



SAARC
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COOPERATION IN LAW



**SECOND PROF. N. R. MADHAVA MENON
SAARC MOOTING COMPETITION, 2016-17**



SAARC ROUND

This Moot proposition has been authored by Mr. Ravi Prakash, Advocate, Supreme Court of India for the SAARC Round of Second Prof. N.R. Madhava Menon SAARC Mooting Competition, 2016-17 and settled by Mr. R. Venkataramani, Senior Advocate, Supreme Court of India. This Moot Proposition has been formulated solely for the purpose of this competition furthering the academic exercise.

MOOT COMPROMIS

1. The United Republic of Andorra (hereinafter URA) is a highly-industrialized country with a population of approximately 10 million people. It is a global economic power and world leader in the field of science & technology. Its mainstay in the world economy is due to the number of patents it holds and its scintillating brilliance in the field of innovation. It is one of the leading exporter of semi-conductors and variety of chips used in computers and cyber technology. The cyber and information technology companies of the United Republic of Andorra (URA) hold almost all the intellectual property rights over design of semi-conductor chips & circuits. The value of URA currency is equivalent to the EURO and has found its global acceptance in the international economy.
2. Indistan is a developing economy having a population of approximately 30 million people. Large percent of its population belongs to the below poverty group i.e. the population lives below an average earning of one Euro per day.
3. It is a land- locked country having highly diversified and rich biodiversity, flora, fauna and has embarked on rapid industrialization. In the last decade, the Republic of Indistan has witnessed new wave of foreign direct investments in various sectors which had opened the new vistas and opportunities for the people of Indistan.
4. Indistan got its independence in 1970 from URA and has a written Constitution as its governing document. The Constitution of Indistan is considered and described as one of the most progressive Constitutions based on the principles of 'liberal democratic' governance. Its constitution guarantees several fundamental rights, broadly corresponding to those recognized in International Human Rights instruments. The Constitution further guarantees direct access to its Supreme Court for enforcement of those rights.
5. The Govt. of Indistan has also entered into several Bilateral Investment Treaties (BITs) with various developed States. The BITs serve as a minimum guarantee of least State intervention and offers a unique protection to the investments made by future investors under current International Economic regime. In the last decade, Indistan has witnessed a major development in the field of Information Technology and Govt. of Indistan sees it as a vital component for pursuing its developmental agenda and bridging the gap between 'haves' and 'haves not'. It aims to realise the

constitutional goal of 'Equality' with the help of informational technology in an equitable manner.

6. The Republic of Indistan is seen as one of the 'bright spots' in world economy largely due to the continued investment reforms, stable Govt. and policy measures including banking and labour reforms undertaken by the Govt. of Indistan to attract large scale foreign direct investments. Infrastructure, power generation and automobile industries are a few major foreign investment sections.
7. URA and Indistan also have signed a Bilateral Investment Treaty (BIT) in the course of the above trend towards investment which was signed and entered into force in the year 2010. This was widely considered as conducive to Indistan.
8. The BIT guarantees fair and equitable treatment, total protection and security of their contractual rights, due safeguards against unlawful expropriations, as well as other protections of investors from one of the contracting parties, as specified in the BIT.
9. URA and Indistan are founding members of the United Nations and are Parties to the Statute of the International Court of Justice.
10. URA and Indistan are Parties to the Vienna Convention on the Law of Treaties.
11. URA and Indistan are also the founding members of the WTO system and were party to the Uruguay Round of negotiation which led to the signing of the Marrakesh Agreement.
12. The important provisions of the BIT are as under:

TREATY BETWEEN THE GOVERNMENT OF INDISTAN AND THE GOVERNMENT OF ANDORRA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT

The Government of the United Republic of Andorra (URA) and the Government of Indistan (each hereinafter referred to as a — Contracting Party);

Desiring to create favorable conditions for greater economic cooperation between them and in particular for investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party based on the principles of equality, non-discrimination, and mutual benefit;

