

Amity University

Amity Law School Centre-II

3rd INTERNATIONAL MOOT COURT COMPETITION

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Disclaimer: *“All aspects of the moot problem do not correspond to reality. Any representations of the Governments and other institutions or persons are work of fiction only employed for academic purposes.”*

MOOT PROPOSITION

1. State of Bracia is a democratic, federal and republic nation, having the population of 1.25 billion. Being the developing nation, it strives to maintain good relations with the developed nations of the world like State of Sera, State of Sino, State of Pierre etc so as to improve its financial stakes in the world economy. After considering the Human Rights Index (HRI) of the State of Bracia, myriad global investors from the developed nations have become keen to invest in the country.

2. State of Sera, a developed and financially sound economy has a population of 316.1 million. Being the capitalist economy, State of Sera encourages overseas investment deals under the various Bilateral and Multilateral Investment treaties.¹ In 1969, the State of Sera entered into a Bilateral Investment Treaty (BIT) with the State of Bracia namely, BRASE Bilateral Investment Treaty (hereinafter referred to as BRASE BIT) which ensured the economic cooperation between the two nations. The aims of BRASE BIT are as follows:

a) To encourage the adoption of market- oriented domestic policies that treat private investment in an open, transparent and non- discriminatory way;

b) To support the development of International Law standards consistent with the objectives of BRASE BIT.

c) SERA's BIT, in consonance with the international law principles of 'National Treatment and Most Favoured Nations (MFN) clause, requires that investors and their covered investments be treated as favourably as the host party treats its own investors and investment from any other third country.

3. In 1970, an agreement was signed between the United Corporation of Bracian Limited (hereinafter referred as UCBL) and Union Phosene Corporation (hereinafter referred as UPC) of the State of Sera stating the rights and liabilities of the UPC, UCBL and the Government of Bracia respectively. In accordance with the agreement, the Government of Bracia allowed UPC to open its factory outlets in 15 cities of the State of Bracia but 80% of the production was proposed to come from UCBL, located in the Krav city of the Kred state of Bracia. UCBL was operating as a manufacturing

¹ The laws governing State of Bracia correspond to the Union of India and that of State of Sera correspond to the United States of America.

unit in the State of Bracia and dealing in the production of industrial gases and also plastic products used for general public utility.

4. It is pertinent to note that the time when UPC decided to come up with its Pesticide Plant in the State of Bracia, severe economic recession had blown out the finances of the State of Sera. Thus, to cover up the deficits and earn greater profits through cost cutting techniques, UPC reduced the production activities in its own territory to the minimum and decided to open its plants in developing nations like State of Bracia. It was a conscious decision made at the time when the world was combating the economic friction created by the developed nations. State of Sera cleared its position by stating officially, "We want to explore the III worlds never gone before." The strategy was appreciated as in this way employee attrition could be saved.

5. As per the regulatory requirements mentioned in the agreement, a team of Serian engineers inspected the Krav factory outlet of UCBL, as 80% of the UPC production capacity was dependant on it. Further, in accordance with the agreement, UCBL along with the Government of Bracia owns 49% shares whereas 51% shares were owned by UPC. Subsequently, Baaz Ezikil, a very influential local businessman of the Kred state of State of Bracia was inducted in the board of directors of UCBL who played a key role in fetching the tribal land of 500 acres near the Krav city of the state of Kred. Out of his political influence, forest lands were allotted to the Amot Pesticide Plant of UCBL because of which 30 clans comprising of 4000 Sukni tribal people were made homeless and about 200 people had been reported missing.

6. Resultantly, UCBL came up with its Amot Pesticide Plant in the forest lands near the Krav city and successfully started its production and became operational by 1986. In the year 1987, the Trade Union of UCBL declared the strike and the objectives to be sought were never reported officially anywhere. When asked from the Management in the press meet, the management remained silent on the issue and also, no clear answer was given by the Trade Union Leader. Again in 1990, another strike took place by the Trade Union which continued for two weeks on the similar lines of the previous strike.

