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MOOT PROPOSITION

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Moot Proposition for SAARC Round

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MOOT PROPOSITION

PART - I

- [1] The Republic of Trinity and the Kingdom of Gama are two neighbouring States, sharing an international boundary, which comprises of three autonomous regions namely (i) autonomous region of Ardenia (ii) autonomous region of Trevis & (iii) autonomous region of Eden. These border-sharing regions are autonomous as they house three different ethnic populations having unique cultural and social identities, namely 'Ardenian', 'Trevis' and 'Edenian'.
- [2] According to the domestic laws of the Republic of Trinity and the Kingdom of Gama, when a citizen of the Republic of Trinity seeks to enter into the territory of the Kingdom of Gama (and vice-versa), that individual has to apply for an electronic visa via the internet. For the sake of easy communication and exchange among the populations of three different ethnic groups, both the countries have a 'Visa Facility Centre' in each autonomous region dedicated to the people.
- [3] The Kingdom of Gama has a population of around 2.4 million, whereas the Republic of Trinity has a population of around 9.3 million. The capital city of the Kingdom of Gama is 'Humpy'. Mocco, the capital city of the Republic of Trinity has emerged as a global node of creativity and entrepreneurship, social tolerance, environmental sustainability and as a symbol of freedom and cultural diversity. In 2019, the city of Mocco was voted as the greatest city in the world as per a survey of over 30,000 people from 48 cities worldwide, citing its cultural diversity.
- [4] According to a 2015 census carried out in both the States, the proportion of individuals who can be identified as ethnic Trevis in the Republic of Trinity and the Kingdom of Gama is around 6% and 89% respectively. Whereas the population of Ardenian is around 43% and 44.5% in the Republic of Trinity and the Kingdom of Gama respectively and the population of Edenian is around 11% in the Kingdom of Gama and 81% in the Republic of Trinity respectively.
- [5] The Trevis belong to an ancient culture that clings to traditions stemming back hundreds of years, including strict rules of conduct. One such rule is that when a promise is made by an ethnic Trevis individual, that promise must be kept or else the

individual will be dishonoured. In ancient Trevis writings, making a promise has been described as a devout act and compliance with promises as a form of worship.

- [6] Ardenian community, a separate homogenous ethnic group, having acquired high literacy and educational level, does not believe in following any such traditional and orthodox societal norms. Ardenian community rather have embraced the modern scientific way of thinking and are pioneers of the Information Technology (IT & ITES) related entrepreneurship. However, what set them apart as a distinct homogenous ethnic group is their dialect and their belief *i.e.* all Ardenian women are descendant of Goddess Ardenia who symbolises divine power and who has bestowed upon the Ardenian people prosperity, security and well-being.
- [7] However, the region of Eden across the border remains one of the under-developed regions and the conditions of the Edenian community is very miserable. Children are forced to work as casual labourers instead of receiving meaningful education, women are under-nourished and are forced to accept lower wages as against their counterparts in both the States *i.e.* the Republic of Trinity and the Kingdom of Gama. However, the gap in the income level of Edenian women is more in Republic of Trinity.
- [8] Both the governments *i.e.* the Republic of Trinity and the Kingdom of Gama are recognising the need of integrating the people of the three autonomous regions namely, Ardenia, Eden and Trevonis. To promote cultural and social exchange, the governments have agreed to hold an event named 'Socio- Cultural Extravaganza Week' every year in the month of October.
- [9] This 'Socio-Cultural Extravaganza Week' is being organised by both the States simultaneously for the last 40 years. Each year members from three different communities cross into the territory of each other to witness the development of diverse activities including music, sports, traditional native culture, science corner, opportunities, knowledge sharing.

PART - II

- [10] Mr. WPC Fletcher, aged around 59 years, a doctor by profession and a natural leader from the Ardenian ethnic community has devoted his life to the welfare and service of all three ethnic communities across the border. However, he is a national of the Republic of Trinity. He enjoys wide support and unquestionable trust of the members of all ethnic communities namely, Ardenian, Edenian and Trevis.
- [11] The vision and mission of Mr. WPC Fletcher was to develop all three different regions of Ardenia, Eden and Trevonis equally. He aspires to usher a regime of developmental politics based on modern scientific temperament inspired by the region of Ardenia. However, the people of Trevonis region across the border are not too excited about this vision of Mr. WPC Fletcher.
- [12] In September 2019, Mr. WPC Fletcher called upon the population of three ethnic group to boycott the 'Socio- Cultural Extravaganza Week' which is to be held in city of Mocco this year between 23 October to 30 October, 2019. He gave this call so that just

and fair developmental activities take place in an equitable manner and in all the three autonomous region of both the states. He demanded that both governments of the Republic of Trinity and the Kingdom of Gama must present a joint blueprint of development for the three autonomous regions before 30 September, 2019.