Recognizing that the encouragement and reciprocal protection of such investments will be conducive to stimulating business initiatives and increasing economic prosperity in both States;

Recognizing the importance of providing effective means of asserting claims and enforcing rights with respect to investment under national law as well as through international arbitration;

Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment, and the promotion of internationally recognized labor rights;

Having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of investment; have agreed as follows:

Article 1: Definitions

For the purposes of this Agreement:

“investment” means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, alongwith the assumption of risk. It means and includes all kinds of assets that have been invested in accordance with the laws of the Contracting Party receiving them, including though not exclusively any:

- (a) Movable and immovable property and other property rights such as mortgage, usufruct, lien, or pledge;
- (b) Title or claim to money or to any contract having a financial value;
- (c) shares, stock, and other forms of equity participation in an enterprise;
- (d) futures, options, and other derivatives;
- (e) All intellectual property including Copyright, Patent, Design, Trademark, Geographical indication as covered under TRIPS.
- (f) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

“investment agreement” means a written agreement between a national authority of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies on in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, manufacture, making transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government....

Article 5: Minimum Standard of Treatment

1. Each Party shall accord to the covered investments, treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) “full protection and security” requires each Party to provide the level of police protection required under customary international law. ...

Article 6: Any unilateral act of the parties in one sector of the investment in any manner whatsoever will give the other party a right to terminate other investment measures in the country.

Article 10: Expropriation & Compensation

(1) Neither of the Contracting Parties shall take any measure of expropriation, nationalization, or other measures having effect equivalent to nationalization or expropriation (all of which measures shall hereinafter be referred to as — —expropriation) against the investment of nationals or companies of the other Contracting Party unless the measures are taken for a purpose authorized by law, on a non-discriminatory basis, in accordance with its laws and in return for payment of just compensation, which shall be made without unreasonable delay. Such compensation shall be the value of the investment immediately before the expropriation, taking into account the customary norms of international law and except:-

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law and Article 5 [Minimum Standard of Treatment]....

Article 11: Umbrella Clause

Each Contracting Party shall comply with any other obligation that it has entered into in relation to the investments of nationals or companies of the other Contracting Party in its territory....

Article 12: Investment and Environment

1. The Parties recognize that their respective environmental laws and policies, and multilateral environmental agreements to which they are both party, play an important role in protecting the environment.

2. The Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic environmental laws. Accordingly, each Party shall ensure that it does not waive or otherwise derogate from or offer to waive or otherwise derogate from its environmental laws in a manner that weakens or reduces the protections afforded in those laws, or fail to effectively enforce those laws through a sustained or recurring course of action or inaction, as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

Article 16: Non-Derogation

This Treaty shall not derogate from any of the following that entitle an investor of a Party or a covered investment to treatment more favorable than that accorded by this Treaty:

1. laws or regulations, administrative practices or procedures, or administrative or adjudicatory decisions of a Party;
2. international legal obligations of a Party; or
3. obligations assumed by a Party, including those contained in an investment authorization or an investment agreement. ... Including determinations of similar obligations under any principle of International Law.

Article 20: Settlement of Disputes

- (1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement that cannot be settled within a reasonable lapse of time by means of diplomatic negotiations shall, unless the Parties have otherwise agreed, be submitted at the request of either Party to International mediation.
- (2) If such dispute cannot be settled through negotiation or mediation, the Contracting Parties shall agree to submit the matter to an arbitral tribunal or the International Court of Justice.

