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**XV K.K. LUTHRA MEMORIAL MOOT COURT COMPETITION, 2019**

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*Before*

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**THE SUPREME COURT OF GRANICUS**

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**ISLANDIC EMBASSY .....APPLICANT**

**v.**

**DIRECTORATE OF ENFORCEMENT, GRANICUS .....RESPONDENT**

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**MEMORIAL *for* RESPONDENT**

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**STATEMENT OF FACTS**

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**ISLANDER**

Prior to 1961, Islander was a colony of Granicus. In 1961, it was recognised as an independent state. It is a dictatorship masked as an oligarchy. Mr Tyereus Dark, the former president of Islander, made it into a tax haven. He set up an opaque banking system in the country. Mr. Dark passed away in 2011. Ms. Aria Dark took over after his death.

**GRANICUS**

Granicus is a democratic federation and secular republic. It is second largest in terms of population and fifth largest in terms of area. The Head of Granicus is Ms. Aisha Drenner. Drenner Financials is the largest financial services company in Granicus. Earlier, it was run by Ms. Drenner. Now Ms. Drenner's son and daughter have taken over the company. Drenner Advisors, a company incorporated in Islander, is said to be the holding company of Drenner Financials.

Citizens of Islander and Granicus are similar in appearance and share common ancestry. It is traceable to the Harzinnian colonization of Granicus. During this Granicians were sent to Islander. Due to this, the people of Granicus share similar names, physical characteristics and religious beliefs.

**DISINVESTMENT IN ISLANDER**

Ms. Dark presided over a huge disinvestment policy in 2014. It formally commenced in 2016. Walhala Industries is a company headed by Mr. Andrew Dark, Ms. Aria Dark's nephew. It began taking over large number of government companies.

Whispers emerged that money used by Walhala Industries was earned by Ms. Dark through corrupt practices. However, Ms. Dark, through carefully orchestrated leaks, maintained that Walhala Industries has no connection with Ms. Dark.

**RELEASE OF INVESTIGATIVE NEWS REPORTS**

In early 2018, a series of investigative news reports were published. They indicated that Walhala Industries and Drenner Advisors are related and that Ms Dark and Ms Drenner are related by blood. It was reported that a large amount of monies was earned by Ms Dark and her associates in the Islander Government and the Granicus Government. These were then

routed through Drenner Advisors into Walhala Industries. The money was finally used in the process of disinvestment.

#### **DIPLOMATIC MISSION TO GRANICUS**

Furious with the investigative reporting, Ms. Dark decided to make an official visit to Granicus to lodge a diplomatic protest. Mr. Andrew Dark accompanied her. They travelled in Walhala One, a private aircraft owned by Walhala Industries. Prior to disinvestment, it was known as Air Force One which was the national aircraft to ferry the Dictator of Islander.

#### **ACTION TAKEN BY GRANICUS**

Ms. Dark and Mr. Dark landed in Granicus on 28 March 2018. Ms. Dark was personally escorted by Ms. Drenner to a limousine. Mr. Dark was escorted by General of the Granicus Police Force to a separate limousine. As Ms. Dark rushed to her hotel, she was made aware of the following:

- a. Mr. Dark was arrested and taken into custody by an officer of the Directorate of Investigation.
- b. Walhala One was seized and sealed by the officers of Directorate of Investigation.
- c. The Directorate of Enforcement passed a *quia timet* order to seize the bank account of Ms. Aria Dark.



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ISSUES ADVANCED

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- I -

Whether the State Authorities of Granicus had the power to arrest Mr Dark, seize Walhala One and Ms Dark's bank account

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- II -

Whether the actions of Directorate of Investigation violate the right to diplomatic immunity of Ms Aria Dark, Mr Andrew Dark and Walhala One

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- III -

Whether the Directorate of Investigation has the power to investigate money laundering outside the territory of Granicus

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- IV -

Whether the acts of Granicus violate the right to equality of Ms. Dark and Mr. Dark

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**SUMMARY OF ARGUMENTS**

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**THE STATE AUTHORITIES OF GRANICUS HAD THE JURISDICTION TO ARREST MR. DARK, SEIZE WALHALA ONE AND EXPROPRIATE MS. DARK'S BANK ACCOUNT**

According to Article 12 of the Constitution of Granicus, protection is granted against conviction and penalty. However, no protection is granted against arrest or procedure of trial. The arrest of Mr Dark and the attachment of Walhala One merely amounts to investigation conducted by the Directorate of Enforcement. It does not amount to conviction or penalty. Therefore, it does not violate the right granted by the Constitution of Granicus.

*Quia timet* orders are justified if it is proved that there is a reasonable apprehension of damage so imminent that if a such order is denied, the damage would be irreparable. The standard for imminence is not “beyond reasonable doubt”; but the court must be a shown a “strong case of probability that the apprehended mischief will in fact arise.” In the present case, once it is known that an investigation is in place, there was a high probability that Ms. Dark would make attempts to move the tainted money. If Ms. Dark moved the monies from her account, it could not be recovered by the Directorate of Investigation. Therefore, there was a reasonable apprehension of imminent danger and the *quia timet* order of seizure of bank account is justified.

