

# **First Prof. N.R. Madhava Menon SAARC Mooting Competition, 2016**

## **SAARC ROUND**

This Moot proposition has been authored by Mr. Ravi Prakash, Advocate, Supreme Court of India for the SAARC Round of the First Prof. N.R. Madhava Menon SAARC Mooting Competition, 2016. This Moot Proposition has been formulated solely for the purpose of this competition furthering the academic exercise.

## MOOT PROPOSITION

### PART I.

1. Climate change is a much spoken and debated phenomenon. It is understood to be causing numerous problems cutting across economic, social, cultural, technological and specific environmental dimensions, as anthropogenic greenhouse gas emissions and disturbances in ecological systems are impacting the atmosphere and the global environment. It is causing a significant increase in forced migration and displacement. The emergence of 'Climate change refugees' is suggested to be the outcome of environmental damages and disorders coupled with injustice and inequity around the Globe attended by unfair and inequitable international legal and economic orders.
2. The link between Climate change and environmental vulnerability has been the focus of much attention in light of the increased prevalence of droughts, desertification, rising sea levels and extreme weather patterns [UNDP, 2007 Human Development Report 2007/2008: Fighting Climate Change: Human Solidarity in a Divided World].
3. The most commonly identified cause of Climate change displacement is rising sea levels which threaten small island states and low-lying coastal communities. Thermal expansion, along with the melting of glaciers and polar ice caps, has led scientists to estimate conservatively that a global sea level rise of between 28 to 43 centimetres is likely by the end of the Century (IPCC Report, 2007). However, more recent projections put the figure closer to 150 centimetres within the same timeframe. Environmental factors of migration have been studied leading to conceptualisation of environmental refugees [R. Stojonov & J. Novask (ed), Development, Environment and Migration : Analysis of linkages and Consequences, 2008]
4. The threat to basic life and livelihood due to insurmountable consequences of Climate Change giving rise to 'food security', 'clean drinking water' due to coastal erosion, salt contamination and crop degradation, whilst coral bleaching destroys stocks of natural marine resources. The increasing phenomenon of cyclones and extreme weather patterns having disastrous effects are not confined only to low lying island countries but the impact is being felt by every corner of the world irrespective of geographic boundaries and territoriality. The countries in the Himalayan region are witness to shrinking glaciers, and even signs of extinction of perennial rivers. In the

relentless race towards high levels of development and consumption, gigantic development projects yielding economic returns, are undertaken in these countries, at the cost of significant alterations of terrains and natural ecosystems. The Earth as a self organising system is thus said to be exposed to irreversible hazards.

5. The UNDP report of year 2007 clearly measures the impact of climate change on global community in a disproportionate manner irrespective of their contribution in emission of Green House Gases as under:-

“People living in the Ganges Delta and lower Manhattan share the flood risks associated with rising sea levels. They do not share the same vulnerabilities. The reason: the Ganges Delta is marked by high levels of poverty and low levels of infrastructural protections.”

6. There has been a number of attempts to predict displacement numbers attributable to Climate Change; while the specific estimates vary, the current estimates generally indicate the scariest data upto 200 million people to be displaced by 2050 as a direct result of Climate Change [Myers N., (2005) ‘Environmental Refugees: An Emergent Security Issue’, paper presented to Organization for Security and Cooperation in Europe, 13<sup>th</sup> Economic Forum, Prague 23-27 May 2005].
7. The United Nations Refugee Agency (UNHCR) currently recognises 21 million refugees and 50 million refugees approximately as Internally Displaced Persons (IDPs). That the international legal system has not so far recognised such a category of refugee i.e. “Climate Change Refugees” have made their position very precarious and jeopardises their very existence as mankind on the planet. There have been wide outcry from the leaders of small island countries, coastal countries, and other jurisdictions cutting across the geographic continents and territoriality demanding a legal framework under the aegis of United Nations to protect the ‘Climate Refugees’ especially ‘children and women’ [F. Bierman and I Boas,’ Preparing for a warmer world: Towards a Global Governance System to Protect Climate Refugees’, Global Governance Working Paper No. 33 (November 2007)].
8. The president of one of the island country in the Indian Ocean (Republic of NAZILAND) i.e. Mr. Adrian D Souza has called for international assistance to evacuate the country before it completely disappears. In his seminal address in the

year 2006 on the World Environment Day to highlight the plight of entire nation and its peoples; he opined as under:-

“...we may be beyond redemption.... We may be at the point of no return, where the emissions in the atmosphere will carry on contributing to Climate Change, to produce a sea level change so in time our small, low-lying islands will be submerged.”