* * *

13. The BIT has been registered in accordance with Article 102 of the UN Charter.

14. In the northern part of Indistan, there is a mountainous terrain ranging from 2000 to 5000 meters in height. River 'Volga' which flows across the length of Indistan is the major river originating from the northern mountainous region. It basically originates from the 'Mount Crater' and meanders through the valley between 'Mount Crater' and 'Mount Lotus' and travels through its natural course as indicated in Annexure A-1. Some major Tributaries of the river also flow through some of these areas rich in mineral resources.
15. The River 'Volga' is considered as the lifeline of Indistan. It has a long history of being the social and economic lifeline of Indistan as its major cities, and industrial zones have been developed on the two banks of the river. Though demands have been made towards regulating its flow through hydro electric use, the Government did not embark on any such major work, for several social, environmental and political reasons.
16. In spite of the economic benefits and upward movement in social and living index of the Indistan, there has been open opposition to the continued and increased presence of the MNCs in the country, who have invested in various segments. The main grievance of sections of the people propounding domestic governance as against multinational profiteering is about the expropriation and exploitation of natural resources including the mining of precious rare ores and exploration of its natural waters. One of such rare ore found in the Republic of Indistan is 'Selenium' which has high utility as semi-conductor in the computer and cyber technology. The concerns raised by civil society and prominent NGOs have led to several non- violent as well as occasional violent demonstrations against Govt. of Indistan and exploitation of natural resources by MNCs.
17. In the midst of these happenings Indistan desired to move forward in pursuance of the BIT with URA. A corporation by name Metallurgical Synergy Group (Met-Synergy Inc.) having its headquarters in the capital city of the Republic of Andorra, entered into an investment contract with the Republic of Indistan. The contract for refining and production of ore/metal was signed by the CEO of Met-Synergy Inc. and the finance minister of Indistan.
18. Under the said contract Met-synergy Inc. purchased several hundred acres of land near the site of excavation and mining in Indistan at an estimated cost of \$50 million for the exclusive use of setting up of a refining and processing unit. It intended to mine and refine the precious metal i.e. SELENIUM and export the majority of its finished product in the world market. However, it assured to the republic of Indistan to make available its finished product for its domestic consumption and also computer chips/electronic chips at a price of 10% below the world market price. Indistan claimed this in view of the rising demand of electronic chips and semi-conductors

in its industries and to cater to its aspiration of catching up with other countries in the field of information technology and services.

19. The 'Investment Agreement' further envisaged that Indistan would be purchasing a minimum of 15% finished product of Met-synergy Inc. exclusively for domestic use and cater to the developmental needs of Indistan. It also envisaged the employment and training of minimum 2000 nationals of Indistan in the Met- Synergy facilities as measure of human capacity development in the emerging technology of refining and processing.
20. As set forth in the contract drawn pursuant to the signing of BIT, Indistan guaranteed Metallurgical Synergy Group full and necessary access to the water resources required for processing and refining the raw ore into finished Selenium. It also envisaged issuance of all required licenses and permission to ensure the efficient operation of the mining activities. However, citing various technical requirements like EIA Report for the project and the proposed diversion of water against the natural course of river 'Volga' - not permissible under its domestic legislation – the Govt. of Indistan was unable to provide unhindered access to necessary water resources for commencement of the mining operation as envisaged, viz., within six months of signing of the Agreement. The metallurgical Synergy group therefore built a costly water pipeline for an efficient use of water for mining purpose from the river 'Volga' and two of its major Tributaries. This virtually amounted to indirect diversion of the course of the river. The pipeline details and quantum of water drawals were not duly disclosed to Indistan on the ground of confidentiality. Indistan however tacitly gave its nod to this course of action on the good faith that no undue advantage will be taken, nor will Indistan be otherwise persuaded to give express approvals. It began to cite the example of a gigantic river water project of this nature in the People's Republic of China, as if this would be beneficial to the people of Indistan in due course. The Government of Indistan was led into this thinking on certain projections and representations made by Met-Sync-Inc and which were believed to be true.
21. Amidst all these developments and fascinating stories of economic growth and industrialization and modern cyber technology world, one of the lesser known tribe named 'INDO-TURIN' was away from and living in isolation from all these happenings. The 'Indo-Turin' tribe - a local indigenous group that insists on maintaining their traditional historic way of life like the Amish faith. The Constitution of Indistan also provides for the preservation of and protection to these tribes with least interference in their habitat, land, and way of life. The Govt. of Indistan also had a policy to allow the 'Indo-Turin' tribe to peacefully co-exist as long as they do not interfere with

the pursuant of technology and other industrial process that will benefit the rest of the country. However, no major interfaces took place in the past, post independence.

