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IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE,

THE HAGUE, NETHERLANDS

YEAR 2017

CASE CONCERNING SATELLITE ELECTROMAGNETIC INTERFERENCE

THE 2014 MANFRED LACHS

INTERNATIONAL LAW MOOT COURT COMPETITION

THE AKERAN FEDERATION	**V.**	**THE COMMONWEALTH OF MHENI**
THE APPLICANT		**THE RESPONDENT STATE**

ON SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE

JOINT NOTIFICATION ADDRESSED TO THE REGISTRAR OF THE COURT

ON BEHALF OF THE APPLICANT STATE

– THE AKERAN FEDERATION –

TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. TREATIES AND CONVENTIONS

B. MUNICIPAL LAWS

C. ARTICLES AND ESSAYS

R. St. J. Macdonald, *The Nicaragua Case: New Answers to Old Questions?* 24 Can. Y.B. Int'l Law (1986)	24
Ram S. Jakhu, *Dispute Resolution under the ITU Agreements*, Institute of Air and Space Law, McGill University	11
Ram Jakhu, *Legal Issues Relating to the Global Public Interest in Outer Space*, 32 J. Space L. (2006)	
Robert Ago, *Addendum to Eighth Report on State Responsibility*, II(1) Y.B. Int'l L. Comm. 13, (1980)	18
Rosalyn Higgins, *International Law and the Avoidance, Containment and Resolution of Disputes-General Course on Public International Law, in* 230 Recueil Des Cours 9-342, 296 and 310 (1991-V)	23
Ruys & Verhoeven, *Attacks by Private Actors and the Right of Self Defence*, 10 J Conflict Security L 289 (2005)	22
S.A. Alexandrov, *Self Defence Against the Use of Force in International Law*, (1996)	20
Sarah Eastbrooks, *Update on Prevention of an Arms Race in Outer Space*, 27 (3) The Ploughshares Monitor (2006)	16
V.M. Antolin-Jenkins, *Defining the Parameters of Cyberwar Operations: Looking for Law in All the Wrong Places*?, Naval Law Review 51 (2005).	17
WF Foster, *The Convention on International Liability for Damage caused by Space Objects*, 10 Canadian Yearbook Of International Law (1972)	28
William Wirin, '*Practical implications of Launching State and Appropriate State Definitions*' in Proceedings of the 37th Colloquium on the Law of Outer Space (1994)	5
Zachary T. Eytalis, *International Law and the Intentional Harmful Interference with Communication Satellites*, Institute of Air and Space Law McGill University, August 2012.	11

D. BOOKS AND TREATISES

E. U.N. RESOLUTIONS AND OTHER DOCUMENTS

F. INTERNATIONAL CASES AND ARBITRAL DECISIONS

G. NATIONAL CASES

H. MISCELLENOUS

QUESTIONS PRESENTED

- I -

Whether Mheni is liable under International Law for any EMI preventing access to the SEANAV signals?

- II -

Whether Akera violated International Law by disabling the X-12A satellite resulting in its destruction?

- III -

Whether Mheni is liable to Akera for the loss of the unmanned aerial vehicle, the damage to the military facility and the deaths of the two Akeran personnel?

STATEMENT OF FACTS

BACKGROUND

The Akeran Federation ("Akera") and the Commonwealth of Mheni ("Mheni") are neighbouring states with a long history of competition, diverging political systems, alliances and disputes. Mheni is located on the coast of the Botous Sea whereas Akera is a federation of nearly 500 islands, extending 950 kilometres north-south closely along the length of Mheni. Both nations allocate a significant part of their budgets to civil and military space programmes.

AKERAN ECONOMIC DEVELOPMENT

In the late 20th century, huge reserves of natural gas and crude oil were discovered under Akera's island chain, and it became a major exporter in the global marketplace. Historically inter-island trade was difficult because the waters of Akera were threatened by many dangerous reefs and other natural hazards. However, due to the development and flight of its own Precision Navigation and Timing ("PNT") satellite system, known as SEANAV, Akera's economy prospered from the resulting petroleum trade, and it was able to exploit these resources to eliminate navigation threats, enhance its own national and economic security, and enable sea-borne trade by supertankers and container ships to its islands.

