

MOOT PROPOSITION

Case concerning responsibility for transboundary pollution

Republic of Indiya

v.

Bangala

1. Republic of Indiya (hereinafter “Indiya”) and Bangala are both low-income countries located in the Continent of Asia. Indiya and Bangala both are neighbouring countries, sharing a border of 750 square kilometres (hereinafter sq kms). A part of their border, i.e. 200 sq kms) is a river shared by both the countries. The river name Mother is considered the lifeline of both the countries. It was historically known for its rich biodiversity and ability to clean itself. It serves as a source of food, water, transportation and economy for millions of people in both the countries. Indiya is the upper riparian country for the river and Bangla is the lower riparian country. The river flows from Indiya to Bangla. It originates in India, flows in India for 350 sq kms, then is shared by Indiya and Bangla for 200 sq kms, then flows in Bangala for 150 sq kms

2. In past five decade, Indiya has rapidly industrialised and globalised its economy by licensing large scale industries on the banks of River Mother. The industries use the water and biodiversity of the river to produce commercialised goods. Most of these industries are high carbon emitting industries, use a lot of energy and dump more than 200 billion litres of untreated toxic waste in the river. Most clothing, textile and leather industries on the river bank use coal and oil to run, emitting high level of greenhouse gases. The leather industry in the River Mother region also utilised the *Mugger (Crocodylus palustris)*. The leather from Mugger is high in demand globally and Indiya received good revenue by exporting the leather from the Mugger. The residents of Bangla have reported poachers from Indiya, hunting and killing the Muggers in Bangla. The Mugger is believed to be locally extinct because the local residents have not reported their sighting for a year.

3. Bangala is an agrarian economy and has not used industrialisation as a route towards development. Its greenhouse gas emissions are negligible. Since two decades, its fertile plains have reduced in productivity. The fertile plain once known as the grain bowl of the region, is now facing an unprecedented loss of fertility. In 2019, the Friends of Farmers, released a report citing “pollution from industries in Indiya” as one of the major reasons for decrease in fertility

of the Agricultural lands in Bangala. The Indigenous Population Group of Bangala, however, have cited local extinction of the Mugger as the cause of decrease in fertility of the lands. Culturally, Bangalan people have worshipped the Mugger as the God of virility and productivity of the agrarian lands. The people believe that the fertility of land is lost with the Mugger.

4. After the 2019 report, the Bangalan Government send a diplomatic note to the Indian Government, requesting them to inspect the pollution caused by the textile, clothing and leather industries located on the banks of the River Mother. The Government of Bangala, on 16th June 2019, sent a note stating that “...the fertile lands in Bangala around the river Mother are turning into barren lands. The toxicity level of the lands has increased significantly in the past. Additionally, there are evidences of solid and plastic waste flowing to Bangala, negatively impacting the land topography. There are private reports which link the degradation of fertility of lands in Bangala to the pollution from industries in India. In the light of this information, the Government of Bangala, requests the Government of the Republic of India to inspect, and consequently regulate the industries around River Mother. Under international law, it is the duty of a state to be due-diligent of activities within its territory. Additionally, it is the duty of a state not to cause a trans-boundary harm in another state under Convention of Biological Diversity (1982) Convention on the Law of the Non-navigational Uses of International Watercourses (1997) and customary international law. If the Government of the Republic of India fails to check the industries within its jurisdiction and the consequent pollution, the Government of Bangala may have to approach a dispute resolution forum.”

5. The Government of the Republic of India responded on 18th July, 2019, stating that “... India is taking all appropriate measures within its capacity to ensure that activities within its jurisdiction does not cause any trans-boundary harm or pollution. India has stringent national laws for licensing. The government and its departments conduct extensive environmental impact assessment to evaluate the environmental and social impacts of industries within its territory. While the Government of India understands the concerns of the Government of Bangala, please be assured that we have conducted our due-diligence and we are complying with both conventional and customary international law...”

6. In October, 2019, the Government of India proposed a draft law in its country allowing establishment and operation of a wide range of industries, including many chemical industries, without a prior authorisation or license from the government. The draft law 2019 stated that an industry can obtain licenses within 2 years of establishment and operationalisation. This law

received heavy criticism from environmentalists and conservation groups across the globe. Many independent reporters produced reports predicting harmful impacts of this law on the already heavily impacted natural resources within the region, especially the River Mother.

7. Soon after this draft law was published in 2019, a global lockdown due to coronavirus pandemic was instituted. The law was buried and never approved by the Government of India. Two years later, in June 2021, the Bangla Broadcasting Company, released a report citing 1000 new industries were approved in India during the lockdown between 2019 and 2021. 700 of these new industries have been operational on the banks of River Mother and 200 of these industries are leather industries dependent on the Muger. The report predicted that the operationalisation of these 1000 industries will be detrimental to the resources of the region and includes resources of Bangla.
8. After the release of the report, The Government of Bangla approached the International Court of Justice under Article 33(2) of the Convention on the Law of the Non-navigational Uses of International Watercourses (New York, 1997), requesting the Court to (i) declare that the Government of India has caused a trans-boundary harm by allowing its territory to be used for polluting industries. Under the rules governing the responsibility of a state, India should compensate Bangla with 10 billion US dollars and conduct restitution of River Mother and the land in Bangladesh.
9. The Government of India has raised a preliminary objection to the institution of the claims by the Government of Bangla. India claims that the Court does not have jurisdiction under Article 33(2) of the Convention on the Law of the Non-navigational Uses of International Watercourses (New York, 1997) because the elements of the article are not fulfilled by the Government of Bangla.; (ii) India has acted in accordance with international law and has fulfilled its duty to prevent a transboundary harm under international law, which is a duty of conduct and not a duty of obligation.; (iii) Alternatively, India, requests the ICJ to establish a Fact-finding Commission under Article 33(4) of the Convention on the Law of the Non-navigational Uses of International Watercourses (New York, 1997).

ANNEXURE I: Article 33(2) of the Convention on the Law of the Non-navigational Uses of International Watercourses

Article 33 (2) Settlement of disputes

(.....) 2. If the parties concerned cannot reach agreement by negotiation requested by one of them, they may jointly seek the good offices of, or request mediation or conciliation by, a third party, or make use, as appropriate, of any joint watercourse institutions that may have been established by them or agree to submit the dispute to arbitration or to the International Court of Justice. (.....)

ANNEXURE II: Article 3 of the Convention on Biodiversity, 1992

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Note*: The participants are allowed to use other treaties and treaty provisions relevant to the moot problem with an assumption that both India and Bangladesh have signed and ratified major multi-lateral treaties and convention, except the core human rights treaties.

**Participants may also draw from other sources of International Law apart from the Conventions and treaties.