22. The 'Indo-Turin' tribes mainly rely upon animal husbandry and goat/ sheep herding in the foothills of Mount Etna and Lotus. They also grow rice and millets. The area is rich in fruit orchards and most of some rare variety of fruits not found in the rest of Indistan and even in other mountainous ranges. It is believed that this area is also special for its unique ecological diversity. The Turin tribe believe in minimum technology only necessary to cater to their basic needs. They further believe that education must serve only such purpose and that natural resources shall not be invaded as they cannot be created or generated by human effort. In fact, the tribe has a limited understanding of the common language spoken in Indistan and its neighboring areas, and their only written language is a pictographic script. Some anthropologists believe that they may have historic links with the prototype people of Northern Indistan whose archeological excavations continue to be a subject of great international speculation and literature.
23. The spiritual leaders and folklorists of the Tribes and some sections of the Indistan population have worshipped the Mount Lotus which is also site of a dormant volcano. It is estimated that the said volcano erupted last in 2000 B.C. The Indo- Turin tribe claims Mount Lotus known in ancient times as the abode of the creator and as the ancestral home of the sole divine power, which provides the 'Indo-Turin' people/ tribe with all nourishment, energy, crop growth and light. The mountain is said to be an extraordinary centre of spiritual upliftment. Certain sections of the people of Indistan also undertake special journeys to a particular spot of the mount and consider this as rare opportunity of spiritual value. The routes which have been followed over a long period of time have also acquired a hallowed importance.
24. The Constitution of Indistan also provides a kind of autonomy for the administration of such areas through the Tribal Advisory Council and provides special protection to the 'land' and 'area' inhabited by them. The Constitution of Indistan specifically forbids the transfer of such tribal land to 'non- tribals'. Special provisions for administration of justice in these areas are guaranteed.
25. The 'Indo-Turin' tribe and its successive young generation goes through a process of enlightenment, whereby young children are required to climb Mount Lotus via a winding route which is very difficult and rugged terrain. However when the young children reach the summit, they give offerings to their deity believed to be eternally present on the mount through sacrificing chosen animals. Once the children successfully complete this ritual task and return, the tribal elders adorn them in a traditional manner and celebrate the occasion by feasts and other cultural celebrations.

26. However, the tribals do not encourage nor discriminate among the male and female child in the performance of this ritual; rather it is a way of life which the children of 10 to 15 years undertake to perform on voluntary basis. There have been several deaths reported by independent journalists and social organizations of the young children of 'Indo- Turin' tribe. It is also reported that, over last three decades, the population of 'Indo- Turin' tribe has not shown significant increase and has been far below compared to the general demography of Indistan.
27. Since early 2016, several parts of Indistan began to witness severe droughts, due to unprecedented climate change, water shortage following scant rains virtually 10% of its normal rainfall and increased demand due to increasing population. Large scale deaths/ suicide by farmer were reported by national and international media due to scarcity of vital yet life supporting component like 'water' for supporting agriculture and livelihood on a day- to – day basis. Emphasizing these issues, several NGOs and sections of the civil society forged a strong demand that the water supply to Metallurgical Synergy Group ought to be stopped with immediate effect as it does not have any sanction in law to the use waters of river Volga. The mounting public pressure was a matter of great concern and governance crisis. The task of balancing growth and development and the obligations under the BIT, with the need to conserve its resources became a major national issue. This called for greater attention to constitutional discipline and political maturity. The Turin Tribe people also occasionally joined these demands.
28. To meet the extra- ordinary situation, as stated above the Govt. of Indistan constituted an expert Committee to study the use and management of its water resources particularly of River 'Volga', to strike a balance between economic progress and social development with least impact on environment. The expert Committee in its report envisaged erection of a huge concrete structure between Mount Crate and Mount Lotus and a further gigantic dam between the two mountain Hills i.e. Mount Etna and Mount Lotus. However, it also expressed its apprehension about ecological damage and threats/ risks involved in diverting the course of river and storage of water for the purpose of such a dam. The land mark studies on large dams were pressed into service.
29. The Govt. of Indistan made several conciliatory efforts to reduce the ongoing resentment and protests by negotiation and dialogue process. It also asked Metallurgical Synergy Group to reduce its water usage to help in ameliorating the situation until the drought conditions subside. The CEO of Metallurgical Synergy Group however refused to heed to the request made by Govt. of Indistan and continued with its mining operations as well as refining process in full swing. It also cited the obligation and duty of Republic of Indistan under the contract executed pursuant to the BIT. The Govt. of Indistan in its communication to Metallurgical Synergy Group accused it of