PART - III

- [13] The importance of the 'ability of diplomats to communicate securely with their respective home governments' is vital to the entire conduct of diplomatic affairs. However, the practice and freedom of communications as recognised under Article 24, 27 of the VCDR has fallen somewhat short of the ideal. The states simply claim that it had not been authorised by them, or take refuge in saying that it was a measure under exceptional circumstances in the defence of its vital interests invoking the 'doctrine of necessity'.
- [14] The modern diplomatic communications are shared electronically, often through emails or through online networks or secured servers. One of the typical features of these electronic communications is that the contents of diplomatic cables are automatically archived. The challenges posed to the inviolability of diplomatic correspondence and archives by new technology and new actors (including non- state actors) have also called for a new approach and legal regime by the international community.
- [15] Twenty- first century stands in solidarity with human dignity and certain basic universal values. The VCDR in its definition clause continues to distinguish between “private servant” and 'the members of the service staff'. To what extent, the use of the word 'servant' in relation to diplomatic mission/ affairs continues to justify 'morals' in this era of human rights under the aegis of the United Nations is itself debatable. However, the practice of employing 'Private Domestic Servants' (PDS) by diplomats speaks of cherishing the tradition which is archaic, incompatible and reprehensible in post-colonial world.

PART - IV

- [16] 'Official Transparency' (hereinafter '**OT**') is a project of 'Sunshine Press Productions – a private limited company incorporated in the island of French Polynesia and has no affiliation with any recognised 'State Government'.
- [17] The official website of '**OT**' describes itself as a site where whistle-blowers could anonymously share information of public concern. The majority share in 'Sunshine Press Productions' is held by Mr. Davis, a national of Republic of Xander.
- [18] On 01.06.2019, '**OT**' started publishing classified diplomatic cables/ communications of different governments which had been sent from its embassies and consulates abroad.
- [19] As the news televisions and news agencies in the Republic of Trinity and worldwide started highlighting the leaks by '**OT**', pictures of Mr. Davis were also shown. After watching the news, a woman belonging to the Ardenian community and a national of

the Republic of Trinity accused Mr. Davis of rape charges. However, she told that the incident happened in the year 2017 and also informed public at large about her pending complaint against an anonymous person given that she did not know the personal details of Mr. Davis, – as he was a foreigner.

- [20] Mr. Davis also belonged to the ethnic group of Trevis and was now, a 'wanted' in the Republic of Trinity in connection with the accusation of certain sexual offences, including rape. The allegation against Mr. Davis is that he has sexually abused an Ardenian woman (a Trinity National) in the year 2017.
- [21] Due to the sudden turn of events, Mr. Davis entered into the embassy of the Kingdom of Gama in city of Mocco and also sought asylum on the very same day.
- [22] On 05.06.2019, 'OT' started publishing classified diplomatic cables/ communications of the Trinity Government which were sent from its embassies and consulates abroad.
- [23] That the Foreign and External Affairs Office of the Republic of Trinity sent an official communication/ message dated 06.06.2019 to the government of the Kingdom of Gama asserting a legal right on the part of her majesty's government to enter the premise of the embassy and if necessary, without the permission of the ambassador and to remove Mr. Davis.
- [24] The official communication further reads that harbouring Mr. Davis was an improper, even illegal and unlawful use of diplomatic premises and that the government of Trinity had powers under its domestic framework of law to declare that the embassy no longer enjoyed the 'diplomatic status & protection'.
- [25] Due to the ongoing protest by the people in the Republic of Trinity to arrest Mr. Davis in relation to the sexual offences committed by him on an Ardenian women and fearing unlawful consequences in its diplomatic premises, the Kingdom of Gama notified to the Foreign and External Affairs Officer (FEAO) of the Republic of Trinity about the appointment of Mr. Davis as a member of their embassy's diplomatic staff.
- [26] With the dispatch of this notification, the Kingdom of Gama drove Mr. Davis immediately to the airport and put him in a plane, claiming his immunity from arrest as a diplomatic agent under Article 29 of the VCDR.
- [27] Acting swiftly on the tip of information about notifying Mr. Davis as diplomatic staff by the Kingdom of Gama, the Republic of Trinity declared him as persona non –grata under Article 9 of VCDR.
- [28] The Minister for Foreign and External Affairs of Republic of Trinity in an address to the Press Conference asserted as under:

