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

before

THE SUPREME COURT OF GRANICUS

ISLANDIC EMBASSY.....APPLICANT

v.

DIRECTORATE OF ENFORCEMENT, GRANICUS.....RESPONDENT

MEMORIAL *for* APPLICANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
STATEMENT OF FACTS	vi
ISSUES ADVANCED.....	viii
SUMMARY OF ARGUMENTS.....	ix
WRITTEN PLEADINGS	1
I. THE STATE AUTHORITIES OF GRANICUS DO NOT HAVE THE JURISDICTION TO ARREST MR DARK, SEIZE BANK ACCOUNT OF MS DARK AND WALHALA ONE	1
A. Arrest of Mr Andrew Dark is illegal.....	1 <u>s</u>
i. Proceeds of Crime Act cannot be enforced retroactively	1
ii. Money Laundering is not a continuous offence.....	2
B. Walhala One cannot be attached under Proceeds of Crime Act 2017	2
C. Granicus does not have the power to pass the <i>quia timet</i> order against Ms. Dark	3
II. THE ACTIONS OF THE DIRECTORATE OF INVESTIGATION VIOLATE THE RIGHT TO DIPLOMATIC IMMUNITY OF MS. ARIA DARK, MR. ANDREW DARK AND WALHALA ONE	4
A. The expropriation of Ms. Dark’s bank account is illegal.....	4
i. Bank accounts are private property	4
ii. The indirect expropriation of bank account is illegal	5
a. The expropriation was not done for a public purpose.....	5
b. It was not done in a non-discriminatory manner.....	5
c. It was not in accordance with due process of law	5
d. It was not done against the payment of compensation.....	6
B. The arrest of Mr. Dark violates his diplomatic immunity	6
i. Mr. Dark is a family member of Ms. Dark.....	6

- ii. *Arguendo*, even if Mr. Dark is not considered as a member of family, he is still entitled to receive diplomatic immunity 7
- C. Walhala One is entitled to receive diplomatic immunity and its seizure is illegal 7
- III. DIRECTORATE OF INVESTIGATION DOES NOT HAVE THE POWER TO INVESTIGATE MONEY LAUNDERING OUTSIDE THE TERRITORY OF GRANICUS 8**
 - A. Offence of money laundering was not committed inside Granicus 8
 - B. Granicus does not have extra-territorial jurisdiction 8
- IV. THE ACTIONS OF STATE AUTHORITIES OF GRANICUS ARE MALA FIDE AND VIOLATE THE RIGHT TO EQUALITY OF MS. DARK AND MR. DARK 9**
 - A. The classification does not have an intelligible differentia 10
 - i. Walhala and Drenner are similarly situated individuals 10
 - ii. The action against Walhala amounts to selective prosecution 10
 - B. *Arguendo*, even if there is an intelligible differentia, there is no rational nexus to the object 11
- PRAYER xi

TABLE OF AUTHORITIES

Legislation

Constitution of Granicus	5, 6, 12
Diplomatic and Privileges Act 2001 (South Africa),.....	10
Proceeds of Crime Act 2017 (Granicus).....	6, 7, 11, 14
The General Clauses Act 1897(U.K.)	6

Cases

<i>Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation</i> [1948] 1 K.B. 223 [1947] 2 All E.R. 680 C.A.;.....	10
<i>Dinesh Kumar v State of Madhya Pradesh</i> (2004) (8) S.C.C. 770.....	6
<i>Ganesh Gogoi v State of Assam</i> (2009) (7) S.C.C. 404.....	6
<i>Garland v. British Rail Engineering Ltd.</i> [1983] 2 A.C. 751 [1982] 2 W.L.R. 918.....	10
<i>In re: special courts bill v. Unkown</i> , (1979) (1) SCC 380.....	13
<i>Jolly George Vergese v. Bank of Cochin</i> AIR [1980] S.C. 913.....	12
<i>Kuldeep Singh v. Subhash Chandra Jain</i> (2000) (4) S.C.C. 50.....	7
<i>Lafontant v. Artside</i> U.S. 844 F. Supp. 128 E.D..N.Y. (1994).	10
<i>Libia v. Condor Srl</i> , Corte di Cassazione, 23 Aug. 1990 [1991] <i>Rivista di diritto internazionale</i> 679	11
<i>Lonrho Exports v. ECGD</i> [1996] UKHL 4, All ER 673, 687	12
<i>Maclaine Watson v. Department of Trade and Industry</i> [1989] UKHL 3, All ER 523, 531; .	12
<i>Maganlal Chhagganlal V. Greater Municipality</i> AIR [1974] S.C. 2009	12
<i>Mahanivesh Oils & Foods Pvt. v. Directorate of Enforcement</i> W.P.(C) 1925/2014 & C.M. No. 4017/2014, H.C. Del. 2014	6, 11
<i>Mobarik Ali Ahmed v State of Bombay</i> AIR[1957] S.C. 857.....	12
<i>Novello v. Toogood</i> UKHL 29 [1823] 107 ER 204	8
<i>Oyler v Boles</i> 368 U.S. 448 (1962).....	14
<i>P Trivikrama Prasad v Enforcement Directorate</i> 1 ALD 513 [29], H.C. Alh. 2014	7
<i>P.G. Naryanan v. Union of India</i> MAD 2005-5-14, H.C. Mad. 2005	7
<i>Paresha G Shah v State of Gujarat</i> (1) 329, H.C. Guj. 2016.....	7
<i>Philippine Embassy</i> BVerfGE 46, 342 2 BvM 1/76 (Federal Court of Germany)	11
<i>Rai Foundation v Directorate of Enforcement</i> 2378, H.C. Del. 2015	7
<i>Rama Raju v. Union of India</i> APH 2011-3-76, H.C. A.P. 2011.....	6, 11

