MANFRED LACHS SPACE LAW MOOT COURT COMPETITION 2008

Team No. 2

IN THE

INTERNATIONAL COURT OF JUSTICE

AT THE

PEACE PALACE, THE HAGUE

CASE CONCERNING THE CONTINUED PROVISION OF

LIFELINE SATELLITE SERVICES TO COUNTRIES

IN THE FACE OF SATELLITE OPERATOR INSOLVENCY

THE STATE OF CONCORDIA

THE STATE OF LANDIA

v.

THE KINGDOM OF USURPIA

ON SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE

- MEMORIAL FOR THE RESPONDENT -

THE KINGDOM OF USURPIA

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USURPIA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Conventions

Essays

Michael Chatzipanagiotis, *Registration of Space Objects and Transfer of Ownership in Orbit*, 56 Ger. J. Air & Space L. 229 (2007) 8, 9, 10

Bin Cheng, *Convention on International Liability for Damage caused by Space Objects*, in: Nandasari Jasentuliyana / Roy S. K. Lee, *Manual on Space Law, Vol. I* (1979), 83..... 21

Bin Cheng, *Nationality for Spacecraft?* in: Tanja Masson-Zwaan, *Air and Space Law – De Lege Ferenda: Essays in Honour of Henri A. Wassenbergh* (1992), 203..... 10

Carl Q. Christol, *International Liability for Damage caused by Space Objects*, 74 Am. J. Int'l L. 346 (1980)..... 17, 21

Adrian Copiz, *Scarcity in Space: The International Regulation of Satellites*, 10 J. Comm. L. & Pol'y 207 (2002) 3

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Nandasiri Jasentuliyana, *Review of recent discussions relating to aspects of Article I of the Outer Space Treaty*, 32 I.I.S.L. Proc. 7 (1989) 1

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Books

U.N. Documents

Cases

Miscellaneous

QUESTIONS PRESENTED

A. Whether Usurpia's decision to license the Satelsat-18 satellite and to permit it to be deployed at a Usurpian orbital location over the objection of both Landia and Concordia is consistent with applicable principles of international law, including, *inter alia*, the 1967 Outer Space Treaty, the 1975 Registration Convention and the GLITSO Agreement.

B. Whether Landia is entitled to compensation from Usurpia as a result of the collision that destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

C. Whether Concordia is entitled to compensation for the loss of the Satelsat-18 satellite, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

D. Whether Concordia is entitled to indemnification from Usurpia for any financial obligation owed to Landia, as a result of the collision that destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

STATEMENT OF FACTS

1. The year is 2010. Landia, a landlocked and geographically isolated country, is surrounded by uninhabitable terrain on all of its borders, with few natural resources and limited economic means. Its Gross Domestic Product places it in the lowest 5% of national GDPs in the world.

2. Given its isolated condition, Landia is totally dependent on satellites to meet its basic telecommunications requirements, both for international telecommunications links connecting it to the rest of the world and for providing a critical basic domestic telecommunications infrastructure within Landia. In order to fulfill these basic requirements, Landia recently entered into a long-term, non-preemptible lease with Satelsat, Inc. ("Satelsat"), a private global satellite operator incorporated in the country of Concordia. Pursuant to this lease, Landia, through its state-owned Landia Telecommunications Authority ("LTA"), leases three transponders from Satelsat on the Satelsat-18 satellite. These transponders are used for the following purposes:

(a) to provide links from Landia to all other countries in the world;

(b) to provide backbone internet connectivity within the country, including more than 250 remote and isolated villages located throughout the Landia countryside and access to which, according to the Constitution of Landia, is recognized as a fundamental right of all of its citizens; and

(c) to provide critical infrastructure used to support various of its important governmental activities and functions, including e-government, distance learning and telemedicine.

3. Satelsat operated a fleet of 25 geosynchronous satellites providing satellite services and connectivity on a global basis, operating in the conventional C and Ku-band frequencies available for use by the Fixed Satellite Service. Satelsat is incorporated and has its principal

place of business in Concordia, which also serves as the notifying administration with the International Telecommunication Union ("ITU") on behalf of Satelsat, although Satelsat does have a major business presence in other countries, including the location of a number of satellite control facilities in the Kingdom of Usurpia. All of Satelsat's satellites are licensed by the Concordia Communications Commission ("CCC") and are deployed at orbital locations that Concordia has notified to the ITU on Satelsat's behalf. All of these satellites were launched from the Concordia Space Center by commercial launch services providers based in Concordia and licensed by the government of Concordia.

4. Over the past 15 years, Satelsat has undergone a number of corporate reorganizations and transformations, having on multiple occasions been successively sold to differing groups of private investors, with the effect of significantly increasing the overall debt level of the company. In 2010, it has debt obligations in excess of $25 billion with annual debt service of approximately $3 billion and annual revenues of approximately $4.5 billion. The bulk of Satelsat's debt is held by banks located in Usurpia and is secured by the assets of Satelsat, including the entire Satelsat satellite fleet and its satellite control facilities located in Usurpia.

5. Usurpia, Concordia and Landia are also all parties to an international intergovernmental agreement pursuant to which each party commits to provide affordable satellite services to those countries of the world, each having a GDP in the bottom quartile (a "Lifeline Dependent Country"). The agreement, known as the Global Legacy International Telecommunications Satellite Organization Agreement (the "GLITSO Agreement"), was established in 2009 to supersede a number of other international agreements that had previously been in place with respect to the privatization of former international satellite organizations. Pursuant to the GLITSO Agreement, each State party thereto has committed to the principles of maintaining global connectivity and global coverage to all countries of the world on a non-discriminatory basis and supporting the provision of affordable services to all Lifeline Dependent Countries

requiring such services, in order to meet their international or domestic telecommunications services.

6. While GLITSO has overall responsibility for overseeing the adherence to these principles by its member states, it does not possess any binding enforcement authority to compel adherence or to impose remedies in the event that a member state breaches these principles. Moreover, the GLITSO Agreement does not specify any particular means by which a State party thereto must honor its obligations, this being left to the discretion of each State party. In ratifying the GLITSO Agreement, each State party undertakes to issue a Declaration indicating how it intends to adhere to these objectives. In the case of the various satellite licenses that Concordia has issued to Satelsat regarding the Satelsat fleet, Concordia has imposed the affirmative obligation on Satelsat that it must adhere to the principles set forth in the GLITSO Agreement and abide by the conditions set forth in Concordia's ratification Declaration, whenever providing services to any Lifeline Dependent Country.

7. Due to a major downturn in the global economy, a number of Satelsat's major customers have either become insolvent or fallen significantly in arrears in their payments to Satelsat for space segment capacity leased from Satelsat. Consequently, Satelsat has been unable to meet the interest payments on its debt for the past six months, resulting in the breach of a number of covenants in its various debt instruments. Given concerns by the banks holding Satelsat's debt that the prospects for rectifying the situation at any time in the foreseeable future were dim, the banks felt they had no recourse but to place Satelsat under the protection of a bankruptcy proceeding, choosing to do so in their home country of Usurpia. This petition was filed with the Usurpia Bankruptcy Court on June 1, 2010.

8. The petition sought to restructure Satelsat so as to maximize the likelihood that it could continue in business on a profitable basis and meet its debt obligations as restructured through the bankruptcy process, while avoiding a potentially much more disruptive total liquidation of

the company. The reorganization plan put forward would keep Satelsat largely intact, but contemplated redeployment of certain Satelsat satellites to different orbital locations, all of which had previously been notified by Concordia to the ITU. The objective was to be able to achieve utilization levels (and revenue generation) at these new locations that would be significantly higher than achievable at current locations.

9. In particular, one potential customer was prepared to commit to a long-term lease of an entire Satelsat satellite at premium rates, if Satelsat could quickly redeploy one of its satellites to a particular portion of the orbital arc that presently was unserved by any Satelsat satellite. The revenues that would be generated by this transaction would significantly improve Satelsat's future financial prospects. Fortuitously, Concordia happened to have a currently unoccupied, registered orbital slot within the required portion of the orbital arc and which would be acceptable to the potential customer. If, however, a Satelsat satellite could not be redeployed to such a location within a three-month period (by the end of August 2010), the potential customer has indicated that it would make alternate arrangements to provide the service, instead utilizing a new fiber optic cable that had been recently activated.

10. Of all of the satellites in the Satelsat fleet, the one that would be easiest to relocate and have the necessary configuration of transponders to meet this customer's requirements was the Satelsat-18 satellite. However, if the Satelsat-18 satellite were moved to this new orbital location, Landia's current leases could not be maintained. This was both because the Satelsat-18 satellite would be fully dedicated to this new customer and would be unable to provide adequate coverage of Landia from the new orbital location. To address the situation, the banks proposed that Landia's current services be reapportioned among three other Satelsat satellites serving the same region. These satellites, however, were older and less powerful than the Satelsat-18 satellite. As such, the effect of dispersing Landia's services among these three satellites would be to force Landia, at great expense, to modify its current ground segment

infrastructure. Even with these changes, Landia was of the view that the substitute services would be markedly inferior to the current levels of service that it was receiving on the Satelsat-18 satellites. In particular, Landia's ability to operate its internal domestic networks and its external international links on an integrated basis would be substantially impeded.

11. Based on an expedited order issued by the Usurpia Bankruptcy Court approving the proposed reorganization, Satelsat applied to the CCC in Concordia for the necessary authority to relocate the Satelsat 18 satellite to this new orbital location.

12. When notified of these developments, Landia sent a strong diplomatic note to Concordia, protesting the relocation of the Satelsat-18 satellite. In that note, Landia contended that it was entitled to special consideration as a Lifeline Dependent Country, since this measure would significantly harm the interests of all Landian citizens. Landia's plea struck a responsive chord with certain portions of the Concordian public, resulting in public demonstrations in support of Landia throughout Concordia. Following these demonstrations, the CCC issued an interim order on July 1, 2010 withholding authority for Satelsat to relocate the Satelsat-18 satellite until the CCC could further consider the situation.

