

MEDIATEGURU

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**INTERNATIONAL
UNIVERSITY OF SARAJEVO**

MOOT PROPOSITION

3rd International Arbitration Moot

September 14 - 17, 2023

Objective of the Moot

MediateGuru aims at promoting ADR mechanisms and nurture a strong ADR culture around the globe. In pursuance of our goal, After the grand success of the 1st and 2nd International Arbitration Moot and from request from participants and universities from diverse jurisdictions, MediateGuru is pleased to organise the 3rd International Arbitration Moot 2023.

In furtherance of MediateGuru's initial aim to promote ADR practices, this competition will focus on providing a practical exposure to ADR enthusiast law students on Arbitration.

About 3rd IAM'23

The objective of this Moot Court Competition is to foster a deeper understanding of the complex issues surrounding international water law, interstate arbitration, and the peaceful resolution of transboundary disputes.

The moot proposition, focusing on a hypothetical dispute under the Zephyr Waters Treaty—a parallel to the real-world Indus Waters Treaty—provides participants with a unique opportunity to delve into the nuanced interplay of international law and diplomacy in managing shared water resources.

Through their preparation and participation, students will gain a rich understanding of the legal, technical, and diplomatic dimensions of water disputes. They will grapple with questions of treaty interpretation, equitable water allocation, international arbitration procedures, and the role of neutral experts.

Theme

Theme of 3rd International Arbitration Moot 2023 is "International Public Arbitration"



Background

The disputing parties are two neighbouring nations in the South Asia region: the Democratic Republic of Utopia (akin to India) and the Federal Republic of Arcadia (akin to Pakistan). Despite sharing centuries of intertwined historical and cultural heritage, their modern history post mid-20th century independence has been marked by political tension, territorial disputes, and intermittent conflicts, including several wars.

A crucial element of their shared geography and a source of both cooperation and contention is a system of six rivers, known collectively as the Zephyr River System, paralleling the real-world Indus River System. These rivers, vital for agriculture, industry, and the daily sustenance of millions, crisscross the borders of Utopia and Arcadia, thereby embodying the interconnectedness and interdependence of the two nations.

In 1960, to manage the usage of this crucial water source, Utopia and Arcadia, with mediation from the International Bank for Reconstruction and Development, entered into the Zephyr Waters Treaty. The treaty, akin to the Indus Waters Treaty, set guidelines for the distribution and use of the waters from the Zephyr River System.

The Treaty divided the rivers into two groups: the Eastern Rivers, including Aequor, Pax, and Concordia (akin to Beas, Ravi, and Sutlej), for which Utopia was given unrestricted use, and the Western Rivers, consisting of Unity, Harmonia, and Arcus (akin to Indus, Jhelum, and Chenab), primarily allocated to Arcadia.

Background

To facilitate ongoing cooperation and management of the river system, the Treaty established the Permanent Zephyr Commission, mirroring the real-world Permanent Indus Commission. This body is comprised of representatives from both nations and meets regularly to discuss matters of water management, data sharing, and any potential concerns arising from the Treaty's implementation.

The Zephyr Waters Treaty is considered a beacon of successful bilateral cooperation amidst a complex historical and political context. It is a testament to the commitment of Utopia and Arcadia to peaceful resolution of shared resource usage, ensuring the sustainability and prosperity of their people. The Treaty has withstood the test of time, geopolitical changes, and several crises, and continues to govern the management of the Zephyr River System.

Building on their shared, yet complex history, Utopia and Arcadia have striven to navigate their disputes, particularly regarding natural resources, with diplomacy and dialogue. The signing of the Zephyr Waters Treaty marked a pivotal moment in their relationship, highlighting their mutual recognition of water as a critical shared resource, and the necessity of its equitable and sustainable management.

