrage l'insertion d'une disposition appropriée. Il est permis de supposer que, s'ils ne l'ont pas fait, c'est que ledit risque leur a paru minimal ou possible à accepter*."

238 **Exhibit CL-68**, *RSM v. Grenada*, ¶ 5.19. See also **Exhibit CL-5**, *Pey Casado v. Chile*, ¶ 86: "*rien n'indique que, dans le système de la Convention, la requête soumise par un investisseur ne devrait être considérée comme recevable qu'à la condition pour le demandeur d'établir sa propre solvabilité*."

Rules imposing such a condition, *except the advance on costs under Administrative and Financial Regulation 14(3)(d)*."[239] And indeed, the tribunal (composed of Mr. Bernardo Cremades, Mr. Toby Landau Q.C. and chaired by Professor Brigitte Stern) in *Hamester v. Ghana*, unanimously rejected the respondent's request for provisional measures on the ground, *inter alia*, that there "*was a serious risk that an order for security for costs would stifle the Claimant's claims*."[240]

221. In light of the above, Respondent's request to impose on Claimants an additional financial burden has no legal basis and goes against the very purpose and spirit of the ICSID framework. It was foreseeable since the inception of the ICSID Convention that there would be an imbalance in terms of resources between sovereign States and foreign investors. This instant case is a textbook example. It is public knowledge that Claimants are experiencing financial difficulties, in part due to Respondent's own actions. The Slovak Republic, on the other hand, generates an annual GDP in excess of USD 91 billion, placing it ahead of Portugal in terms of GDP per capita.[241] Furthermore, the drafters of the ICSID Convention and Arbitration Rules did not include any provisions empowering tribunals to order potentially impecunious investors to provide security for respondent's costs. Rather, their concern was to provide investors with a direct – unfettered – access to a neutral forum for the resolution of their dispute. Given that the power struggle in investor-State disputes in generally in favor of the State, any additional financial burden imposed on Claimants is very likely to unduly restrict their ability to bring forward meritorious claims.

222. In any event, even if the Tribunal were to consider that Respondent's request falls within the scope of its power under the ICSID Convention, Respondent has failed to demonstrate the existence of the exceptional circumstances that would justify the request being granted.

---

239 **Exhibit CL-65**, *Burimi. v. Albania*, ¶ 41.

240 **Exhibit CL-66**, *Hamester v. Ghana*, ¶ 17.

241 **Exhibit C-64**, World Bank Data, Slovak Republic (publicly available at http://data.worldbank.org/country/slovak-republic).

D. RESPONDENT HAS FAILED TO DEMONSTRATE THE EXISTENCE OF EXCEPTIONAL CIRCUMSTANCES JUSTIFYING THAT ITS REQUEST BE GRANTED

1. The requested measure is not necessary

223. The fact that "*provisional measures should only be granted in exceptional circumstances*" is common ground, and the tribunal in the *RSM v. Saint Lucia* Decision did not hold to the contrary.[242] However, in the specific context of a request for security for costs, the few tribunals that have considered such a request have required the respondent to meet a threshold so high that until *RSM v Saint Lucia*, such a request had never been granted.

224. Accordingly, mere financial difficulties are not sufficient to justify granting Respondent security for its costs. This was underlined by the tribunal in *Burimi v. Albania*:

> *Even if there were more persuasive evidence than that offered by the Respondent concerning the Claimants' ability or willingness to pay a possible award on costs, the Tribunal would be reluctant to impose on the Claimants what amounts to an additional financial requirement as a condition for the case to proceed. Notably, there are no provisions in the ICSID Convention or the Arbitration Rules imposing such a condition, except the advance on costs under Administrative and Financial Regulation 14(3)(d). The Claimants met this requirement on January 11, 2012.*[243]

225. From a more general point of view, the tribunal in *Libananco v. Turkey* considered that "*it would only be in the most extreme case – one in which an essential interest of either Party stood in danger of irreparable harm – that the possibility of granting security for costs should be entertained at all*."[244] In *Commerce Group & San Sebastian Gold Mines v. El*

---

242 **Exhibit RA-4**, *RSM v. Saint Lucia* Decision, ¶ 48, with reference to **Exhibit CL-97**, *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Decision on Provisional Measures, dated April 6, 2007, ¶ 32 (available at http://www.italaw.com/sites/default/files/case-documents/ita0667.pdf); **Exhibit CL-18**, *Plama v. Bulgaria*, Order, dated September 6, 2005, ¶ 38 (available at http://www.italaw.com/sites/default/files/case-documents/ita0670.pdf); **Exhibit CL-10**, *Saipem. v. Bangladesh*, ¶ 175; **Exhibit CL-2**, *Occidental v. Ecuador*, ¶ 59; **Exhibit CL-68**, *RSM v. Grenada*, ¶ 5.17; **Exhibit CL-98**, *Commerce Group Corp. & San Sebastian Gold Mines, Inc. v. Republic of El Salvador*, ICSID Case No. ARB/09/17, Decision on El Salvador's Application for Security for Costs, dated September 20, 2012, ¶ 44 (available at http://www.italaw.com/sites/default/files/case-documents/italaw1087.pdf; hereafter "*Commerce Group v. Salvador*"); **Exhibit CL-65**, *Burimi. v. Albania*, ¶ 34.