13. Fearful that any delay in the relocation of the Satelsat-18 satellite would imperil the entire reorganization plan, the banks devised a revised plan that was submitted to the Usurpia Bankruptcy Court on July 8, 2010. This revised plan sought authority to create a new subsidiary of Satelsat, to be known as New Satelsat, which would take title to certain Satelsat assets, including the Satelsat-18 satellite. This subsidiary would be established under the laws of Usurpia. Without intending to affect the licensing status of the other Satelsat satellites, the banks proposed that the Satelsat-18 satellite be re-licensed by the Usurpian telecommunications Authority ("UTA") as an Usurpian satellite and requested that redeployed to a new, but currently unoccupied orbital location that was currently notified to the ITU by Usurpia, and which was also fully acceptable to the new customer. This revised

plan was approved by the Usurpia Bankruptcy Court on an expedited basis on July 15, 2010. Satelsat immediately notified the CCC of its intent to relinquish its license to operate the Satelsat-18 satellite and any rights it had to locate the satellite at its current orbital location, and simultaneously applied on an emergency basis to the UTA for licensing authority for the satellite. The UTA granted the license request on August 15, 2010, based upon which Satelsat immediately commenced the relocation process for the Satelsat-18 satellite.

14. Landia and Concordia strongly protested these actions, claiming that this was a sham transaction intended to circumvent commitments that previously had been made by Concordia and that national responsibility for the satellite could not be transferred from Concordia to Usurpia without the express consent of Concordia. Usurpia responded by arguing that its actions were entirely appropriate, in that it was acting on the proper application of an Usurpian commercial enterprise to license a satellite in accordance with standard Usurpian procedures. For that reason, it asserted that the prior status of the satellite as having been licensed by Concordia was completely irrelevant to the actions now requested by Newtelsat as a Usurpian company. And while Usurpia is also a member of GLITSO, its licensing procedures only contain a "best efforts" provision with respect to the furnishing of services to any Lifeline Dependent Country.

15. Landia, having now lost the use of the Satelsat-18 satellite and dissatisfied with what it viewed as a wholly inadequate alternate arrangement offered by Satelsat, contacted a second satellite operator, Orbitsat, to determine if Orbitsat could accommodate its requirements. Orbitsat, also licensed by Concordia, did have capacity available on its Orbitsat SpaceStar satellite to meet Landia's requirements, although the cost of such capacity would be five times the cost of the capacity that Landia has previously obtained from Satelsat. Without knowing how it would be able to handle these additional costs, Landia entered into a provisional lease agreement with Orbitsat, to take effect on September 1, 2010, subject to

Landia's ability to obtain emergency funding from the World Bank or a similar international organization.

16. In light of Landia's and Concordia's protests and concerned about what impact they might have on Usurpia, New Satelsat decided to speed up the relocation of the Satelsat-18 to the new orbital location licensed by Usurpia. Unfortunately, as a direct result of this effort, the Satelsat-18 satellite collided in geosynchronous orbit on August 25, 2010, with the Orbitsat Space Star satellite, completely destroying both satellites.

17. Following the collision, Landia found itself not only lacking the ability to continue to receive services from the Satelsat-18 satellite, but also deprived of the ability to secure appropriate replacement capacity on the Orbitsat SpaceStar satellite. In Landia's view, it was now totally deprived of any suitable means for meeting its internal and external telecommunications requirements, especially given the inferiority of the alternate arrangements that had previously been proposed by the banks.

18. Estimating that it would take at least three years to get adequate replacement capacity from another satellite operator and that, during the interim, Landia would suffer more than $2 billion in losses to its economic welfare as a result of the disruption of its telecommunications infrastructure, Landia submitted demands for compensation to both Concordia and Usurpia for this amount, contending that both countries were ultimately liable for the loss. Usurpia rejected this demand, disavowing any breach of international law or obligations owed to Landia. Moreover, Usurpia denied that there was any basis under international law for recovery of the type of damages allegedly incurred by Landia. Concordia, which has its own claim for compensation from Usurpia for loss of both the Satelsat-18 and Orbitsat SpaceStar satellites, did not directly deny Landia's claim for compensation, but rather took the position that, to the extent it would be held liable for compensation, it was entitled to indemnification from Usurpia.

19. In an effort to resolve this impasse, Landia, Concordia and Usurpia have agreed to submit this dispute for resolution to the International Court of Justice, which has accepted jurisdiction over the matter. Concordia's damages claim against Usurpia relating to the loss of the Orbitsat SpaceStar satellite has been resolved by negotiation and is not presented for further consideration. However, Concordia's damages claim against Usurpia relating to the loss of the Satelsat-18 satellite has not been resolved. Because of the overall commonality of many of their respective positions, Landia and Concordia have joined forces in opposition to Usurpia in the submission of the dispute to the International Court of Justice.

20. Landia seeks declarations from the International Court of Justice to the effect that:

(i) Usurpia's decision to license and then authorize the relocation of the Satelsat-18 satellite over the objections of Landia is contrary to applicable principles of international law, including, *inter alia*, the 1967 Outer Space Treaty, the 1975 Registration Convention and the GLITSO Agreement; and

(ii) Landia is entitled to compensation for economic consequences of its loss of basic satellite telecommunications services from Usurpia for the relocation of the Satelsat-18 satellite and from both Concordia and Usurpia as a result of the collision destroying the Satelsat-18 and Orbitsat Space Star satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

21. Concordia seeks declarations from the International Court of Justice to the effect that:

(i) Usurpia's decision to authorize relocation of the Satelsat-18 satellite over its objections is inconsistent with applicable principles of international law, including, *inter alia*, the 1975 Registration Convention and the GLITSO Agreement;

(ii) Usurpia is liable to Concordia for the loss of the Satelsat-18 satellite under, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement; and

(iii) Usurpia is obligated to indemnify Concordia for any liability Concordia might owe to Landia for the economic consequences of Landia's loss of basic satellite telecommunications services arising from the collision of the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

22. Usurpia seeks declarations from the International Court of Justice to the effect that:

(i) Usurpia's decision to license the Satelsat-18 satellite and to permit it to be deployed at an Usurpian orbital location over the objections of both Landia and Concordia is consistent with applicable principles of international law, including, *inter alia*, the 1967 Outer Space Treaty, the 1975 Registration Convention and the GLITSO Agreement;

(ii) Landia is not entitled to compensation from Usurpia as a result of the collision that destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement;

(iii) Concordia is not entitled to compensation for the loss of the Satelsat-18 satellite, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement; and

(iv) Concordia is not entitled to indemnification from Usurpia for any financial obligation owed to Landia, as a result of the collision destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

23. All three countries are members of the United Nations and the ITU and are parties to the 1967 Outer Space Treaty, the 1972 Liability Convention and the 1975 Registration Convention. Concordia and Usurpia are members of the World Trade Organization but Landia is not.

24. Both the Satelsat-18 and Orbitsat Space Star satellites were registered with the Secretary General of the United Nations in accordance with the 1975 Registration Convention, with Concordia listed as the "launching State" and the "State of registry." Usurpia has placed the Satelsat-18 satellite on the registry it maintains for such purposes and had commenced the process of notifying the Secretary-General of the United Nations in accordance with the 1975 Registration Convention of its status as the State of registry for the Satelsat-18 satellite but had not completed the process at the time of the collision.

25. Concordia and Usurpia are both parties to the Convention on International Interests in Mobile Equipment. However, to date, negotiations regarding a specific Protocol to the Convention on Matters Specific to Space Assets are ongoing, and therefore no such Protocol has yet been opened for signature.

26. For purposes of this problem, participants are to assume that there are no technical coordination matters associated with any of the orbital locations referenced therein.

Appendix A

Relevant Provisions of the GLITSO Agreement and Party Declarations Made Pursuant Thereto

GLITSO Agreement

Preamble:

The State Parties to this Agreement,

Considering the principle set forth in Resolution 1721(XVI) of the General Assembly of the United Nations that communication by means of satellites should be available to the nations

of the world as soon as practicable on a global and non-discriminatory basis,

Considering the relevant provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and in particular Article I, which states that outer space shall be used for the benefit and in the interests of all countries, and

Considering the importance of continuing to assure that, in today's modern era of satellite telecommunications, all countries of the world, including those that may be uniquely pendent on satellite telecommunications to meet their domestic and international telecommunications requirements, which for purposes of this Agreement are specified as all countries comprising the bottom quartile of countries in the world as determined by level of Gross Domestic Product ("GDP") and hereinafter referred to as a "Lifeline Dependent Country", have reasonable access to the satellite telecommunications services they require on fair and equitable terms and conditions,

Agree as follows:

. . . . .

Article II: Purposes and Means for Achievement

Each Party to this Agreement hereby commits to adhere to the following objectives:

(a) To maintain global connectivity and global coverage, available to all countries on a non-discriminatory basis; and

(b) To support the provision of affordable satellite service to all Lifeline Dependent

> Countries so requiring such services, in order to meet their international or domestic telecommunications requirements

Each Party to this Agreement shall take such action as it determines to be appropriate, consistent with its national regulatory regime, to achieve the objectives set forth above. In ratifying or acceding this Agreement, each Party shall issue a Declaration indicating the specific measures by which it intends to abide by its commitment to the achievement of these objectives.

Party Declarations

In connection with its ratification of the GLITSO Agreement, Concordia issued the following Declaration, in which it stated:

> Concordia views these obligations to be of paramount importance and will include in all licenses issued for satellites licensed by our national regulatory authority, the Concordia Communications Commission, the specific requirement that licensees are obligated to adhere to these principles and must not take any actions inconsistent therewith; moreover, to the extent that any licensee sells or otherwise disposes of any particular satellite asset, as a condition of that sale or transfer, any successor in interest holding that satellite license shall similarly be obligated to adhere to such obligations.

In connection with its ratification of the GLITSO Agreement, Usurpia issued the following Declaration, in which it stated:

> Usurpia is fully committed to supporting the objectives of the GLITSO Agreement, while recognizing that such measures must be harmonized with the realities of the commercial nature of the satellite telecommunications business. Consistent therewith, Usurpia will require all satellite operators to accommodate the objectives in Article II

of the GLITSO Agreement on a "best efforts" basis consistent with prudent business practices.