Background

The Zephyr River System, running through diverse terrains in both nations, has vast ecological, cultural, and economic significance. The Eastern Rivers—Aequor, Pax, and Concordia—flow primarily through Utopia's territories, nourishing its agricultural heartlands and contributing to its water supply. The Western Rivers—Unity, Harmonia, and Arcus—while originating in Utopia, course majorly through Arcadia, forming its economic and agricultural backbone.

The Zephyr Waters Treaty took into account these geographical realities and the dependence of both nations on these waters. It was meticulously designed to foster cooperation and prevent conflict over water usage. Moreover, the treaty stands as one of the world's most significant examples of transboundary water dispute resolution, demonstrating a forward-looking approach towards shared resource management.

Furthermore, it is noteworthy that the treaty has remained in effect despite the challenging bilateral relationship between Utopia and Arcadia. This includes three major wars and numerous military standoffs, alongside continuing political tensions. It stands as a testament to the strength and durability of the agreement and the recognition by both nations of the critical importance of the Zephyr River System.

Background

The Permanent Zephyr Commission has played a significant role in maintaining open lines of communication and cooperation. Regular meetings allow for continuous dialogue on various technical matters related to the rivers' management and provide a forum for raising and addressing any concerns. This enduring cooperation under the Zephyr Waters Treaty continues even as both nations navigate their complex and evolving relationship.

Through the ups and downs of their relationship, Utopia and Arcadia continue to rely on the Zephyr Waters Treaty to govern their shared waters. The importance of these waters for both nations—whether for agriculture, industry, energy generation, or daily life—cannot be overstated. The Zephyr Waters Treaty is not merely an agreement between nations; it is a pact for survival, prosperity, and a commitment to peaceful coexistence.

Statement of Facts

Introduction of Dispute: In the spring of 2023, an alarming climatic phenomenon hit the South Asia region. A severe drought, the likes of which had not been seen for over a century, took hold, and its devastating effects were felt most intensely across the lands of the Democratic Republic of Utopia and the Federal Republic of Arcadia. The drought resulted in a drastic reduction in the water levels of the Zephyr River System, a crucial source of water for both nations.

Impact on Utopia: In Utopia, a country where a significant percentage of the economy relies on agriculture, the drought proved to be catastrophic. The Eastern Rivers—Aequor, Pax, and Concordia—saw their lowest water levels in decades, leading to widespread crop failure. This situation led to considerable socio-economic distress among Utopia's predominantly agrarian population. In addition, Utopia's water reservoirs, reliant on the regular inflow from the Eastern Rivers, suffered a significant shortfall, which had further implications for the country's water supply for domestic and industrial purposes.

Impact on Arcadia: Arcadia, a country heavily reliant on the Western Rivers—Unity, Harmonia, and Arcus—for both its domestic water supplies and its agricultural sector, faced a similar crisis. As the drought wore on, water scarcity issues began to intensify, affecting millions of Arcadians who depended on these rivers for their livelihoods. The country's agricultural heartlands experienced significant crop losses, and concerns about food security started to emerge.

Statement of Facts

Utopia's Response: In response to this unprecedented crisis, the government of Utopia decided to construct a series of temporary diversion channels and barriers on the Western Rivers, in the area where these rivers flowed through Utopian territory before entering Arcadia. These structures were aimed at diverting a part of the additional water flow to replenish Utopia's severely depleted reservoirs and to provide immediate relief to its agricultural and domestic sectors.

Arcadia's Reaction: Arcadia first became aware of Utopia's diversion projects in early 2024, through satellite imagery analysis conducted by its national space agency. The images showed extensive construction activity along the Western Rivers in Utopian territory. Concerned about the potential implications of these diversions on its own water supply, particularly given the ongoing drought, the government of Arcadia immediately sought an official clarification from Utopia, initiating what would soon become a complex and contentious dispute.

Utopia's Clarification: Responding to Arcadia's inquiry, Utopia explained that its actions were a temporary and necessary measure taken to alleviate the effects of the extreme drought. It highlighted that these diversion projects did not violate the Zephyr Waters Treaty as they were being conducted on Utopian territory, and were not intended to permanently alter the course or the flow of the Western Rivers.