THE SEANAV SATELLITE SYSTEM

The SEANAV constellation is a set of 18 payloads hosted onboard a variety of commercial states that have been launched by sea-based commercial space launch providers into inclined, near circular, medium Earth orbits. The SEANAV hosted payloads have been fully operational since

2010. The SEANAV PNT capabilities have been employed by the Akeran military as well as the international private sector.

ACCESS TO THE SEANAV SIGNAL

Private sector users purchase SEANAV user ("SEA-U") receivers from Akera in order to access the signal. Unbeknownst to Akera, the SEANAV PNT signal was also used by the Mhenian military with unauthorized Mhenian produced SEANAV user Equipment ("M-SUE") tuners.

LANGERHANS ISLANDS

The claimed economic zones of Akera and Mheni overlap in places in the Botous Sea, including the area of Langerhans Islands. The Langerhans Archipelago is a small cluster of uninhabited islands and contains an abandoned airstrip that was constructed and used by the State of Mintov during the Second World War. No State or entity expressed concerns about the area until geologists determined substantial oil and gas reserves exist under its waters. When that occurred, considerable interest was expressed by established by Akeran petro-companies, as well as by smaller and start-up companies in both Akera and Mheni.

SAIN COMMUNICATIONS

Sain Communications is a Mhenian corporation founded, owned and controlled by former Mhenian space and defence contractor employees, including hardware and software engineers. Sain Communications conducts a variety of business operations, including consulting services for Mhenian oil and gas industry. According to a filing with the Mhenian securities regulators, Sain Communications had a contract with one petroleum start-up company, Peabody Enterprises.

Sain Communications' compensation was comprised, in majority with part, of stock and stock options which were potentially lucrative in the event Peabody Enterprises successfully exploits the oil and gas reserves of the Langerhans Archipelago.

ASSERTION OF SOVEREIGNTY OVER LANGERHANS ARCHIPELAGO BY AKERA

In mid-2014, in an attempt to assert to assert its interests in the Langerhans Archipelago region, small Akeran warships sailed out of harbours in northern Akera into the Langerhans Archipelago's waters. Akera's air force also flew several transports onto the abandoned airstrip. While there, the pilots exited their aircraft, saluted, planted an Akeran flag next to their aircraft, shook hands, climbed back into their planes, and departed. Photographs of these events were widely publicized and celebrated by Akeran media.

DEVELOPMENT AND DEPLOYMENT THE X-12 SATELLITE SYSTEM BY SAIN COMMUNICATIONS

In early 2015, Sain Communications received authorization from the Mhenian government pursuant to its Space Licensing Act to begin development of the X-12 satellite system. The license application listed the purpose of the X-12 satellites as the "*testing of new communication technologies*". Sain Communications proceeded to complete and deploy the X-12 system in early 2016. The X-12 A and X-12 B satellites were launched at 6 months intervals from floating platform in waters of the Langerhans Archipelago by an international commercial launch services consortium which included entites incorporated in Akera. The X-12 satellites were placed in highly elliptical orbits, with their apogees above the territories of Akera and Mheni. The X-12 A and X-12B were phased within the same orbital plane to present 24 hours

continuous coverage of the region. Mheni registered the X-12 with the United Nations, and listed the purpose of each satellite to be the "*testing of new communication technologies.*"

ELECTROMAGNETIC INTERFERENCE WITH AKERAN SEA-U RECEIVERS

In mid-2016 Akera noted that its SEA-U receivers began to suffer from intermittent electromagnetic interference ("EMI") and, as a result, the systems began to have difficulty accessing the SEANAV PNT signal. The EMI coincided with the over flights of the X-12A satellite over Akera, and only affected SEA-U receivers which were within the communications footprint of the X-12A. As the two X-12 satellites became fully functional, other communications and digital systems tied to the SEANAV PNT system in Akera suffered deterioration. Numerous sensitive electronic and electrical devices also were disrupted, including those used for military purposes and civil aviation.

DESTRUCTION OF AKERAN UNMANNED AERIAL VEHICLE ("UAV') AND THE CONSEQUENCES THEREOF

The prestigious investigative journal *Aviation Daily & Space Operations* reported that as a result of the interference of the SEANAV signal, an Akeran UAV equipped with a SEA-U receiver had crashed at a military base, destroying the vehicle, as well as the building at the base, and killed two military personnel on the ground. In a press conference, the President of Akera confirmed that an Akeran UAV had crashed. She announced the Akeran analysts had confirmed the loss was caused by EMI generated, that the EMI had disabled the UAV's onboard navigation capabilities. According to the Akeran President, the analysts concluded that the interference phenomenon had never occurred prior to placing the X-12 system on-orbit. She described the X-

12A satellite as a "*sophisticated weapon*" and complained that it was used against Akera endangering it territorial integrity and national security.