In connection with its ratification of the GLITSO Agreement, Landia issued the following Declaration, in which it stated:

> Landia, as a Lifeline Dependent Country, lacks the resources to launch its own satellite and does not expect to have such resources for many years to come. In light of our geographic and economic circumstances, Landia is uniquely dependent on satellite telecommunications services to meet its international and domestic telecommunications requirements and is therefore totally dependent on the commitments made by other Parties to the GLITSO Agreement, and their continuing good will in adhering to their commitments, in order to be able to provide basic telecommunications services to the citizens of our country.

Statement of Additional Facts

1. After New Satelsat was incorporated on 16 July 2010, the Board of Directors of this new company, could not decide on the name for the company and so for some time the company was known as Newtelsat. The two names belong to the same company.

2. Orbitsat is licensed by Concordia and is 100% owned by Concordian private interests.

3. None of the States referred to are parties to the Vienna Convention on the Law of Treaties.

4. Satelsat-18 has 11 transponders on board, of which only 10 were used at all relevant times.

5. The front cover to the present *compromis* has been corrected.

SUMMARY OF ARGUMENTS

I. Usurpia's decision to license the Satelsat-18 satellite and to permit it to be deployed at a Usurpian orbital location over the objections of both Landia and Concordia is consistent with the Outer Space Treaty, the GLITSO Agreement, the Registration Convention and general principles of international law.

A. Usurpia acted in conformity with the Outer Space Treaty since it did not disregard the interests of Landia and its actions were beneficial to all countries.

B. Usurpia did not violate any obligations owed to Landia and Concordia under the GLITSO Agreement. All acts of Usurpia were consistent with its commitments issued in its Party Declaration since it required New Satelsat to use "best efforts" consistent with prudent business practice. Usurpia was under no duty to require Satelsat to uphold Landia's lease agreement, nor was it or its nationals in any respect bound by Concordia's Party Declaration.

C. Usurpia was entitled to register Satelsat-18 pursuant to the Registration Convention as New Satelsat, a Usurpian national, is the lawful owner of the satellite. As Usurpia exercised effective control over the satellite, an ongoing registration with Concordia would be inconsistent with the aims and purposes of the Convention.

D. Usurpia was lawfully exercising jurisdiction and control over the satellite pursuant to the genuine link principle and Concordia's refusal to de-register Satelsat-18 frustrated the attribution of jurisdiction and control over the space object.

II. Landia is not entitled to compensation from Usurpia as a result of the collision that destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to the Liability Convention, the Outer Space Treaty and customary international law.

A. Landia cannot claim compensation under the Liability Convention as Usurpia is not a launching state within the meaning of Article I of the Convention.

B. Landia's losses are not within the scope of the Liability Convention. Indirect damages, pure economic losses and losses due to telecommunications services are not recoverable under the Convention.

C. Article XII of the Liability Convention does not encompass Landia's pure economic losses as they are not connected to an internationally protected legal right.

D. Landia cannot recover its losses under the Outer Space Treaty since Article VII is not applicable. Usurpia is not responsible according to Article VI as it did not violate international law, in particular its duty to continually supervise acts of its nationals.

E. Landia is not entitled to damages under general principles of international law since Usurpia is not responsible for the acts of its nationals and Landia's losses are not recoverable under international law.

III. Concordia is not entitled to compensation for the loss of Satelsat-18, pursuant to the Liability Convention, the Outer Space Treaty, the GLITSO Agreement and customary international law.

A. Satelsat-18 constitutes Usurpian property since it is owned by New Satelsat, which is a Usurpian national. Consequently, Concordia did not incur a loss when the Satelsat-18 satellite was destroyed.

B. The Liability Convention is not applicable since Usurpia is not a launching State.

C. Article III of the Liability Convention is not applicable since it refers to space objects from different launching States. In any event, Usurpia's actions lack the element of fault required by Article III.

D. Usurpia is not responsible for the acts of its nationals under the regime of State responsibility. Concordia cannot invoke State responsibility since Usurpia did not violate any rules of international law.

IV. Concordia is not entitled to indemnification from Usurpia for any financial obligation owed to Landia as a result of the collision that destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to the Liability Convention, the GLITSO Agreement and general principles of international law .

A. Concordia is under no obligation to pay compensation to Landia since Landia's damages are not recoverable under the Liability Convention.

B. Usurpia is not a launching State and therefore not jointly and severally liable under the Liability Convention.

C. Neither Article IV(2) nor Article V(2) are applicable to this dispute.

D. The GLITSO Agreement as well as general principles of international law do not provide a basis for Concordia's claim for indemnification. Usurpia did not breach international law, particularly the duty to prevent harm to other States.

ARGUMENT

I. USURPIA'S DECISION TO LICENSE THE SATELSAT-18 SATELLITE AND TO PERMIT IT TO BE DEPLOYED AT A USURPIAN ORBITAL LOCATION OVER THE OBJECTIONS OF BOTH LANDIA AND CONCORDIA IS CONSISTENT WITH THE OUTER SPACE TREATY, THE GLITSO AGREEMENT, THE REGISTRATION CONVENTION AND GENERAL PRINCIPLES OF INTERNATIONAL LAW.

A. Usurpia's actions are consistent with Article I of the Outer Space Treaty.

Usurpia's decision to license and then authorize the relocation of Satelsat-18 is in conformity with the Outer Space Treaty[1] because it is consistent with the free use of outer space. Article I(2) of the Outer Space Treaty provides that outer space "shall be free for exploration and use by all States without discrimination of any kind". Article I(1) sets forth limitations on that freedom, namely that space activities "shall be carried out for the benefit and in the interests of all countries."[2] Landia cannot bring a claim under Article I as this provision is not self-executing. Even if Landia could claim under Article I of the Outer Space Treaty, Usurpia's actions were consistent with Article I because they did not exceed the limits set forth therein.

1. Landia cannot bring a claim under Article I of the Outer Space Treaty.

Although Article I not only constitutes a statement of general goals but also imposes an obligation on States Parties to carry out their space activities for the benefit and in the interests of all countries, it is still too vague to be self-executing.[3] It is significant that no

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[1] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 610 U.N.T.S. 205 (1967) [Outer Space Treaty].

[2] Nandasiri Jasentuliyana, *Review of recent discussions relating to aspects of Article I of the Outer Space Treaty*, 32 I.I.S.L. Proc. 7, 11 (1989).

[3] See Marco G. Markov, *Implementing the Contractual Obligation of Article I, Par. 1 of the Outer Space Treaty 1967*, 17 I.I.S.L. Proc. 136, 137 (1974); Edwin W. Paxson, *Sharing the*

claims have ever been asserted against a space power under Article I of the Outer Space Treaty.[4] The only acts unequivocally prohibited by the provision are aggressive acts that violate the principle that outer space may only be used for peaceful purposes,[5] e.g. attacks from outer space, and thus are clearly not for the benefit and in the interests of all countries. Consequently, recourse must be had to other treaties, in which the parties specify the affirmative obligations arising under the Outer Space Treaty.[6] In this case, the GLITSO Agreement[7] is a treaty dealing with these issues and specifically determines the affirmative obligations of the parties. Therefore, claims can only be asserted under this specific agreement.

2. Usurpia's activities were "for the benefit and in the interests of all countries".

Even if Article I created affirmative obligations for the parties to the treaty, the phrase "for the benefit and in the interests of all countries" has to be interpreted in a restrictive manner. The treaty contains no indication as to what constitutes "benefit" and "interests";[8] and thus, the limitations cannot be precisely determined. When the scope of a treaty obligation cannot be definitely established, it has to be presumed that the States Parties to the treaty intended to limit their sovereignty as little as possible.[9] This is especially true of the terms "benefit" and "interests" as set forth in Article I of the Outer Space Treaty, since they impose unilateral obligations on space-faring nations, like Usurpia, towards other countries.[10]

Benefits of Outer Space Exploration: Space Law and Economic Development, 4 Mich. J. Int'l L. 487, 492 (1993) [Paxson].

[4] Eric Husby, *Sovereignty and Property Rights in Outer Space*, 3 J. Int'l L. & Prac. 359, 364 (1994).

[5] Preamble to the Outer Space Treaty, *supra* note 1.

[6] Paxson, *supra* note 3, at 493.

[7] Compromis, Appendix A.

[8] Stephen Gorove, *Studies in Space Law: Its challenges and prospects* (1977), 56 [Gorove].

[9] György Haraszti, *Some Fundamental Problems on the Law of Treaties* (1973), 155-6; see also *Georges Pinson* Case (*Fr. v. Mex.*), *Mixed Claims Commission (1928)*, 4 Ann. Dig. & Rep. of Pub. Int'l L., 426, 427 (1927-1928).

[10] Adrian Bueckling, *Bemerkungen zur Deutung der Kommunklauseln des Weltraumvertrags*, 25 Ger. J. Air & Space L. 94, 98 (1976).