9. While realising the existential threat to the future of the people of NAZILAND, one of the neighbouring countries i.e. Democratic Republic of VINDHYA, which has vast geographic territorial boundary, extensive natural resources and low population, formulated a State policy in year 2010 to adopt 500 children every year from the island country of NAZILAND. The seminal features of the policy formulated by the Republic of VINDHYA are as follows:-

- (i) Children of age group of 6-14 would be adopted as “Climate Refugee” from the Republic of NAZILAND, in an exclusive exercise of ‘Sovereign function’ of the Democratic Republic of VINDHYA.
- (ii) The Rights of such “Climate Refugee” children will not be jeopardised and would be in consonance with the fundamental rights available in their country i.e. Republic of NAZILAND.
- (iii) The Fundamental dignity and basic rights of Children from the Republic of NAZILAND would be in accordance with the “Best Interests of the Child Principle” as incorporated under the International Convention on the Rights of the Child, 1989 for a ‘total realignment of protection for Child Refugee Applicants’.
- (iv) The Democratic Republic of VINDHYA will not discriminate between the ‘Climate Refugee’ Children from Republic of NAZILAND and their own citizens.

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- (x) The Democratic Republic of VINDHYA will offer one time option to the ‘Climate Refugee’ Children from the NAZILAND to accept the citizenship of Republic of VINDHYA once they attain the age of 18

years purely on voluntary basis, after which their status as refugee will cease to exist.

10. The effort of Democratic Republic of VINDHYA has been welcomed by international NGOs working for protection of Child Rights, UNHCR, UNICEF, UNDP and other UN agencies including the Secretary General of UNITED NATIONS. It was commended as the model policy to be adopted by developed economies and developing economies of the world towards the protection and adoption of 'Climate Refugees' specially children and women.
11. Certain small island countries have formed an intergovernmental organization namely AOSIS (Association of Small Island States) of low-lying coastal countries. In the year 2016, AOSIS has a membership of 44 states, of which 39 are members of the United Nations and 5 observers from all around the world. The Republic of NAZILAND is a member of AOSIS.
12. In year 2007, Calling for a "long-term global response" to deal with climate change, along with unified efforts involving the Security Council, Member States and other international bodies, Secretary-General of UN said that projected climate changes could not only have serious environmental, social and economic implications, but implications for peace and security as well, in following words:-

"This is especially true in vulnerable regions that face multiple stresses at the same time -- pre-existing conflict, poverty and unequal access to resources, weak institutions, food insecurity and incidence of diseases such as HIV/AIDS, protection of Women and Children as vulnerable group and future of humankind."
13. The Secretary-General of the UN outlined several "alarming, though not alarmist" scenarios, including limited or threatened access to energy increasing the risk of conflict, a scarcity of food and water transforming peaceful competition into violence and floods and droughts sparking massive human migrations, polarizing societies and weakening the ability of countries to peacefully resolve the conflicts.
14. One of the Island Nations; which is non-permanent member of UNSC and a member state of AOSIS also emphasised and justified the intervention of UNSC in the following words:-

"The Security Council, charged with protecting human rights and the integrity and security of States, is the paramount international forum available to us.

The Forum did not expect the Council to get involved in Climate Change Convention negotiations, but it did expect the 15-member body to keep the issue of climate change under continuous review, to ensure that all countries contributed to solving the problem and that those efforts were commensurate with their resources and capacities. It also expected the Council to review sensitive issues, such as implications for sovereignty and international legal rights from the loss of land, resources and people.”