243 **Exhibit CL-65**, *Burimi. v. Albania*, ¶ 41; emphasis added. See also **Exhibit CL-68**, *RSM v. Grenada*, ¶ 5.20: "*it seems clear to us that more should be required than a simple showing of the likely inability of a Claimant to pay a possible costs award.*"

244 **Exhibit CL-32**, *Libananco v. Turkey*, ¶ 57.

Salvador, the tribunal confirmed that "*the power to order security for costs should be exercised only in extreme circumstances, for example, where abuse or serious misconduct has been evidenced*."[245] No such extreme circumstances, abuse or serious misconduct has been evidenced in the present proceedings.

226. Even in *RSM v Saint Lucia*, which, for the reasons set out above, can only provide limited guidance, the underlying facts were rather exceptional. The claimant had previously failed to comply with its payment obligations in two arbitrations: first, in an annulment proceeding, where the claimant's repeated failures to satisfy the tribunal's calls for advance payments caused the proceedings to eventually be discontinued; and then, in another ICSID proceeding, where the respondent had to seek enforcement of the cost award against one of the claimant's shareholders.

227. In the present case, a similar track record has not been demonstrated or even alleged. Neither one of Claimants has defaulted on its payment obligations in the present proceedings or in other arbitration proceedings. On the contrary, Claimants have paid the ICSID lodging fee in the amount of USD 25,000 and will comply in a timely manner with any call for advance payment made by the Tribunal.

228. In any event, the grounds on which Respondent claims that its request is necessary are circumstantial, outside the subject-matter of the present proceedings, and irrelevant.

229. First, Respondent claims that granting its request for security for costs is necessary because Claimants are allegedly not capable of satisfying a cost award. It is undeniable that Claimants are encountering financial difficulties, and it will in due course be demonstrated that these difficulties are in large part attributable to acts and omissions of Respondent. However, Respondent has failed to demonstrate that the said financial difficulties would effectively keep Claimants from satisfying an award on costs, or prevent Respondent from being able to enforce such an award against the assets of Claimants. In this respect, no purported agreement between the Parties regarding the liabilities of each other in case of an award on costs would prevent Respondent from seeking enforcement of an award on costs against either one of the Claimants. Furthermore, Respondent has not alleged, let alone demonstrated, that Claimants would attempt to resist the enforcement of an award on costs. In any event, financial difficulties, or even an unwillingness to satisfy a cost award, are not,

245 **Exhibit CL-98**, *Commerce Group v. Salvador*, ¶ 45.

as demonstrated above at paragraph 224, sufficient to justify an order that Claimants provide security for Respondent's costs.

230. Second, Respondent relies on the alleged involvement of a third-party funder to portray EuroGas and Belmont as unmeritorious claimants that have nothing to lose. The underlying logic of this is, however, highly questionable. Neither company is controlled by a third-party funder. Both are run by individuals who have to answer to shareholders, who have invested a lifetime' work in their respective companies, and who have indeed lost most of that work at the hands of Respondent. As demonstrated above, the proceedings at hand have a rather unique feature in that the merits of the claims brought forward have been recognized and acknowledged on three separate occasions by Respondent's highest judicial organ.

231. Further, if Respondent wishes to raise the issue of third-party funding, it must face the implications its allegations entail. Contrary to the surprising statements made by Mr. Gavan Griffith QC,[246] third-party funders are not "*mercantile adventurers*," nor are they "*gamblers.*" They expect a return on their investment, and they will certainly not fund unmeritorious claims, for fear of losing their investment. To the contrary, third-party funders will carry out thorough due diligence investigations to "*remove as much risk as possible from the investment process through solid analysis of business, economic and legal risk factors*."[247] This was confirmed by Lord Justice Jackson in his report on Civil Litigation Costs in England & Wales. In his opinion, two of the main reasons why third party funding should be supported are that it "*promotes access to justice* [and] *tends to filter out unmeritorious cases, because funders will not take on the risk of such cases*."[248] In other words, third party funders fund winning cases and the allegation that Claimants are benefitting from third-party funding reinforces the fact that their claims have merit. At the very least, it guarantees that the merits of the claims have been thoroughly investigated, are not frivolous or abusive, and have been deemed to have reasonable chances of success. As such, allegations of third-party funding can certainly not be said to evidence the "*extreme circumstances*" that would warrant granting Respondent's request for security for costs.

246 **Exhibit RA-4**, *RSM v. Saint Lucia*, Assenting Opinion, ¶¶ 13-14.