**THE ACTIONS OF THE DIRECTORATE OF INVESTIGATION DO NOT VIOLATE THE DIPLOMATIC IMMUNITY OF MS. DARK, MR. DARK AND WALHALA ONE**

Islander and Granicus are only signatories to the Vienna Convention on Diplomatic Relations. They have not ratified the treaty and are not bound by it. The bank account of Ms. Dark is her private property. The seizure of Ms. Dark's bank account amounts to indirect expropriation. Expropriation is justified if it is done for a public purpose, in a non-discriminatory manner and in accordance with the due process of law.

Diplomatic immunity is granted to a *member of the family* of a diplomat. According to common law practice, spouse or unmarried children of the diplomat are recognised as family members. Some exceptions are drawn for dependent parents and unmarried daughters. However, Mr. Dark, the nephew of Ms. Dark, is not a member of the family. He is not entitled to receive diplomatic immunity. Further, he is entitled to receive immunity from the moment he was declared as the “Official Advisor of Ms. Aria Dark”. However, such immunity does not have a retrospective application.

According to common law principles, the immunity of the premises of a diplomatic mission is subject to the approval of receiving state. The aircrafts and other property belonging to and carrying the heads of state have been subject to search and seizure,. Walhala One is a private aircraft owned by Walhala Industries. It is alleged to be involved in the offence of money laundering. Therefore, it is not entitled to receive diplomatic immunity.

**THE DIRECTORATE OF INVESTIGATION HAS THE POWER TO INVESTIGATE WHAT  
APPEARED TO BE (ON A DEMURRER) MONEY LAUNDERING OUTSIDE THE TERRITORY OF  
GRANICUS**

It is a well-accepted principle in common law that a state has jurisdiction to investigate if the essential ingredients (all of them or some of them), take place inside the territory of a state. If a state has felt the effect of a crime, it has the right to investigate into the same. Drenner Financials is run by Ms. Drenner's son and daughter. It was earlier run by herself. It is the largest financial company in Granicus. Its holding company is Drenner Advisors, which is alleged to be involved in the offence of money laundering. The money used in the offence was earned through dubious means by Ms. Aria Dark and her associates in the Islander and Granicus Government. As the public money of Granicus is alleged to be used, Granicus has the jurisdiction to investigate.

**THE ACT OF GRANICUS IS NOT MALA FIDE AND DOES NOT VIOLATE THE RIGHT TO  
EQUALITY**

Right to equality is not an absolute right and is subject to reasonable restrictions. For a classification to be reasonable, it should be based on some intelligible differentia which has rational nexus with the objective that the legislation seeks to achieve. A classification is unreasonable when it distinguishes between two similarly situated individuals. The investigative news reports directly implicated Walhala to be involved in the offence of money laundering. However, no such evidence exists against Drenner. Therefore, Walhala and Drenner are not similarly situated individuals and the classification is based on an intelligible differentia. Further, according to the Palermo Convention, to which Granicus is a signatory, and the Proceeds of Crime Act 2017, requires the States to take steps against the offence of money laundering. As the investigation against Walhala strengthens the purpose, while acting for public good, it has a rational nexus to the object.

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**WRITTEN PLEADINGS**

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**I. THE STATE AUTHORITIES OF GRANICUS HAD THE JURISDICTION TO ARREST MR. DARK, SEIZE WALHALA ONE AND MS. DARK'S BANK ACCOUNT**

1. There is no fundamental right to any course of procedure.<sup>1</sup> A trial by a court different from which had the competence at the time of commission of the offence or under a procedure different from that which was prescribed earlier cannot be ipso facto held unconstitutional.<sup>2</sup> Thus, even though the Directorate of Enforcement did not exist at the time of commission of the offence committed by Mr Dark, it has the power to investigate into the same.
2. Article 12 of the Constitution of Granicus only grants protection against conviction or penalty.<sup>3</sup> The RESPONDENT submits that the arrest of Mr. Dark does not amount to conviction [A.], the seizure of Walhala One [B.] and Ms. Dark's bank account [C.] does not amount to penalty is not protected by Article 12 of the Constitution of Granicus.

**A. Arrest of Mr. Dark is not conviction and is not protected by Article 12 of Constitution of Granicus**

3. Article 12 of the Constitution of Granicus only grants protection against conviction or penalty.<sup>4</sup> However, there is no protection against trial or investigation.<sup>5</sup>As the arrest of Mr Dark is merely a part of the investigation<sup>6</sup> conducted by Enforcement Directorate, it will not amount to conviction. Therefore, arrest of Mr Dark is not illegal under Article 12 of the Constitution of Granicus.