7. In the year 1992, first incident of the malfunctioning of the Amot Pesticide plant was reported to the appropriate authority at the district level. The complainant never came on record. Nevertheless the management was asked to report the incident. In

reply, the management released the press note in which they stated their compliance with respect to the objective standards. It was adjudicated as Class 2 report falling under Environment Impact Assessment (EIA) whereas Class 1 report relates to the strict compliance norms. In Class 2 report, they have stated that it was not the case of malfunctioning but negligence on part of some workers. After two years, four trade union workers were found guilty of 'sabotage' with the factory installations and other equipments and were eventually suspended by the management. A report related to the above-mentioned incident flashed the newspapers' headlines but no other official statement was available in the official domain.

8. After the submission of the report of the malfunctioning of the Pesticide Plant, examinations and thorough inspections revealed that enormous quantity of chemical gases and pesticides should not be stored as the leakage of the same may prove fatal to the human and animal existence. In answer to the above suggestion, the UPC officials turned down the suggestion and stated, "You have absolutely no need to worry, Krav plant will remain as inoffensive as a chocolate factory."

9. The tribal community which was relocated in the nearby residential colonies started widespread procession against the establishment of UCBL. Initially, UCBL resisted the tribal's hostile attitude sternly but later on keeping in tune with the principle of Corporate Social Responsibility (CSR) and the welfare directives of the state, management of UCBL decided to come up with UCBL's people's initiative programs and accordingly, schools both primary and secondary and other vocational institutes were established for the well being of the tribals. The press release next day states that the hostility of the tribals was answered by hospitality of the UCBL authorities.

10. On December 3rd, 1996, amot gas leaked from the pesticide plant which was owned, managed and controlled by UCBL. Amot is a colorless, lachrymatory (tearing agent) and flammable liquid. It is an intermediate chemical in the production of carbamate pesticides (such as carbaryl, carbofuran). It has also been used in the production of rubbers and adhesives. As a highly toxic and irritating material, it is extremely hazardous to human health.

11. The Krav Gas disaster is considered to be the world's worst industrial disaster caused by a 'run-away chemical reaction' of the amot gas stored in a stainless steel

tank of UCBL factory. The sheer magnitude of the industrial catastrophe has aroused the conscience of the world. The incriminated tank of the Pesticide plant of UPC in Krav city was maintained by the Bracian counterpart UCBL. Following the chemical run away reaction, there was a massive release of toxic gases into the atmosphere which spread over the densely populated area of Krav city. Over five hundred thousand people were exposed to the amot gas and other toxic chemicals. Apart from this, the leak caused 650,000 injuries including both temporary partial injuries and permanent disabling injuries.

12. On June 3rd, 1997, the official report of Bracian Council of Medical Research (hereinafter referred as 'BCMR') titled as 'Analysis of the Krav Accident' stated that the Krav accident is due to a series of errors, not only of the hardware but equally serious lapses which fall under 'operator, information and systematic error categories'. Finally, according to the report, "the most critical reason for the occurrence of these errors can be attributed to the slackening management of the UCBL.

13. By all accounts, the Krav gas tragedy took a sudden and heavy toll of human and animal lives. Around 600 to 700 carcasses were found floating in the Meda river of the Krav city. Moreover figures from the morgue may not account for all deaths in the city and the surrounding areas. As per the official data generated by the state government of Kred, around 6,000 people died and 40,000 to 50,000 of people were too ill to ever return to their jobs. The loss of human life and prolonged incapacitation of many survivors was unprecedented. In many cases, the entire family or the sole bread earner died; several were widowed and many of the survivors were either infants or minor children. For several weeks and months, large number of survivors exhibited a wide range of respiratory, ocular, behavioural and other morbidities. Pernicious effects of the Krav Gas Tragedy are still evidently seen in the succeeding generation of the victims.

14. Furthermore, the tragic accident has undoubtedly degraded the environment of not only the Krav city but also its adjoining areas. The Bracian Central Bureau of Investigation (hereinafter referred as BCBI), the Bracian courts and the Kred Pollution Control Board (hereinafter referred as KPCB) closely monitored and controlled all activities at the site. No steps were taken to remediate the site while the

Krav disaster litigation was in progress. The BCBI blocked access on the accidental site. However, after the global settlement, numerous environmental studies were conducted through the years, sponsored by Kred State Government, KPCB, UCBL and various other Bracian governmental agencies, Bracian environmental law firms and non-governmental organizations (NGOs).