15. The presidency for year 2016-2017 of AOSIS vests with the Republic of Mandova, an island state in the Indian Ocean which is a member state of SAARC (South Asian Association for Regional Cooperation) President of Mandova in year 2015 at the UN General Assembly Session had asked the UNGA, which can refer matters to the International Court of Justice as under:

“ to seek, on an urgent basis [...] an advisory opinion from the International Court of Justice on the responsibilities of all States under international law to ensure that activities carried out under their jurisdiction or control that emit greenhouse gases do not damage other States, and responsibilities for damages caused are defined and stipulated”

16. The President of Mandova emphasised further that:

“While we continue to negotiate, we should renew our faith in a system of law that has guided States’ actions in the past and gives them legitimacy today in the International Legal Framework under the aegis of United Nations.”

17. He favoured a consensus on the exact question that would be laid before to the Court, as it was a valuable way to work together to find a shared solution to the impact of climate change, which affects the entire world. “The rule of law must reflect the interests and obligation of the entire international community,” he said. The President of Mandova further termed the alarming situation as a quest for “survival” than merely being the issue of ‘socio- economic problem’ or ‘an issue of geopolitics’.
18. The Republic of Mandova under the Aegis of AOSIS moved for a resolution in the UN General Assembly i.e. UNGA/123/2015 to be adopted for reference of the legal issues surrounding ‘State Responsibility’ before the International Court of Justice. This was supported by some members of the UN Security Council but vehemently opposed by developing economies led by the Republic of Indistan and

other newly developed economies. The relevant text of the UNGA resolution as presented before the Assembly is as set out in the appendix.

19. However, the proposed resolution for seeking an advisory opinion from the International Court of Justice on the specific question was defeated on the floor of the House and could not get the nod of the UN General Assembly in its 70<sup>th</sup> session.
20. Realising the importance of the subject matter and the need for international cooperation on the issues at hand, howsoever to be realised, and the deliberations which the United Nation Security Council initiated in year 2007 i.e. *“Impact Of Climate Change On Peace & Security”*, the UNSC decided to send the specific question with suitable amendments to the ICJ for its advisory opinion.
21. The amended questions which have been referred by the UN Security Council to the ICJ for advisory opinion pursuant to Article 96 of the UN Charter in year 2016 are as under:-
  - (a) *“What can be the extent of responsibility of sovereign States to off-set the social and human impact of Climate Change, based on established legal concepts, common to all mankind including the precautionary principle and the prevention of trans-boundary harm under International Law as concerning the future of any section of mankind(specially in relation to Child and women) of several Island Nations facing existential threat as well as of peoples of other regions of the world in ecologically and geologically sensitive zones?”*
  - (b) *Whether the responsibility is not to be shared by all nations in due forms and by due means- viz. economic aid, refugee status and rehabilitation, and not to be confined to neighbouring countries alone?*
22. The United Nations is authorized to take action in cases of widespread destruction of natural environment and grave violations of international environmental law, and can apply appropriate sanctions against the states responsible for such violations. The Rio Declaration, the Agenda 21 Programme and the statement of principles for a global consensus on the management, conservation and sustainable development of forests, all strengthen the United Nations to act towards ensuring international cooperation.
23. The Security Council having debated in depth the security and policy implications of climate change for the first time in April 2007, the question which has arisen is

whether and how the Security Council's mandate can be appropriately adapted to meet these challenges. One option is to invoke the principle of the "responsibility to protect" by means of which the United Nations claims high moral authority. The United Nation Security Council has a responsibility to maintain world peace and security in international legal framework and climate change in its last decade has posed a serious threat to the Peace and Security of the World.

## **PART II.**

24. Indistan is a developing economy having a population of approximately 120 million people. Almost 30% of its population is poor living below an average earning of one Euro per day. It has a highly diversified economy, rich biodiversity, flora, and fauna. Presently it is one of the favourite destinations for FDI and other economic investments for developed nations, in view of a facilitating policy framework.
25. The Kingdom of Himalayan State (KHS) is located in the foothills of the mighty Himalaya sharing a long porous border with the Republic of Indistan. Tourism is one of the mainstays of the economy of KHS. While the international borders which KHS shares with Republic of Indistan is clearly demarcated but not fenced or distinguished like borders with other neighbouring countries of Indistan. The two countries are not only linked culturally and socially through ties of religion, rather KHS is heavily dependent on the Republic of Indistan for essential commodities as well as tourist inflow. This has led to bilateral understandings and execution of infrastructure projects, such as roads and railways. The free movement of people and goods from the Republic of Indistan and KHS to each other takes place without following strict border measures, but through bilateral understanding drawn under exercise of their respective Executive Authority.
26. The Republic of Mandova is another island nation in the Indian Ocean, a neighbouring country of Indistan; which too has cultural and religious affinities with the Republic of Indistan and common economic interests. It shares cordial relations and is one of the economies which is heavily dependent on tourism and investment aids from Indistan under the regional Cooperation Agreement. The Republic of Mandova is heavily dependent on the Republic of Indistan for the socio- economic development of its population.