ESCALATION OF EMI

By early-2017, the X-12A EMI had increased to prevent the use of receivers throughout Akera's islands and near the Langerhans Archipelago. This had the effect of causing a substantial reduction in international shipping and transit through Akera's waters, because large super tankers and container cargo ships could not navigate safely through its reefs and hazards. As a result, Akeran oil exports and trade declined significantly. During this time, however, several companies from Mheni, including Peabody Enterprises, began oil drilling operations in Langerhans Archipelago.

DIPLOMATIC DIALOGUE BETWEEN AKERA AND MHENI

The Akeran Foreign Ministry issued a *demarche* to the Mhenian authorities demanding that Mheni take immediate action to prevent the transmission of signals of X-12 satellites that were causing or could cause harm to Akera's use of the SEANAV system.

In a news conference, Mheni's foreign minister Preston Yukon, responded to the Akeran *demarche*. He said that Mheni was not at fault for deterioration of Akera's communications. Yukon stated that there was no proof of direct connection between the malfunctioning of the Akeran systems and devices and the transmissions of the X-12 satellites, and Mheni refused to take responsibility for the interference. He stated that Sain communications was in possession of valid authorizations to perform its space experiments and testing in accordance with both Mheni's laws and international obligations. He added that, during the authorization process

nothing indicated that X-12A was designed to disrupt any other satellite's signal. Further, he disclosed that Mheni was using M-SUE tuners, and explained that it would not be in Mhenian interests to interfere with the SEANAV system since its military and national space systems also used the signal for PNT purposes. As further proof of the point, Yukon stated that he was told that X-12 satellites also used the SEANAV PNT signal for navigational purposes. He stated that Akera's authorities should search for the source of disruption in their own territory.

ATTEMPTS BY AKERA TO GET ITS COMPLAINTS REDRESSED AT INTERNATIONAL FORUMS

Akera sought redress for its complaints about the X-12 satellite's transmissions through International Telecommunication Union (ITU), and requested that Mheni accede to the Optional Protocol on Compulsory Settlement of Disputes. Mheni rejected the request. Thereafter, Akera invoked the ITU dispute resolution consultations. Mheni denied any responsibility for the EMI, and the ITU procedures were unsuccessful in resolving the matter.

Akera also raised concerns about the X-12 satellite before the United Nations (UN) Committee on Peaceful Uses of Outer Space ("COPUOS"), as a part of its Legal Subcommittee ("LSC") and Scientific and Technical Subcommittee ("STSC") general exchange of views. Other members of the LSC and STSC declined to offer comments responsive to the topic, though some did advise that they wanted to consult with home governments before expressing any view.

Akera also sent an official letter to the UN Secretary-General informing him about the situation, and formally requested the UN Security Council to undertake measures with a view to prohibiting the attacks against its communication networks and navigation systems. One permanent Member State of the Security Council, a long-standing ally of Mheni, issued a

statement that it would veto any resolution against Mheni. Subsequently, the UN Security Council matter was tabled without a vote.

DEVELOPMENT OF SEANAV-2 SYSTEM BY AKERA

During this period of time, Akera developed a second generation of SEANAV PNT satellites, which were designed to transmit a more powerful and protected signal resistant to the EMI and to counteract and neutralize the effects of the EMI. No longer flown on hosted payloads, the SEANAV-2 was inaugurated with the launch of three satellites in the constellation in orbits close to the original SEANAV hosted payloads. The launch of these three satellites: Klondlike, Hudson and Simcoe. It was accompanied by an announcement by Akera's President that the SEANAV systems would be used to in support of expanded use of its drone program, and to patrol waters in and around the Akera and the Langerhans Archipelago. She also stated that the SEANAV-2 signal would not be as vulnerable to the EMI as was the original SEANAV system, but the full deployment of SEANAV-2 would take several years to complete. She reiterated that the X-12 EMI was provocative, illegal and a threat to Akeran national security interests and demanded that Mheni take immediate action by the EMI

Mheni responded to the Akeran demand by stating that Mheni was not responsible for the EMI and that there was no proof that the X-12A caused any interference