excessive use of water which turned and aggravated the drought situation in Indistan into a national emergency. The dilemma of a bilateral agreement becoming non-accountable to domestic needs, began to pose a huge issue of review of all Bilateral Investment treaties.

30. An Association of concerned citizens called “People Cause” petitioned the Supreme Court of Indistan under its fundamental rights jurisdiction, seeking that the agreement between the Government of Indistan and Metallurgical Synergy Group as well as the BIT between Indistan and URA, be declared unconstitutional and that the further operation of all processes under the agreement be stopped as it would cause irretrievable loss and injury – social and economic. The wisdom and propriety of such Treaties was seriously questioned.
31. The Supreme Court of Indistan however declined to grant any prohibitory orders. The Court, while willing to hear the petition, however expressed grave doubts about the appropriateness and scope of its judicial review powers, as in its view, set out in one of its orders, several economic, political and technical questions including issues of international law are so entangled.
32. With each passing day the weather conditions continuing to be unsympathetic, the drought conditions in Indistan worsened which led violent protests across the country and against the MNCs which were exploiting its mineral resources and abusing its scarce water resources. The percentage or quantum of returns to the government, were said to be meager compared to the profits being made by Metallurgical Synergy. Comparisons were made to the case of Enron and Dabhol power Companies.
33. In one of the inflammatory video released by the Civil Society and its leaders described as to how the Metallurgical Synergy Group is abusing the waters of River ‘Volga’ which it is transporting for refining and commercial purposes. The video not only criticized the inadequate steps undertaken by the Govt. of Indistan rather asked it to take immediate action against Metallurgical Synergy Group. The reluctance of the Supreme Court to expeditiously adjudicate the matter also led to the civil society unrest.
34. Out of several incidents/ protests and demonstrations which took place across Indistan, a violent and angered mob in the vicinity of Metallurgical Synergy Group attacked the refining unit and caused damage to the production unit. This resulted in a loss of several million dollars to the Company. The CEO of Metallurgical Synergy Group wrote and complained about the Indistan’s inability or unwillingness to deal with the hostilities against the Metallurgical Synergy Group and termed the incident as direct breach of the ‘Investment Agreement’ drawn pursuant to BIT.