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<sup>1</sup>*Union of India v. Sukumar*, AIR [1966] SC 1206; *Shiv Bahadur Singh Rao v State of Vindhya Pradesh* AIR [1953] SC 394 (“*Bahadur*”); Suri Ratanpal, ‘Reason and Reach of the Objection to Ex Post Fact Law’ [2007] 1 Indian Journal of Constitutional Law, ¶¶ 140,168.

<sup>2</sup>*Sukumar* (n 1); *Shiv Bahadur*(n 1).

<sup>3</sup> Constitution of Granicus, Art. 12.

<sup>4</sup> Constitution of Granicus, Art. 12.

<sup>5</sup>*Union of India v. Sukumar*, AIR [1966] SC 1206; *Shiv Bahadur Singh Rao v State of Vindhya Pradesh* AIR [1953] SC 394; Suri Ratanpal, ‘Reason and Reach of the Objection to Ex Post Fact Law’ [2007] 1 Indian Journal of Constitutional Law, ¶¶ 140,168.

<sup>6</sup>*H N Rishbud v State of Delhi* AIR [1955] SC 196, ¶10; *State of Madhya Pradesh v Mubarak Ali* AIR [1959] SC 707, ¶19.

**B. Attachment of Property does not amount to penalty**

4. “Penalty” refers to punishment for an offence<sup>7</sup> and does not include remedial measures<sup>8</sup>. The word “penalty” must be read with the word “convict”<sup>9</sup>, as it refers to the punishment or sentence that might be inflicted upon conviction<sup>10</sup>. Forfeiture of property for a statutory offence, ordered by the administrative authority does not constitute “penalty”.<sup>11</sup> The words “convict” and “offence” make it clear that the limitation applies to a criminal proceeding and to a judicial punishment.<sup>12</sup> Further, the attachment of property is a part of the investigation of offence of money laundering.<sup>13</sup> Therefore, the attachment of Walhala One does not amount to penalty and will not receive any protection under Article 12 of the Constitution of Granicus.

**C. Granicus has the jurisdiction to pass the *quia timet* order against Ms. Dark**

5. *Quia timet* orders have been defined as actions which “claimant may bring to obtain an injunction to prevent or restrain some threatened act which, if it is done, would or may cause substantial damage and for which money would not be a sufficient or appropriate remedy”<sup>14</sup> Further, *quia timet* orders are justified only if it is proved that there is a reasonable apprehension of damage so imminent that if a such order is denied, the damage would be irreparable.<sup>15</sup>
6. The standard for imminence is not “beyond reasonable doubt”; but the court must be a shown a “strong case of probability that the apprehended mischief will in fact arise.”<sup>16</sup> In the present case, once it is known that an investigation is in place, there was a high probability that Ms. Dark would make attempts to move the tainted money. Further, if Ms. Dark moved the monies from her account, it could not be recovered by the

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<sup>7</sup>*HathisingMfg Co. v Union of India*, AIR [1960] S.C. 923, 932; *Jawala Ram v State of Pepsu* (1962) (2) S.C.R. 503; *State of West Bengal v S. K. Ghosh* (1963) (2) SCR 111.

<sup>8</sup>*KedarNathBajoria v State of West Bengal* AIR [1954] SC 404.

<sup>9</sup>Durga Das Basu, *Commentary on the Constitution of India*, (Edn. 9<sup>th</sup>,2014, Lexis Nexis), ¶¶222,226.

<sup>10</sup>*Sajjan Singh v State of Punjab* AIR [1964] SC 464, 468.

<sup>11</sup>*Brij Busan Kalwar v State of Delhi* AIR [1950] SCR 605; *Shiv Dutt Rai Fateh Chand V. Union Of India*AIR [1984] SC 1194.

<sup>12</sup>*Gadai v Emperor* AIR [1943] Pat 361.

<sup>13</sup>*KalComm Pvt Ltd v Directorate of Enforcement* AIR [2000] SC 142.

<sup>14</sup>*P.G. Naryanan v. Union of India*(5)TMI 333, H.C. Mad. 2005.

<sup>15</sup> Id; *Kuldeep Singh v. Subhash Chandra Jain* AIR [2000] SC1410.

<sup>16</sup>Id, ¶ 8.

Directorate of Investigation. Therefore, there was a reasonable apprehension of imminent and irreparable damage. In such an instance, the *quia timet* order is justified.

**II. THE ACTIONS OF THE DIRECTORATE OF INVESTIGATION DO NOT VIOLATE THE DIPLOMATIC IMMUNITY OF MS. DARK, MR. DARK AND WALHALA ONE**

7. Granicus and Islander are signatories to the Vienna Convention on Diplomatic Relations (VCDR).<sup>17</sup> However, they have not ratified the treaty.<sup>18</sup> Therefore, Granicus is not bound by VCDR to provide diplomatic immunity.<sup>19</sup>
8. The Directorate of Investigation exercised its sovereign right to expropriate Ms. Dark's bank account which was integral for economic, public and political reasons and was granted to the state of Granicus by the Proceeds of Crimes Act, 2017<sup>20</sup>[A.], Mr. Andrew Dark's arrest was justified because he is not entitled to receive diplomatic immunity under VCDR[B.]and Walhala One is private aircraft and is not entitled to receive diplomatic immunity [C.].