27. With shared values and responsibilities, realising the impact of Climate Change on future generations and mankind as debated in the international fora, International organisations, inter-governmental organisations and under the aegis of United Nations – the Republic of Indistan framed a policy in the year 2013 similar to that extended by Democratic Republic of VINDHYA to the Republic of NAZILAND. It was however a purely voluntary policy decision taken by Republic of Indistan as a gesture of humanity towards the Republic of Mandova.
28. KHS, Mandova and Indistan are members of the United Nations and are Parties to the Statute of the International Court of Justice.
29. KHS, Mandova and Indistan are Parties to the Vienna Convention on the Law of Treaties, 1969.
30. KHS, Mandova and Indistan are also the founding members of the WTO system and were parties to the Uruguay Round of negotiations which led to the signing of Marrakesh Agreement.
31. KHS, Mandova and Indistan are also founding members of the regional cooperation agreement namely SAARC.
32. KHS, Mandova and Indistan are parties to all Climate Change negotiations, framework and conventions under the aegis of United Nations.
33. KHS, Mandova and Indistan are contracting parties to the International Convention on the Rights of the Child, 1989 and its optional protocols and conventions.
34. Republic of Mandova and KHS are signatories to the United Nations 1951 Convention relating to the Status of Refugees and related Protocol thereto, but, the Republic of Indistan is neither a signatory to, nor has ratified the UN Convention on Refugees or the Protocol.
35. In the year 2014, a major devastating earthquake hit the KHS; of which the epicentre was its capital city. It was widely believed that just as island States stood exposed to universal climate change effects, the drastic man made changes on the mountainous terrain by reason of huge infrastructure projects were responsible as a cause, as a trigger and as undue human interventions. The results of the studies on environment related migration had in fact attempted to focus on the negative impacts of drastic and large scale human intervention on mountainous regions, whose geological studies have expressed words of caution. Experts have opined that causes of climate change and its impacts are comparable to factors impacting ecologically sensitive mountainous regions. The earthquake triggered an avalanche in the upper Himalayas,

the deadliest day of the mountain history in recorded memory, which caused loss of lives of thousands of people and several hundreds of them were reported missing.

36. Large number of people were rendered homeless with entire villages flattened, across many districts of the country. Centuries-old heritage buildings recognised in UNESCO World Heritage sites were destroyed. Infrastructure projects were also affected. Geophysicists and other experts had warned for decades that KHS was vulnerable to a deadly earthquake, particularly because of its fragile geology, exposed to unplanned rapid urbanisation, conversion of its topography etc. to cater to international tourism and development. The country also had a continued history of landslides. Thus climate change impact on island nations and rapid development impacts on mountainous regions were assimilated into one common class of man-made environmental disasters.
37. As the future of socio- economic life of the KHS looked very bleak with resettlement and rehabilitation in no promising form from its government, and international investment and economic assistance appearing to be uncertain, thousands of families, including women and children, who had lost their bread winners, ventured to migrate. Many of them were lured and caught in the net of trafficking and thus illegally brought into the Republic of Indistan. It is estimated that nearly 10,000 women and children have entered the Republic of Indistan due to the devastating earthquake and the effect of Climate change in the sub- continent.
38. While the Constitution of Indistan guarantees a Fundamental right to life and liberty and the inviolability of human dignity and basic rights has been its governing principles, the Republic of Indistan itself is a developing economy, facing problems like illiteracy, poverty, child labour, gender inequality, and unemployment.
39. The KHS has requested the Govt. of Republic of Indistan to grant refugee status and protect the basic rights and dignity of the 'climate refugees' who have fled to the Republic of Indistan after the devastating earthquake specially of Children and Women akin to the 'adoption policy', which the Republic of Indistan had earlier offered to the children of Republic of Mandova. However, the Republic of Indistan through its External Affairs Ministry communicated to the KHS that it would not be responsible for the life, liberty and security of the 'illegal refugees' from the KHS and it reserves its sovereign rights to grant or to decline socio- economic benefits and citizenship or any other rights akin to 'adoption policy'. The Govt. of Indistan in its communication brought to the attention of KHS that it is not party to the UN