Usurpia did not violate the principle of carrying out space activities in the interests of all countries because the only reasonable interpretation of the requirement is that the treaty only prohibits States from disregarding the interests of other countries when conducting space activities.[11] Usurpia did not disregard the interests of Landia. The Usurpian bank explicitly addressed Landia's situation and proposed that Landia's current services be reapportioned among three other satellites serving the same region.[12]

Activities must also be for the "benefit of all countries". This clause does not require the direct sharing of benefits[13] but merely requires that activities are, in general terms, beneficial.[14] Declarations of major space powers at the time they ratified the treaty support this interpretation. For example, the United States stated that "nothing in Article I diminishes or alters the right of the United States to determine . . . how it shares the benefits and results of its space activities."[15] In fact, the space-faring nations do not have an affirmative obligation to help less developed nations enjoy any benefits of space.[16] The wording of Article I of the Outer Space Treaty furthermore indicates that space activities only have to be beneficial to *all* countries, not to *every* country. Usurpia therefore was not obliged to act in a way that actually would have benefited Landia specifically, as long as its actions were incidentally beneficial to all countries. The authorization of the relocation of Satelsat-18 was a beneficial space activity for various countries as recipients of telecommunications services which Satelsat and New

[11] Paxson, *supra* note 3, at 494.
[12] Compromis, para. 10.
[13] Adrian Copiz, *Scarcity in Space: The International Regulation of Satellites,* 10 J. Comm. L. & Pol'y 207 (2002).
[14] Luis F. Castillo Argañarás, *Benefits Arising from Space Activities and the Needs of Developing Countries*, 43 I.I.S.L. Proc. 50, 57 (2000).
[15] Treaty on Outer Space: U.S. Senate Executive Report Nr. 8. 90th Cong., 1st Sess. 1, 6 (1967), cited in Eilene Galloway, *The United States and the 1967 Treaty on Outer Space*, 40 I.I.S.L. Proc. 18, 26 (1997); this view is shared by the Soviet Union, as indicated by the Soviet delegate to COPUOS, Gennady Zhukov / Yuri Kolosov, *International Space Law* (1984), 77.
[16] Paxson, *supra* note 3, at 494; Daniel A. Porras, *The "Common Heritage" of Outer Space: Equal Benefits for most of Mankind*, 37 Cal. W. Int'l L. J. 143, 172 (2006).

Satelsat could continue to provide as a result of the relocation.[17] Usurpia's actions are therefore consistent with Article I of the Outer Space Treaty.

B. The authorization of the relocation of Satelsat-18 is consistent with the GLITSO Agreement.

1. Usurpia did not violate any obligations owed to Landia under the GLITSO Agreement.

Usurpia's duty under Article II of the GLITSO Agreement is to further the objective "to support the provision of affordable satellite service to all Lifeline Dependent Countries" [LDCs], meaning countries having a GDP in the bottom quartile,[18] and to take such actions as it determines to be appropriate in achieving this objective. Thus, Usurpia is neither obliged to maintain global connectivity nor to provide LDCs with affordable satellite services. This is also Landia's perception of the GLITSO Agreement, as Landia refers in its Party Declaration to the goodwill, and not the obligation, of other Parties to the GLITSO Agreement in adhering to these objectives.[19] Usurpia declared that "it [would] require satellite operators to accommodate these objectives on a 'best efforts' basis consistent with prudent business practices."[20] This declaration constitutes a unilateral declaration, specifying the means by which Usurpia intends to achieve the objectives of the GLITSO Agreement.[21] It does not create any obligations for other parties to the GLITSO Agreement, and acceptance by the other parties is not required.[22] In the *Nuclear Tests* Case, this Court stated that the specific obligations arising under a unilateral declaration depend on the "meaning and scope intended

[17] Compromis, para. 3.
[18] Compromis, para. 5.
[19] Compromis, Appendix A, Landia's Party Declaration.
[20] Compromis, Appendix A, Usurpia's Party Declaration.
[21] Compromis, Appendix A, Article II.
[22] Second report on unilateral acts of States, International Law Commisson, 51st Sess. (1999), U.N. Doc. A/CN.4/500, at 11 [Report on unilateral acts].

by the author of the unilateral declaration".[23] In order to determine this intention, "account must be taken of all the factual circumstances" in which the declaration was made.[24] Additionally, "when States make statements by which their freedom of action is to be limited, a restrictive interpretation is called for."[25] The declaration imposes unilateral obligations upon Usurpia towards LDCs and thus limits its freedom of action. Therefore, it has to be interpreted in a restrictive manner.

In its Party Declaration to the GLITSO Agreement, Usurpia made clear that it would require satellite operators to take measures "on a best efforts basis" that were "consistent with prudent business practices"[26] and that such measures "must be harmonized with the realities of the commercial nature of the satellite telecommunications business".[27] The term "best efforts" is commonly used in company law and implies that to use "best efforts" cannot mean to do "everything possible under the sun."[28] It imposes an obligation to act with good faith in light of one's own capabilities, leaving the party the authority to give reasonable consideration to its own interests.[29]

New Satelsat was created to ensure that Satelsat, which became insolvent due to a major downturn in the global economy, could continue in business.[30] The plan to restructure Satelsat, approved by the Usurpia Bankruptcy Court,[31] would not have been feasible had the relocation been suspended or delayed. Therefore, to stop the relocation process and to maintain the lease agreement with Landia would have been anything but prudent business practice. New Satelsat was not bound by the lease agreement between Satelsat and Landia. In

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[23] *Nuclear Tests Case* (*Austl. & N.Z. v. Fr.*), 1974 I.C.J. 253, 269 [*Nuclear Tests Case*].
[24] *Frontier Dispute Case* (*Burk. Faso v. Mali*), 1986 I.C.J. 554, 574.
[25] *Nuclear Tests Case*, *supra* note 23, at 267.
[26] Compromis, Appendix A, Usurpia's Party Declaration.
[27] Compromis, Appendix A, Usurpia's Party Declaration.
[28] *Coady Corp. v. Toyota Motor Distrib.*, 361 F.3d 50, 59 (1st Cir. 2004), see also *Hughes Communications Galaxy, Inc. v. U.S.*, 47 Fed.Cl. 236 (2000).
[29] *Bloor v. Falstaff Brewing Corp.*, 601 F.2d 609, 613-4 (2d Cir. 1979).
[30] Compromis, para. 7.
[31] Compromis, para. 13.

a bankruptcy proceeding, the treatment of existing contracts to which the debtor is a party is governed by the law of the State in which the bankruptcy proceeding was opened.[32] The Compromis does not indicate that any rule of Usurpian law prohibits the termination of lease agreements in a bankruptcy proceeding. Thus, it was consistent with the GLITSO Agreement to terminate the lease agreement with Landia.

Furthermore, Satelsat's creditors had already offered to reapportion Landia's services among three other Satelsat satellites, a plan which was rejected by Landia,[33] so further offers by New Satelsat would have been futile. Thus, Usurpia's actions were consistent with its obligations towards Landia under the GLITSO Agreement.

2. Nor did the authorization of the relocation over the objections of Concordia breach the GLITSO Agreement.

Despite Concordia's objections, the authorization of the relocation is consistent with the GLITSO Agreement because neither New Satelsat nor Usurpia are bound by Concordia's Party Declaration. It is impossible for a State to impose treaty obligations on a company over which that State has no jurisdiction.[34] Accordingly, New Satelsat, as a Usurpian company,[35] is not under Concordia's jurisdiction. Consequently, New Satelsat could only be required to fulfill the objectives of the GLITSO Agreement on a "best efforts" basis as stated by Usurpia in its Party Declaration. New Satelsat did not fail to comply with these obligations and thus, its actions do not constitute an international wrong attributable to Usurpia.

Usurpia itself is not bound by Concordia's Party Declaration since a unilateral declaration can only create obligations for the State formulating it; a State cannot impose

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[32] cf. EC Insolvency Regulation, Council Regulation (EC) No. 1346/2000, Article 4(2)(e); see Royston Miles Goode, *Principles of Corporate Insolvency Law* (2005), A 109, citing to *Virgós-Schmit report on the EU Insolvency Convention* (unpublished).
[33] Compromis, para. 10.
[34] Ian Brownlie, *Principles of Public International Law* (5th ed. 1998), 301; Michael Gerhard, *Transfer of Operation and Control with Respect to Space Objects – Problems of Responsibility and Liability of States*, 51 Ger. J. Air & Space L. 571, 578 (2002) [Gerhard].
[35] Compromis, para. 13.

obligations on other States without their consent.[36] This is in accordance with the established principle in international law that treaties do not create either rights or obligations for third States without their consent.[37] Therefore, Usurpia is not obliged to require its nationals to further the objectives of the GLITSO Agreement pursuant to the Concordian Party Declaration. Consequently, Usurpia's actions were fully consistent with the GLITSO Agreement.

C. Usurpia's decision to license the Satelsat-18 satellite is consistent with the Registration Convention.

Usurpia's actions are consistent with the Registration Convention[38] because Satelsat-18 was owned by a Usurpian national, and therefore, Usurpia was entitled to register Satelsat-18 pursuant to the Registration Convention.

1. New Satelsat was the lawful owner of Satelsat-18.

The credit agreements concluded with the Usurpian banks constitute valid contractual agreements classifying, *inter alia,* Satelsat-18 and the satellite control facilities in Usurpia as security for Satelsat's debts.[39] The titles of ownership to Satelsat-18 and the control facilities were transferred to New Satelsat by the Usurpia Bankruptcy Court as part of a bankruptcy proceeding commenced in Usurpia, rendering Usurpian law the *lex concursus*. In compliance with the credit agreement, the Usurpian Banks are lawfully entitled to retain the titles of ownership to the assets referred to in the agreement in case of Satelsat's insolvency.

As far as assets within Usurpia's jurisdiction are concerned, recognition of these transfers by Concordia is unnecessary.[40] Usurpia is aware that exercising enforcement jurisdiction on Concordian soil would constitute a violation of Concordia's state

[36] Report on unilateral acts, *supra* note 22, at 11.
[37] Vienna Convention on the Law of Treaties (1969), 1155 U.N.T.S. 331, Article 34.
[38] Convention on Registration of Objects Launched into Outer Space (1975), 1023 U.N.T.S. 15 [Registration Convention].
[39] Compromis, para 4.
[40] Iwan Davies, *Security Interests in Mobile Equipment* (2002), 310.

sovereignty.[41] However, as outer space is free of any territorial jurisdiction, Satelsat-18 cannot be regarded as within Concordian territory. Usurpia has satellite control facilities located within its territory,[42] by which it had the ability to exercise effective control over Satelsat-18 without having to exercise enforcement jurisdiction in Concordia.[43] Hence, Usurpia may lawfully exercise jurisdiction over Satelsat-18.

Furthermore, Satelsat could have objected to the transfer by appealing the order of the bankruptcy court. Satelsat chose not to do so, thereby accepting the court's jurisdiction and consenting to the transfer of the titles of ownership, including that of Satelsat-18.