Statement of Facts

Arcadia's Objection: Despite Utopia's explanation, Arcadia expressed strong reservations about the potential impact of these diversion projects. They claimed that any alteration of the natural flow of the Western Rivers could significantly impact Arcadian agriculture and water supply, exacerbating their already precarious situation due to the ongoing drought.

Request to the Permanent Zephyr Commission: In light of the ongoing discussions and disagreements, Arcadia formally approached the Permanent Zephyr Commission, asking for an urgent intervention to assess Utopia's diversion projects. Arcadia proposed that an on-site inspection should be carried out by a team comprising members from both Utopia and Arcadia under the Commission's oversight.

Inspection by the Commission: In response to Arcadia's request, the Commission organized an on-site inspection in mid-2024. Both countries were represented in this inspection team, which was tasked to assess the potential impact of the diversion projects on the Western Rivers and their compliance with the Zephyr Waters Treaty.

The Commission's Findings: After thorough inspection and assessment, the Commission concluded that while Utopia's diversion projects were indeed temporary in nature, their potential long-term impact on the flow of the Western Rivers could not be conclusively ascertained. The Commission recommended a more detailed and comprehensive study to be conducted by neutral experts in order to fully understand the potential implications.

Statement of Facts

Arcadia's Dismay and Continued Construction: Despite the Commission's findings and recommendations, Arcadia expressed frustration and discontent with the situation. Arcadia was particularly aggrieved by the fact that Utopia had continued construction of its diversion projects during the investigation period. In Arcadia's view, this was not in the spirit of the Zephyr Waters Treaty or the bilateral cooperation it intended to foster.

Utopia's Defense: Utopia, on the other hand, maintained that its actions were within its rights as per the Treaty, stressing the exceptional circumstances posed by the drought. Utopia asserted that the diversion projects were purely temporary measures designed to alleviate a severe crisis, and would not permanently impact the flow of the Western Rivers.

The Neutral Expert Assessment: Taking into account the Commission's recommendation and the escalating tensions between Utopia and Arcadia, a Neutral Expert was appointed in late 2024 to conduct an exhaustive assessment of Utopia's diversion projects. This Neutral Expert, a highly respected hydrologist with experience in international water disputes, was agreed upon by both nations.

The Expert's Investigation: The Neutral Expert carried out an extensive investigation over a period of six months. The investigation included on-site inspections, consultations with technical experts from both nations, a thorough review of the Zephyr Waters Treaty, and comprehensive

Statement of Facts

assessments of environmental, ecological, and hydrological reports related to the Western Rivers.

The Neutral Expert's Report: In mid-2025, the Neutral Expert released his report (Annexure 2). The report acknowledged the severity of the drought situation and Utopia's need to safeguard its citizens and agriculture. However, it also pointed out that Utopia's diversion projects, while temporary in nature, could potentially have a significant impact on the downstream flow of the Western Rivers, thereby adversely affecting Arcadia, especially given its high dependence on these waters. The Expert suggested that both parties engage in dialogue to reach a mutually beneficial and equitable solution.

Arcadia's Reaction to the Report: The Neutral Expert's report confirmed Arcadia's concerns regarding the potential impact of Utopia's diversion projects. Arcadia used the report as a basis to demand an immediate halt to all construction and removal of the diversion structures built by Utopia on the Western Rivers.

Utopia's Response: Utopia responded by arguing that the Neutral Expert's report did not categorically state that the diversion projects were in violation of the Zephyr Waters Treaty. They maintained that the projects were a necessary response to the drought and were in line with the Treaty's provisions, allowing Utopia to utilize the Western Rivers within its territory under exceptional circumstances.

Statement of Facts

Establishment of the Court of Arbitration: In accordance with the provisions of the Zephyr Waters Treaty, a Court of Arbitration was established. The Court is composed of 3 members, including one appointed by Utopia, one by Arcadia, and one neutral President agreed upon by both nations.

