Moot Court Society, Law Centre-I,
Faculty of Law, University of Delhi

XVIII LC-I ALL DELHI (NCR)

MOOT COURT COMPETITION 2025

MOOT PROPOSITION

FEDERAL REPUBLIC OF MIRAGEA v. REPUBLIC OF SHANDORA

Miragea is a developing country. The country has two main ethnicities – *Mekas*, which forms the majority and *Seeris*, which are in minority. Miragea is famous for its vast diamond-rich lands which are hardly exploited. It is also known to have poor labour standards, which has attracted many foreign investors in various sectors in Miragea for availability of cheap labour. These poor labour conditions are particularly concerning in the northern province of Karai Bari. The Province of Karai Bari is notorious for forcefully employing *Seeris* people in sweat shops which are mostly run by foreign investors.

StarSpark Mines is an internationally renowned diamond mining company having headquarter in the capital city of Country Zephyria. Looking at the prospects of diamond mining in Miragea, StarSpark enters into a joint-venture agreement with the Miragea State Mining Company, MSM. The joint venture was registered as SS-MSM company in 2010 with 60% shareholding owned by StarSpark Mines and 40% per cent owned by MSM. The joint venture (JV) is established for a period of 30 years based on 70-30 profit sharing in favour of StarSpark. Thereafter, SS-MSM started mining in the Karai Bari province from 2010 onwards. StarSpark Mines invested around eight million dollars in mining activities in Karai Bari province over the period of five years. The JV company largely benefited from the forced cheap labour and widespread corruption in the Karai Bari province.

The opposition parties in Miragea have always but thinly protested against the bad labour and human rights situation in the province of Karai Bari which is also ruled by the majority party of Miragea Union Government. However, the ruling party has mostly remained unaffected by protests.

However, when the public and youth of the country began to protest and question the moral integrity of the ruling government, especially with general elections on the horizon, a change occurred. To address the growing concerns of the public and to potentially secure votes, the government shifted its stance. They placed the blame on the foreign investors, accusing them of violating labour norms and contributing to human rights violations in Karai Bari province. This move was seen as an attempt to deflect responsibility and regain public trust in the face of the upcoming elections of 2016.

In 2015, the Miragea Parliament passed a new law retrospectively imposing heavy taxes on all foreign investors in the Karai Bora province, leaving alone all the domestic investors in the same region, from the year 2010 to 2015 for violation of labour standards in Karai Bora province. SS-MSM was particularly troubled by the retrospective tax legislation which demanded around three million dollars to be paid by SS-MSM as taxes. However, Miragea did not take any other step to hamper the interest of SS-MSM. Thus, its investments, which included rough and uncut extracted diamonds and costly state-of-the- art machinery used in mining and the license for mining remained unaffected. StarSpark Mines started considering filing an Investor–State Dispute Settlement (ISDS) case in International Centre for Settlement of Investment Dispute (ICSID) against Miragea for retrospective taxes and violation of many provisions of BIT including national treatment under the Miragea – Zephyria Bilateral Investment Treaty (BIT) signed in 2005.

Shandora is also a developing country which is located along the northern borders of Miragea. The poverty and bad human rights situation of the Karai Bora region of Miragea has created the problem of illegal migration in Shandora. As per a noted international research organisation, *Global Refuge Insights*

Network (GRIN), in the last decade nearly two million *Seeris* ethnicity people have illegally migrated from Miragea to Shandora. Shandora's own investigation reveals a much higher figure of illegal migration than mentioned by GRIN. This influx of illegal migration from the Karai Bora region of Miragea has created a huge law and order situation, like riots, robbery and other crimes, in Shandora's southern cities and provinces. The law-and-order enforcement agencies of Shandora attribute most of these problems to *Seeris* illegal migrants. There is strong public resentment against illegal migration in Shandora particularly against Miragea's failure to restrict its own citizens from illegally entering Shandora. Shandora has made many diplomatic efforts including sending diplomatic notes on at least three occasions, in 2011, 2013 and 2015, but to no avail or result.