2. Usurpia is entitled to register Satelsat-18 pursuant to the Registration Convention.

The Registration Convention focuses on the term "launching State", declaring that "when a space object [is] launched into Earth orbit . . . the launching State shall register the space object".[44] Article VIII of the Outer Space Treaty states that "[a] State . . . on whose registry an object launched . . . is carried shall retain jurisdiction and control over such object". Thus, the purpose of the Registration Convention is to provide the international community with information about the State that has jurisdiction and control over a space object.[45] As the development of a private space sector was not considered when the Registration Convention was drafted,[46] the Registration Convention lacks a specific regulation for subsequent transfers of ownership.

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[41] *Cf. Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, 108.
[42] Compromis, para 3.
[43] This view is also taken by Article XII(2)(ii) of the UNIDROIT Draft Protocol on Matter Specific to Space Assets (2004), http://www.spacelawstation.com/DraftSpaceAssetsProtocol.pdf.
[44] Registration Convention, *supra* note 38, Article II(1).
[45] Stephan Mick, *Registrierungskonvention und Registrierungspraxis* (2007), 146 [Mick]; Edward A. Frankle, *Once A Launching State, Always* The *Launching State?*, 44 I.I.S.L. Proc. 32, 39 (2001) [Frankle].
[46] Michael Chatzipanagiotis, *Registration of Space Objects and Transfer of Ownership in Orbit*, 56 Ger. J. Air & Space L. 229, 236 (2007) [Chatzipanagiotis].

a) Article II only applies to an actual launch.

This Court has held that "[i]nterpretation must be based above all upon the text of the treaty."[47] The term "*[w]hen* an object is launched"[48] plainly refers to a point in time, suggesting that Article II of the Registration Convention is only applicable at the time of an actual launch. Consequently, Article II is not applicable to the Usurpia's subsequent registration of Satelsat-18.

Article II constitutes a prudent regulation applicable at the time of a launch and necessary to safeguard the purpose and functionality of the Registration Convention. The list of States in Article I(a) comprises not only launching States by definition, but also includes the State most concerned with the operation of the space object at the time of the launch. [49] When a launch takes place, those states form an exhaustive group. Expanding this list would permit a State to register a space object to which it lacks any factual or legal connection and thereby defect the purpose of the Convention.

However, in cases of subsequent in-orbit transfers, the Convention permits a departure from the initial list of launching states and focuses on the State that is actually most concerned with the operation of the space object. Reference to ownership, effective control, ground control and jurisdiction can facilitate the identification of that State and prevent abuse of the Convention as a pretense for convenience practice.[50] The rapid development of new launch systems, which require less infrastructure at the launching site[51] will result in an increased number of States with the ability to launch space objects. If factual ownership and effective control are disregarded, potential satellite operators could resort to poorer States for the actual

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[47] *Territorial Dispute (Lybia v. Chad)*, 1994 I.C.J. 6, 22.
[48] Registration Convention, *supra* note 38, Article II(1), emphasis added.
[49] Chatzipanagiotis, *supra* note 46, at 236, Motoko Uchitomi, *State Responsibility/Liability for "National" Space Activities*, 44 I.I.S.L. Proc. 51, 52 (2001) [Uchitomi].
[50] Uchitomi, *supra* note 49, at 57.
[51] i.e. Sea Launch, http://www.boeing.com/special/sea-launch/; Space Ship One, http://www.scaled.com/.

launch and registration, trying to effectively evade the fundamental principles underlying the Registration Convention.[52] The registry would then list a State that lacks effective control over the space object and is unwilling to exercise jurisdiction over it. This would ultimately lead to a situation similar to flag of convenience practice and strip Article VIII of the OST of its meaning, purpose and effect.[53]

The Principles Relevant to the Use of Nuclear Power Sources In Outer Space recognize the importance of identifying the state exercising jurisdiction and control over a space object at any given point in time[54] in contradistinction to identifying the original launching states for purposes of liability and compensation.[55]

b) The inclusion of "procuring" States in Article I is further evidence for the limitation of Article II of the Registration Convention.

A limitation of Article II to the situation of an actual launch is furthermore evidenced by the concept of a "procuring" State. It is generally agreed today that Article II of the Registration Convention does not prohibit subsequent transfers of jurisdiction and control rights among launching States.[56] With regard to in-orbit deliveries, "procuring" a launch enables the purchasing State to become a "launching State" despite not being involved in the actual launch proceeding. Thereby, the State that conducted the launch is relieved of having to initially register a space object it never intended to use. A State procuring a launch is generally considered the State which will be most concerned with its operation.[57] This definition fosters the purpose of the Registration Convention in that it includes the State that

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[52] Armel Kerrest, *Remarks on the Notion of Launching State*, in: 42 I.I.S.L. Proc. 308, 313 (1999) [Kerrest].
[53] Bin Cheng, *Nationality for Spacecraft?*, in: Tanja Masson-Zwaan, *Air and Space Law – De Lege Ferenda: Essays in Honour of Henri A. Wassenbergh* (1992), 203, 211.
[54] Principles Relevant to the Use of Nuclear Power Sources In Outer Space, U.N. Doc. A/47/49 (1992), Principle 2(1).
[55] *Id.*, Principle 2(2), referring to Principle 9.
[56] Ricky J. Lee, *Effects of Satellite Ownership Transfers on the Liability of the Launching State*, 43 I.I.S.L. Proc. 148 (2000) [Lee]; Kerrest, *supra* note 52, at 309.
[57] Chatzipanagiotis, *supra* note 46, at 236.

will, as owner and operator, exercise effective control over the space object and is thereby most concerned with its operation[58] in the group of States eligible for registration at the time of the launch. However, the Registration Convention does not explicitly regulate subsequent transfers of jurisdiction and control rights to non-launching States.

If Article II were applicable to subsequent changes of ownership to non-launching States, the new owner would be barred from registering its space object pursuant to the Convention. As early as 1932, the Permanent Court of International Justice [P.C.I.J.] held that States are generally free to enter into agreements conferring actual rights of their own to a third state.[59] This permits launching States to transfer jurisdiction and control to non-launching States. Article II(2) has been advocated to support such practice.[60] However, such a transfer would require a separate agreement between the States concerned [61] to which, at worst, only those states would be privy. As a result, the U.N. Registry would be inaccurate to the extent of a multitude of bi- and multilateral agreements and would certainly not further the goal of transparency.

The only difference between States ordering a launch and States that subsequently purchase satellites is that the former were satellite owners when the object was launched while the latter subsequently became owners. This distinction can hardly justify barring Usurpia from exercising jurisdiction and control over the property of its nationals,[62] nor can it bypass the fundamental aims of the Registration Convention.[63] Usurpia is in fact the State

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[58] Uchitomi; *supra* note 49, at 52.
[59] *Free Zones of Upper Savoy and the District of Gex (Fr. v. Switz.)*, 1932 P.C.I.J. (ser. A/B), No. 46, at 147.
[60] Mick, *supra* note 45, at 145.
[61] Kay-Uwe Hörl / Julian Hermida, *Change of Ownership, Change of Registry? Which Objects to Register, what Data to be Furnished, when, and until when?*, 46 I.I.S.L. Proc. 454, 458 (2003); see also Gerhard, *supra* note 34, at 572-3, referring to the sale of BSB-1A from the United Kingdom to Sweden as non-launching State.
[62] Frans von der Dunk, *The Illogical Link: Launching, Liability and Leasing*, 36 I.I.S.L. Proc. 349, 351 (1993).
[63] *Cf.* Frankle, *supra* note 45, at 41, footnote 16.

most concerned with Satelsat-18's operation and therefore is eligible for registration. Consequently, Article II cannot apply to this situation, as it would exclude the only State that is concerned with the operation of the space object from registering it, frustrating the Convention's purpose.

c) Usurpia acted in conformity with the Registration Convention when registering Satelsat-18.

New Satelsat effectively controlled Satelsat-18 using its Usurpian control facilities and is in fact the State most concerned with its operation. Additionally, transfer to a non-launching State has been recorded by the U.N. Registry[64] without any objection or challenge by any of the States Parties to the Registration Convention.

Consequently, Usurpia was entitled to register Satelsat-18 pursuant to the Registration Convention as Satelsat-18 was an in-service satellite that had previously operated under Concordian Registration,[65] rendering Article II of the Registration Convention inapplicable. Hence, Usurpia acted in conformity with the Registration Convention when it registered Satelsat-18.

D. Usurpia lawfully exercised jurisdiction over Satelsat-18 and was in fact empowered to relocate Satelat-18.

As Concordia refused to relinquish its registration of the Satelsat-18, it is in fact registered by two States. Space law does not provide for dual registration.[66] It can be clearly deduced from Article II(2) of the Registration Convention that only one State of registry shall exist. Therefore, the registration is rendered ineffective as it fails to identify a single state which retains jurisdiction.

[64] Note verbale by Sweden to the Secretary General of the United Nations, dated 1 February 1999, U.N. Doc. ST/SG/SER.E/352.
[65] Compromis, para. 3.
[66] Lee, *supra* note 56, at 152-3.

The Convention on the Law of the Sea[67] as well as the Chicago Convention,[68] both internationally accepted regimes[69] on maritime and aviation law respectively contain comparable registration provisions to the Outer Space Treaty.[70] A "[s]hip sailing under the flag of two or more States . . . may not claim any of the nationalities"[71] and "[a]n aircraft cannot be validly registered in more than one State".[72] Hence, registration looses its effect once there are multiple States of registry. Maritime and aviation law resort to the genuine link principle established by the I.C.J. in the *Nottebohm* Case[73] to resolve problems of multiple registrations.[74]

It has been frequently discussed whether the genuine link principle can be applied to space law, as the *corpus juris spatialis* is newer than the I.C.J. decision in the *Nottebohm* Case. Furthermore, due regard to this judgment was paid when deciding not to include said principle in the space treaties.[75] Consequently, the genuine link principle is likely to be disregarded when there is only one state of registry. However, as space law contains no provision resolving multiple registrations, it is prudent to have recourse to well settled areas of international law.