**A. Expropriation against Ms. Dark does not violate her diplomatic immunity**

9. In case of *Indirect Expropriation*, there is no legal transfer of the property rights, rather it involves an informal transfer of title of the property which affects the ownership or right of the lawful owner to use his or her property<sup>21</sup>. The RESPONDENT submits that the bank account of Ms. Dark is her property [i.] and its indirect expropriation is legal [ii.].

**i. Bank accounts are private property**

10. Inviolability primarily refers to goods in the diplomatic agent's private residence; but it also covers other property such as his motor car, his bank accounts and goods which are intended for his personal use or essential to his livelihood.<sup>22</sup> All the things which

<sup>17</sup>*Moot Compromis* (Note to counsel).

<sup>18</sup>*Clarification* (18).

<sup>19</sup> Malcom Shaw, *International Law* (Edn 7<sup>th</sup>, 2016, Cambridge University Press)¶ 236 ; Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (4<sup>th</sup> Ed, Oxford Publication, 2016)¶ 138.

<sup>20</sup>*Moot Compromis* (¶13).

<sup>21</sup>G.C. Christie, 'What Constitutes a taking under International Law?' [1962]38 British Year Book, ¶¶ 320,327.

<sup>22</sup>*Denza*(n 16)¶¶197,198; ILC, 'Report of the International Law Commission on the Diplomatic Intercourse and Immunity' 2 May 1957 UN Doc A/N4/91, ¶ 30.

are necessary for a diplomat to sustain as an individual and to fulfill his or her official duties would amount to property are considered as property, including bank accounts.<sup>23</sup> Therefore, bank accounts of a diplomat are treated as her property.

**ii. The indirect expropriation of bank account is justified and does not violate her diplomatic immunity**

**11.** The act of Granicus amounts to taking of property and is an interference with the use and enjoyment of her property.<sup>24</sup> This amounts to indirect expropriation. According to the principles of customary international law of expropriation, three conditions are required for expropriation.<sup>25</sup> There are: for a public purpose [a.], in a non-discriminatory manner [b.], in accordance with due process of law[c].<sup>26</sup>

**a. The expropriation was done for a public purpose**

**12.** The expropriation of property must be motivated by legitimate welfare objective.<sup>27</sup> In the instant case, the monies were obtained through dubious means inter alia by Ms. Aria Dark and her associates in the Islander Government, and other associates linked to even the Granician Government.<sup>28</sup> As the officials of Granician Government are alleged to be involved, there is a reasonable apprehension that public money of Granicus is used. The expropriation was done to protect the interest of the public. It was done for public purpose.

**b. It was done in a non-discriminatory manner**

**13.** The alleged offence of money laundering was done by officials of both Islander and Granicus.<sup>29</sup> However, a series of investigative news reports concluded that the money laundered in the process of disinvestment belonged to Ms Dark.<sup>30</sup> Further, Walhala One, the company run by Ms. Dark's nephew, was company involved in the

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<sup>23</sup>*Denza* (n 16)¶198; *Novello v. Toogood* UKHL 29 [1823] 107 ER 204.

<sup>24</sup>Harvard Draft Convention on International Responsibility of States for Injuries to Aliens, (Adopted in 1961) Art.10(5)).

<sup>25</sup>UNCTAD, 'Series on Issues in International Investment Agreement II' (2012) Sales No. E.12.II.D.7.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup>*Moot Compromis* (¶9).

<sup>29</sup>*Moot Compromis*(¶9).

<sup>30</sup>*Moot Compromis* (¶ 9).

process.<sup>31</sup> The monies were said to be routed through Drenner Advisors<sup>32</sup>, a company incorporated in Islander.<sup>33</sup> Even though there is a speculated connection between Drenner Financials and Advisors, it has not be established.<sup>34</sup> The news reports suggesting Granician government officials were involved, it does not implicate Ms Aisha Drenner.<sup>35</sup>Therefore, as similar evidence was not available against both the parties, the act of Granicus was not discriminatory.

*c. It was in accordance with due process of law*

14. The due-process principle requires (a) that the expropriation comply with procedures established in domestic legislation and fundamental internationally recognized rules in this regard and (b) that the affected investor have an opportunity to have the case reviewed before an independent and impartial body (right to an independent review).<sup>36</sup> The Proceeds of Crime Act 2017 gives the power to investigate<sup>37</sup> and attach property<sup>38</sup> to the Directorate of Investigation. Further, there is a mechanism to get the decision reviewed by the courts, an independent authority. Therefore, it was done in accordance with due process of law.