Due to the failure of diplomatic exchanges, strong public sentiments and keeping security interests in mind, Shandora decided to invade some parts of Miragea with higher incidents of illegal migration, most of which fell in the province of Karai Bora in 2015. Miragea tried to defend against Shandora's invasion. However, Miragea failed to protect its land against the overwhelming forces of Shandora. Newly occupied territories by Shandora were soon recognised by at least 25 countries as part of Shandora and some of them even initiated the process to open a consulate in the occupied territories of Shandora. Soon after the occupation of the new territory by Shandora, it stopped all commercial activities within the occupied region *'until further notice'* to stop prospects of any rebellion from the occupied territory. This prohibition remained in effect for at least 2 years.

Miragea raised the matter of invasion by Shandora internationally including in UNGA and UNSC. Unfortunately, the UNSC could not pass any resolution against Shandora due to a veto being used by U-SAM, a permanent member of the security council. However, UNGA, in 2016, passed a resolution recognizing the territorial integrity of Miragea and requested the other states to not recognize the occupied territory as part of Shandora. (*See annexure I*)

StarSpark mining activities and investments fell within the newly gained territory by Shandora. During the armed conflict between Miragea and Shandora, StarSpark's investment including 20 million dollars' worth of rough and uncut diamonds and mining machinery was either stolen or destroyed. StarSpark requests the new govt formed in the territory gained by Shandora for compensation for all the loss. The request was denied by the newly formed govt of Shandora by saying they recognised investments formed after the occupation of the new territory and all previous international obligations concerning the occupied territory had vanished.

StarSpark requests its home country Zephyria to negotiate with Miragea to claim compensation from Shandora on behalf of StarSpark by claiming to be the home country of StarSpark. Zephyria and Miragea enter into a negotiation and Miragea agrees to take up the matter of StarSpark provided StarSpark pays the retrospective taxes due to Miragea and all the legal costs associated with the suit. StarSpark agreed to pay the retrospective taxes including the cost of the suit. Miragea filed the matter against Shandora before the Permanent Court of Arbitration secretariat for the loss suffered by StarSpark and various domestic investors of Miragea who were working in the occupied area and lost their investments during the armed conflict and banned commercial activities but became foreign investors to Shandora when the region was occupied by Shandora. Thereby, Miragea became the host state to SS-MSM.

Miragea claims that Shandora has violated the Customary International Law (CIL) principles by violating International Minimum Standard (IMS). Also, Shandora has expropriated the investments of StarSpark and other investors of Miragea. Miragea also claims that it was due to the armed aggression of Shandora that StarSpark and other investors lost their investments. Therefore, under the state responsibility, it is Shandora who should be held liable for loss to investors. Claim of Miragea also includes that succession of territory would also mean succession to treaties.

Shandora replied that Miragea does not have any jurisdiction to come before the PCA as Shandora-Miragea BIT does not contain a state-state dispute settlement mechanism. Also, that the StarSpark or other investors are not foreign investors for Shandora. Also, there is no investment by these "so-called" investors. Also, it was a failure on the part of Miragea to provide full security and protection to StarSpark or other investors. Shandora also claimed that the succession of territory does not bind the successor state of any previous international obligations. It also raised the issue of ethical concern of third-party funding used by Miragea in this matter as Permanent Court of Arbitration (PCA) Arbitration Rules, 2012 do not anywhere provide for such actions. Also, the prohibition on commercial activity was justified on account of the protection of its essential security interests.

Shandora and Zephyria do not have any BIT signed between them. Shandora and Miragea have BIT signed between them (Annexure II). Shandora and U-SAM have a BIT signed between them which is *pari materia* with India-Belarus BIT (signed in 2018 and entered into force in 2020). All the countries involved - Shandora, Zephyria, Miragea and U-SAM are members of United Nations (UN), Vienna Convention on the Law of Treaties, 1969; the Convention on the Settlement of Investment Disputes between States and Nationals of Other States

(ICSID Convention), and Vienna Convention on Succession of States in respect of Treaties, 1978.