35. The Govt. of Indistan through its response assured all lawful action against identified set of people and assured justice in every sense but also took the plea of extra- ordinary drought scenario prevailing in country and stated that it may not have all control over people's protests. It also accused the Metallurgical Synergy Group of unlawfully operating its mining as well as refining unit without the proper clearance to access the quantity of water as stipulated in the 'investment Agreement'. For the first time, the Govt. of Indistan termed the drawing of water from river Volga through pipeline as 'not approved' by the Govt. Consequently, the Metallurgical Synergy Group has to shut down two of its processing and refining units which reduced the production output of 'selenium' to 30%. This retrospective declaration by Indistan was considered illegal by Metallurgical Synergy Incorporation.
36. As the Govt. of Indistan termed the activity of drawing water from river 'volga' by Metallurgical Synergy Group without its express consent as illegal and unlawful, people gathered once again surrounding the processing & refining units and caused massive destruction of the property which also resulted into death of 7 nationals from URA and around 10 local workers from Indistan. After this second incident of attack and destruction of the Metallurgical Synergy Group, the production decreased by 50%. In response, to this, the CEO of Metallurgical Synergy Group decided to reduce the number of workers and laid off nearly 1000 employee (all national of Indistan). The retrenched employee of Indistan reported of racial discrimination, inequality in work conditions and wages by the management of Met- Synergy group.
37. The leaders of 'Indo – Turin' tribe and Republic of Indistan (through its colonial master i.e. URA) had entered into a solemn treaty 110 years ago, called the URA – TURIN Treaty declaring the area between Mount Lotus and Mount Etna as 'Indo- Turin' Territory. The Indo- Turin tribe also consider these lands their own since time immemorial. However, the said treaty was entered by the URA with leaders of Indo-Turin tribe.
38. Whenever, the Republic of Indistan desired to use the land specified and protected for 'Indo- Turin' tribe, it negotiated through the Tribal Advisory Council as established under the Constitution of Indistan through an amicable agreement.
39. Taking cue from the Expert Committee report, the Government of Indistan decided to undertake the task of fundamental alterations in the mountain topography, to secure a man made reservoir and to build a huge dam on River Volga.
40. The internal crises led to another thinking on the regulation of the waters of river Volga. The Government of Indistan while finalizing its views on the Expert Committee recommendations

thought that this could resolve several issues including management of water resources to deal with the draught conditions as well as regulated supply of water to Metallurgical Synergy Inc. The consequences of acting in breach of the BIT loomed large with Indistan.

41. The URA – TURIN Treaty was not considered to be any impediment in this regard. The Turin Tribe was thus kept out of the decision. All decisions were taken in secrecy. Indistan government thus started the Volga River Dam construction and diversion of its water. One fine morning, the ‘Indo- Turin’ tribe woke up to the sound of massive construction material and machinery alongwith large workforce at the dam site. In due course, they were forcibly evicted, displaced and relocated on the other side of the mountain which amounted to complete abandonment of its hoary past, its traditions and its rights. The entire ‘Indo- Turin’ tribe could only watch as their homes, life, liberty, livelihood and traditional way of living was destroyed at the hands of its own Republic of Indistan.
42. Additionally, the dam, when completed, is expected to cause the water in the river volga to rise upstream from the dam and cover a significant portion of the near-by lands of the ‘Indo-Turin’ tribe displacing them forever from key parts / portions of their homeland. Most recently, however, the tribe ‘Indo-Turin’ were apprised of International Law Association Resolution No. 5/2012 of August 30, 2012, cited as evidence of their collective human rights under customary international law. They see their rights to their traditional lands as violated by the flooding of their lands resulting from the dam construction; also, their customary international law right not to be relocated without their free, prior, and informed consent was, in their eyes, clearly breached. In addition, they claimed a violation of their rights under the pre-constitutional treaty with URA. It was felt that pre-constitutional treaties / agreements are constitutionally protected.
43. Attempts were made to petition the Supreme Court of Indistan, by the Turin Tribe. The court was sympathetic to their cause, and decided to hear their complaint, along with the petition moved by “Peoples cause”. But the court said in its interim order, that the issues are too complex, to be halted by it by any interim measures.
44. At this point, Metallurgical Synergy Group (Met-Synergy Inc.) was unable to sell its chips at world market prices, as inflammatory videos, and public outcry against the alleged activities of Met- Synergy Group in adverse situation like drought, amongst other human rights concerned, which spread around the globe, led to a boycott of its products worldwide. Drought conditions continued even as the construction of the dam was underway in Indistan with great speed. The drought, the construction of the dam, and the additional expenses by the Indistan government to deal with its domestic and international crisis had an obvious adverse impact on the economy of

