
10TH UPES DR. PARAS DIWAN MEMORIAL INTERNATIONAL
ENERGY LAW MOOT COURT COMPETITION

3 – 5 APRIL 2020

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MOOT PROPOSITION¹

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REPUBLIC OF ABVILLIANA

1. Abvilliana is an island country, located in the middle of the Eastern Mediterranean Sea and surrounded by countries namely, the Republic of Todleson, Jinkara, Libya, Norkas, Egyptiana, Israel, Norkas & Luskas, all of which are party to the United Nations Charter (See Map 1). Abvilliana, with its capital Nicosiam, is a Unitary Presidential Republic State, established under the Treaty of Establishment signed on 17th February 1959 signed between Britain, Jinkara, and the Republic of Todleson and is recognized as a State by all the UN member States including the Republic of Todleson.
2. Abvilliana is the third most-populated country in the Eastern Mediterranean region with its cultural, social, and geographical features similar to that of Cyprus. After a recent discovery of gigantic oil resources, Abvilliana has emerged as a regional power. However, it is still endeavouring to overcome many of its social, economic and political problems.
3. Abvilliana, spanned across an area of 9250 square kilometres, has had a distinct geopolitical significance because of its centrality in the middle east oil transport routes. In the 19th Century, Abvilliana had been a strategically located colony for the Great Britain which became a key location for the Eastern Mediterranean Sea routes after the 1950s. Its strategic location has not only served to flag security concerns but also constituted as a means for maintaining stability. Countries such as Todleson, Jinkara, Israel have been struggling, over the years, to take control over Abvilliana in order to utilize the energy resources of Central Asia and expand the trade routes to the Eastern Mediterranean via Todleson. These countries have been striving to build a lasting peace in the Middle East in order to establish economic and commercial cooperation in the region and build a free trade zone between the European Union (EU) and countries in the region.

4. Abvilliana is an island as a whole but is divided into two self-proclaimed independent countries, i.e. the Republic of Abvilliana (**ROA**) and the Todleson Republic of Abvilliana (**TRA**) as a consequence of a civil war on the basis of ethnical conflict between the Greek Abvillianese and Todleson Abvillianese.
5. The ROA, populated by Greek Abvillianese, is internationally recognised as an independent State, whereas the TRA, populated by Todleson Abvillianese, is not internationally recognised and is merely regarded as a dummy State controlled by the Republic of Todleson and is governed by a political leader who is elected by the people of the TRA.
6. The ROA is a developing country with a rising demand for energy both renewable and non-renewable. Further, the ROA to exploit the global oil and gas deficit extracts hydrocarbons and oil from its territorial and maritime boundaries.
7. The energy sector of Abvilliana is rapidly transforming due to the new discoveries of oil fields and gas deposits in its territory and therefore an increased number of drilling expeditions have been planned for the year 2020. As the international multinational companies are investing heavily in the energy sector of Eastern Mediterranean, Abvilliana is well poised to shift from exploration to production and consequently set to become a key energy hub in the region.



Figure: Map 1

REPUBLIC OF TODLESON

8. The Republic of Todleson is the largest country having its capital at Mondus with a strong economy and a military force to be reckoned with. It is one of the largest oil suppliers in the world and is currently running low on its oil resources. Therefore, it is intending to exploit the oil resources from TRA and making investments in other countries with ample of oil resources. The country has created new ports and pipelines for better connectivity, a move which has been warmly welcomed by Jinkara, Norkas and ROA.
9. The Republic of Todleson has had a quite diversified natural energy resources ranging from, hard coal, lignite, asphaltite, oil, natural gas, hydro, geothermal, wood, animal and plant wastes, solar to secondary energy resources such as coke and briquettes which are produced and consumed. Albeit presently, the Republic of Todleson has become an energy importing country and more than half of its energy requirement is being met by imports. Oil has the biggest share in the country's total primary energy consumption.

Due to the diversification efforts of energy sources, consumption of newly discovered natural gas has been growing rapidly.