DESTRUCTION OF X-12A

While the Klondike satellite orbited in near conjunction with the X-12A, the Klondike broadcast a new SEANAV navigation signal with information encoded and integrated within its waveform to counteract the EMI. The X-12A was equipped with an on-board M-SUE tuner, which

malfunctioned when processing the Klondike's new PNT signal. The malfunction rendered the X-12A uncontrollable and it began to spin. Automatic systems on-board the X-12A ignited the thrusters in an attempt to correct its orientation, but the impaired X-12A ignited its thrusters in an attempt to correct its orientation, but the impaired M-SUE tuner sent inaccurate navigation information to the control system, and the automated thrusters firings had the effect of changing the X-12's control system, and to lower its perigee to 100 km. Ground controllers were unable to stabilize the X-12A the EMI affecting SEA-U receivers use of the SEANAV PNT signals ceased.

TIMELINE OF EVENTS

Time	**Event**
2010	The SEANAV payloads become fully operational.
2014	Akera attempts to assert its interests in the Langerhans Archipelago.
2015	Sain Communications receives authorization from Mhenian government pursuant begin the development of the X-12 satellite system.
Early 2016	Sain Communications completes and deploys the X-12 satellite system.
Mid 2016	Akeran SEA-U receivers begin to suffer from intermittent

	electromagnetic interference.
Early 2017	The X-12A EMI increases to prevent the use of SEA-U receivers throughout Akera's islands and near Langerhans Archipelago.
Subsequent events	After various rounds of negotiations and representations, Akera develops the SEANAV-2 system to counteract the EMI.

SUMMARY OF ARGUMENTS

I. It is established in international law that a State is responsible for internationally wrongful acts. Generally, Acts of private entities can only be attributed to a State if it is proved that the entity was acting as an agent or an organ of the State. However, in the current case, both the Parties are signatories to the Outer Space Treaty which applies as *lex specialis* and provides for State responsibility for the actions of all private entities in outer space. Therefore, Mheni is responsible for all the activities of Sain Communications in outer space.

Proving an internationally wrongful act requires the two step process of identification and attribution. In the present case, Akera is compelled to rely on circumstantial evidence as any direct evidence which might have been available, is in exclusive control of Mheni. The circumstantial evidence available proves that the electromagnetic interference is attributable to the X-12 satellite system whose launching was procured by Sain Communications. After the launch of X-12 satellite system, Mheni acknowledged its status as the launching state by registering the satellite under its name.

Intentional electromagnetic interference is an internationally wrongful act as it violates the rights of other states to explore the outer space and use the outer space for the remote sensing purposes. Further, such an act is also in derogation of the obligations of the parties under the Constitution and Convention of the International Telecommunication Union and its radio regulations ("ITU Constitution"). The ITU Constitution specifically prohibits harmful interference with the operations of the

other satellites. Lastly, the acts of Sain Communications in the present case violate the principle of non-intervention which is customary in international law

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II. Akera submits that it acted in conformity with international law by disabling the X-12A satellites as it was a valid countermeasure which it was entitled to take in order to ensure that Mheni complies with its obligations under international law. Such an act was proportionate as it reciprocated the perceived wrong in the present case. Even if this Court believes that Akera used force by disabling the X-12A satellite, in the current circumstances, it was entitled to do so as it was responding to an armed attack which was launched on it by Mheni. Even if the actions of Sain Communications are not attributable to Mheni, Akera can exercise its right to self-defence against non-state actors. Even if Mheni's actions did not amount to an armed attack, Akera could respond to the same with Forcible Countermeasures.

State practice confirms that States equate the use of non-kinetic disruptions and interferences to conventional weapons. These interferences can amount to "use or force" or an "armed attack" if they produce the same effect that a conventional weapon would. In the present case, the actions of Mheni amounted to an armed attack as they had the effect of causing an adverse effect on the security and economic infrastructure, substantial impairment of economy, damage to property and loss of life.

Even if there is a justification for the acts of Mheni, it cannot claim a right of self-defense as in the present case the act was performed by private entities and under international law belligerent rights can only be exercised by States and state organs.

Therefore, private entities such as Sain Communications cannot use these arguments to justify the legality of their actions. Due to these circumstances, Akera was entitled to exercise its right of self defense and it did so by disabling the X-12A satellite.