- Indistan. The currency of Indistan suffered a substantial devaluation. The CEO of met-Synergy Group demanded that Indistan take delivery and payment for the agreed upon 15% of finished product at 10% below the market price, as contemplated in the Investment Agreement and payment of outstanding dues of around 50 million dollar. The Govt. of Indistan citing its economic emergency coupled with wide social unrest, declined to purchase the finished product from Met –Synergy group as demanded by its and also refused to pay the outstanding dues.
45. Metallurgical Synergy Group also filed an application to implead itself in the pending proceedings before the Supreme Court of Indistan. It argued that the contract between it and Indistan is justiciable under Indistan law. No orders have been passed by the Court in this regard.
 46. The Metallurgical Synergy Group does not see any hope to fight and recover their due(s) and their own bankruptcy, failure of Govt. of Indistan to purchase new finished product, their wide-scale destruction of investment by violent mob in Indistan. The shareholders of Met-Synergy group urged the Govt. of Andorra to take legal action against the Govt. of Indistan. As the stocks of Met- synergy group plummeted world-wide due to all these circumstances- the Andorra's reputation as an economic power began to be doubted. It is also contemplated that the bankruptcy of met- Synergy Group would create economic disaster within the Andorra's society. At this juncture, the Govt. of Andorra decided to take action on behalf of Met-Synergy group against Indistan.
 47. The President of Andorra wrote a letter to the Govt. of Indistan to compensate Met- Synergy group for the destruction of its refining and processing units and all other damages sustained by it as a result of several incidents. Additionally, he requests the Govt. of Indistan to take legal action against all leaders of civil society and protestors who fuelled the attack on the establishment of Met-Synergy Group. In addition, he further asked the Govt. of Indistan to stop construction of the dam as may block the use of water for its mining, refining and processing production and to provide Met- Synergy Group with all appropriate licenses and permits as promised under the Investment Agreement including access to water resources. In exchange, the company would release Indistan from its commitment to purchase 15% of finished products and also consider waiving off portion of its dues, as that may reduce huge liabilities on Indistan.
 48. Govt. of Indistan refuses to abide by any such conditions and accuses Met-Synergy Group of violating the Investment Agreement by operating without a license and using excessive amounts of water, and discriminating against its nationals as employees. It further claimed that the retrenchment of employees of Indistan origin added to the already bad conditions of the Indistan's economy and increased hostilities. Furthermore, Indistan argues that Met-Synergy group should

have decreased its use of natural resource like water when asked to do so by its government in response to the drought, and that not doing so has contributed to the escalation of conditions into a national crisis. It said that it has been misled by Met Syn Inc and its misrepresentation may amount to fraud.

49. As neither state was willing to negotiate, URA on behalf of Met-Synergy Group and all citizen shareholders, instituted proceedings against the Government of Indistan in the International Court of Justice. Andorra claims that Indistan violated the BIT and the Investment Agreement, resulting in significant physical and economic injuries to it for which it seeks just compensation. Also, acting on behalf of the 'Indo- Turin Tribe' and their collective human rights, Andorra claims that Indistan violated the internationally protected rights of 'Indo- Turin' tribe to their traditional lands and the principle of free, prior, and informed consent and demanded scrapping of the dam project on river Volga and urged that domestic policies that violate the BIT are violations of international law and are reviewable by the ICJ..
50. Indistan contends that the ICJ has no jurisdiction, and that the claims put forward by Andorra on behalf of the Indo-Turin Tribe people are not admissible. It claims that after the enactment of its constitution URA is a complete stranger to its people including the Turin Tribes and it has no locus to act on their behalf. The Indistan constitution alone governs all issues and it is a domestic issue. Indistan also cited the proceedings pending before its Supreme Court where Met Syn Inc has sought impleadment. In addition, Indistan denies all of Andorra's claims regarding the violations of the BIT and customary international law. If the ICJ found that it had jurisdiction, it also had to conclude that Andorra had violated the basic human rights of the citizens of Indistan i.e. Right to water as it suffered from severe drought and loss of life and property due to the same. Andorra and its corporation did not stop from using excessive water for commercial activities during such sever crisis of human rights. It also alleged the Met. Syn. Inc. – contract stood vitiated due to fraud and unlawful unilateral measures and that BIT or the contract cannot override its domestic constitution.
51. Both states are active members of the United Nations and have ratified the International Covenant on Civil and Political Rights and the Vienna Convention on the Law of Treaties. Additionally, in 2010 both states endorsed the 2007 United Nations Declaration on the Law of Indigenous Peoples.
52. In December 2016, both Andorra and Indistan had submitted individual declarations recognizing the jurisdiction of the International Court of Justice in accordance with Article 36(2) of its Statute. Indistan, however, had reserved that it would not accept the jurisdiction of the