<i>Ritesh Agarwal v Securities and Exchange Board of India</i> (2008) (8) S.C.C. 205	6
<i>Shiv Bahadur Singh Rao v State of Vindhya Pradesh</i> AIR [1953] SC 394	6, 13
<i>Soni Devrajbhai Babubhai v State of Gujarat</i> A.I.R. [1991] S.C. 2173.....	6
<i>State of Bengal v. Kesoram Industries</i> AIR [2005] S.C. 1646	12
<i>State of Bihar v. Deokaran Nenshi & Anr.</i> AIR [1973] S.C. 908.....	6
<i>State Trading Corporation of India v. Commercial Tax Officer and Ors.,</i> AIR [1963] S.C. 1811.....	13
<i>United States v Armstrong</i> 517 U.S. 456 (1996).	13
<i>Vide Pradeep Kumar Biswas v. Indian Institute of Chemical Biology,</i> (2002) (5) SCC 111 ..	13
<i>Virendra Kumar Ohri v UOI</i> W P (C)No 341/2004.	14
<i>Wayte v United States</i> 470 U.S. 598 (1985).....	13

Treaties and Conventions

The United Nations Charter (entered into force 24 October 1945)	12
UN General Assembly, <i>United Nations Convention against Transnational Organized Crime : resolution / adopted by the General Assembly,</i> 8 January 2001, A/RES/55/25	14
Vienna Convention on Diplomatic Relations (adopted on 14 April 1961, entered into force 24 April 1964) 500 UNTS 95	8, 9, 10, 11

Books, Commentaries, Journals

Christopher Lau, Berkeley Law, <i>Diplomatic & Consular Law: Research Guide</i> (1 st Ed, Legal Research Series, 2015),.....	8
Durga Das Basu, <i>Commentary on the Constitution of India,</i> (Edn. 9 th , 2014, Lexis Nexis).....	6
Eileen Denza, <i>Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations</i> (4 th Ed, Oxford Publication, 2016)	8, 9, 10
G.C. Christie, ‘What Constitutes a taking under International Law?’ [1962]38 British Year Book.....	8
Malcom Shaw, <i>International Law</i> (Edn 7 th , 2016, Cambridge University Press),	11
S.R. Subramanian, ‘Abuse of Diplomatic Privileges and the Balance between Immunities and the Duty to Respect the Local Laws and Regulations under the Vienna Conventions: The Recent Indian Experience’ [2017] 82 Chinese Law Journal	10
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UN Resolutions and Documents

ILC, ‘Report of the International Law Commission on the Diplomatic Intercourse and Immunity’ 2 May 1957 UN Doc A/N4/91	8
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Other International Organization Documents

Harvard Draft Convention on International Responsibility of States for Injuries to Aliens, (Adopted in 1961) Art.10(5).....	8
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Government Reports

FA Committee, ‘Balancing of Human Rights and Diplomatic Immunity’ [2011] 3 HC	10
Law Commission of India, ‘Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities’ March 2012 Report No. 239.....	14

ICJ Cases

<i>Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)</i> (Merits) [1986] ICJ Rep 392.....	12
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STATEMENT OF FACTS

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 of Granicus. It is run by Ms. Drenner's son and daughter. Earlier, it was run by Ms. Drenner herself. Drenner Advisors, a company incorporated in Islander, is said to be the holding company of Drenner Financials.

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 targeted in disinvestment. Whispers emerged that money used by Walhala Industries was earned by Ms. Dark through corrupt practices. However, the government spokespersons and Ms. Dark maintained that Walhala Industries has no connection with Ms. Dark.

RELEASE OF NEWS REPORTS

In early 2018, a series of news reports were published. They indicated that Walhala Industries and Drenner Advisors are related. 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 news reporting, Ms. Dark, accompanied with Mr. Andrew Dark, decided to make an official visit to Granicus to lodge a diplomatic protest. They travelled in Walhala One. Prior to disinvestment, it was known as Air Force One and 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.