BACKGROUND

10. The history of external domination has had a tremendous impact on all of Abvillianese. Despite the multiplicity of the island's historical ownership & the nationalist waves divided the island in favour of two major groups: a Greek (80%) and a Todleson (20%). These two communities are scattered all over Abvilliana and are united geographically without any mono-ethnic communities. However, they are politically and socially divided which has led to many conflicts between the two groups over the time.
11. Abvilliana was conquered by the Ottoman Empire in 1571. During the Ottoman rule, the indigenous Greek population was proliferated with approximately twenty per cent Todleson. The Ottoman government lasted until 1878 without witnessing any overt conflict between the Greek and Todleson groups.
12. Rather the feudal structure and serfdom were abolished by the Ottoman Empire. After the recognition of its authority by the Ottomans, the Greek Orthodox Church regulated social, educational and religious affairs of the Greek Abvillianese.
13. In 1878, the Ottomans transferred its rule to the British due to an ostensible Russian threat. Therefore after the Ottoman rule, the British ruled the island and arguably sowed the seeds of conflict between the two communities. Subsequently, the British in 1914 unilaterally annexed Abvilliana.
14. The Republic of Todleson had accepted British sovereignty over Abvilliana with the Treaty of Lausanne in 1923 which had then led to the Greek Abvillianese movement with the objective to end the British rule over the island and to establish a union with Jinkara. On the other hand, the Todleson community pursued the taksim thesis and

aligned themselves with the British government and established their own organization to fight with the Greek community. This conflict between the two communities resulted in hundreds of deaths until a ceasefire in the year 1958.

15. The Todleson community had lived in fear since 1878, when the Ottomans had transferred the rule of the island to the British which resulted in relinquishing their rights to the Republic of Todleson. The rising struggle of the Greek community aiming to achieve dominance further accelerated the orientation of Todleson Community towards the Republic of Todleson.
16. In 1960, Britain eventually relinquished control of Abvilliana to the Todleson Abvillianese and the Greek Abvillianese with the Treaty of Establishment in the year 1959 while maintaining two military bases: Akrotiri and Dhekelia. Further negotiations were held between secondary actors of the conflict i.e. Britain, Jinkara, and the Republic of Todleson who proposed a new formula of creating an independent Abvilliana where both communities would share the community offices and would vote for their representatives. Besides the Treaty of Establishment, the Treaty of Guarantee and the Treaty of Alliance were signed between these three parties with the objective to protect the territory of the new State of Abvilliana. Consequently, in 1960, the independent Republic of Abvilliana was established.

THE INVASION

17. IN 1963, inter-communal violence erupted in Abvilliana which resulted in deaths of hundreds of Greeks and Todleson's and displacement of thousands of citizens of Abvilliana. In 1964, the United Nations Security Council sent UN peacekeeping troops to Abvilliana and the conflicting parties laid down a buffer zone called the Green Line.. Although a number of appeals were made to the guarantor powers to intervene, prior to

1974, no such direct intervention was made. The Republic of Todleson's intention to intervene in 1967 had been aborted by the United States.

18. The situation in Abvilliana was tense and volatile because of disagreements between Greek and Todleson community group leadership on issues pertaining to grass-root level administration. The minor incidents of violence escalated into intercommunal clashes, fuelled by outside interference which further led to bombing by the Republic of Todleson air force on Greek Community villages and other civilian targets using napalm.
19. The Republic of Todleson was displeased due to the increased presence of U.N peacekeeping troops in Abvilliana and started advocating for partition of Abvilliana and also armed the Todleson Abvillianese. The Republic of Todleson invaded the northern portion of the Republic of Abvilliana in response to a military coup taking place on the island which was aimed to annex the island to Jinkara. A division of Greek Community troops was sent to Abvilliana to defend against an invasion by the Republic of Todleson. The Republic of Todleson claimed that this was an intervention in accordance to Treaty of Guarantee.
20. The invasion consisted of its two major offensives and involved air, land and sea combat operations. The Greek Abvillianese armed forces attempted to resist and respond to the attacks as part of a coordinated defence plan which proved to be inadequate to deal with the forces that the Republic of Todleson had mustered. However, the invasion ended with Todleson Abvillianese holding only 1/3rd of the island.
21. There was strong international condemnation against the Republic of Todleson and attempts were made to avoid further war between the countries. The Republic of Todleson desisted from further military intervention. However, the crisis marked the

beginning of a de facto division of the island as the Todleson Abvillianese (TRA), encouraged by the Republic of Todleson, implementing a policy of systematic self-segregation by setting up enclaves and unilateral withdrawal from the government, parliament and all state institutions.