International Court of Justice in relation to matters regarding its domestic economy and domestic judicial autonomy.

53. Andorra, the Applicant, asks the Court to adjudge and declare that:
- a) The International Court of Justice has jurisdiction to adjudicate this dispute;
 - b) The case is admissible;
 - c) Indistan has violated the BIT in place between the two states by planning and starting to construct a dam that will substantially impede the water flow from the Volga River to the mining and processing facilities of MET- Synergy group, a corporation registered in Andorra, in violation of the Investment Agreement between Met- Synergy Group and Govt. of Indistan;
 - d) Indistan further violated the BIT by failing to stop, investigate or prosecute local protestors that destroyed Met- Synergy Inc. facilities and caused millions of dollars in damages;
 - e) Indistan has violated international law by depriving the ‘Indo- truin tribe’ of their traditional lands without their consent and compensation;
 - f) Indistan has to compensate Andorra under international law for all losses resulting from the incidents causing injury to Met- Synergy Group.
54. In December 2016, both Andorra and Indistan had submitted individual declarations recognizing the jurisdiction of the International Court of Justice in accordance with Article 36(2) of its Statute. Indistan, however, had reserved that it would not accept the jurisdiction of the International Court of Justice in relation to matters regarding its domestic economy and domestic judicial autonomy.
55. Indistan, the Respondent, asks the Court to adjudge and declare that:
- a) The International Court of Justice has no jurisdiction to adjudicate this dispute;
 - b) The case is inadmissible;
 - c) Bilateral investment treaties are good faith agreements and their operation should be subject to domestic emergencies and be further subject to domestic constitutional action.
 - d) Indistan did not violate the BIT by starting to construct the dam as this project was clearly within its sovereign rights of development and, as a matter of necessity, was done

in response to the severe drought causing a shortage of water endangering the survival of the nation;

- e) Andorra’s national Met- Synergy Inc. claim of violation of the BIT was negated by its failure to secure the appropriate water licenses and permits, by building an unlicensed pipeline, and by using excessive amounts of water in their irrigation of sugar cane fields; and all on the basis of its several misrepresentations amounting to fraud;
- f) Indistan did not violate international law by failing to prosecute protest groups, because Indistan respects and adheres to international human rights guaranteeing free speech and assembly;
- g) Indistan is not liable for damages to Andorra as the actions of Met- Synergy Inc. and their refusal to mitigate conditions caused the incidents that led to its injury.
- h) URA has no locus to canvas the concerns of Turin Tribe, as all matters relating to them fell within the Indistan Constitution and are amenable to domestic jurisdiction alone.

56. The ICJ, at Hague has scheduled the specific legal issues arising from the above *Moot Compomis* for hearing before its Full Court on 11th-12th February, 2017 at Peace Palace (Netherlands).

*Please Refer the Moot Map in the Context of the Moot Compromis.

Moot Map