NOTE: Arguments used by the States against each other are not exhaustive. Teams may frame any other relevant issues and arguments as per their understanding of the subject matter and the rules of the moot.

ANNEXURE I

United Nations

A/RES/HF/27

General Assembly

1 April 2016

Ninety-eighth session

Agenda item 33 (*b*)

Resolution adopted by the General Assembly on 27 March 2016

HF/27. Territorial integrity of Miragea

The General Assembly,

Reaffirming the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Recalling the obligations of all States under Article 2 of the Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, and to settle their international disputes by peaceful means,

Recalling also its resolution 2625 (XXV) of 24 October 1970, in which it approved the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, and reaffirming the principles contained therein that the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force, and that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

Stressing the importance of maintaining the inclusive political dialogue in Miragea that reflects the diversity of its society and includes representation from all parts of Miragea,

Welcoming the continued efforts by the Secretary-General and the Organization for Security and Cooperation in Europe and other international and regional organizations to support de-escalation of the situation with respect to Miragea,

1. *Affirms* its commitment to the sovereignty, political independence, unity and territorial integrity of Miragea within its internationally recognized borders;
2. *Calls upon* all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Miragea, including any attempts to modify Miragea's borders through the threat or use of force or other unlawful means;
3. *Urges* all parties to pursue immediately the peaceful resolution of the situation with respect to Miragea through direct political dialogue, to exercise restraint, to refrain from unilateral actions and inflammatory rhetoric that may increase tensions and to engage fully with international mediation efforts;
4. *Calls upon* all States, international organizations and specialized agencies not to recognize any alteration of the status of the province of Karai Bora and the on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status.

nth plenary meeting 27 March 2016

ANNEXURE II

AGREEMENT BETWEEN THE GOVERNMENT OF REPUBLIC SHANDORA AND THE GOVERNMENT OF THE REPUBLIC OF MIRAGEA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Shandora and the Government of the Republic of Miragea (hereinafter referred to as the "Contracting Parties"),

have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

a. movable and immovable property as well as any other rights *in rem* such as mortgages, liens, pledges and similar rights;

b. shares, stocks and debentures of companies or any other form of participation in a company;

c. claims to money or to any performance having an economic value associated with an investment;

d. intellectual and industrial property rights, including copyrights, trade marks, patents, designs, rights of breeders, technical processes, know-how, trade secrets, geographical indications, trade names and goodwill associated with an investment;

e. any right conferred by law or under contract and any licenses and permits pursuant to law,

including the concessions to search for, extract, cultivate or exploit natural resources. Any alteration of the form in which assets are invested shall not affect their character as investment on condition that this alteration is made in accordance with the laws and regulations of the Contracting Party in the territory of which the investment has been made.

2. The term "investor" shall mean any natural or legal person of one Contracting Party that has made an investment in the territory of the other Contracting Party.

a. The term "natural person" shall mean any individual having the citizenship of either Contracting Party in accordance with its laws.
b. The term "legal person" shall mean with respect to either Contracting Party, any legal entity incorporated or constituted in accordance with its laws having its central administration or principal place of business in the territory of one Contracting Party.

3. The term "returns" shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties or fees.

4. The term "territory" shall mean:

a. in the case of Shandora, the territory over which Shandora exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction;
b. in the case of the Republic of Miragea the territory over which the Republic of Miragea has, in accordance with international law and its national laws and regulations, sovereign rights or jurisdiction.

Article 2
Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and, shall admit such investments in accordance with its laws and regulations.

2. Each Party shall accord in its territory to investments of the other Party and to investors with respect to their investments fair and equitable treatment and full protection and security.

