Pacta Sunt Servanda means that obligations undertaken shall be fulfilled. The Vienna Convention of Treaties expresses it as "[e]very treaty in force is binding upon the parties to it and must be performed by them . . . ." There has been a good deal of argument as to whether this rule should be applied to concession agreements as well as treaties.

[Subsequently set out in detail.]

Whatever the significance of Pacta Sunt Servanda in legal theory, the state practice of renegotiating concession agreements calls into question the doctrine's practical importance.

[...]

The final way to bridge the gap between law and practice would be to temper the strictures of Pacta Sunt Servanda with the doctrine of Rebus Sic Stantibus. 106

[...]

Rebus Sic Stantibus is the doctrine which allows for the termination of a treaty when there has been a fundamental change in the circumstances underlying the treaty.113 An important aspect of the doctrine is that it focuses upon changes that would contradict the "parties" shared expectations" and thereby "defeat their apparent objectives."114

[Subsequently set out in detail.]

The problem with unjust enrichment as a doctrine is that it is a conclusion rather than a legal tool. Both parties to a concession are generally enriched. The only inquiry, therefore, is which party has been "unjustly" enriched. While Pacta Sunt Servanda examines the agreement concluded by the parties, and estoppel examines the nature of encouragements by the host state,139 unjust enrichment offers no insight into the interpretation of an agreement. Focusing upon unjust enrichment merely highlights the disagreement between the developed and developing nations as to what constitutes a "just" situation, without providing any insight into a solution to the disagreement.140

[...]

The theory of estoppel has been more widely discussed and accepted than that of duress, although less than that of unjust enrichment. Estoppel is the contractual theory that justifiable reliance by one party, upon the encouragement of the other party, should bind the second party to perform, its, apparent promises. Jhe ICJ has found estoppel to be "among the general principles of law accepted by international law."141

[Subsequently set out in detail.]

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106 See infra section V(B) on Rebus Sic Stantibus.

113 See, e.g., article 62 of the Vienna Convention on the Law of Treaties, which mandates that "a fundamental change" 1) "not foreseen by the parties"; 2) in circumstances which "constituted an essential basis of the consent of the parties"; and 3) the effect of which was "radically to transform the extent of obligations" must have occurred in Order to implicate the doctrine of Rebus Sic Stantibus. Vienna Convention on the Law of Treaties, supra note 84, at 702.


123 See infra section V(C)(3) on estoppel.

140 While in Lena Goldfields, Ltd., it was found that taking away a company’s rights under its contract with a sovereign amounted to "unjust enrichment," this constitutes only one interpretation of the word "just." See Lena Goldfields, Ltd., 5 Ann. Dig. 3 (Special Arbitral Tribunal 1930).

141 North Sea Continental Shelf Cases (Germany v. Denmark and the Netherlands), 1969; I.C.J. 1, 120 (sep. op. J. Ammoun); see also 1969 I.C.J. at 27 (majority opinion).

Referring Principles:

- I.1.2 - Prohibition of inconsistent behavior
- IV.1.2 - Sanctity of contracts
- VIII.1 - Definition
- IX.1 - Basic rule