ISSUES ADVANCED

- I -

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

- II -

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

- III -

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

- IV -

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

SUMMARY OF ARGUMENTS

I. THE STATE AUTHORITIES OF GRANICUS DO NOT HAVE THE JURISDICTION TO ARREST MR DARK, SEIZE WALHALA ONE AND BANK ACCOUNTS OF MS DARK

According to Article 12 of the Constitution of Granicus, retrospective laws are unconstitutional. Proceeds of Crime Act (PC Act) was enacted in 2017. Therefore, no action can be taken under the PC Act prior to its enactment. The alleged offence of money laundering was completed before 2017. The Directorate of Investigation does not have the power to investigate any offence prior to 2017. Therefore, it did not have the power to arrest Mr Dark.

The order of attachment is based on the premise that the properties attached are involved in money laundering. An order of attachment cannot be sustained when the alleged offence of money laundering was completed before the enactment of the Proceeds of Crime Act. Therefore, the State Authority of Granicus does not have the jurisdiction to attach Walhala One.

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. In the instant case, there was no reasonable apprehension of imminent damage. Ms Dark's involvement in the alleged offence is not established. If Ms. Dark is guilty of money laundering, penalty in form of money will be enough. Therefore, the *quia timet* order was illegal and not justified.

II. THE ACTIONS OF THE DIRECTORATE OF INVESTIGATION VIOLATE THE RIGHT TO DIPLOMATIC IMMUNITY OF MS. ARIA DARK, MR. ANDREW DARK AND WALHALA ONE

The Vienna Convention on Diplomatic Relations (VCDR) codifies the principles of customary international law. It is applicable on Islander and Granicus. The banks accounts of Ms. Dark are her property and enjoys inviolability under Article 30 of VCDR. Granicus has indirectly expropriated the bank account of Ms. Dark. An expropriation is justified only if it was done for a public purpose, in a non-discriminatory manner and in accordance with the due process of law. However, such guidelines were not followed by Granicus. Therefore, the expropriation was illegal and it violates the diplomatic immunity of Ms. Dark.

Diplomatic immunity is granted to the family members of the diplomat. This is done to ensure that the diplomat is able to work peacefully. Mr. Dark is the nephew of Ms. Dark. He is a part of the diplomatic mission. The principle of diplomatic immunity to every

accompanying member of the diplomat's family has been recognized. Therefore, Mr. Dark is entitled to receive diplomatic immunity. The arrest violates his right.

The premises and property of a diplomat in a diplomatic mission are inviolable. The property used by the sending state for the performance of its diplomatic functions in any event enjoys immunity. This is accepted as a principle of customary international law. Walhala One is the aircraft used by Ms. Aria Dark, head of Islander. The aircraft also carried Mr. Andrew Dark, the nephew of Ms. Aria Dark. This was used for a diplomatic mission. It was known to the State Authorities of Granicus that the aircraft is being used for a diplomatic mission. Therefore, Walhala One is entitled to receive diplomatic immunity and the seizure violates this right.

III. DIRECTORATE OF INVESTIGATION DOES NOT HAVE THE POWER TO INVESTIGATE MONEY LAUNDERING OUTSIDE THE TERRITORY OF GRANICUS

It is an accepted common law principle that states can apply their domestic laws only within their own territories. The offence of money laundering has to be connected to a scheduled offence. In the instant case, no scheduled offence was committed inside Granicus. According to the Proceeds of Crime Act 2017, Directorate of Investigation cannot investigate offences outside the territory of Granicus. Therefore, Directorate of Investigation does not have the power to investigate the alleged offence of money laundering.

IV. THE ACTS OF GRANICUS VIOLATE THE RIGHT TO EQUALITY OF MS. DARK AND MR. DARK

A classification does not violate the right to equality only if it has an intelligible differentia and a rational nexus to the object sought. In the instant case, Walhala and Drenner are similarly situated individuals. The alleged offence of money laundering was a part of the common conspiracy committed by them. The actions against Ms. Dark and Mr. Dark amounts to selective prosecution. It violates the right to equality granted by the Constitution of Granicus.

WRITTEN PLEADINGS

I. THE STATE AUTHORITIES OF GRANICUS DO NOT HAVE THE JURISDICTION TO ARREST MR DARK, SEIZE BANK ACCOUNT OF MS DARK AND WALHALA ONE

1. The state authorities of Granicus do not have the power to arrest Mr Andrew Dark [A.] to seize Walhala One [B] or the bank accounts of Ms Aria Dark [C.]