Terms of Reference for the Court of Arbitration: The Court of Arbitration is tasked with deciding whether Utopia's diversion projects are in violation of the Zephyr Waters Treaty. The Court must determine what, if any, remedial measures should be taken if such a violation is found. Additionally, the Court is to consider whether Arcadia has suffered harm as a result of these projects and, if such harm is established, suggest appropriate reparations.

Preparation for the Proceedings of the Court of Arbitration: The Court of Arbitration is in the process of preparing for extensive proceedings. Both Utopia and Arcadia are currently finalizing their arguments, gathering evidence, and interpreting the Zephyr Waters Treaty's legal framework. The countries will be provided with the opportunity to present their respective cases in detail.

Anticipation of the Court's Decision: As of early 2027, the Court of Arbitration is set to commence its proceedings. The dispute over the Zephyr River System, initially triggered by a response to an extreme drought, has now emerged as a significant test of the Zephyr Waters Treaty's robustness, the cooperation between Utopia and Arcadia, and the governance of shared water resources.

Statement of Facts

Bilateral Negotiations: Following the Neutral Expert's suggestion, Utopia and Arcadia entered a series of bilateral negotiations throughout late 2025. However, despite several rounds of talks, the two nations failed to reach a mutually acceptable solution. While Utopia insisted on its right to maintain the diversion projects, Arcadia remained steadfast in its demand for their removal.

Escalation of the Dispute: The ongoing disagreement and the lack of resolution through bilateral negotiations led to a significant escalation of the dispute. Tensions flared between the two nations, with widespread media coverage and public sentiment fueling the situation. The dispute over the Western Rivers became a significant issue of national concern in both Utopia and Arcadia.

Invocation of Arbitration: Given the unsuccessful bilateral negotiations and increasing tensions, in early 2026, Arcadia invoked the arbitration clause of the Zephyr Waters Treaty. Arcadia formally requested the establishment of a Court of Arbitration to resolve the dispute, marking a significant turning point in the unfolding crisis over the Zephyr River System.

Utopia's Agreement to Arbitration: Despite maintaining its stance that the diversion projects were within its rights under the Zephyr Waters Treaty, Utopia agreed to Arcadia's request for arbitration. Utopia recognized the necessity for a definitive resolution given the escalating tensions and the potential implications of the dispute.

Rules and Procedures

- 1. Composition of the Court of Arbitration:** The Court of Arbitration shall consist of three members, one appointed by each Party and a President chosen jointly by the Parties.
- 2. Procedure for Appointment of Arbitrators:** Each Party shall appoint its sole arbitrator within 30 days from the date of commencement of the arbitration. The arbitrators shall jointly select the President of the Court of Arbitration within 60 days from the date of commencement of the arbitration.
- 3. Language:** The official and working language of the arbitration shall be English. All documents, evidence, and communications shall be submitted in English. Interpreters may be used, if necessary.
- 4. Commencement of Proceedings:** The arbitration shall commence on the date when the notice invoking arbitration, sent by the Claimant, is received by the Respondent.
- 5. Statement of Claim and Defense:** The Claimant shall present a Statement of Claim outlining the facts and legal basis for the claim within 90 days from the commencement of arbitration. The Respondent shall then present its Statement of Defense within 90 days from the receipt of the Statement of Claim.
- 6. Counterclaims:** Any Counterclaims by the Respondent must be included in its Statement of Defense.
- 7. Hearing:** The Court of Arbitration shall hold a hearing for the oral argument, which shall be conducted in an orderly, expeditious, and efficient manner. The Parties shall agree on the date for the hearing.
- 8. Order of Pleadings at the Hearing:** The Claimant shall present its argument first, followed by the Respondent. The Claimant will then have the right to reply, followed by the Respondent's rejoinder.