DISPUTE REGARDING EXPLORATION OF OIL AND NATURAL GAS

22. In 2011, An Energy and Technology Company XYZ ltd., discovered hydrocarbon at the coast of Abvilliana in East Mediterranean. This discovery was considered as the world's largest discovery of hydrocarbons. Subsequently, in August 2014, the Greek Abvillianese government signed a contract with a US firm named as Noble Energy to launch exploration activities in TRA Exclusive Economic Zone (**EEZ**) region. The discovery of hydrocarbon by the ROA increased the tension between the north and south Abvillianese on more fundamental disagreements such as sovereignty and the form of the State. The Todleson Abvillianese and the Republic of Todleson proposed that both the communities have the right to explore these newly discovered resources whereas the Greek Abvillianese stated that the Todleson community can share wealth from natural resources only if there is a settlement arrived between them.
23. The hydrocarbon discoveries at the offshore of Abvilliana has led to a paradigm shift in the conflict from an identity-based one to a resource-based dispute. However, the parties are at stalemate in the hydrocarbon controversy due to the insufficient effect of the resources on the market. Italy and France have already established their new subsidiary companies in Abvilliana for the purpose of exploring oil and natural gases and earn a huge profit from the area The ROA considering the potential economic benefits and the enrichment of natural resources decided to enter into an agreement with these companies.

24. When the ROA started exploring for hydrocarbons and oil, the Todleson Abvillianese in the north of the island strongly objected to it. They feared any potential revenue from oil and gas will be solely for the Greek side of the island. The Republic of Todleson claimed that the Todleson Abvillianese have not been represented in the ROA's drilling agreements and warned that if ROA does not stop they will start their own exploration schemes. The ROA then responded by stating that the drilling operations will continue as it is acting well within its rights provided under the U.N. Convention on the Law of Sea, 1958 (**UNCLOS**) to which the Republic of Todleson is not a signatory. Pertinently, in 2016 the TRA also started drilling for oil and hydrocarbons. Subsequently in 2017, an Italian company (**CHOAM**) and a France company (**Bell Oil and Petroleum**) announced a "promising gas discovery" project at the coast of ROA, named Calypso. Both Italy and France signed a bilateral investment treaty (**BIT**) with ROA to regulate the norms of the trade and for the promotion and reciprocal protection of investments. The BIT also bears a standard arbitration clause stating that all the disputes arising thereof would be dealt through arbitration.

25. Terms of the Arbitration Agreement under the BIT are as follows:

By submitting this Request for Arbitration, the parties accept to arbitrate investment disputes, which is expressed in Article 9 of the Agreement between Italy and France with Republic of Abvilliana as set forth below:

Article 9 - Settlement of Disputes Between one Contracting Party and Nationals or Companies of the other Contracting Party :

“Disputes between one Contracting Party and a national of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of the latter, shall at the request of the national concerned be submitted to the International Centre for Settlement of Investment

Disputes, for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States. ”

The dispute settlement articles, as well as the entire Italy-Abvilliana and France-Abvilliana BIT, are identical.

26. The Government of the Todleson Community in Mondus consistently warned these multinational oil companies against drilling for offshore natural gas around Abvilliana as they stated that the EEZ belongs to the Republic of Todleson equally and thus they are equally entitled to have a say in the BIT. Despite these warnings by the Republic of Todleson, the two countries dispatched their drilling ships into the sea for drilling and extraction of oil and natural gas as per the contracts.
27. Meanwhile, the ROA was planning another drilling activity for the purpose of ensuring regional economic cooperation. In December 2018, an organisation comprising of countries Egyptiana, Israel, Abvilliana, Jinkara, Italy, Jordan and Palestine, known as the *Eastern Mediterranean Gas Forum*, was constituted which aimed to establish a regional gas market by connecting the major oil and gas fields named: (a) Abvilliana’ Glaucus, (b) Aphrodite and Calypso fields, (c) Israel’s Leviathan Oil, and (d) Egyptiana’s Zohr gas field.
28. The members of the *Eastern Mediterranean Gas Forum* intended to capitalise on the 70 trillion cubic feet of natural gas worth around \$700 billion in the Eastern Mediterranean Region. In pursuance of this regional agreement, the ROA signed accords with Luskas, Egyptiana and Israel to delineate its Exclusive Economic Zone (EEZ) in the region according to the provisions of the UNCLOS. Egyptiana and Israel heavily invested in oil exploration activities in the region.
29. Under the aegis of the *Eastern Mediterranean Gas Forum* a pilot project, namely the *Eastern Mediterranean Pipeline project or EastMed*, a 1900 km natural gas pipeline