As Judge Jessup noted in the *Barcelona Traction* Case,[76] "[i]f a State purports to confer its nationality on ships by allowing them to fly its flag, without assuring that they meet such tests as . . . ownership, jurisdiction and control, other States are not bound to recognize

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[67] United Nations Convention on the Law of the Sea (1982), 1833 U.N.T.S. 3 [U.N.C.L.O.S.].
[68] Convention on International Civil Aviation (1944), 15 U.N.T.S. 295 [C.A.].
[69] U.N.C.L.O.S., *supra* note 67, 155 States (September 2007) http://www.state.gov/s/d/2007/92921.htm; C.A., *supra* note 68, 190 States (February 2008), http://www.icao.int/icao/en/leb/chicago.pdf.
[70] U.N.C.L.O.S., *supra* note 67, Articles 91, 92; C.A., *supra* note 68, Article 17.
[71] U.N.C.L.O.S., *supra* note 67, Article 92(2).
[72] C.A., *supra* note 68, Article 18.
[73] *Nottebohm Case (Liech. v. Guat.), Second Phase*, 1955 I.C.J. 4.
[74] see Convention on the High Sea, 450 U.N.T.S. No. 11 (1958), Article 5.
[75] Horst Bittlinger, *Hoheitsgewalt und Kontrolle im Weltraum* (1988), 76 [Bittlinger].
[76] *Barcelona Traction Light and Power Company, Ltd. (Belgium v. Spain)*, 1970 I.C.J. 3, 188 (Jessup, J., dissenting).

the asserted nationality of the ship." A similar opinion was taken by the Canadian-American Commission in the case of the *I'm Alone*, focusing on the *de facto* control rather than on the attribution to Great Britain whose flag it was flying.[77]

In the present case, reference to the genuine link is inevitable as the attribution to a State pursuant to the registration is not possible. As demonstrated above, Usurpia is entitled to register Satelsat-18. The dual registration by Concordia and Usurpia necessitates resorting to the genuine link, and other criteria, such as ownership, exercise of ground control and effective control. [78] Usurpia is the only State that satisfies any of these criteria.

Consequently, Satelsat-18 has to be attributed to Usurpia resulting in a lawful exercise of Usurpian jurisdiction and control. Usurpia was acting consistently with international law when it relocated Satelsat-18.

[77] *I'm Alone (Can. v. U.S.)*, 3 R.I.A.A. 1609, 1617-8.
[78] Bittlinger, *supra* note 75, at 77; see also Gorove, *supra* note 8, at 147.

II. LANDIA IS NOT ENTITLED TO COMPENSATION FROM USURPIA AS A RESULT OF THE COLLISION THAT DESTROYED THE SATELSAT-18 AND ORBITSAT SPACESTAR SATELLITES, PURSUANT TO THE LIABILITY CONVENTION, THE OUTER SPACE TREATY AND CUSTOMARY INTERNATIONAL LAW.

A. Landia cannot claim compensation under the Liability Convention.

1. Usurpia is not a launching State within the meaning of the Liability Convention.

Since Usurpia was not involved in the launch of Satelsat-18, Usurpia cannot be considered a launching State. The registration of a space object does not change, alter or even affect the liability of a State under the Liability Convention.[79] This conclusion is justified in light of the different purposes of the Liability Convention and the Registration Convention. The Registration Convention's purpose is to identify the State which has jurisdiction and control over a space object.[80] During the drafting of the *corpus juris spatialis*, it was noted that the registration of a space object does not entail legal liability for it.[81] The purpose of the Registration Convention would be frustrated if liability for a space object arose by virtue of registration, since States would stop registering space objects in order to avoid liability.[82]

The Liability Convention aims to provide an injured party with recourse for damages incurred. Under the Liability Convention, a State can only incur liability if it is a launching State. In order to be a launching State, a State has to be involved in the actual launch.[83] However, Usurpia was not involved in the launch of the Satelsat-18 satellite as it was transferred in orbit subsequent to the actual launch. Therefore, Usurpia cannot be a launching

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[79] Convention on International Liability for Damage Caused by Space Objects (1972), 961 U.N.T.S. 2389 [Liability Convention].
[80] Mick, *supra* note 45, at 146; Frankle, *supra* note 45, at 39.
[81] Frankle, *supra* note 45, at 38, citing to U.N. Doc. A/AC.105/21/Add. 2, at 36-45 (1964).
[82] Mick, *supra* note 45, at 28.
[83] Liability Convention, *supra* note 79, Article I(c); see also Bruce A. Hurwitz, *State Liability for Outer Space Activities* (1992), 21-2 [Hurwitz]; Elmar Wins, *Weltraumhaftung im Völkerrecht* (2000), 80-7 [Wins]; Peter Malanczuk, *Haftung*, in: Karl-Heinz Böckstiegel, *Handbuch des Weltraumrechts* (1991), 782-5 [Malanczuk]; Morris D. Forkosch, *Outer Space and Legal Liability* (1982), 77-80.

State for the purposes of the Liability Convention. The Liability Convention cannot be expanded to include every State whose nationals own space objects. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter."[84] Article I(c) of the Liability Convention makes sense in its context since liability flows from the actual act of launching or of procuring the launch.

Under the Liability Convention, the notions of "once a launching state always a launching state"[85] and "once a 'launching State' always a *liable* state"[86] are applicable, and thus the injured party can always claim damages from the original launching State or States. The notion of launching States "creates a clear and unambiguous allocation of responsibilities vis-à-vis the general public".[87] This in turn promotes and implements the victim-oriented nature and purpose of the Convention. The Liability Convention is based on the assumption that there will always be at least one liable launching State.[88] Holding non-launching States liable under the Liability Convention could lead to confusion as the original launching States may seek exemption from liability. Consequently, although Satelsat-18 was lawfully registered by Usurpia, it is not liable for Satelsat-18 under the Liability Convention.

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[84] *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion*, 1950 I.C.J 4, 8; see also *Polish Postal Service in Danzig, Advisory Opinion*, 1925 P.C.I.J. (ser. B) No. 11, at 39.
[85] Statement of Germany to the Legal Subcommittee of the UNCOPUOS, A/AC.105/867 (2006), 4 [Statement of Germany]; Frankle, *supra* note 45, at 36.
[86] Susanne U. Reif / Bernhard Schmidt-Tedd / Kathrin Wannenmacher, *Report of the 'Project 2001' Working Group on Privatisation*, in: Karl-Heinz Böckstiegel, *Project 2001 – Legal Framework for the Commercial Use of Outer Space* (2001), 405, 423; emphasis added.
[87] Statement of Germany, *supra* note 85, at 4; Bernhard Schmidt-Tedd / Michael Gerhard, *How to Adapt the Present Regime for Registration of Space Objects to New Developments in Space Applications*, 48 I.I.S.L. Proc. 353, 357 (2005).
[88] Christian Kohlhase / Philip S. Makiol, *Report of the 'Project 2001' Working Group on Launch and Associated Services*, in: Karl-Heinz Böckstiegel, *Project 2001 – Legal Framework for the Commercial Use of Outer Space* (2001), 55, 72.

2. Landia's losses are not recoverable under the Liability Convention.

a) Indirect losses are not within the scope of the Liability Convention.

Even if the Liability Convention were applicable, Landia would still not be entitled to recover its losses since they are indirect. Indirect damage has been defined as damage that "does not flow directly and immediately from the act, but only from some of the consequences or results of such act."[89] The losses claimed by Landia are not direct damages since they are merely consequences of the collision. Damage pursuant to the Liability Convention means "loss of or damage to property of States".[90] Indirect damage is not contemplated within the definition of "damage" in Article I.[91] International conventions typically state specifically whether indirect damages are recoverable. For example, the Convention on Liability of Operators of Nuclear Ships and the Vienna Convention on Civil Liability for Nuclear Damage explicitly refer to "any other loss".[92] Since the Liability Convention lacks such a provision, Landia cannot claim its losses under it.[93]

Landia claims that it will suffer more than $2 billion in losses to its economic welfare.[94] The only type of loss which is recoverable under the Liability Convention involves physical damage or personal injury.[95] Therefore, Landia's losses are not covered by Article

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[89] Carl Q. Christol, *International Liability for Damage caused by Space Objects*, 74 Am. J. Int'l L. 346, 360 [Christol]; Hurwitz, *supra* note 83, at 15; both citing to Commentary on Aeronautical & Space Sciences, U.S. Senate, *Convention on International Liability for Damage Caused by Space Objects: Analysis and Background Data*, 92d Cong., 2d Sess. (May, 1972) at 24.

[90] Liability Convention, *supra* note 79, Article I.

[91] Edward R. Finch, *Outer Space Liability: Past, Present and Future*, 14 Int'l Law. 123, 126 (1980).

[92] See *Convention on Liability of Operators of Nuclear Ships* (1962), 57 Am. J. Int'l L. 268 (1963), Article I(7); *Vienna Convention on Civil Liability for Nuclear Damages* (1963), 2 I.L.M. 727 (1963), Article I(k)(ii).

[93] Sa'id Mosteshar, *Responsibility for Pure Economic Loss Arising from Space Activity*, 34 I.I.S.L. Proc. 274, 275 (1991) [Mosteshar].

[94] Compromis, para. 18.

[95] Malanczuk, *supra* note 83, at 791; Adrian Bueckling, *Völkerrechtliche Haftung für Raumfahrtschäden nach dem Weltraumhaftungsabkommen vom 29. März 1972* (1982), 17; Wins, *supra* note 83, at 101.

I(a) of the Liability Convention.[96] This interpretation is compelled by the reasons for imposing a regime of absolute liability in the Liability Convention under Article II. Absolute liability is an essential part of the Convention since activities in outer space can be considered ultrahazardous, and victims on the surface of the Earth have not accepted the risk of such activities.[97]

This approach differs markedly from Article III's fault-based liability regime, which is predicated on States' acceptance of the risks of outer space activities in exchange for the benefits they get.[98] It would be intolerable if States, that benefit from space activities and have accepted their risks, could recover their economic losses due to the loss of telecommunications capabilities under the absolute liability regime.[99]

Moreover, in Article 21 of the International Telecommunications Convention, "responsibility towards users of international telecommunication services, particulary as regards claims for damages" are precluded.[100] Landia, Concordia and Usurpia are members of the International Telecommunication Union and have specifically disclaimed liability for damages due to the loss of telecommunication services.[101] Thus, Landia cannot claim damages for this type of loss.

b) Landia's type of injury is not recoverable under international law.