A. Arrest of Mr Andrew Dark is illegal

2. According to Article 12 of the Constitution of Granicus, a law cannot be enforced retroactively. Therefore, Mr Andrew Dark cannot be arrested under Proceeds of Crime Act 2017 [i.]. Further, the offence of money laundering is not a continuous offence. The Directorate of Investigation can only investigate when the offence was committed post 2017 [ii.].

i. Proceeds of Crime Act cannot be enforced retroactively

3. Article 12 of the Constitution of Granicus grants protection against retrospective laws.¹ States do not have the jurisdiction to investigate under the laws that are not in force at the time of commission of the offence.² The state cannot order punishment unless an offence has been committed.³ “Offence” means any act or omission made punishable by any law for the time being in force.⁴ The Proceeds of Crime Act was enacted in 2017⁵ and the offence of money laundering did not exist prior to that. The State Authorities of Granicus will not have the jurisdiction to investigate crimes which were committed prior to the enactment of the Proceeds of Crime Act. The alleged offence of money laundering was completed prior to 2017.⁶ Therefore, the investigation and arrest of Mr. Dark is illegal.

¹ Constitution of Granicus, Art. 12.

² Durga Das Basu, *Commentary on the Constitution of India*, (Edn. 9th, 2014, Lexis Nexis), 234; *Shiv Bahadur Singh Rao v State of Vindhya Pradesh* AIR [1953] SC 394 [12]; *Dinesh Kumar v State of Madhya Pradesh* (2004) (8) S.C.C. 770; *Soni Devrajbhai Babubhai v State of Gujarat* A.I.R. [1991] S.C. 2173; *Ritesh Agarwal v Securities and Exchange Board of India* (2008) (8) S.C.C. 205; *Ganesh Gogoi v State of Assam* (2009) (7) S.C.C. 404.

³ Id.

⁴ The General Clauses Act 1897 (U.K.).

⁵ Proceeds of Crime Act 2017 (Granicus).

⁶ *Moot Compromis* (¶9).

ii. Money Laundering is not a continuous offence

4. A wrong or a default which is complete but whose effect may continue to be felt even after completion, is not a continuing wrong or default.⁷ An offence cannot be a continuing offence unless the statute expresses such an intention.⁸
5. There are three stages in the offence of money laundering.⁹ These are placement, layering and integration.¹⁰ The offence of money-laundering is over once the third stage of integration is complete and the proceeds of crime is projected as “untainted property”.¹¹ Therefore, money laundering is not a continuous offence.¹²
6. In the instant case, even if it is accepted that the offence of money laundering was committed, then the integrating stage was over in 2016.¹³ As money laundering is not a continuous offence, the offence will stand completed in 2016 when proceeds of crime were projected as untainted property. The Proceeds of Crime Act was enacted in 2017.¹⁴ Therefore, the offence was completed before the law was and proceedings under the Act cannot be initiated.

B. Walhala One cannot be attached under Proceeds of Crime Act 2017

7. The power to attach property cannot be read in isolation as it is tentative in nature.¹⁵ Commission of the scheduled offence is the fundamental pre-condition for any proceeding on the offence of money laundering.¹⁶ The order of attachment is based on the premise that the properties attached are involved in money laundering.¹⁷

⁷*D. D. Basu*, (n 2); *State of Bihar v. Deokaran Nenshi & Anr.* AIR [1973] S.C. 908.

⁸*D. D. Basu*, (n 2).

⁹*Rama Raju v. Union of India* APH 2011-3-76, H.C. A.P. 2011.

¹⁰ *Id.*

¹¹*Hasan Ali Khan S/o. Ghousudin Ali Khan vs. Union of India (UOI), Thru' Asst. Director, Directorate of Enforcement and Anr.* C R(Cri)807, Bom. C R(Cri)807 2012; *Mahanivesh Oils & Foods Pvt. v. Directorate of Enforcement* W.P.(C) 1925/2014 & C.M. No. 4017/2014, H.C. Del. 2014.

¹² *Id.*

¹³*Moot Compromis*, ¶9).

¹⁴*Proceeds of Crime Act* (n 4).

¹⁵*P Trivikrama Prasad v Enforcement Directorate* 1 ALD 513 [29], H.C. Alh. 2014; *Rai Foundation v Directorate of Enforcement* 2378, H.C. Del. 2015.

¹⁶*Paresha G Shah v State of Gujarat* (1) 329, H.C. Guj. 2016.

¹⁷ *Id.*

8. An order of attachment cannot be sustained when no scheduled offence has been recognised.¹⁸The alleged offence of money laundering was committed prior to the enactment of Proceeds of Crime Act 2017.¹⁹ A schedule offence cannot be established prior to 2017 as the Act was itself not enacted. In the absence of a scheduled offence, property cannot be attached or seized. Therefore, the Directorate of Enforcement do not have the power to attach Walhala One.