3. With respect to the investments the following measures or series of measures constitute breach of the obligation of fair and equitable treatment:
(a.) denial of justice in criminal, civil or administrative proceedings; or
(b.) fundamental breach of due process, including a fundamental breach of transparency and obstacles to effective access to justice, in judicial and administrative proceedings; or
(c.) manifest arbitrariness; or
(d.) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or

(e.) harassment, coercion, abuse of power or similar bad faith conduct; Upon request of a Party, the Parties may review the content of the obligation to provide fair and equitable treatment.

4. The Contracting Party shall not encourage investment by lowering domestic environmental, labour or occupational health and safety legislation or by relaxing core labour standards. Where a Contracting Party considers that the other Contracting Party has offered such an encouragement, it may request consultations with the other Contracting Party and the two Contracting Parties shall consult with a view to avoiding any such encouragement.

Article 3
Investment and regulatory measures

The provisions of this Agreement shall not affect the right of the Parties to regulate within their territories through measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity.

Article 4
National and Most-Favoured-Nation Treatment

1. Each Contracting Party shall in its territory accord to an investor of the other Party and to an investment, treatment not less favourable than the treatment it accords, in like situations to its own investors and their investments with respect to the conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.

2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party and their investments treatment no less favourable than that it accords, in like situations, to investors of a third country or to their investments with respect to the operation, conduct, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.

Article 5
Compensation for Losses

1. When investments or returns of investments of investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification,

compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State whichever is more favourable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

a. requisitioning of their investment or a part thereof by its forces or authorities;

b. destruction of their investment or a part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation

shall be accorded by the Contracting Party, in whose territory the losses occurred, just, adequate and effective restitution or compensation. Compensation shall include interest at a commercially reasonable rate from the date of losses occurred until the day of payment.

Article 6
Expropriation

1. Investments or returns of investors of either Contracting Party shall not be subject to nationalisation, direct or indirect expropriation, or any measures having equivalent effect (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose.

2. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation.

3. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge (whichever is earlier), shall include interest at a commercially reasonable rate from the date of expropriation to the date of actual payment and shall be made without delay, be effectively realizable and be freely transferable in a freely convertible currency.

Article 7
Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall, if possible be settled amicably and be subject to negotiations between the parties in dispute.
2. If any dispute between an investor of one Contracting Party and the other Contracting Party can not be thus settled within a period of six months following the date on which such negotiations were requested in written notification, the investor shall be entitled to submit the dispute either to:

   a. the competent court of the Contracting Party in the territory of which the investment has been made; or

   b. the International Centre for Settlement of Investment Disputes (ICSID) pursuant to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965, in the event both Contracting Parties have become a party to this Convention; or

   c. an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to deviate from these arbitration Rules; or

   d. under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes ("Additional Facility Rules of ICSID"), provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D. C. on March 18, 1965; or

   e. any other form of dispute settlement agreed upon by the parties to the dispute.

3. Once a dispute has been submitted to one of the tribunals mentioned in paragraph 3 a. – e the investor shall have no recourse to the other dispute settlement fora listed in paragraph 3 a.-e.

Article 8
General and Security Exceptions

Nothing in this Agreement shall be construed:

a. to prevent any Contracting Party from taking any actions that it considers necessary for the protection of its essential security interests

i. relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

ii. taken in time of war or other emergency in international relations, or

iii. relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices;

iv. necessary to protect human, animal or plant life or health;

v. necessary to protect public morals or to maintain public order, provided that the public order exception may only be invoked where a genuine and sufficiently
serious threat is posed to one of the fundamental interests of society, or

b. to prevent any Contracting Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 32
Duration and Termination

1. This Agreement shall remain in force for a period of 20 years after its entry into force and shall continue in force unless terminated as provided for in paragraph 2.
2. A Contracting Party may, by giving one-year advance notice in writing to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter.

IN WITNESS WHEREOF, the undersigned duly authorized have signed this Agreement.

DONE in duplicate at Praia, 1st day of March 2005, in the Shandorian, Miragean and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

……..	……
For the Government of Shandora	For the Government of the Republic of Miragea