Convention on the Refugee and allied protocol, hence, it has no obligation and responsibility under the framework of International law.

40. Finding itself in helpless state KHS however reiterated its request with respect to the protection of Child Rights and Women – as two specific vulnerable groups of the Climate Change widely understood under the various international legal framework relating to Child Rights, prevention of human trafficking, gender based violence and their protection of basic dignity and also reminded Republic of Indistan of its solemn responsibility under the International Convention on the Rights of the Child and accord the protection based on the “Best Interests of the Child Principle” as incorporated in it.
41. In December 2015, with the help of an NGO working for the protection of children and women rights has, the Police agency of Republic of Indistan rescued two women (one aged 35 years and another aged 17 years) who are citizens of KHS. A diplomat officer from the Republic of Mandova was accused for the offences of holding them captive, physical violence and repeated rape while hiring them as domestic servants. The two victims in their statements before the ‘appropriate court’ has accused not only the officer concerned of rape, but also accused his family members for ill and inhumane treatment which violated their basic human rights. The Republic of Mandova sought diplomatic immunity for its officer and insisted on a safe passage for him alongwith his family members. This story illustrated the hazardous conditions of refugees without being accorded any recognition, though International Law has marched against statelessness of peoples.
42. The KHS through its ambassador immediately identified the two victims as their citizens and termed them as ‘Climate Refugees’ as a consequence of the devastating earthquake in the year 2014. It also requested the Govt. of Indistan not to give a safe passage to the diplomat officer and asked to protect the basic ‘dignity and rights’ under international legal framework relating to the Child Rights, prevention of human trafficking, gender based violence and their protection of basic dignity and also reminded Republic of Indistan of its solemn duty under the International Convention on the Rights of the Child. It also reminded Republic of Indistan and Republic of Mandova under the regional framework i.e. SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.
43. The Secretary General of United Nation also condemned the barbaric incident and the misdeeds of the diplomat, called for reform in the law relating to diplomatic immunity

in such heinous crimes which undermine the very basis of human dignity, called for universal consensus on protection and welfare of children as 'shared heritage & future of mankind', called for consensus and adoption of principle of 'State Accountability' than 'State Responsibility' in the protection of and safeguarding rights of vulnerable climate refugees and asked the Govt. of Indistan to secure justice to the victims.

44. Republic of Indistan assured the Republic of KHS of all cooperation in peculiar facts and circumstances but also conveyed and reiterated its position that it has no obligation of any kind under the framework of International law to protect other illegal refugees in its territory.
45. While the diplomat officer along with his family member was on his way to Airport to fly back to Republic of Mandova, the police agency arrested the Diplomat and provided safe passage to the family members only.
46. The Republic of Mandova condemned the arrest of its diplomatic officer at the airport and illegal detention by the police agency of Republic of Indistan and asked for immediate release and safe return of its officer.
47. The Republic of Indistan through its diplomatic note reminded the Republic of Mandova as under:-

“We observe that there exists ample legal basis which validates the arrest and detention of Diplomat Officer who has been prima facie accused of various offences under the Domestic law of Indistan. It is further important to mention that the Republic of Indistan has not only highest respect for its duty and obligation for protection of vulnerable group including children and women under existing international legal framework to which Republic of Mandova is also a party. We share a long standing bilateral and multilateral relationship which is not only strengthened by the economic cooperation and investment, rather our social and cultural ties supersede all other cooperation. The Republic of Mandova and Republic of Indistan have respect for basic human dignity and rights under the UDHR principles, CEDAW, Child Rights Convention etc.