C. Granicus does not have the power to pass the *quia timet* order against Ms. Dark

9. *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”²⁰ 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.²¹
10. In the instant case, the money was transferred from Drenner Advisors to Walhala Industries.²² There is no direct connection with Ms. Dark.²³ There is no allegation that the monies are in Ms. Dark’s account.²⁴ *Even if* Ms. Dark is guilty of money laundering, penalty in form of money will be enough. Therefore, in absence of a reasonable apprehension of imminent or irreparable damage, Granicus did not have the power to pass the order.

¹⁸ Id.

¹⁹ *Moot Compromis* (¶9).

²⁰ *P.G. Naryanan v. Union of India* MAD 2005-5-14, H.C. Mad. 2005.

²¹ Id; *Kuldeep Singh v. Subhash Chandra Jain* (2000) (4) S.C.C. 50.

²² *Moot Compromis* (¶9).

²³ *Moot Compromis*.

²⁴ *Moot Compromis*.

II. THE ACTIONS OF THE DIRECTORATE OF INVESTIGATION VIOLATE THE RIGHT TO DIPLOMATIC IMMUNITY OF MS. ARIA DARK, MR. ANDREW DARK AND WALHALA ONE

11. Granicus and Islander are signatories to the Vienna Convention on Diplomatic Relations (VCDR).²⁵ It codifies the principles of customary international law.²⁶ Therefore, it is binding on Islander and Granicus.
12. 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 property²⁷. The act of Granicus amounts to indirect expropriation of Ms. Dark's bank account.

A. The expropriation of Ms. Dark's bank account is illegal

13. The property of a diplomatic agent enjoys inviolability under Article 30 of VCDR.²⁸The APPLICANT submits that the bank account of Ms. Dark is her property [i.] and its indirect expropriation is illegal [ii.].

i. Bank accounts are private property

14. 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.²⁹ All the things which are necessary for a diplomat, to sustain as an individual and to fulfill his or her official duties would amount to property.³⁰ This including bank accounts of a diplomat.³¹ Therefore, bank accounts of a diplomat are treated as her property.

²⁵*Moot Compromis*.

²⁶ Christopher Lau, Berkeley Law, *Diplomatic & Consular Law: Research Guide* (1st Ed, Legal Research Series, 2015), ¶ 10.

²⁷ UNCTAD, 'Series on Issues in International Investment Agreement II' (2012) Sales No. E.12.II.D.7; G.C. Christie, 'What Constitutes a taking under International Law?' [1962]38 British Year Book, ¶¶ 320,327.

²⁸ Vienna Convention on Diplomatic Relations (adopted on 14 April 1961, entered into force 24 April 1964) 500 UNTS 95, Art. 30.

²⁹ Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (4th Ed, Oxford Publication, 2016) ¶¶ 320,321; ILC, 'Report of the International Law Commission on the Diplomatic Intercourse and Immunity' 2 May 1957 UN Doc A/N4/91, ¶ 30.

³⁰*Denza* (n 21) ¶ 235; *Novello v. Toogood* UKHL 29 [1823] 107 ER 204.

³¹*Id.*

ii. The indirect expropriation of bank account is illegal

15. The act of Granicus amounts to taking of property and is an unreasonable interference with the use and enjoyment of her property.³² This amounts to indirect expropriation. According to the principles of customary international law of expropriation, four conditions are required for expropriation.³³ There are: it must be done for a public purpose[a.], in a non-discriminatory manner [b.], in accordance with due process of law[c.] and against the payment of compensation [d.].³⁴

a. The expropriation was not done for a public purpose

16. The expropriation of property must be motivated by legitimate welfare objective.³⁵ In the instant case, as there is no conclusive proof that the people of Granicus were affected, the expropriation was not motivated for the purpose of public good.

b. It was not done in a non-discriminatory manner

17. The alleged offence of money laundering was done by officials of both Islander and Granicus.³⁶The action was only taken against foreign nationals of Islander.³⁷As no action has been taken against Granicus or its officials, the expropriation was done in a discriminatory manner.

c. It was not in accordance with due process of law

18. 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).³⁸According to the Proceeds of Crime Act 2017, the Directorate of Investigation can only investigate into offences committed inside the territory of

³² Harvard Draft Convention on International Responsibility of States for Injuries to Aliens, (Adopted in 1961) Art.10(5)).

³³UNCTAD (n 23), ¶ 27.

³⁴ Id.

³⁵UNCTAD (n 23) ¶28.

³⁶Moot Compromis(¶ 9).

³⁷Moot Compromis(¶13).

³⁸UNCTAD (n 23)¶ 36.

Granicus.³⁹ The alleged of money laundering was committed in Islander.⁴⁰ Therefore, by taking an extra-territorial action, the procedure established in the domestic legislation was violated.

d. It was not done against the payment of compensation

19. As Ms. Dark was not required to pay any form of compensation to Granicus, the expropriation of her bank account was not done against the payment of compensation.