connecting the gas reserves of Eastern Mediterranean to Europe via Jinkara was launched. It is expected that the \$5.9 billion project, when completed, will have the capacity to transport 10 billion cubic metres per year (bcm/y) of gas to Jinkara and Italy and other South-east European countries. The project is being developed by IGI Poseidon, which is jointly owned by the Public Gas Corporation of Jinkara and Edison International Holding.

30. The *East Med pipeline project* will improve Europe's energy security by diversifying its routes and providing direct interconnection to the production fields. It will provide an opportunity for ROA to merge with the European gas system, which will further enhance gas trading in the south-east European region. This pipeline could, in the future, provide supply up to 10% of Europe's gas needs.
31. The project will also support the economic development of ROA and Jinkara by providing a stable market for gas exports. It will enable the development of gas trading hubs in Jinkara and Italy and facilitate gas trading in south-east Europe.
32. Meanwhile, in February 2018, the Republic of Todleson warships blocked the passage of a drillship, the Saipem 12000, commissioned by **CHOAM**, which was licensed by the ROA to drill in its allocated area which triggered a diplomatic standoff leading to tensions in the region over competing claims for offshore resources. Further, Republic of Todleson has threatened to follow suit with any other exploratory vessels.
33. According to the Republic of Todleson, the unilateral agreements made between ROA and the regional countries in the form of investment agreements is an attempt to 'steal' the rights of Todleson's Abvillianese and is also without any legal sanctity.
34. In February 2019, the Republic of Todleson, to establish its rights over the natural resources and in order to take revenge and to enjoy its equivalent right over the natural

- resources, sent its first drill ship named '**Faith**' to the west of Abvilliana. The drill ship was guarded and protected by the Todleson's Navy and entered into Abvilliana's EEZ.
35. Subsequently, in June 2019 the ROA issued arrest warrants against the crew of the Faith and auxiliary vessels which were anchored close to its coast for allegedly invading its territory where it has rights to explore for oil and gas. The ROA further in order to stop the activities of the Republic of Todleson requested the support of EU. In response to the same, the EU sent a formal statement to the Republic of Todleson stating that the drilling operations undertaken by the Republic of Todleson is "illegal" and that the bloc's stands ready to respond appropriately.
36. The Republic of Todleson in complete failure of the EU issued compliance sent another drillship named '**Yavuz**' for drilling in the north-east region of Abvilliana. The Republic of Todleson's Yavuz started carrying out its drilling activities in the waters of southern Abvilliana, where Greek Abvillianese authorities (ROA) had already awarded exploration rights to the Italian and French companies under the BIT.
37. The Energy Minister of the Republic of Todleson stated that the Republic of Todleson will not stop its drilling operations as it is operating in its own continental shelf and in areas where the Republic of Todleson has licensed its main exploration company (**Todleson Petrolleri**) for drilling. On the contrary, the ROA alleged that the Republic of Todleson's action of sending a drill ship to an area near to Nicosiam for offshore hydrocarbons exploration counts for violations of its sovereign rights.
38. Pertinently the Republic of Todleson, even after much deliberations by the EU, continued with its drilling activities through October 2019 which gravely agitated the EU.
39. In result thereof, the EU agreed to draw up a list of economic sanctions against the Republic of Todleson's oil and gas drilling activities in the waters of Abvilliana. The

EU also released a statement inter alia stating that ‘*This new provocation is exemplary of the Republic of Todleson’s defiance of the European Union’s, and the international community’s, repeated calls to cease its illegal activities*’. The EU statement also demanded the Republic of Todleson to respect the sovereign rights of the ROA with respect to explore and exploit its natural resources within its maritime zones.

40. The internationally recognized Greek Abvillianese government (ROA) and the EU sticking sides have accused the Republic of Todleson of violating the Abvilliana’s maritime EEZ by sending ships for drilling off the divided island.