Relevant Legal Principles and Authorities

1. ***The Zephyr Waters Treaty (ZWT)***: The most directly relevant legal authority for this moot arbitration is the ZWT itself. This treaty outlines the distribution of the Western and Eastern Rivers between Utopia and Arcadia, and contains several provisions on dispute resolution mechanisms, data sharing, and permissible uses of water.
2. ***International Water Law***: Central principles of international water law that might be pertinent include equitable and reasonable utilization, the obligation not to cause significant harm, and the duty to cooperate in the management of shared watercourses. The United Nations Convention on the Law of Non-Navigational Uses of International Watercourses, while not universally ratified, outlines these principles and may be used as a guide.
3. ***Customary International Law***: This refers to the legal principles derived from the consistent conduct of States acting out of a sense of legal obligation. Relevant customary principles could include the duty of States not to use their territory in a way that harms other States, and the duty to settle disputes peacefully.
4. ***Case Law***: Prior arbitral or judicial decisions dealing with similar disputes may provide persuasive authority. For instance, the decision of the Permanent Court of International Justice in the River Oder case, or more recent decisions by the International Court of Justice (ICJ) such as the Gabčíkovo–Nagymaros Project case or the Pulp Mills case, can offer insights on how international tribunals have interpreted and applied the principles of international water law.
5. ***Secondary Sources***: In addition to primary legal materials like treaties and case law, secondary sources, such as academic articles and expert commentary on the principles of international water law, the ZWT, and related topics, might provide valuable insights and perspectives.

Annexure 1

AGREEMENT TO ARBITRATE UNDER ICC RULES

THIS AGREEMENT is made this day of 1st November of 2027, by and between the Governments of Utopia and Arcadia (hereinafter "the Parties").

WHEREAS, the Parties are party to the Zephyr Waters Treaty (hereinafter "the Treaty"), governing the use and conservation of the water resources of the Zephyr River System;

WHEREAS, a dispute has arisen between the Parties regarding the interpretation and application of the Treaty (hereinafter "the Dispute");

WHEREAS, the Parties have been unable to resolve the Dispute through consultation and negotiation;

WHEREAS, the Parties desire to resolve the Dispute by arbitration in accordance with the International Chamber of Commerce (ICC) Rules of Arbitration;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Agreement to Arbitrate: The Parties hereby agree to submit the Dispute to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce (ICC).

2. Arbitral Tribunal: The arbitral tribunal shall consist of three arbitrators, one to be appointed by each Party, and the third, who will serve as the presiding arbitrator, to be appointed by agreement of the two party-appointed arbitrators.

Annexure 1

3. *Applicable Law:* The arbitral tribunal shall apply the provisions of the Treaty, other international treaties to which both Parties are a party, customary international law, and general principles of law.

4. *Language of Arbitration:* The language of the arbitration shall be English.

5 *Final and Binding Award:* The award of the arbitral tribunal shall be final and binding on the Parties, and the Parties agree to carry out the award without delay.

6. *Costs:* The costs of the arbitration, including the fees and expenses of the arbitrators, shall be borne by the Parties as determined by the arbitral tribunal in its award.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

FOR THE GOVERNMENT OF UTOPIA:

K. Ramakrishnan

Mr. K. Ramakrishnan,
Hon. External Minister of Utopia

FOR THE GOVERNMENT OF ARCADIA:

Sahiwal Bhutto

(Mr. Sahiwal Bhutto,
Hon. Foreign Minister of Arcadia

Annexure 2

REPORT BY NEUTRAL EXPERT

Date: 01/06/2025

To: The Governments of Utopia and Arcadia

1. Introduction

This report is issued in accordance with the procedure outlined in Article IX of the Zephyr Waters Treaty, following the dispute raised by Arcadia in respect of Utopia's construction of the Neptune Hydroelectric Project and Poseidon Irrigation Scheme on the River Cronus.

2. Factual Background

From the evidence and data provided by both Parties, my inspection of the sites, and consultations with relevant experts, I make the following factual findings:

2.1 Utopia, in line with its plans to bolster its clean energy capacity and meet its agricultural demands, commenced the construction of the Neptune Hydroelectric Project and Poseidon Irrigation Scheme on the Cronus River in the Western Zephyr basin.