B. The arrest of Mr. Dark violates his diplomatic immunity

20. Diplomatic immunity is conferred to the family members of a diplomat, and the family members enjoy the privileges under Article 27 to 36 of the VCDR⁴¹. The APPLICANT submits that Mr. Dark is the family member of Ms. Dark [i.]. *Arguendo*, even if Mr. Dark is not considered as member of family, he is still entitled to receive diplomatic immunity [ii.].

i. Mr. Dark is a family member of Ms. Dark

21. There is no specific definition of the terms ‘*member of the family*’ and ‘*forming part of the household*’ under Article 27 to 36 of VCDR.⁴²Therefore, a *purposive interpretation* has to be adopted to interpret the terminologies.⁴³ The extension of immunities and privileges to family members has long been established.⁴⁴ It derives from the need to protect diplomats from harassment particularly by means of framed or legal proceedings, so that they can do the job for which they have been sent⁴⁵, to create a healthy environment for diplomat’s work.⁴⁶ The principle of diplomatic immunity to every accompanying member of the diplomat’s family has been recognized.⁴⁷ In the instant case, Mr. Dark accompanied Ms. Dark in her diplomatic

³⁹*Moot Compromis*, Annexure.

⁴⁰*Moot Compromis* (¶ 9).

⁴¹*Vienna Convention*(n 20); *Denza*(n 21) ¶ 233.

⁴²*Denza* (n 20); *Lafontant v. Artside* U.S. 844 F. Supp. 128 E.D..N.Y. (1994).

⁴³United Nations, ‘Diplomatic Intercourse and Immunity’ (1958) Year Book of The Int L Com. (YBILC) ¶¶ 32,33 .

⁴⁴ *Id.*

⁴⁵FA Committee, ‘Balancing of Human Rights and Diplomatic Immunity’ [2011] 3 HC, ¶¶323, 324.

⁴⁶ S.R. Subramanian, ‘Abuse of Diplomatic Privileges and the Balance between Immunities and the Duty to Respect the Local Laws and Regulations under the Vienna Conventions: The Recent Indian Experience’ [2017] 82 Chinese Law Journal 323, ¶ 244 .

⁴⁷ Diplomatic and Privileges Act 2001 (South Africa), Art. 2.

mission.⁴⁸ His safety was necessary for Ms. Dark to work in a healthy environment. Therefore, Mr. Dark is a member of family and is entitled to diplomatic immunity.

ii. *Arguendo*, even if Mr. Dark is not considered as a member of family, he is still entitled to receive diplomatic immunity

22. It is not mandatory to provide prior notification to the receiving state about the diplomat under VCDR.⁴⁹ It can be done subsequently when a person is already in the receiving state⁵⁰. If a person is already in the territory of the receiving state, the moment her appointment as a diplomat is notified, she is entitled to the privileges and immunity⁵¹. Prior notice and acceptance are not required for the commencement of privileges and immunities⁵². Therefore, Mr. Dark will receive diplomatic immunity from the moment he was appointed as the “Official Advisor of Ms. Dark”.⁵³ His custody with the Granicus State Authorities is illegal.

C. Walhala One is entitled to receive diplomatic immunity and its seizure is illegal

23. The premises and property of a diplomat in a diplomatic mission are inviolable.⁵⁴The property used by the sending state for the performance of its diplomatic functions in any event enjoys immunity.⁵⁵This is accepted as a principle of customary international law.⁵⁶

24. Walhala One is the aircraft used by Ms Aria Dark, head of Islander.⁵⁷ The aircraft also carried Mr Andrew Dark, the nephew of Ms Aria Dark.⁵⁸ This was used for a

⁴⁸*Moot Compromis* (¶12).

⁴⁹*Denza* (n 21) ¶ 237, *Vienna Convention*(n 20) Art. 10.

⁵⁰ *Id.*

⁵¹*Vienna Convention*(n 20) Art 39; *Reg. v. Secretary of State for the Home Department, Ex parte Sattar* [1988] Imm.A.R. 190, C.A.; *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223 [1947] 2 All E.R. 680 C.A.; *Garland v. British Rail Engineering Ltd.* [1983] 2 A.C. 751 [1982] 2 W.L.R. 918.

⁵² *Id.*

⁵³*Moot Compromis* (¶14).

⁵⁴*Vienna Convention*(n 20), Art 22(3).

⁵⁵*Philippine Embassy* BVerfGE 46, 342 2 BvM 1/76 (Federal Court of Germany); *Libia v. Condor Srl*, Corte di Cassazione, 23 Aug. 1990 [1991] *Rivista di diritto internazionale* 679,¶10 ; Malcom Shaw, *International Law* (Edn 7th, 2016, Cambridge University Press),¶762.

⁵⁶*Id.*

⁵⁷*Moot Compromis*(¶10).