“The Republic of Trinity has all respect for international laws and its official communication/ message dated 06.06.2019 was in accordance with law and his government is committed to bring the perpetrator of crime on an Ardenian women to justice. The principles as enshrined in various provisions of VCDR cannot be used as a tool to protect the perpetrator of heinous crimes like this. The Republic of Trinity will take all the appropriate measures to secure the custody of Mr. Davis to

uphold the majesty of law.”

- [29] The Republic of Trinity asserts that there has been breach in the “Secure Internet Protocol Router Network” (SIPRN) which used to transmit confidential information in a secured environment. Subsequently, the Republic of Trinity did not rule out the role and breach by private manning and hack of its server which is housed in a bunker thirty metres underground in the autonomous region of Ardenia on the side of Trinity territory itself.
- [30] The robust legal protection to the 'data & electronic information' and special secured policy framework for the Information Technology (IT & ITES) industries attracted the 'OT' to locate / house its server in the autonomous region of Ardenia on the side of Trinity.

PART - V

- [31] Till now, both the governments have failed to respond to the call given by Mr. WPC Fletcher and did not pay any heed to the demand of 'blue print' for development of the three autonomous regions. Instead, the Republic of Trinity was putting all its efforts to organise this 'Socio-Cultural Extravaganza Week- 2019' in the city of Mocco like every other year.
- [32] On 01.10.2019, Mr. WPC Fletcher organised a closed- door meeting of leaders of three autonomous regions representing different villages and tribal councils. Both the governments were keeping a close watch on the development and activities led by Mr. WPC Fletcher. By evening, Mr. WPC Fletcher sent a recorded video message launching the 'Freedom Movement' of three autonomous regions housing the ethnic groups Trevis, Ardenian and Edenian.
- [33] He justified his movement as the 'right to self- determination' of the ethnic communities being a basic human right and also cited the cultural and social difference between the three ethnic communities and the rest of the Kingdom of Gama and the Republic of Trinity. However, he did not fix or indicate his future plans leading to independence and went hiding underground.
- [34] Ms. Sephora, a Trinity national, a member of the Trinity's Consulate General in Humpy wrote a confidential diplomatic communication through an email dated 09.10.2019 to her government, which reads as under: -
- “The Trevis people have more sympathy and 'nationalist' feelings towards the Kingdom of Gama. The ethnic population of Trevis in the Republic of Trinity and the Kingdom of Gama is around 6% and 89% respectively. We fear that the Kingdom of Gama can exploit the socio- cultural strength and conviction of Trevis people to quell the movement led by Mr. WPC Fletcher.”*
- [35] The Minister of Home Affairs of the Republic of Trinity decides to make use of the tradition as followed and practiced by the ethnic Trevis population uniformly *i.e.* to adhere to all promises that they make by having each person who attends the 'Socio-Cultural Extravaganza Week' sign a declaration at the entrance of the stadium that they

will be of good behaviour during 23.10.2019 to 30.10.2019.

[36] On 10.10.2019, Trinity's Home Minister sends a copy of the decision to his counterpart in the Kingdom of Gama. This is so that authorities in the Kingdom of Gama can publicise the new security requirement for prospective attendees at the 'Socio-Cultural Extravaganza Week'.

[37] The Foreign Affairs Ministry of the Kingdom of Gama responds the next day with a note to the Republic of Trinity which reads as under:

“I confirm the receipt of your communication dated 10.10.2019. However, I have to inform you that a large proportion of the population of Trevonis is made up of ethnic Trevis who are not traditionally permitted on Wednesday, under any circumstances, to make promises to a stranger. Wednesday is the day of worship for Trevis people. Promises may only be made to God on that day, as a demonstration of loyalty to one's faith. I note that as the 'Socio- Cultural Extravaganza Week' is beginning on Wednesday, such declaration by ethnic communities, in particular by Trevis, is not required nor warranted. Therefore, I request the Republic of Trinity to not proceed with the procedure proposed in your note.