It is further important to take note that the principles contained under Child Rights Conventions and the principle of “Best Interests of the Child Principle” has attained the status of customary international law and the “claim of diplomatic immunity” in present case is a dwarfing principle in the changed circumstances and realities of the International Framework.

It is further important to remind your obligation under the regional framework relating to Child Welfare in South Asia under aegis of SAARC and the adoption policy which Republic of Indistan has purely extended to the Republic of Mandova on voluntary basis.

The Republic of Indistan is committed to bring justice to the victim and expect cooperation from Republic of Mandova at the highest level.

Please accept the assurance of my highest consideration.

Sd/-

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Ambassador”

48. After these diplomatic exchanges, the Government of two States (i.e. Republic of Mandova and Republic of Indistan) tried to negotiate, but failed to resolve the dispute bilaterally on the application and invocation of diplomatic immunity. However, the parties agreed to submit these matters to the International Court of Justice under a Special Agreement pursuant to Article 36, Paragraph 1 of the ICJ Statute.
49. The Republic of KHS has also approached the International Court of Justice under Article 36 suing Republic of Indistan as it failed to protect the basic dignity and liberties of victims who were ‘Climate Refugees’ under the unprecedented circumstances and global changes brought due to the Climatic and other environment degrading conditions. It also accused Republic of Indistan of discrimination between two sets of economies who were part of SAARC framework and raised concerns regarding the absence of international framework or guidelines and the grave impact on the question of *State’s responsibility to off-set the impact of Climate and environmental Changes based on established legal concepts, including the precautionary principle and the prevention of trans-boundary harm under International Law vis-a-vis future of mankind (especially in relation to child and women) of the climatic- vulnerable economies facing existential threat?*

### **Part III**

50. The International Court of Justice in the exercise of its extra-ordinary power, considering the similarity of legal issues pending before it as referred for advisory opinion by the United Nation Security Council on the *‘state responsibility vis-a-vis*

*future of mankind (especially in relation to child and women) due to Climate Change'* has clubbed the advisory opinion reference by UNSC and the dispute between KHS and Republic of Indistan.

51. However, the Republic of Indistan not only opposes the jurisdiction of ICJ to render its advisory opinion as asked by UN Security Council on the said issue and also opposes the clubbing of the two references, It argues that as a specific resolution was defeated in the UN General Assembly Session, which was not only indicative of lack of democratic sanction and approval of the World Assembly rather indicative of unguided unilateral conduct of UNSC in the present framework. It also asserted that if climate change or environment degrading activities and their impact are not attributable to one community or one nation and is the result of disproportionate economic activities of nations and particularly dominant economies of developed nations who consume and exploit greater part of natural resources, there cannot be a responsibility regime for Indistan alone. This singling out, would be in derogation of all evolving principles of proportionality of obligations in the International Environmental Law. It also opposes the relevance of the clubbing, as the opinion sought regarding climate change refugees, has no connection to the earthquake induced refugee flow or to the diplomatic immunity issue which is an independent issue unconnected to the refugee subject.
52. However, the Members of AOSIS and other countries including KHS have opposed the view taken by the Republic of Indistan on the jurisdiction of ICJ to render its advisory opinion on the issue as referred by UNSC and other related issue, viz the Republic of Indistan request to the ICJ to hear the dispute with the Republic of Mandova which is also related to claim of diplomatic immunity vis –a- vis Rights and protection of Climate Refugees. They assert that environmentally degrading activities and climate change are inter-related and “climate change refugee” concept deserves wide meaning and conceptualisation. They further assert that the responsibility for consequences of non-extension of refugee status must fully lie with the Republic of Indistan. The issue of diplomatic immunity must receive its understanding in the context of vulnerability of refugee population and the common obligation of all nations to ensure against human trafficking.
53. There is considerable authority that the ICJ has taken a progressive view of its role in rendering advisory opinions and that by lending its assistance in the solution of a problem confronting the United Nations, the Court would discharge its functions as

the principal judicial organ of the United Nations and that only compelling reasons should lead it to refuse to give advisory opinion. At the same time it has to be recognised that Article 38 of the ICJ Statute in referring to the resolution of “such disputes as are submitted to it” excludes not only disputes which the parties have not chosen to bring before the Court, but also aspects of a dispute which the parties have reserved to themselves for settlement.