15. Studies released by the Bracian Ministry of Environment and Forests (BMOEF) stated that slums surrounding the site are still vulnerable to lethal chemicals that are polluting the ground water and soil, causing birth defects and range of chronic diseases. The State government of Kred has only partially cleared the area where hundreds of tons of toxic materials are deposited. Thousand more tones lie just yards away from the plant in man-made 'solar evaporation ponds' where UCBL was dumping its waste for years before the accident. An International Environment watchdog and leading NGO, Green Initiative, tests the ph of soil, quality of ground water and wells in and around the derelict of UCBL factory and found the presence of 6 million times higher toxic and volatile organic chemicals in the vicinity. It further stated in its observations that the state government of Kred has failed to take proper steps to safeguard the environment resulting into the continuous degradation of the environment.

16. Legal proceedings involving UPC, State of Sera, State of Bracia, local Krav area authorities and the disaster victims started immediately after the incident. The Bracian government enacted the 'Bracian Gas Leak Act, 1998', allowing the Government of Bracia to act as the legal representatives for the victims of the disaster.

17. In October 1998, UPC proposed a settlement figure endorsed by the attorneys of the State of Sera. Accordingly, the UPC undertook the liability to generate a fund within 20 years for Krav gas victims which amounted to approximately 400 million dollars.

18. Soon after that the litigation was transferred from the state of Sera to the State of Bracia by the Federal Court of the State of Sera. Following appeal of this decision, the Court of Appeals in the State of Sera affirmed the transfer that UCBL was a separate entity owned, managed and operated exclusively by Bracian citizens in the State of Bracia. Further, it stated clearly that UPC's participation was limited and its involvement in plant operations terminated long before the accident.

19. Several victims of the Krav Gas disaster and Non Government Organisations (NGOs) filed a petition against UPC and its CEO Mr. Waxon, charging UPC for violating international human rights law, international environmental law and international criminal law. Charges of culpable homicide were maintained against Mr. Waxon by the local court of the Kred state which demanded his extradition to stand the trial. Accordingly, the Bracian government has formally conveyed its request for Mr. Waxon's extradition from the state of Sera which in turn rejects the request stating that the request does not meet requirements of certain provisions of the Bilateral Extradition Treaty. In spite of the repeated demands of 'extradition' by the Bracian government, there was no word from Mr. Waxon who was eventually declared as an absconder by the local court of the Krav city.

20. Eventually in order to reach the settlement, the Bracian government and UPC struck an out of court deal. UPC paid compensation of 400 million dollars to the Bracian government. All claims arising out of the release were finally settled in 2006 at the explicit direction and with the approval of the Supreme Court of Bracia by means of a settlement agreement between the Government of Bracia, UPC and UCBL. But the Government of Bracia failed to fully disburse the settlement amount among the victims of the Krav Gas Disaster.

21. In 2008, UPC sold its entire stake in UCBL to Ukero Chemical Ltd. (UCL), having the registered office in the State of Sera. As a result of the sale of its shares in UCBL, UPC retained no interest in the Krav site.

22. With the approval of the Bracian Supreme Court, the proceeds of the UCBL sale were placed in a trust and exclusively used to fund a hospital in Krav, which now provides specialist care to victims of the tragedy.

23. Public protests started against the unjust settlement negotiated by the Bracian government and the subsequent permission granted by the Bracian Supreme Court to allow UPC to sale all its shares in UCBL to the UCL. The public remonstrations were followed by the filing of the writ petition in the Supreme Court of Bracia by the 'Victim of Krav Disaster Union (VMDU), Krav Gas Victims' Justice Seeking Group (MGVJSG), Green Initiative and other concerned groups.

24. In pursuance of the public pressure, the State of Bracia entered into a special agreement with the State of Sera to seek settlement of the Krav Gas dispute by the International Court of Justice (ICJ).

25. The issues before the court are pertaining to the violation of international human rights law, international environment law and international criminal law. Further, the victims of the Krav Disaster were aggrieved with respect to the amount of compensation which have been promised to be distributed among them but was never distributed at any point of time. Therefore, they seek to redress their grievances before the appropriate forum.