247 **Exhibit CL-99**, Mark Kantor, "Third Party Funding in International Arbitration: An Essay About New Developments," 24 ICSID Rev. 65 (2009), p. 72.

248 **Exhibit CL-100** Lord Justice Jackson, "Review of Civil Litigation Costs: Final Report," The Stationery Office, 2010 (publicly available at http://www.ciarb.org/information-and-resources/2010/01/22/Review%20of%20Civil%20Litigation%20Costs%20Final%20Report.pdf), p. 117.

232. In fact and moreover, third-party funding allows investors not to rely on their own resources to fund the proceedings, which reduces the risk that no assets will be left to satisfy a cost award. In other words, it improves Claimant's financial position, and thus increases the chances of recovery.

233. Even in *RSM v. Saint Lucia*, the involvement of a third party funder was not, contrary to Respondent's assertion, a "*key consideration*" relied upon by the tribunal. Rather, "*the admitted third party funding further support*[ed] *the Tribunal's concern that Claimant will not comply with a cost award rendered against it*."[249] The tribunal's initial concern however stemmed from the averred fact that the claimant had already failed to abide by its payment obligations in two previous arbitrations. In the present case, there are no grounds that would justify a similar concern for the Tribunal.

2. The requested measure is not urgent

234. Respondent asserts that the provisional measure requested is urgent because otherwise "*it will never recover the costs to which it is entitled*," which would cause "*irreparable harm*" to the Slovak Republic.[250]

235. Yet, as stated above, Respondent has failed to demonstrate that the financial situation of Claimants would effectively keep them from satisfying an award on costs, or prevent Respondent from being able to enforce such an award against the assets of Claimants. More importantly, Respondent has not alleged, let alone demonstrated, that Claimants would attempt to resist the enforcement of an award on costs.

236. In these circumstances, "*the matter is not urgent. Because the alleged harm is speculative, there is no basis for finding that the matter cannot await the outcome of an award*."[251]

237. Moreover, the Slovak Republic is not a State with limited financial resources. As noted above, it generates an annual GDP in excess of USD 91 billion, placing it ahead of Portugal in terms of GDP per capita.[252] It is highly doubtful that costs in the amount of EUR 1 million, as quantified by Respondent in its Request, would cause it immediate irreparable harm,

---

249 **Exhibit RA-4**, *RSM v. Saint Lucia* Decision, ¶ 83.

250 Respondent's Application for Provisional Measures and Opposition to Claimants' Application for Provisional Measures, dated September 10, 2014, ¶ 76.

251 **Exhibit CL-65**, *Burimi. v. Albania*, ¶ 40.

252 **Exhibit C-63**, World Bank Data, Slovak Republic.

especially when there is no evidence that Respondent would not be able to enforce a potential cost award against the assets of Claimants and/or their shareholders.

IV. PRAYERS FOR RELIEF

238. Based on the foregoing, Claimants respectfully request that the Tribunal, once constituted, take the following measures:

a. Order the Slovak Republic to withdraw permanently the criminal proceedings launched on June 23, 2014.

b. Order the Slovak Republic to maintain the *status quo* as of the date of the filing of the Request of Arbitration, namely as of June 25, 2014, and put the Parties in the position they should have remained in as of the said date.

c. Order the Slovak Republic to return to Rozmin and Ms. Czmoriková all copies made of documents and material seized pursuant to the Order for Preservation and Handing over of Computer Data dated June 23, 2014 and the Order for a House Search dated June 25, 2014, including records, documents, and software collected in the course of the search carried out on July 2, 2014.

d. Order the Slovak Republic to undertake, in writing, that the documents and property returned on October 1, 2014 constitute the full set of documents and materials that were seized, and that no copies thereof are kept.

e. Order the Slovak Republic to refrain from using, in the arbitration proceedings, any material or documents seized pursuant to the Order for Preservation and Handing over of Computer Data dated June 23, 2014 and the Order for a House Search dated June 25, 2014, including records, documents, hardware and software collected in the course of the search carried out on July 2, 2014, or any information gathered in the course of the criminal proceedings launched on June 23, 2014 in the Slovak Republic.

f. Order the Slovak Republic to refrain from taking any further measure of intimidation against Rozmin, EuroGas, Belmont or any director, employee or personnel of any of these companies and to refrain from engaging in any conduct that may alter the *status quo* that existed prior to the initiation of the criminal investigation launched on June 23, 2014, including taking any further steps which might undermine Claimants' ability to substantiate their claims, threaten the procedural integrity of the arbitral process, or aggravate or exacerbate the dispute between the Parties;

g. Reject Respondent's request for security for costs.

239. Claimants reserve the right to supplement and/or amend the above list of provisional measures applied for, which are both necessary and urgent to the preservation of their rights. This application is without prejudice to Claimants' right to seek, in due course, moral damages for the acts and omissions of Respondent.

Respectfully submitted,

[Signed]

Hamid G. Gharavi