41. The Republic of Todleson on the other hand contends that it is operating in waters coming under in its own continental shelf or areas where Todleson’s Abvillianese have equal and undeniable rights. Pertinently, the Republic of Todleson also signed a Memorandum of Understanding (**MoU**) with Libya in January 2020 in order to stop the project of *Eastern Mediterranean Gas Forum*.

TODLESON’S MEMORANDUM OF UNDERSTANDING WITH LIBYA

42. The *Eastern Mediterranean Gas Forum*, which sought to create a regional market by connecting the important gas fields of countries such as an Abvilliana’s Glaucus, Aphrodite and Calypso gas fields, Israel’s Leviathan gas field and Egypt’s Zohr gas field through a multi-billion dollar pipeline, deliberately saw to the exclusion of the Republic of Todleson. While the route of the proposed pipeline goes through the Republic of Todleson EEZs, Mondus (Todleson’s Capital) was not consulted on the implementation of the project. This action angered the Republic of Todleson and thus developed its own plan to block the Eastern Mediterranean project by reaching an understanding with Govt. of Libya, a UN Member State.

43. In furtherance to the above, the Republic of Todleson entered into a MoU with Libya, a North African country, having a coastline on the Mediterranean Sea. By virtue of this

MoU, the Republic of Todleson aimed to create an exclusive economic zone from its southern Mediterranean shore to Libya's North-East Coast, as is evident from the picture below (Figure 2).

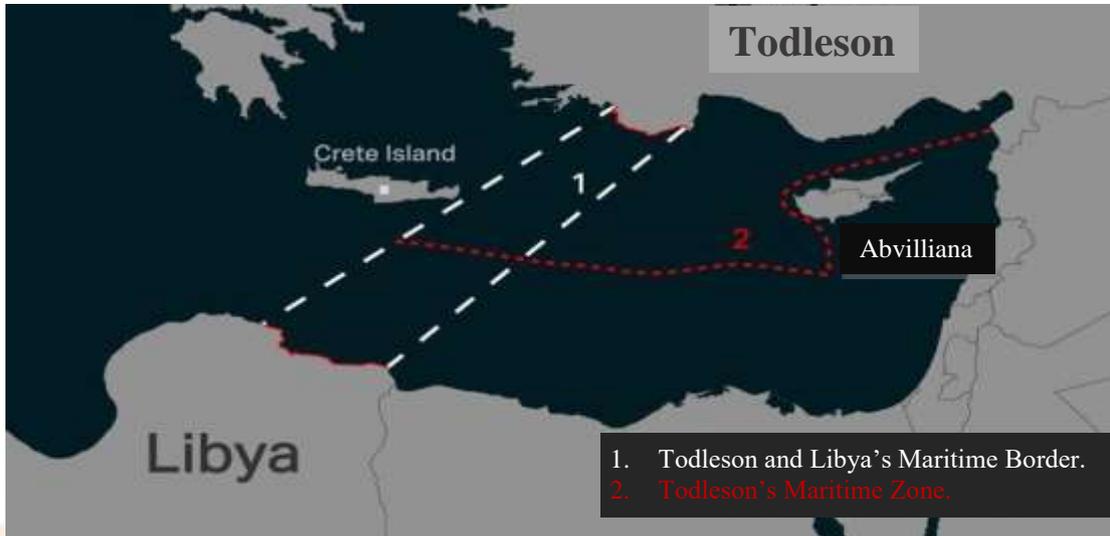


Figure: 2

44. The Republic of Todleson contended that the deal with Libya is aimed to protect its rights under international law and it is further ready and willing to sign similar deals with other States on the basis of 'fair sharing' of resources. The signing of MoU between the Republic of Todleson and Libya meant that the project for a proposed gas pipeline between the members of the *Eastern Mediterranean Gas Forum* effectively came to a halt, since the Republic of Todleson had created its own Exclusive Economic Zone right through the route which was to be taken by the proposed gas pipeline. The route of the gas pipeline is shown in the picture below (Figure 3).



