**Investment Law Exam – MITPL FTU 2017**

*Rodrigo Polanco*

Peter Pumpkinhead, a national of Northland and resident of Middleland, which is a province that was formerly part of Eastland (and is now a region of Northland), invested in the Republic of Eastland in February 2008 by purchasing 100% of the shares in the company, “Kubrick Bombs Ltd”, a firm specialised in arms production, and subsequently became its president and sole member of its board of directors. In 1999, Northland and Eastland signed a bilateral investment treaty that follows the 1998 “US Model ” (<http://investmentpolicyhub.unctad.org/Download/TreatyFile/2868>)

When Mr Pumpkinhead purchased Kubrick Bombs Ltd, the company was a decrepit enterprise as it had lost its environmental license necessary for arms production operations. The suspension of arms production left a lot of workers from the local town of Kald without a means to make a living. Mr Pumpkinhead managed to improve Kubrick Bombs Ltd from its state of operations at the time of purchase, and he modernise the production line to meet the requirements of the Eastland Environment Act 2006. On 23 July 2008, Peter Pumpkinhead obtained an environmental license from the Eastland National Environment Authority, which allowed for the commencement of arms production at Kubrick Bombs Ltd. Subsequently, Mr Pumpkinhead managed to obtain a number of contracts for arms production. The most crucial contract was concluded with the Ministry of National Defence of Northland on 23 December 2008, effective as of 1 January 2009.

The situation allowed Mr Pumpkinhead to commence arms production and to rehire the workers from Kald. Life in that town improved immensely. The contract with the Ministry of National Defence of Northland was set to expire on 1 January 2015. The Claimant had not yet managed to conclude any substitute contract. It seemed that the production line would have to be partially closed, with many workers being laid off again. However, before the situation became too challenging, the Ministry of National Defence of Northland proposed the conclusion of another contract. It was concluded on 28 February 2015, effective as of 1 April 2015.

Historically, the region of Middleland had been part of the Republic of Northland. However, due to multiple wars over the last 100 years, at the time Mr Pumpkinhead had purchased the shares of Kubrick Bombs Ltd, the province found itself within Eastland territory for the past 50 years. On 1 November 2014, the residents of Middleland decided, in a referendum, that Middleland should be reunited with its homeland – the Republic of Northland. On 1 March 2015, the region of Middleland was peacefully re-united with the Republic of Northland. On 23 March 2015, the Republic of Northland officially declared that Middleland had been returned to the “motherland”.

The Republic of Eastland did not accept the reunification of Middleland to Northland claiming that it was improperly encouraged by Northland. It subsequently imposed sanctions on all entities operating within the territory of Eastland that had any contractual relationship with Northland, including Kubrick Bombs Ltd and Peter Pumpkinhead. Consequently, Mr Pumpkinhead became unable to sell his shares in Kubrick Bombs Ltd. Furthermore, the market value of shares was reduced almost to zero. All contracts with entities operating in the territory of Eastland with Northland companies or state entities were terminated by virtue of the Executive Order of the President of the Republic of Eastland of 1 May 2015 on Blocking Property of Persons Contributing to the Situation in the Middleland. The Executive Order caused a complete standstill in arms production, as the large majority suppliers of Kubrick Bombs Ltd were operating within the territory of the Republic of Northland. As a result, Kubrick Bombs Ltd was unable to meet any of its contractual obligations towards entities from outside of the Republic of Eastland.

**QUESTIONS**

Please prepare a short memo answering the following questions, explain the reasoning behind your response in each case:

* Which standards of treatment Mr Pumpkinhead could claim that have been violated by Eastland, under the 1999 Eastland-Northland BIT?
* Which standards of protection Mr Pumpkinhead could claim that have been violated by Eastland, under the 1999 Eastland-Northland BIT?
* Which defences can be used by Eastland in case Mr Pumpinkhead starts investor-State arbitration?
* It would make any difference if Mr Pumpkinhead chooses ICSID or UNCITRAL rules?

 (1'500 words maximum) - please include a final word count at the end of your exam.