Even if indirect losses were recoverable under the Liability Convention, Landia would still not be entitled to compensation from Usurpia. Article XII of the Liability Convention

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[96] Mosteshar, *supra* note 93, at 275.
[97] Hurwitz, *supra* note 83, at 29-31; C. Wilfred Jenks, *Liability for Ultra-Hazardous Activities in International Law*, 117 R.A.D.I. 99, 153 (1966).
[98] E. R. C. van Bogaert, *Aspects of Space Law* (1986), 167; Manfred Lachs, *The Law of Outer Space* (1972), 126.
[99] Mosteshar, *supra* note 93, at 274, stating that "[i]t would be a curious result if" a State had to establish fault for damages to one of its satellites but not for loss of profits generated by the satellite.
[100] International Telecommunications Convention (1982), in: Karl-Heinz Böckstiegel / Marietta Benkö, *Space Law Basic Legal Documents* (1990), C.IV.1.
[101] Nicolas M. Matte, *Aerospace Law: Telecommunications Satellites*, 166 R.A.D.I. 123, 149 (1980).

states that damages "shall be determined in accordance with international law".[102] However, under international law "[t]he compensation shall cover any financially assessable damage including loss of profits insofar as it is established."[103] Thus, international law only allows the recovery of pure economic losses under certain circumstances. "[P]rospective profits [like losses] must not be too speculative, contingent, uncertain, and the like."[104] Due to possible, unforeseeable changes in the future, compensation can only be based on an internationally recognized vested right.[105] However, the Landian claims for damages lack such a basis. The provisional lease agreement with Orbitsat was contingent upon the decision of an independent third party, namely the World Bank.[106] As long as the funding was not provided, the provisional lease agreement was not a valid and enforceable contract. Thus, Landia's losses, which are not accompanied by the violation of an internationally recognized right, are not recoverable.

Moreover, the lease agreement between Landia and Satelsat was lawfully terminated in the Usurpian bankruptcy proceeding. Landia cannot claim rights under this agreement. Since Landia's losses are not connected to a vested legal right and thus by their very nature speculative, international law does not provide Landia with a remedy.

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[102] Liability Convention, *supra* note 79, Article XII.
[103] ILC Articles on the Responsibility of States for Internationally Wrongful Acts, Official Record of the General Assembly, 56th Sess., Supp. No. 10, U.N. Doc. A/56/10 (2001), Article 36 [Articles on State Responsibility].
[104] Marjorie Whiteman, *Damages in International Law*, *Volume III* (1936), 1837; see also *Asian Agricultural Products Limited v. Democratic Socialist Republic of Sri Lanka*, 6 ICSID Rev.—FILJ 526, 569 (1991); *Shufeldt Claim (U.S. v. Guat.)*, 2 R.I.A.A. 1083, 1099 (1930).
[105] *Oscar Chinn Case (U.K. v. Belg.)*, 1934 P.C.I.J. (ser. A/B) No. 61, at 88.
[106] Compromis, para. 15.

B. Landia cannot claim compensation pursuant to the Outer Space Treaty.

1. Landia cannot claim compensation under Article VI of the Outer Space Treaty.

Landia cannot claim compensation pursuant to Article VI of the Outer Space Treaty since no international wrong was committed either by Usurpia itself or by Usurpian nationals. Additionally, Landia's losses are not compensable under international law.

Article VI modifies the customary rules of State responsibility as far as attributability is concerned as States have to bear responsibility for their nationals' activities. Since Satelsat-18 was owned by a Usurpian company, namely New Satelsat, the activities in question are national activities pursuant to Article VI. However, responsibility for an act under international law requires not only attributability but also a breach of an international obligation.[107] Neither Usurpia nor Usurpian nationals violated international law by lawfully exercising jurisdiction over Satelsat-18 and relocating it. Satelsat-18 was the property of a Usurpian national at the time of the collision. The accidental destruction of Usurpian property is not a breach of international law which would entitle Landia to claim compensation.

Furthermore, Usurpia did not breach its obligations under Article VI. Pursuant to Article VI, the appropriate State has to authorize and continually supervise the activities of non-governmental activities. Usurpia considered itself to be the "appropriate State" for Satelsat-18 since it was owned by a Usurpian national, and Usurpia had jurisdiction and effective control over it.[108] Thus, Usurpia's duty was to continually supervise the satellite, and it did in fact supervise it. The Outer Space Treaty does not define the term "continuing supervision". Article VI requires a State to control the activities of its nationals. However,

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[107] Articles on State Responsibility, *supra* note 103, Article 2; *United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, 1980 I.C.J. 3, 29 [*Diplomatic and Consular Staff*].
[108] Karl-Heinz Böckstiegel, *The Terms "Appropriate State" and "Launching State" in the Space Treaties – Indicators of State Responsibility and Liability for State and Private Activities*, 34 I.I.S.L. Proc. 13, 14 (1991); Gregory Silvestrov, *On the Notion of "Appropriate" State in Article VI of the Outer Space Treaty*, 34 I.I.S.L. Proc. 326 (1991).

States have discretion as to how they implement this obligation.[109] Usurpia empowered the Usurpian Telecommunications Authority [UTA] to authorize and supervise its nationals. It was planned that Satelsat-18 would be relocated to a Usurpian orbital slot. In order to effect the relocation, New Satelsat applied for a license, which was granted by the UTA.[110] Thus, the UTA authorized the relocation and supervised it, and the UTA certainly knew about the current position as well as the prospective position of Satelsat-18. Consequently, Usurpia fulfilled its obligations under Article VI since the UTA competently supervised New Satelsat. A violation of Article VI of the Outer Space Treaty did not occur.

2. Landia cannot claim compensation under Article VII of the Outer Space Treaty.

Article VII of the Outer Space Treaty is not applicable since it explicitly refers to the State "that launches or procures the launching of an object into outer space". Article VII, like the Liability Convention, cannot be broadened to hold non-launching States liable.[111] Thus Usurpia is not liable under Article VII of the Outer Space Treaty.

Even if Article VII were applicable, Landia could still not claim damages pursuant to it since Usurpia did not incur international liability. International liability under the Outer Space Treaty refers to liability under general international law, namely fault-based liability.[112] International liability must necessarily imply fault, since an absolute liability regime which was proposed during the drafting of the treaty was deliberately left out.[113] Fault implies that a certain standard of conduct was violated.[114] However, as "there is no accepted code of

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[109] Julian Hermida, *Legal Basis for a National Space Legislation* (2004), 46.
[110] Compromis, para. 13.
[111] Karl-Heinz Böckstiegel, *Die Nutzung des Weltraums*, in: Karl-Heinz Böckstiegel, *Handbuch des Weltraumrechts* (1991), 265, 295-6.
[112] Malanczuk, *supra* note 83, at 779.
[113] Christol, *supra* note 89, at 353-4; in support for a fault-based liability in Article VII see also Bin Cheng, *International Liability for Damage caused by Space Objects*, in: Jasentuliyana / Lee, *Manual on Space Law, Vol. I*, (1979), 87; Malanczuk, *supra* note 83, at 777-80.
[114] Marc S. Firestone, *Problems in the Resolution of Dispute concerning Damage Caused in Outer Space*, 59 Tul. L. Rev. 747, 767 (1985).

behaviour"[115] for activities in outer space, "collisions may result in *both* parties 'being in the right.'"[116] No evidence can be deduced from the *Compromis* that anyone violated a particular code of conduct or acted in a careless or inappropriate manner. New Satelsat was lawfully entitled to relocate the Satelsat-18 satellite. Consequently, fault cannot be assumed. The mere fact that a collision took place does not imply wrongful conduct.[117] A contrary result would obliterate the difference between fault and absolute liability. In the absence of proven fault, Usurpia and its nationals cannot be held liable for damages resulting from the relocation of Satelsat-18 and the subsequent collision.

3. Landia's economic losses are not recoverable under the Outer Space Treaty.

Since the Outer Space Treaty does not define which damages are recoverable when a State incurs international responsibility, resort to customary international law principles is necessary to determine the feasibility of the Landian claim. However, under those principles, Landia cannot claim compensation for its losses since they are not connected to an internationally recognized vested right.

C. Landia cannot claim compensation under general principles of international law.

In contrast to the *corpus juris spatialis*, States are not responsible for the acts of their nationals under customary international law. New Satelsat decided on its own to speed up the relocation, and any consequences of this decision cannot be attributable to Usurpia. Since all of Usurpia's actions were in conformity with international law, it is not liable for any of Landia's losses.

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[115] Hurwitz, *supra* note 83, at 33.
[116] F. Kenneth Schwetje, *Space Law: Considerations for Space Planners*, 12 Rutgers Computer & Tech. L.J. 245, 250, Footnote 16 (1987); see also Jacob Zissu, *ASTROREGS: The 'Rules of the Road' in Outer Space*, 46 I.I.S.L. Proc. 340, 341 (2003).
[117] *The Java*, 81 U.S. 189, 191 (1871); The U.S. Supreme Court held that a ship is not liable, if it rightfully exercises its right of passage under ordinary precautions; see also *The Hector*, 5 U.S. 110, 124-5 (1860); *Turecamo Maritime, Inc. v. Weeks Dredge No. 516*, 872 F.Supp. 1215, 1229 (D.N.Y. 1994); see also George T. Hacket, *Space Debris and the Corpus Iuris Spatialis* (1994), 181; Jochen Pfeifer, *International Liability for Damage Caused by Space Objects*, 30 Ger. J. Air & Space L. 215, 230 (1981).

III. CONCORDIA IS NOT ENTITLED TO COMPENSATION FOR THE LOSS OF THE SATELSAT-18 SATELLITE, PURSUANT TO THE LIABILITY CONVENTION, THE OUTER SPACE TREATY, THE GLITSO AGREEMENT AND CUSTOMARY INTERNATIONAL LAW.