2.2 Arcadia expressed concerns over the potential impact of these projects on the water flow to its territory, citing potential violations of the Zephyr Waters Treaty.

Annexure 2

2.3 I conducted an inspection of the projects and the relevant river basins, in accordance with the procedure laid out under Article VII of the Zephyr Waters Treaty.

3. Findings

3.1 Based on my examination, it appears that the Poseidon Irrigation Scheme has been designed to divert water primarily for irrigational purposes, with limited provision for returning the water back to the river.

3.2 As per the data provided by the Utopian government, the Neptune Hydroelectric Project is not intended to materially affect the volume of water flowing into Arcadia. However, it could influence the timing and intensity of the flows.

3.3 Both projects have been designed with safeguards aiming to minimize environmental impact and to adhere to the principles of the Zephyr Waters Treaty.

4. Recommendations

4.1 In light of these findings, it is recommended that Utopia and Arcadia initiate a detailed technical consultation process to ensure that the Poseidon Irrigation Scheme and Neptune Hydroelectric Project comply with the provisions of the Zephyr Waters Treaty.

4.2 Utopia should consider modifications to the Poseidon Irrigation Scheme to ensure that the diversion of water does not materially impact the water flow to Arcadia, in compliance with the principles of the Treaty.

Annexure 2

4.3 Further, both Parties should strengthen their data-sharing mechanisms to build mutual confidence and prevent similar disputes in the future.

Please note that these findings and recommendations are based on the technical and factual aspects of the dispute. Any legal issues arising from these findings should be addressed through the appropriate mechanisms under the Zephyr Waters Treaty or international law.

Sincerely,

Alex Roberts

Mr. Alex Roberts
Neutral Expert

Author of the Moot Proposition

Mr. Param Bhamra
(Advocate and Founding Partner at MediateGuru)

Academic Coordinator of the Moot

Please note that any attempt to contact the drafters of the negotiation problem, in relation to the problem of this competition, would lead to immediate disqualification.



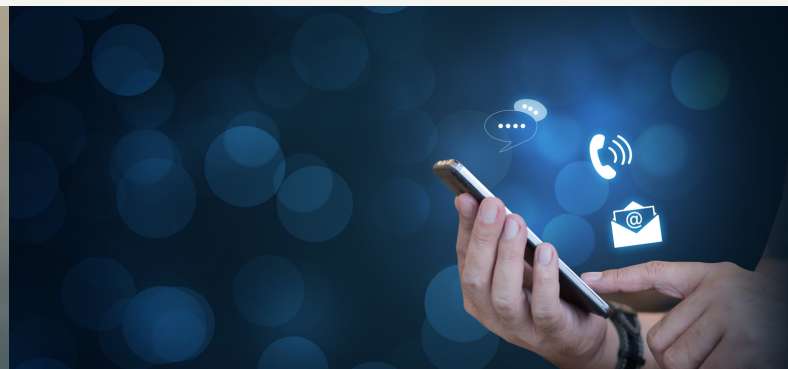
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ABOUT MEDIATEGURU

In the era of emerging legal disputes due to high population which within its purview has different demographics, not all people can afford the high cost of going to court to seek justice or wait for years to get justice at the constant burden to monetary terms and time. Here we come to assist you.

We intent to bridge the gap between the classes in a community and the mediators, provide a linkage between the same with an aim to provide social awareness.

Apart from this, we organise various conferences, webinars, landmark Mediation, Negotiations and Arbitration competitions.



CONTACT US

In case of any query please contact:

Kindly refer to below mentioned (in this order):

- Ms. Garima Rana (Event Coordinator)

+91 8800 474 226

garima@mediateguru.com

- Mr. Aditya Mathur

+91 8447 919 954

adimathur07@gmail.com

Write to us at admin@mediateguru.com

or reach out to us on our Social Media Handles



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