⁵⁸*Moot Compromis*(¶ 12).

diplomatic mission.⁵⁹ It was known to the State Authorities of Granicus that the aircraft is being used for a diplomatic mission.⁶⁰ As Walhala One is the property of diplomats used during a diplomatic mission, it will enjoy diplomatic immunity. Therefore, the seizure of Walhala One is illegal.

III. DIRECTORATE OF INVESTIGATION DOES NOT HAVE THE POWER TO INVESTIGATE MONEY LAUNDERING OUTSIDE THE TERRITORY OF GRANICUS

25. It is an accepted legal principle that States can apply their domestic laws only within their own territories.⁶¹ The Directorate of Investigation investigated acts which took place outside the territory of Granicus.⁶² The APPLICANT submits that Granicus did not have the power to investigate as the alleged offence of money laundering was not committed inside Granicus [A.] Granicus does not have extra-territorial jurisdiction [B.].

A. Offence of money laundering was not committed inside Granicus

26. According to Proceeds of Crime Act 2017⁶³ and common law jurisprudence⁶⁴, the offence of money laundering is necessarily connected to a predicate or scheduled offence. The offence of money laundering involves money arising from such scheduled offence.⁶⁵ In the instant case, it is alleged that the money was “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.”⁶⁶ However, this does not amount to scheduled offence in Granicus.⁶⁷ Therefore, in the absence of such an offence, the Directorate of Investigation does not have the power to investigate.

B. Granicus does not have extra-territorial jurisdiction

27. In modern International Law and common law jurisprudence, extra territorial jurisdiction is recognized if the constituent elements of a crime, especially its effects

⁵⁹*Moot Compromis* (¶12).

⁶⁰*Moot Compromis* (¶10).

⁶¹*Shaw*(n 43).

⁶²*Moot Compromis* (¶ 13).

⁶³*Proceeds of Crime Act* (n 4) .

⁶⁴*Mahanivesh Oils* (n 8); *Rama Raju* (n 7).

⁶⁵*Proceeds of Crime Act 2017* (n 4). Sec. 1(iv).

⁶⁶*Moot Compromis* (¶ 9).

⁶⁷*Proceeds of Crime Act 2017*.

take place in the territory of the country which attempts to assume such jurisdiction.⁶⁸

If an offence takes place completely outside the territory of the State, with no provable effects upon the said State, there is no jurisdiction.⁶⁹

28. The alleged offence of money laundering was committed by routing money from Drenner Advisors to Walhala Industries.⁷⁰ Both of these companies are incorporated in Islander.⁷¹ No effect of money laundering has been felt in Granicus.⁷² Therefore, Granicus does not have extra-territorial jurisdiction and the State Authorities of Granicus cannot investigate the alleged offence of money laundering.

29. Granicus and Islander are only signatories to the UN Convention against Transnational Organised Crimes (UNTOC), and they have not ratified the treaty.⁷³ Therefore, the powers under UNTOC cannot be used.⁷⁴ By investigating, Granicus violated the common law principle of sovereignty.⁷⁵

IV. THE ACTIONS OF STATE AUTHORITIES OF GRANICUS ARE MALA FIDE AND VIOLATE THE RIGHT TO EQUALITY OF MS. DARK AND MR. DARK

30. The only exception to the right to equality is a classification based on an intelligible differentia.⁷⁶ Such a classification should have a rational nexus to the object sought to be achieved.⁷⁷

31. The APPLICANT submits that the action against Walhala Industries by Granician Government Authorities violates the right to equality. The classification did not have

⁶⁸*Mobarik Ali Ahmed v State of Bombay* AIR[1957] S.C. 857, ¶21.

⁶⁹ Id.

⁷⁰*Moot Compromis* (¶9).

⁷¹*Moot Compromis* (¶3).

⁷²*Moot Compromis*

⁷³*Clarification* (¶18).

⁷⁴*Maclaine Watson v. Department of Trade and Industry* [1989] UKHL 3, All ER 523, 531; *Lonrho Exports v. ECGD* [1996] UKHL 4, All ER 673, 687; *State of Bengal v. Kesoram Industries* AIR [2005] S.C. 1646; *Jolly George Vergese v. Bank of Cochin* AIR [1980] S.C. 913.

⁷⁵*Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)* (Merits) [1986] ICJ Rep 392, ¶¶109-16; The United Nations Charter (entered into force 24 October 1945) ¶¶ 313,314.

⁷⁶*State Trading Corporation of India v. Commercial Tax Officer and Ors.*, AIR [1963] S.C. 1811; *Bahadur Singh*(n 2).

⁷⁷*Vide Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) (5) SCC 111, ¶12.

an intelligible differentia [A.] *Arguendo*, even if it did, it does not have a rational nexus to the object [B.].