I also bring forth to your kind attention the 'Freedom Movement' and activities as announced by Mr. WPC Fletcher. Hope the 'Socio- Cultural Extravaganza Week' as held in city of Mocco this year will not support and further the cause of Mr. WPC Fletcher which seeks to undermine the territorial integrity and respective sovereignty over the autonomous regions of both the countries.”

[38] The Republic of Trinity does not respond to the above note.

[39] Four teenaged members (two boys and two girls) of the Edenian ethnic group from the territory of the Kingdom of Gama formed a pop music group and travelled to the capital city of Trinity *i.e.* Mocco. They sang the famous “Freedom Song” on 23.10.2019 itself, in support of the 'Freedom Movement' led by Mr. WPC Fletcher in the 'Socio- cultural Extravaganza Week'.

[40] The song sung by the four teenagers was telecasted several times by news agencies and television channels worldwide. The Kingdom of Gama on 24.10.2019 requested the Republic of Trinity to return the four teenagers to their home state immediately as they are the citizens of the Kingdom of Gama. However, the Republic of Trinity did not respond to this request as well.

[41] The four teenagers had signed the declaration form as required and mandated by the Republic of Trinity to attend the 'Socio- Cultural Extravaganza Week' in the city of Mocco. They had a valid visa to stay in the territory of the Republic of Trinity till 31.10.2019.

[42] In the meantime, on 25.10.2019, the news broke worldwide that the Kingdom of Gama has arrested Ms. Sephora on an alleged complaint by Ms. Alexa Albert, who happens to work as a 'private domestic servant' to Ms. Sephora for payment of lower wages than what was mentioned in the contract, continued subjugation and exploitation.

- [43] Further, Ms. Alexa Albert belongs to the Edenian ethnic group and is a citizen of the Kingdom of Gama. She complained to the police in the Kingdom of Gama vide a written complaint that she is forced to do inhuman work and in miserable conditions including overtime duty of up to 15 hours a day. She also wrote in her complaint that she is not paid even the minimum wages as per laws of the Kingdom of Gama *i.e.* € 10 per day for every 8 hours' duty. She also produced the agreement signed by Ms. Sephora which required her to pay € 10 per day for every 8 hours' duty and € 2 for every 2 hours' overtime duty. It further stipulated that in no case, her duty will extend beyond 12 hours a day.
- [44] Based on the charges filed by a special agent before the competent court, Ms. Sephora was arrested by the Department of State's Diplomatic Security Service on 25.10.2019. She was presented before the competent court and pleaded not guilty to the charges. She was released at 4 p.m. on same day on a €1,00,000 bond. She also surrendered her passport.
- [45] After her release, Ms. Sephora wrote an email to the Republic of Trinity highlighting the ill- treatment meted out to her owing to “repeated handcuffing, stripping, and cavity searches, swabbing,” and being held with common criminals.
- [46] The Attorney General of the Kingdom of Gama claimed that after her arrest, Ms. Sephora was “accorded courtesies well beyond what other similarly accused, most of whom are citizens of the Kingdom of Gama, are accorded”.
- [47] On 27.10.2019, the 'OT' publishes two pieces of information on its website *i.e.* (i) that Ms. Sephora is the daughter of Mr. WPC Fletcher from his first wife, whom he divorced 30 years ago. However, Ms. Sephora has been raised by single mother since then and her certificate does not bear the name of her father *i.e.* Mr. WPC Fletcher. (ii) Further, it also leaked a portion of her communication dated 09.10.2019.
- [48] On 29.10.2019, the Republic of Trinity moved Ms. Sephora to a permanent mission at the United Nations Labour Commission, at Humpy which may provide her with diplomatic immunity. The Kingdom of Gama vide its communication dated 29.10.2019 has asked the Republic of Trinity in advance that it would not accept any citizen of Trinity related to Mr. WPC Fletcher and perpetrators of labour offences as diplomatic staff/ officer and has clarified that full diplomatic immunity, which Ms. Sephora might receive being in the UN post, would not be retroactive.
- [49] On 30.10.2019, the United Nations approved a request from the Republic of Trinity to accredit Ms. Sephora but also stated that approval of the Kingdom of Gama was still needed as the UN Labour Commission Headquarters is situated in Humpy.
- [50] Ms. Sephora applied for special visa to the Kingdom of Gama, under the terms of Section 15 of the Headquarters Agreement between the United Nations and the Kingdom of Gama which would give her full diplomatic immunity and would preclude any court's jurisdiction over her. However, the Kingdom of Gama refused to grant her visa and cited its communication dated 29.10.2019.