54. The two disputes namely Between Republic of Mandova vs. Republic of Indistan and KHS vs. Republic of Indistan and advisory opinion as sought from UNSC on specific legal questions have been scheduled for hearing before the ICJ on 3-4 March 2016.
55. The two specific issue scheduled for the hearing on specified dates relate to “Issue of Jurisdiction of ICJ on the reference as made by UNSC on the subject of international importance surrounding climate change” as well as “on the claim of the extent of diplomatic immunity as by Republic of Mandova vis- a-vis legality of action of Indistan in the present changed set of circumstances and scenarios”.

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This Moot proposition has been authored by Mr. Ravi Prakash, Advocate, Supreme Court of India for the SAARC Round of First Prof. N.R. Madhava Menon SAARC Mooting Competition, 2016 and settled by Mr. R. Venkataramani, Senior Advocate, Supreme Court of India.

## APPENDIX

*The General Assembly,*

*Recalling* its resolutions 43/53 of 6 December 1988, 54/222 of 22 December 1999, 62/86 of 10 December 2007, 63/32 of 26 November 2008, 64/73 of 7 December 2009, 65/159 of 20 December 2010, 66/200 of 22 December 2011, 67/210 of 21 December 2012, 68/212 of 20 December 2013 and 69/220 of 19 December 2014, and other resolutions and decisions relating to the protection of the global climate for present and future generations of humankind,

*Noting* that the content of the present resolution does not prejudice the outcome of the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, to be held in Paris from 30 November to 12 December 2015,

*Welcoming* the convening of the twenty-first session of the Conference of the Parties to the Convention, underscoring the commitment of all States to work for an ambitious and universal climate agreement, and reaffirming that any protocol, other legal instrument or agreed outcome with legal force under the Convention applicable to all parties shall address in a balanced manner, inter alia, mitigation, adaptation, finance, technology development and transfer, capacity-building and transparency of action and support,

*Acknowledging* that the United Nations Framework Convention on Climate Change<sup>1</sup> is the primary international, intergovernmental forum for negotiating the global response to climate change, expressing determination to address decisively the threat posed by climate change and environmental degradation, recognizing that the global nature of climate change calls for the widest possible international cooperation aimed at accelerating the reduction of global greenhouse gas emissions and addressing adaptation to the adverse impacts of climate change, and noting with grave concern the significant gap between the aggregate effect of parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 degrees Celsius, or 1.5 degrees Celsius above pre-industrial levels,

*Recalling* the objectives, principles and provisions of the United Nations Framework Convention on Climate Change,

*Recalling* the United Nations Millennium Declaration,<sup>2</sup> the Johannesburg Declaration on Sustainable Development<sup>3</sup> and the Plan of Implementation of the World Summit on Sustainable Development (Johannesburg Plan of Implementation),<sup>4</sup> the 2005 World Summit Outcome,<sup>5</sup> the outcomes of the thirteenth to twentieth sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change and of the third to tenth sessions of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol, the Programme of Action for the Least Developed Countries for the Decade 2011-2020, adopted at the Fourth United Nations Conference on the Least Developed Countries, held in Istanbul, Turkey, from 9 to 13 May 2011,<sup>6</sup> the Programme of Action for the Sustainable Development of Small Island

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<sup>1</sup>United Nations, *Treaty Series*, vol. 1771, No. 30822.

<sup>2</sup>Resolution 55/2

<sup>3</sup>*Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 1, annex.

<sup>4</sup>*Ibid.*, resolution 2, annex.

<sup>5</sup>Resolution 60/1.

<sup>6</sup>*Report of the Fourth United Nations Conference on the Least Developed Countries, Istanbul, Turkey, 9-13 May 2011* (A/CONF.219/7), chap. II.



