

## **MOOT PROBLEM – THIRD ROUND**

### **INTERNATIONAL COURT OF JUSTICE**

## **CASE CONCERNING E-WASTE DUMPING BY ELIROS**

(BIRSANO v. ELIROS)

1. Eliros and Birsano are two land locked states, sharing a 900 km border with each other. Eliros was a colonial power till 1950s with Birsano as one of its colonies. Since the independence of Birsano, there have been tensions between both the nations as Birsano has persistently claimed reparations to the loss incurred in the colonial rule of Eliros.
2. Being a developed nation, Eliros is technologically advanced and ensures good amount of investment in research and development. In order to keep up the pace of development, Eliros regularly discards older technology and replaces it with the new one. Resultantly 3 million tonnes of e-waste (including mobile phones, laptops, tablets, toys, digital cameras and other electronic devices) is generated annually.
3. On the other hand Birsano is still a developing nation with not as advanced technology as Eliros. Being blessed with natural resources like coal, and with major dependence on industries and factories, Birsano is also facing the situation of increasing air pollution. Its Ministry of Environment Annual Report 2015 suggests that the industrial pollution in Birsano has become a matter of grave concern since it annually emits 2000 million tonnes of greenhouse gases.
4. River Japez originates in the hills of Eliros and flows 300 km into the territory of Birsano before ending. As a matter of policy, Eliros does not allow private entities to do the business of recycling e-waste. It is therefore taken upon by the state itself. However, due to unprecedented generation of e-waste between 2012-2015, the government of Eliros could not discharge its recycling responsibilities effectively. In 2016, the government decided that out of total 3 million tonnes of e-waste, it will recycle only 2 million tonnes of heavy electronic waste and dump the remaining light electronic waste in the portion of river Japez flowing within state's own boundary. This dumping led to a devastating effect on Birsano's

population that was largely dependent on river Japez for agricultural purposes. A state laboratory in Birzano found that e-waste dumped by Eliros in Japez contained toxic substances such as mercury, lead, cadmium, arsenic and flame retardants.

5. Birzano, lagging in technological advancement, did not have enough facilities in place to recycle the waste coming from Eliros through Japez. It had previously asserted in the United Nations General Assembly that developed nations like Eliros must transfer the green technology (including related to recycling e-waste), to the developing countries as obligated under various international environmental treaties (IETs). Eliros responded to that by saying that IETs are not binding *per se*; but the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995 is a legally binding agreement of the World Trade Organisation (WTO) that gives exclusive patent exploitation rights to the creator of technology unless sold or licensed.
6. After the dumping incident, Birzano decided to take Eliros to the International Court of Justice (ICJ) to seek compensation and claim its right on the transfer of green technology. Both the sides had signed a bilateral treaty in 2002 in which they agreed to refer any bilateral environmental dispute arising between them to the ICJ. However, Eliros claims that because IETs themselves do not put any obligation upon the parties to go to the ICJ for dispute resolution, a bilateral treaty cannot compel it to do so by precluding its inherent freedom in the IETs. If at all, the dispute is to be decided by the ICJ, Birzano has no legal standing since the material was dumped within the sovereign territory of Eliros.
7. When the matter came before the ICJ it framed following questions in order to give a decision-
  - a. Whether ICJ has jurisdiction over the bilateral dispute between Eliros and Birzano?
  - b. As per the law of treaties, whether IETs have no binding character whatsoever?
  - c. Whether dumping e-waste in river Japez by state of Eliros is an act in violation of its obligations under IETs and the Convention on the Law of the Non-navigational Uses of International Watercourses, 1997?
  - d. Whether Birzano has a fair claim to compensation and transfer of green technology from Eliros?
8. Argue, presuming that both the sides are party to the WTO agreements and all major international treaties and resolutions of the United Nations.