Figure: 3

45. It is evident from the picture shown earlier (Figure 2) that after the signing of the MoU between the Republic of Todleson and Libya, the route for the proposed gas pipeline by the *Eastern Mediterranean Gas Forum* (shown in (Figure 3) gets obstructed as it passes right through the EEZ created by the Republic of Todleson through its MoU with Libya.
46. In return for the creation of such an EEZ, the Republic of Todleson promised Libya to provide increased military assistance, and if necessary to directly intervene, which is engaged in a civil war with a renegade General Khalifa Haftar who controls most of eastern Libya.
47. The President of the Republic of Todleson referring to the Todleson-Libya deal, announced that “*Greek Abvillianese, Egyptiana, Jinkara and Israel cannot establish a natural gas transmission pipeline without Republic of Todleson’s consent*”.
48. The Republic of Todleson’s move further strained its relations with Jinkara with Jinkara expelling the Libyan ambassador and also lodging a complaint with the United Nations. The EU, through a statement, came in full support with Jinkara and ROA.
49. Due to the MoU, the Republic of Todleson’s relations with Egyptiana and Israel also deteriorated with Egyptiana terming it as ‘*illegal and non-binding*’ and Israel stating

that it could 'jeopardize peace and stability in the area', as its actions threatened the latter's ability to export gas to Europe through the proposed pipeline. The Todleson-Libyan MoU sent a clear signal to the other Eastern Mediterranean that the Republic of Todleson's wants to have a definitive role in the region's future gas development.

PROCEDURAL BACKGROUND

50. The MoU between the Republic of Todleson and Libya also created problems for the ROA and other regional countries to carry out the project of connecting the gas field market for several countries. Therefore, the ROA contended that the MoU between the Republic of Todleson and Libya is violative of its sovereign rights over the continental shelf.
51. The ROA considering the nature of the dispute and its inability to solve it amicably, invoked the relevant provisions of UNCLOS and Treaties of Peace settlements between both the countries claiming that actions of the Republic of Todleson are violative and illegal. The ROA further raised issues regarding the violation of international conventions resulting in the deterioration of the natural resources and harming the national peace of the ROA along with the issue of international peace between both the countries. It was further alleged that the Republic of Todleson has violated the relevant provisions of Treaties of Peace settlement between both the countries.
52. The Republic of Todleson raised objections regarding the jurisdiction and non-applicability of UNCLOS on it since it is not a party to UNCLOS. Whilst, the ROA contends that certain provisions of UNCLOS are binding on all States regardless of its non-ratification due to customary international law status.
53. The Republic of Todleson avers that the coastal States in the crowded regions such as the Eastern Mediterranean have to negotiate the delimitation of maritime borders with equal principles. Moreover, it also argued that it was conducting its operation in its own

EEZ and has full sovereign rights over the continental shelf of the TRC. The ROA, on the other hand, mainly argued about its sovereign right to drill in its EEZ which has been delineated with Israel, Luskas and Egyptiana, but not with Jinkara, Norkas or Todleson.

54. Meanwhile the foreign shareholders of the Italian and the French companies filed for arbitration under Article 25 of International Centre for the Settlement for Investment Dispute (**ICSID**) for claiming their rights as the shareholders since their shares value decreased monumentally due to the regulations made by the various participating governments of the disputing countries. They also impleaded the Republic of Todleson as a party to the arbitration proceedings.

55. After a Preliminary Hearing, following issues have been framed before the International Court of Justice (ICJ):

1. Whether the arbitration proceedings initiated by the Italian and French Companies against the Republic of Abvilliana and the Republic of Todleson shall prevail over or run parallel to the present ICJ Proceedings?
2. Whether the Bilateral Investment Treaty between the Republic of Abvilliana and other regional countries regarding the drilling of oil and natural gas infringes the sovereign rights of the Republic of Todleson?
3. Whether the relevant provisions of UNCLOS are applicable upon the Republic of Todleson and have been violated by it through exploration of oil and natural gases in Abvilliana?
4. Whether the Republic of Abvilliana has the sovereign rights over the continental shelf or exclusive economic zone or both the countries have joint rights over the exclusive economic zone of Abvilliana?

5. Whether the relevant provisions of the treaty between both the countries governing the sovereignty of the Republic of Abvilliana have been violated?

43. Both the countries are party to ICJ statutes and all other major international treaties and resolutions of the United Nations. All the treaties signed between both the countries is similar to that of treaties between Cyprus and Turkey.

***TEAMS ARE ALLOWED TO MAKE ANY OTHER ISSUE ON THEIR OWN ON THE BASIS OF THE MOOT PROBLEM.*