**B. The arrest of Mr. Dark is legal**

15. Mr. Dark is alleged to be involved in the offence of money laundering. He is not entitled to receive diplomatic immunity as is not a family member of Ms. Dark[i.] and *even if* immunity is granted after Mr. Dark was declared as the “Official Advisor to Ms. Aria Dark”, such immunity will not have retrospective application [ii].

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<sup>31</sup>*Moot Compromis* (¶ 7).

<sup>32</sup>*Moot Compromis* (¶ 9).

<sup>33</sup>*Moot Compromis* (¶ 5).

<sup>34</sup>*Moot Compromis* (¶ 5).

<sup>35</sup>*Moot Compromis* (¶ 9).

<sup>36</sup>*UNCTAD*(n 23), ¶ 36.

<sup>37</sup> *Proceeds of Crime Act 2017* (Granicus) Section 1(5).

<sup>38</sup>*Proceeds of Crime Act* (n 34), Section 3.



**i. Mr. Dark is not entitled to receive diplomatic immunity as he is not a family member of Ms. Dark**

16. Article 37 of VCDR provides diplomatic immunity to family members of the diplomatic agent.<sup>39</sup> The definition accepted by countries like U.K.<sup>40</sup>, U.S.A.<sup>41</sup>, Australia<sup>42</sup> and Canada<sup>43</sup>, includes the spouse of the diplomat and his children below the age of majority. Further, dependent parents, unmarried daughters and dependent sons above the age of majority are also given diplomatic immunity at times.<sup>44</sup>

17. Mr. Dark is the nephew of Ms. Dark.<sup>45</sup> He is a distant relative and not a family member. Distant relatives are not entitled to receive diplomatic immunity unless such relative is dependent on the diplomatic agent for sustenance and the diplomat has taken permission for the diplomatic immunity of the receiving state by the notifying state, which has been accepted by the receiving state.

18. The RESPONDENT submits that Mr. Dark is not dependent on Ms. Dark for sustenance [a.] and Granicus did not grant immunity to Mr. Dark [b.].

**a. Mr Dark is not dependent on Ms. Dark for sustenance.**

19. Mr. Andrew Dark is the head of Walhala Industries and was involved in taking over large number of public industries under control.<sup>46</sup>The airline, hotel and banking industries of Islander were taken over by the Walhala industries which was headed by Mr. Dark<sup>47</sup>. This shows that the company was financially strong and Mr. Dark being the head of the company was at a powerful position. He was able to sustain himself<sup>48</sup>. Therefore, he was not dependent on Ms. Dark for sustenance.

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<sup>39</sup>Vienna Convention(n 18), Art. 37.

<sup>40</sup> HL Deb 4<sup>rd</sup> February 1968, Vol. 292, col. 19, ¶ 37.

<sup>41</sup>United Nations, 'Diplomatic Intercourse and Immunity' (1958) Year Book of The Int L Com. (YBILC); Marjorie M. Whiteman, *Digest of International Law* (Vol 2, 1970, Oxford Publications), ¶260.

<sup>42</sup> SEN Deb 21, October 1952, 20<sup>th</sup> Parliament 1<sup>st</sup> Session, ¶ 3.

<sup>43</sup> HL Deb 18<sup>th</sup> February 2016, Vol148, col. 34, ¶ 42.

<sup>44</sup>Denza (n 16)¶324.

<sup>45</sup>Moot Compromis(¶12).

<sup>46</sup>Moot Compromis(¶7).

<sup>47</sup>Moot Compromis(¶7).

<sup>48</sup>Moot Compromis (¶7).

***b. Granicus did not grant immunity to Mr. Dark***

20. Prior notification requesting the diplomatic immunity of Mr. Dark was not sent by Ms. Dark or the Icelandic embassy. Granicus did not provide any immunity to Mr. Dark. Therefore, Mr. Dark is not entitled to receive diplomatic immunity

**ii. *Arguendo, even if immunity is granted later, it has no retrospective application.***

21. Diplomatic immunity is commenced when the foreign ministry or any other relevant ministry is notified of the appointment<sup>49</sup>. Therefore, Mr. Dark is entitled to receive diplomatic immunity after he was declared as the “Official Advisor to Ms. Aria Dark”. However, at the time of arrest, he did not enjoy such status.<sup>50</sup> Therefore, his arrest by Granicus is legal.

**C. The seizure of Walhala One is valid as it is a private aircraft without diplomatic immunity**

22. According to common law principles, the immunity of the premises of a diplomatic mission is subject to the approval of receiving state.<sup>51</sup> The aircrafts and other property belonging to a diplomat have been subject to search and seizure.<sup>52</sup> It is carried out even if the aircraft was carrying the head of the State.<sup>53</sup>

<sup>49</sup>Id; *Vienna convention*(n 18), Art 37.1.

<sup>50</sup>*Moot Compromis*(¶14).