A. The classification does not have an intelligible differentia

32. 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.⁷⁸ The right to equality is violated when there were other similarly situated who could have been prosecuted for the offenses for which respondents were charged, but were not so prosecuted.⁷⁹ The classification is not reasonable as Walhala and Drenner are similarly situated individuals [i.] and the action amounts to selective prosecution [ii.].

i. Walhala and Drenner are similarly situated individuals

33. Ms Aria Dark's ascension to power was pursuant to backroom discussions of banking systems of Islander and Granicus.⁸⁰ Drenner Advisors is said to be the holding company of Drenner Financials⁸¹, the largest financial services company in Granicus.⁸² According to the investigative news reports, Walhala Industries was associated with Drenner Advisors for laundering money.⁸³ The money was earned by Ms Aria Dark, and her associates in Islander and Granicus Government.⁸⁴ It was routed through Drenner Advisors into Walhala Industries.⁸⁵ In light of such evidence, Walhala and Drenner were a part of common conspiracy to launder money. Therefore, they are similarly situated individuals and no rational classification can be drawn between the two.

ii. The action against Walhala amounts to selective prosecution

34. Selective prosecution violates the right to equal protection.⁸⁶ Selective prosecution is such that it has a discriminatory effect and it was motivated by discriminatory intent.⁸⁷

⁷⁸*Bahadur Singh* (n 2).

⁷⁹*In re: special courts bill v. Unknown*, (1979) (1) SCC 380.

⁸⁰*Moot Compromis* (¶ 4), *Moot Compromis* (¶ 9).

⁸¹*Moot Compromis* (¶ 5).

⁸²*Id.*

⁸³*Moot Compromis* (¶ 9).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶*Wayte v United States* 470 U.S. 598 (1985); *United States v Armstrong* 517 U.S. 456 (1996).

A policy is said to have a discriminatory effect when the decision to prosecute is based on race, religion or arbitrary classification.⁸⁸ As has been established already, the classification was arbitrary and therefore, the action has a discriminatory effect.

35. In the instant case, there existed a common conspiracy between Walhala and Drenner. The investigative reports established the connection between the two industries.⁸⁹ Further, it has been recognised that special attention needs to be paid in cases involving public officials in positions of authority.⁹⁰ If the accusations against such persons remain un-investigated or investigated in a slipshod manner, it gives rise to a reasonable suspicion that the police is in the grips of their influence.⁹¹ In light of such evidence, the decision to not act against Drenner shows discriminatory intent. Therefore, the prosecution policy to act against Walhala only violates the right to equal protection.

B. Arguendo, even if there is an intelligible differentia, there is no rational nexus to the object

36. Islander and Granicus are signatories to Palermo Convention.⁹² It seeks to ensure that the benefits of globalisation are not used to promote crime, and the “uncivil” do not take the advantage of countries with weak institutions.⁹³ The 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.⁹⁴ It is the duty of the government of a state to ensure that public officials of the state do not abuse their power. By virtue of positions of power, in spite of their criminal disposition, they can pervasively enter and influence the political and democratic process.⁹⁵

⁸⁷Id.

⁸⁸*Oyler v Boles* 368 U.S. 448 (1962).

⁸⁹ Law Commission of India, ‘Expedition Investigation and Trial of Criminal Cases Against Influential Public Personalities’ March 2012 Report No. 239.

⁹⁰*Law Commission of India* (n 65); *Virendra Kumar Ohri v UOI* W P (C) No 341/2004.

⁹¹ Id.

⁹²*Moot Compromis* (¶9).

⁹³UN General Assembly, *United Nations Convention against Transnational Organized Crime : resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

⁹⁴*Proceeds of Crime* (n 4).

⁹⁵*Law Commission Report on Public Officials* (n 65).

37. The action against Walhala was based on the investigative reporting which provides evidence against Drenner also.⁹⁶ It also concludes that government officials of Granicus were involved.⁹⁷ Ms Drenner's son and daughter run the Drenner Financials, largest financial companies of Granicus. It was earlier managed by Ms Drenner herself.⁹⁸The holding company of Drenner Financials is alleged to be involved in the offence of money laundering.⁹⁹In light of such evidence, the decision to not act against Drenner does not have rational nexus to the objective of preventing the crime of money laundering.
38. Therefore, the action taken by the State Authorities of Granicus are mala fide and violate the right to equality granted by the Constitution of Granicus.

⁹⁶*Moot Compromis* (¶ 9).

⁹⁷ *Id.*

⁹⁸*Moot Compromis* (¶ 3).

⁹⁹*Moot Compromis* (¶9).

PRAYER

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 did not have the jurisdiction to arrest Mr Dark, to seize Walhala One and Ms Dark's bank account

- II -

The actions of Directorate of Investigation violate the diplomatic immunity of Ms Dark, Mr Dark and Walhala One

- III -

The Directorate of Investigation does not have the power to investigate money laundering outside the territory of Granicus

- IV -

The actions of Granicus 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,
URN 1540
Counsels for the APPLICANT