- [51] The Kingdom of Gama taking cognizance of the revelation made by OT on 27.10.2019, on its website also gathered the information and found that Ms. Sephora had met Mr. WPC Fletcher numerous times during the period of March 2019 to July 2019.
- [52] On 30.10.2019, the four teenagers applied for extension of their visas and also sought asylum on political ground citing fear of persecution for their act on 23.10.2019 in the 'Socio-Cultural Extravaganza Week' against the Kingdom of Gama.
- [53] On 01.11.2019, Mr. WPC Fletcher through a pre-recorded video, has declared independence for three autonomous regions of Trevonis, Aredenia and Eden as "Republic of Aborigines' (hereinafter, RoA).
- [54] The Republic of Trinity grants its citizenship to these teenagers on 02.11.2019 and communicates to the Kingdom of Gama that these teenagers are now citizens of Trinity as they have voluntarily given up the citizenship of the Kingdom of Gama.
- [55] The Republic of Trinity and the Kingdom of Gama had termed the activities of Mr. WPC Fletcher as illegal and asked the global community to respect the territoriality and territorial integrity of both the states respectively.
- [56] However, the Prime Minister of the Kingdom of Gama has accused the Republic of Trinity to harbour Mr. WPC Fletcher (as he was a citizen of Trinity) and for providing him safe havens to carry out the activities against the Kingdom of Gama. He also cited the refusal to return four of its teenaged citizens (who sang the Freedom song in Socio-Cultural Extravaganza Week).

PART - VI

- [57] The Kingdom of Gama institutes proceedings against the Republic of Trinity before the International Court of Justice (ICJ) in respect of alleged violations of international laws by the Republic of Trinity. The Kingdom of Gama requests the Court to adjudge and declare that:
- a) The Republic of Trinity violated customary international law by facilitating the activities which are against the territorial integrity and principle of sovereignty of the Kingdom of Gama;
 - b) The Republic of Trinity violated the customary international law by granting political asylum to the four teenaged citizens of the Kingdom of Gama;
 - c) The Republic of Trinity violated its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) by its insistence that attendees (belonging to the Trevis group) at the 'Socio- Cultural Extravaganza Week' must sign a declaration before being permitted to enter the stadium;
 - d) The Republic of Trinity violated the provisions of VCDR and allowed its diplomatic premises for the abuse and denial of basic human rights to a citizen of the Kingdom of Gama by employing her as 'Private Domestic Servant' and also sought to protect Ms. Sephora by changing her designation;

- [58] Republic of Trinity also approached the International Court of Justice instituting a proceeding against the Kingdom of Gama. It requests the court to adjudge and declare that:
- a) The Kingdom of Gama has violated the norms and universal principles of human dignity –as an *erga omnes* norm by providing diplomatic immunity to an alien *i.e.* Mr. Davis
 - b) The Kingdom of Gama has failed to respect the UN Treaty as well as basic principles of diplomatic immunity by apprehending Ms. Sephora and not allowing her to return to the Republic of Trinity
 - c) The Kingdom of Gama has breached the provisions of VCDR by intercepting the privileged confidential communication from its diplomatic staff and embassy in the Kingdom of Gama.
- [59] Both parties have made declarations under Article 36(2) of the Statute of the International Court of Justice, accepting the Court's jurisdiction. No question of jurisdiction or admissibility is raised by either of the parties.
- [60] The Republic of Trinity and the Kingdom of Gama both have ratified the CERD, the Vienna Convention on Diplomatic Relations (VCDR), Vienna Convention on Consular Relation (VCCR) without any reservation.
- [61] The Republic of Trinity and the Kingdom of Gama are members of the United Nations and are (a) parties to the Statute of the International Court of Justice, (b) parties to the Vienna Convention on the Law of Treaties, 1969.
- [62] The two countries have ratified the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (ratified in the year 1995); the 1966 International Covenant on Civil and Political Rights (ICCPR); the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).
- [63] The two disputes between the Republic of Trinity and the Kingdom of Gama have been scheduled for hearing before the ICJ on 21st-23rd February, 2020.