A. Concordia is not entitled to compensation pursuant to the Liability Convention.

1. Usurpia is not a launching State within the meaning of the Liability Convention.

Usurpia was not connected to the actual launch of the Satelsat-18 satellite and cannot be deemed a launching State under the Liability Convention. Thus, the provisions of the Liability Convention do not apply to Usurpia.

2. Concordia is not entitled to compensation under Article III of the Liability Convention.

Should this Court decide that the Liability Convention is applicable, Concordia could still not claim damages for the loss of Satelsat-18 under Article III. A State is liable for damage which was caused "to a space object of [another] launching State . . . by [its] space object . . . if the damage is due to its fault or the fault of persons for whom it is responsible."[118]

a) The loss of Satelsat-18 does not constitute Concordian damage.

Although the Satelsat-18 satellite was destroyed in the collision, Concordia did not incur any damage within the meaning of Article I(a) of the Liability Convention. The transfer of ownership of Satelsat-18 to New Satelsat was lawful. Thus, the Satelsat-18 satellite is owned by a Usurpian national, namely New Satelsat.

b) If Satelsat-18 were Concordian property, Article III would still not be applicable.

Assuming that Satelsat-18 remained the property of Satelsat, Concordia could not invoke Article III as a basis for compensation. Were Satelsat-18 Concordian property, the collision would not have been between space objects of different launching states. Both

[118] Liability Convention, *supra* note 79, Article III.

satellites were launched by Concordia, and therefore, Article III is not applicable. To impose liability under Article III, the space objects must be from different launching States. The matter of liability and compensation would then have to be settled between Satelsat and New Satelsat according to the domestic law of the launching State, namely Concordia.[119]

B. Concordia is not entitled to compensation pursuant to Article VI of the Outer Space Treaty.

Article VI of the Outer Space Treaty establishes the responsibility of States for acts of its nationals. Since Usurpia did not breach any of its obligations it did not incur responsibility under international law.[120] The relocation of Satelsat-18 was consistent with international law. Moreover, Usurpia adequately supervised its nationals. Consequently, Concordia is not entitled to compensation pursuant to Article VI of the Outer Space Treaty.

C. Concordia is not entitled to compensation pursuant to the GLITSO Agreement.

Concordia is not entitled to compensation pursuant to the GLITSO Agreement. Concordia is not an LDC; global connectivity was not impaired; and Usurpia was not bound to Concordia's party declaration to the GLITSO. The relocation of Satelsat-18 was consistent with Usurpia's obligations under the GLITSO Agreement.

D. Concordia is not entitled to compensation pursuant to customary international law.

Usurpia did not violate any rules of customary international law and is thus not responsible. Moreover, States are only responsible for acts of their officials. Private acts of

[119] Hurwitz, *supra* note 83, at 33, citing Baker, "*Liability for Damage Caused in Outer Space by Space Refuse*", 12 Ann. Air & Space L. 183, 215 (1988).
[120] *Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion,* 1949 I.C.J. 174, 184; James Crawford, *The International Law Commissions Articles on State Responsibility Introduction Text and Commentary* (2002), 83.

their nationals are not attributable to them.[121] As the relocation of Satelsat-18 was effected by New Satelsat, acting in a private capacity, it is not attributable to Usurpia.

A claim against Usurpia for violating its international obligation not to allow its territory to be used for acts contrary to the rights of other States is without merit.[122] Neither Usurpia's nor New Satelsat's acts with regard to Satelsat-18 were contrary to the rights of Concordia. Additionally, Usurpia did not have the duty to prevent New Satelsat from relocating Satelsat-18. Therefore, Concordia may not claim damages under international law.

[121] Articles on State Responsibility, *supra* note 103, Chapter II – Attribution of Conduct to a State.
[122] *Corfu Channel (U.K. v. Alb.), Merits*, 1949 I.C.J. 4, 22 [Corfu Channel].

IV. CONCORDIA IS NOT ENTITLED TO INDEMNIFICATION FROM USURPIA FOR ANY FINANCIAL OBLIGATION OWED TO LANDIA AS A RESULT OF THE COLLISION THAT DESTROYED THE SATELSAT-18 AND ORBITSAT SPACESTAR SATELLITES, PURSUANT TO THE LIABILITY CONVENTION, THE GLITSO AGREEMENT AND GENERAL PRINCIPLES OF INTERNATIONAL LAW .

The alleged damage suffered by Landia does not constitute the type of loss that is recoverable under any provision of the *corpus juris spatialis* or under any other principle of international law. Usurpia disavows any claims for indemnification by Concordia since Concordia is not under any obligation to pay for Landia's economic losses.

A. Concordia cannot seek indemnification pursuant to the Liability Convention.

1. Usurpia is not a launching State within the meaning of the Liability Convention.

The Liability Convention is solely applicable to launching States within the meaning of Article I(c) of the Convention. Usurpia is not a launching State since it lacks connection to the actual launch of Satelsat-18. Thus, Concordia cannot seek indemnification pursuant to Article IV(2) or Article V(2) of the Liability Convention for the Landian losses.

2. Article IV(2) of the Liability Convention is not applicable.

Even if Usurpia were considered a launching State within the meaning of the Liability Convention, Article IV would not be applicable. Article IV(1) provides that the damage has to be caused by space objects of two different launching States. Since Concordia is the launching State for Satelsat-18 and Orbitsat SpaceStar, Article IV(1), like Article III, does not apply.[123] However, Article IV(2) is only applicable in the case of "joint and several liability referred to in [Article IV(1)]."[124] Thus, Concordia cannot demand indemnification under Article IV(2) of the Liability Convention.

[123] Hurwitz, *supra* note 83, at 33.
[124] Liability Convention, *supra* note 79, Article IV(2).

3. Article V(2) of the Liability Convention is not applicable.

Should this Court consider Usurpia as a launching State, Article V would still not be applicable. The only possible way to apply the Liability Convention to the facts at hand would be to unduly broaden the concept of "procures the launching" described in Article I(c)(i).[125] However, Article V(1) refers only to States which "jointly launch a space object".[126] This means that procuring a launch under Article I(c)(i) is not sufficient since according to Article V, the State has to play an active role in the actual launch.[127] This interpretation is supported by Article V(3) which stipulates that "[a] State from whose territory or facility a space object is launched shall be regarded as a participant in a joint launching." Article V(3) is not merely "tautological"[128] but expressly includes States whose "contribution to the joint venture is purely passive".[129] Other passive participants are not expressly mentioned, leading to the conclusion that apart from this exception, active participation in the launch is required.[130] Even if Usurpia were considered a launching State, it did not actively participate in the launching of Satelsat-18, rendering Article V inapplicable.

B. The GLITSO Agreement does not provide any basis for claims for indemnification.

Since Usurpia did not violate the GLITSO Agreement, Concordia cannot base any claim for indemnification on that Agreement. The GLITSO Agreement is intended to improve the situation of LDCs with regard to access to high-priced space technologies and services. In the event that this Court holds that Usurpia acted contrary to the GLITSO Agreement, this breach would only affect Landian and not Concordian rights. Thus, Concordia cannot base its claim for indemnification on the GLITSO Agreement.

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[125] Liability Convention, *supra* note 79, Article I(c)(i).
[126] Liability Convention, *supra* note 79, Article V(1).
[127] William Foster, *The Convention on International Liability for Damage Caused by Space Objects*, 10 Can. Y.B. Int'l L. 137, 166 (1972) [Foster].
[128] As proposed by Bin Cheng in: Bin Cheng, *Studies in International Space Law* (1997), 329.
[129] Foster, *supra* note 126, at 166.
[130] Stephan Hobe, *Die rechtlichen Rahmenbedingungen der wirtschaftlichen Nutzung des Weltraums* (1992), at 132.

C. Concordia lacks a basis for a claim under general principles of international law.

Concordia cannot base its claim for indemnification on the principles of State responsibility as such claims are based on internationally wrongful acts.[131] Usurpia has not committed any wrongful act under the *corpus juris spatialis* or under customary international law.

Usurpia acknowledges that this Court held in the *Corfu Channel* case that States have the "obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States."[132] However, Usurpian territory was not used for acts contrary to any Concordian rights. In the event that Concordia has to pay compensation for the Landian economic losses, it is evident that Concordia is obliged to do so under the Liability Convention. Concordia has accepted absolute liability for its space objects by ratifying the Liability Convention. The fact that Concordia has to bear liability for its space object is not contrary to Concordian rights. If Usurpia were to compensate Concordia, Concordia would be absolved from its duties as a launching State. The underlying principle of this Court's holding in the *Corfu Channel* case cannot be expanded to entitle States to claim indemnification when they fulfill their voluntarily accepted obligations. Consequently, Concordia lacks any basis for a claim for indemnification based on general principles of international law.

[131] Articles on State Responsibility, *supra* note 103, Article 2; *Diplomatic and Consular Staff*, *supra* note 107, at 29; Stefan Lorenzmeier / Christian Rohde, *Völkerrecht – schnell erfasst* (2003), 240.
[132] *Corfu Channel*, *supra* note 121, at 22.

SUBMISSIONS TO THE COURT

For the foregoing reasons, the Government of Usurpia, Respondent, respectfully requests the Court to adjudge and declare that:

1. Usurpia's decision to license the Satelsat-18 satellite and to permit it to be deployed at an Usurpian orbital location over the objections of both Landia and Concordia is consistent the Outer Space Treaty, the GLITSO Agreement, the Registration Convention and general principles of international law;
2. Landia is not entitled to compensation from Usurpia as a result of the collision that destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to the Liability Convention, the Outer Space Treaty and customary international law;
3. Concordia is not entitled to compensation for the loss of the Satelsat-18 satellite, pursuant to Liability Convention, the Outer Space Treaty, the GLITSO Agreement and customary international law; and
4. Concordia is not entitled to indemnification from Usurpia for any financial obligation owed to Landia, as a result of the collision destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to the Liability Convention, the GLITSO Agreement and general principles of international law.