<sup>51</sup>Guidelines on Property: Acquisition, Disposition and Development of Real Property in Canada by a Foreign State, version in force on 1 Mar. 2016, section 3 (available at: [http://www.international.gc.ca/protocolprotocole/policies-politiques/establishment\\_diplomatic\\_missions\\_consular\\_posts\\_canada.aspx](http://www.international.gc.ca/protocolprotocole/policies-politiques/establishment_diplomatic_missions_consular_posts_canada.aspx) ); Practical Guide for the Diplomatic Corps accredited in Spain, Madrid, 2010, point 11, pp. 71-73 (available at: [http://www.exteriores.gob.es/Portal/es/ServiciosAlCiudadano/SiViajasAlExtranjero/Documents/guia\\_practica\\_ingles\\_20\\_10.pdf](http://www.exteriores.gob.es/Portal/es/ServiciosAlCiudadano/SiViajasAlExtranjero/Documents/guia_practica_ingles_20_10.pdf) ); Foreign Mission Act 1982, sections 4305 and 4306 (available at: <http://www.state.gov/documents/organization/17842.pdf> ); Diplomatic and Consular Premises Act 1987, entry into force in 1988 (available at: <http://originwww.legislation.gov.uk/ukpga/1987/46/body> ); Acquisition and Transfer of Immovable Property in India, p. 2 (available at: <https://www.mea.gov.in/images/pdf/acquisition-and-transfer-of-immovable-property-in-india.pdf>); Department of International Relations and Co-operation, Policy on the Management of Diplomatic Immunities and Privileges in the Republic of South Africa, section 1.4 (available at: [http://www.dirco.gov.za/protocol/policy\\_dip\\_immun\\_privilege\\_2011a.pdf](http://www.dirco.gov.za/protocol/policy_dip_immun_privilege_2011a.pdf)).

<sup>52</sup> Steve Kim, ‘Thailand’s Prince has Plane Impounded in Germany’ [2011] *The Telegraph* 14 Jul. 2011<<https://www.telegraph.co.uk/news/worldnews/asia/thailand/8636573/Thailands-Crown-Prince-has-plane-impounded-in-Germany.html>> ; Catherine E, ‘Bolivia: Presidential Plane Forced to Land after False Rumours of Snowden Onboard’ [2013] *CNN World* Jul. 3 2013<<https://edition.cnn.com/2013/07/02/world/americas/bolivia-presidential-plane/index.html>> ; Cahal Milmo, ‘Muammar Gaddafi’s Personal Jet Grounded in France: from the heights of luxury to a barbed wire limbo’ [2015] *Independent England* 4 Dec. 2015<<https://www.independent.co.uk/news/world/europe/muammar-gaddafi-s-personal-jet-grounded-in-france-from-the-heights-of-luxury-to-a-barbed-wire-limbo-a6761196.html>>;

23. Walhala One is a private aircraft owned by Walhala Industries.<sup>54</sup> Ms Aria Dark has no share in the property.<sup>55</sup> It is alleged to be purchased from tainted monies involved in the offence of money laundering.<sup>56</sup> It has not received immunity from Granicus. Therefore, the seizure of Walhala One does not violate diplomatic immunity.

**III. THE DIRECTORATE OF INVESTIGATION HAS THE POWER TO INVESTIGATE WHAT APPEARED TO BE (ON A DEMURRER) MONEY LAUNDERING OUTSIDE THE TERRITORY OF GRANICUS**

24. The RESPONDENT submits that the Directorate of Investigation has the power to investigate. Drenner is alleged to be involved and its effect are speculated to be felt in Granicus [A.]. Further, by investigating into the offence, Granicus is adhering to its international law obligations [B.].

**A. Granicus felt the effect of the offence of money laundering**

25. It is a well-accepted principle in common law that criminal jurisdiction is interpreted in terms of criminality, and not territoriality.<sup>57</sup> This means that if the essential ingredients (all of them or some of them), take place inside the territory of a state, the said state has the right to exercise criminal jurisdiction notwithstanding the fact that the offender was situated outside or the complete offence did not take place inside the territory.<sup>58</sup>

26. Drenner Financials is run by Ms. Drenner's son and daughter.<sup>59</sup> It was earlier run by herself.<sup>60</sup> Drenner Financials is the largest financial company in Granicus.<sup>61</sup> Its holding company is Drenner Advisors, which is alleged to be involved in the offence of

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Melissa Block, 'Argentine Leader's Plane Grounded by Credit Holders' [2013] National Public Radio Jan. 10 2013 <<https://www.npr.org/2013/01/10/169077531/argentine-leaders-plane-grounded-by-credit-holders>>.

<sup>53</sup> Id.

<sup>54</sup> *Moot Compromis* (¶10).

<sup>55</sup> *Moot Compromis* (¶7).

<sup>56</sup> *Moot Compromis* (¶9).