Developing States,<sup>7</sup> the Mauritius Declaration<sup>8</sup> and the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States<sup>9</sup> and the SIDS Accelerated Modalities of Action (SAMOA) Pathway,<sup>10</sup>

*Recalling also* the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, entitled “The future we want”,<sup>11</sup>

*Reaffirming* its resolution 70/1 of 25 September 2015, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, in which it adopted a comprehensive, far-reaching and people-centred set of universal and transformative Sustainable Development Goals and targets, its commitment to working tirelessly for the full implementation of this Agenda by 2030, its recognition that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development, its commitment to achieving sustainable development in its three dimensions — economic, social and environmental — in a balanced and integrated manner, and to building upon the achievements of the Millennium Development Goals and seeking to address their unfinished business,

*Taking note* of the successful and timely initial resource mobilization process of the Green Climate Fund, making it the largest dedicated climate fund and enabling it to start its activities in supporting developing country parties to the United Nations Framework Convention on Climate Change,

*Noting* the need for enhanced coordination and cooperation at all levels among the parties to and secretariats of the United Nations Framework Convention on Climate Change, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, and the Convention on Biological Diversity, as appropriate, while respecting their individual mandates,

1. *Reaffirms* that climate change is one of the greatest challenges of our time, expresses profound alarm that the emissions of greenhouse gases continue to rise globally, remains deeply concerned that all countries, particularly developing countries, are vulnerable to the adverse impacts of climate change and are already experiencing an increase in such impacts, including persistent drought and extreme weather events, land degradation, sea-level rise, coastal erosion and ocean acidification, further threatening food security and efforts to eradicate poverty and achieve sustainable development, and in this regard emphasizes that mitigation of and adaptation to climate change represents an immediate and urgent global priority;

2. *Recalls* in particular its invitation, in its decision 1/CP.19,<sup>12</sup> to all parties to initiate or intensify domestic preparations for their intended nationally determined contributions, without prejudice to the legal nature of the contributions, in the context of adopting a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all parties towards achieving the objective of the Convention, as set out in its article 2, that will represent a progression beyond the current undertaking of each party;

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<sup>7</sup>*Report of the Global Conference on the Sustainable Development of Small Island Developing States, Bridgetown, Barbados, 25 April-6 May 1994* (United Nations publication, Sales No. E.94.I.18 and corrigenda), chap. I, resolution 1, annex II.

<sup>8</sup>*Report of the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, Port Louis, Mauritius, 10-14 January 2005* (United Nations publication, Sales No. E.05.II.A.4 and corrigendum), chap. I, resolution 1, annex I.

<sup>9</sup>*Ibid.*, annex II.

<sup>10</sup>Resolution 69/15, annex.

<sup>11</sup>Resolution 66/288, annex.

<sup>12</sup>See FCCC/CP/2013/10/Add.1.

3. *Further takes note* of the invitation to parties to communicate their intended nationally determined contributions in a manner that facilitates the clarity, transparency and understanding thereof; and to ensure that all countries contributed to solving the problem and that those efforts were commensurate with their resources and capacities.
4. *Notes* the work undertaken by the Lima-Paris Action Agenda with a view to galvanizing action to address climate change;
5. *Urges* Member States to promote the integration of a gender perspective into environmental and climate change policies, and to strengthen mechanisms and provide adequate resources towards achieving the full and equal participation of women in decision-making at all levels on environmental issues;
6. *Recalling*, that convinced of the need to strengthen the rule of law in International relations, and reaffirming the principles of United Nations Decade of International law,
7. *Noting* that Article 96, paragraph 1, of the UN Charter empowers the General Assembly to request the International Court of Justice to give an advisory opinion on any legal question,
8. *Recalling* the recommendation of the Secretary General, made in the 5663rd Meeting of the United Nation Security Council, that it poses a serious threat to the territoriality, sovereignty and integrity of several members of the United Nation, poses a serious threat to the peace and security of the world, and questions the very existential future of mankind;
9. *Welcoming* the call from AOSIS to refer the matter of determining the State responsibility in case of Climate Change projections, this threatens the world peace and security in very different context and manner,
10. *Decides*, pursuant to Article 96, paragraph, of the Charter of the United Nations, to request the International Court of Justice urgently to render its advisory opinion on the following question: *what is the extent of State's responsibility to reduce harmful greenhouse gas emissions based on established legal concepts, including the precautionary principle and the prevention of trans-boundary harm under International Law vis-a-vis future of mankind especially in relation to Island Nations facing existential threat?*