<sup>57</sup> L. Oppenheim, *International Law* (Edn. 8<sup>th</sup>, 2008, Cambridge University Press.) ¶332; Lord Simonds, *Halsbury's Laws of England* (Edn. 3<sup>rd</sup>, 1952, Butterworth Publications) ¶ 318.

<sup>58</sup> *Mobarik Ali Ahmed v State of Bombay* AIR [1957] S.C. 857.

<sup>59</sup> *Moot Compromis* (¶5).

<sup>60</sup> *Moot Compromis* (¶5).

<sup>61</sup> *Moot Compromis* (¶5).

money laundering.<sup>62</sup> Further, the reports indicate backroom discussions between banking industries of both Islander and Granicus.<sup>63</sup> Also, the money used in the offence was earned through dubious means by Ms. Aria Dark and her associates in the Islander and Granicus Government.<sup>64</sup>

27. Therefore, the media reports allege that Drenner, the largest financial company of Granicus is involved. Further, there is a speculation that the public money of Granicus is involved. Therefore, effect was felt in Granicus and it has the power to investigate.

**B. Granicus is adhering to its international law obligations**

28. Money Laundering has been recognised as a major economic threat by international community.<sup>65</sup> In modern common law jurisprudence, there is an increasing acceptance of the *Theory of Monism* which views international law and municipal law as a combined unitary body lead principle of Natural Justice.<sup>66</sup> Courts have incorporated international instruments in their judgements which the countries have not even signed.<sup>67</sup> Customary International Law principles have also often been incorporated by domestic courts in common law jurisdiction.<sup>68</sup>

29. Granicus and Islander are signatories to the UN Convention Against Transnational Organised Crimes (UNTOC).<sup>69</sup> It mandates that states take effective measures for the prevention of cross border laundering of the proceeds of crime.<sup>70</sup> The action against Mr. Dark and Ms. Dark amounts to an “effective measure”. Therefore, Granicus was adhering to its international law obligations.

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<sup>62</sup>*Moot Compromis*(¶9).

<sup>63</sup>*Moot Compromis*(¶9).

<sup>64</sup>*Moot Compromis*(¶9).

<sup>65</sup>UNODC, ‘Illicit Money: How much is out there?’ [2011]<[http://www.unodc.org/unodc/en/frontpage/2011/October/illicit-money\\_-how-much-is-out-there.html](http://www.unodc.org/unodc/en/frontpage/2011/October/illicit-money_-how-much-is-out-there.html)> 25 Oct. 2011.

<sup>66</sup>*Shaw*(n 16) ¶333.

<sup>67</sup>*Vishaka&Ors. v. Union of India* (1997) (6) SCC 241;*National Legal Service Authority v. Union of India*, (2015) (5) SCC 438.

<sup>68</sup>*Vellore Citizens Welfare Forum v. Union of India* AIR [1996] SC 2715;*The Paquete Habana* 175 U.S. 677 (1900); *United States v. Belmont* 301 US 324 (1937); *Reference re Exemption of US Forces from Canadian Criminal Law* [1943] 4 DLR 11, 41; *Reference re Powers to Levy Rates on Foreign Legations and High Commissioners Residences* [1943] SCR 208; *Marine Steel Ltd v. Government of the Marshall Islands* [1981] 2 NZLR 1.

<sup>69</sup>*Moot Compromis (Note to Counsel)*.

<sup>70</sup>UN General Assembly, *United Nations Convention against Transnational Organized Crime : resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25, Art. 11(2).

**IV. THE ACT OF GRANICUS IS NOT MALA FIDE AND DOES NOT VIOLATE THE RIGHT TO EQUALITY**

**30.** Right to equality is not an absolute right and is subject to reasonable restrictions.<sup>71</sup> For a classification to be reasonable, it should be based on some intelligible differentia which has rational nexus with the objective that the legislation seeks to achieve.<sup>72</sup> The RESPONDENT submits that the action against Walhala Industries by Granician Government Authorities does not violate the right to equality. The classification was based on an intelligible differentia [A.] and had a rational nexus to the object [B.].

**A. The classification was based on an intelligible differentia**

**31.** Reasonable classification is such classification which is based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis.<sup>73</sup> The right to equality is violated when there are other similarly situated who could have been prosecuted for the offenses for which respondents were charged, but were not so prosecuted.<sup>74</sup> Walhala and Drenner are not similarly situated individuals [i.] and the action does not amount to selective prosecution [ii.].

**i. Walhala and Drenner are not similarly situated individuals**

**32.** Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.<sup>75</sup> The RESPONDENT submits that in the instant case, Walhala and Drenner are not similarly situated individuals, and reasonable classification is drawn between the two. A series of investigative news reports concluded that the money laundered in the process of disinvestment belonged to Ms Dark.<sup>76</sup> Further, Mr Dark, nephew of Ms Dark, was the only company involved in the process.<sup>77</sup> The monies were said to be routed through Drenner Advisors<sup>78</sup>, a

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<sup>71</sup>*State Trading Corporation of India v. Commercial Tax Officer and Ors.*, AIR [1963] SC 1811; *Bahadur Singh*(n 1).

<sup>72</sup>*Vide Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) (5) SCC 111,¶21.

<sup>73</sup>*Bahadur Singh* (n 1).

<sup>74</sup>*In re: special courts bill v. Unkown*, (1979) (1) SCC 380.

<sup>75</sup>*Bahadur Singh AndAnr. vs Jaswant Raj Mehta And Ors.*[AIR] 1953 Raj 158.

<sup>76</sup>*Moot Compromis* (¶9).

<sup>77</sup>*Moot Compromis* (¶7).

company incorporated in Islander.<sup>79</sup> Even though there is a speculated connection between Drenner Financials and Advisors, it has not be established.<sup>80</sup> The news reports suggesting Granician government officials were involved, it does not implicate Ms Aisha Drenner.<sup>81</sup>

**33.** In light of such evidence, it cannot be concluded that Ms Drenner, the head of the state of Granicus, was a part of the common conspiracy to launder the proceeds of crime. Therefore, Walhala and Drenner are not similarly situated individuals and a reasonable classification can be drawn between the two.

**ii. Action does not amount to selective prosecution**

**34.** Selective prosecution violates the right to equal protection.<sup>82</sup> Selective prosecution is such prosecution that has a discriminatory effect and it was motivated by discriminatory intent.<sup>83</sup> A policy is said to have a discriminatory effect when the decision to prosecute is based on race, religion or arbitrary classification.<sup>84</sup> As the citizen of Islander and Granicus share common ancestry and religious belief<sup>85</sup>, the classification cannot be said to be based on either race or religion. Further, the classification had a reasonable basis was not arbitrary. Even in cases of conspiracy, the chief conspirator can be abated and other co-conspirators can be prosecuted.<sup>86</sup> Therefore, the action against Walhala is not a violation of the equal protection granted to all persons.

**B. The classification has a rational nexus to the object**

**35.** The Palermo Convention, to which Islander and Granicus are signatories, seeks to ensure that the benefits of globalisation are not used to promote crime, and that the “uncivil” do not take the advantage of countries with weak institutions.<sup>87</sup> The

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<sup>78</sup>*Moot Compromis* (¶ 9).

<sup>79</sup>*Moot Compromis* (¶ 5).

<sup>80</sup>*Moot Compromis* (¶ 5).

<sup>81</sup>*Moot Compromis* (¶ 9).

<sup>82</sup>*Wayte v United States* 470 U.S. 598 (1985)¶7; *United States v Armstrong* 517 U.S. 456 (1996),¶18.

<sup>83</sup> *Id.*

<sup>84</sup>*Oyler v Boles* 368 US 448 (1962),¶17.

<sup>85</sup>*Moot Compromis* (¶ 6).

<sup>86</sup>*State of Karnatka v. Selvi J. Jayalalitha*(2015) SCC OnLineKar 1277.

<sup>87</sup>*Transnational Organised Crimes* (n 59).

Granicus Proceeds of Crime Act 2017, which draws its roots from the Palermo Convention, seeks to prevent the offence of money laundering and the projection of proceeds of crime as untainted property.<sup>88</sup> Further, the application of the Act is guided by the common law principle. It provides restrictions to rights of private individuals in the interest of the state.<sup>89</sup>

36. Investigative reports disclosed that the money used by Walhala for investment was obtained from the offence of money laundering. The action taken by Granicus Government Authorities facilitated the confiscation of tainted property derived from proceeds of crime. The decision of not acting against Ms Drenner, the head of Granicus, was done to protect the national interest and security. Therefore, the action taken had a rational nexus to the object sought to be achieved.
37. The action against Walhala is justified and does not amount to a violation of right to equality.

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<sup>88</sup>*Proceeds of Crime Act* (n 34).

<sup>89</sup>*Chairman, Railway Board and Ors. v. Mrs. Chandrima Das and Ors.*, (2000) (2) SCC 465, ¶ 35.

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**PRAYER**

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Wherefore in the light of the issues raised, arguments advanced and authorities cited, it is humbly prayed that this honourable court may be pleased to declare that

**- I -**

The State Authorities of Granicus have the jurisdiction to arrest Mr Dark, to seize Walhala One and Ms Dark's bank account

**- II -**

The actions of Directorate of Investigation do not violate the diplomatic immunity of Ms Dark, Mr Dark and Walhala One

**- III -**

The Directorate of Investigation has the power to investigate the alleged offence of money laundering by Ms Dark and Mr Dark

**- IV -**

The actions of Granicus do not violate the right to equality of Ms Dark and Mr Dark

And pass any order, direction or relief that this Honourable Court may deem fit in the interests of justice, equity and good conscience.

All of which is humbly prayed,

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Counsels for the RESPONDENT