In any case, Mheni is foreclosed from any violations by Akera as it has come to the court with unclean acts. It is guilty of the same conduct which it is alleging Akera to be guilty of.

III. The Liability Convention provides for absolute liability for a launching state in the event that the damage is caused in any place other than outer space. In the current circumstances, Mheni being the launching state is absolutely liable for the damage caused to the unmanned aerial vehicle, Akeran property and the deaths of two military personnel. If the Court is of the opinion that Mheni is not absolutely liable for the damage because the damage was not caused by "a space object launched by Mheni", it would still be able to hold Mheni liable under the fault liability provisions of the Liability Convention because the damage to Akeran property and personnel is the direct consequence of the damage caused by the X-12 satellite to the SEANAV satellite system and the requisite causal link for the same is established in the present circumstances.

In the event of this court finding that Akera is precluded from claiming damages under the Liability convention, Mheni would still be responsible to compensate Akera under the Outer Space Treaty which takes precedence over the Liability Convention. Alternatively, Mheni is also liable to compensate Akera under general principles of

international law for the damage caused to the property of Akera as the causing of such damage is an internationally wrongful act.

ARGUMENTS ADVANCED

I. MHENI IS LIABLE UNDER INTERNATIONAL LAW FOR HARMFUL EMI PREVENTING ACCESS TO SEANAV SATELLITE PNT SIGNALS.

Outer space is free for use and exploration to all States.[1] Peripheral data gathering from outer space is permissible and any interference with this right constitutes a violation of International law.[2] A State is responsible for internationally wrongful acts that are attributable to it.[3] Accordingly, Mheni should be held responsible for interference caused by the X-12 Satellite system.

[1] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, *entered into force* Oct. 10, 1967, art. 6, 18 U.S.T. 2410, 610 U.N.T.S. 205 [hereinafter OST]; Manfred Lachs, *The International Law of Outer Space*, in RECUEIL DES COURS, 47-51 (1964).

[2] BIN CHENG, STUDIES IN INTERNATIONAL SPACE LAW, 578 (1997).

[3] Int'l Law Commission, *Articles on State Responsibility*, U.N.GAOR, 56th Sess, Supp No 10, art 1, U.N. Doc. A/56/10 (2001) [hereinafter Articles on State Responsibility]; Chorzow Factory (F.R.G. v. Pol.), 1927 P.C.I.J. (ser. A) No. 9, at 21 (July 26) [hereinafter Chorzow Factory]; Rainbow Warrior (New Zealand/France), (1990) 82 Int'l. L. Rep., 499 (Apr. 30); Gabcikovo-Nagymaros Project (Hungary v. Slovakia), 1997 I.C.J. 7 (Sep. 25).

A. The causing of harmful EMI can be attributed to the X-12 satellite system

i. *Circumstantial evidence proves that the EMI was caused by the X-12 satellite system*

a. Akera has recourse to utilize circumstantial evidence

The ICJ has generally taken a flexible approach to the admissibility of evidence.[4] This can be evidenced from the use of circumstantial evidence in the *Corfu Channel* case wherein this court has allowed parties to take "more liberal recourse to inferences of fact and circumstantial evidence." [5] The pre-condition for allowing such liberal recourse to the fact is that [1] the direct evidence is under the exclusive control of the opposite party and [2] the circumstantial evidence does not contradict direct evidence and accepted facts.[6]

Akera does not have access to direct evidence as the X-12 satellites are under exclusive control of Sain Communications which is a wholly owned Mhenian corporation founded, owned and controlled by Mhenian nationals.[7] Thus, it should be allowed to utilise circumstantial evidence.

b. The uncontested circumstances reveal the causal link between the harmful EMI and the deployment of the X-12 Satellites

The ICJ has placed reliance on evidence that has not been challenged by impartial persons for correctness of facts.[8] The X-12 satellites had their apogees located over Akera and Mheni.[9] The

[4] MICHAEL P. SHARF & MARGAUX DAY, RECONCILABLE DIFFERENCE: A CRITICAL ASSESSMENT OF THE INTERNATIONAL COURT OF JUSTICE'S TREATMENT OF CIRCUMSTANTIAL EVIDENCE, 2 (2010), http://works.bepress.com/michael_scharf/2.
[5] Corfu Channel (U.K. v. Alb.) (Merits), 1949 I.C.J. 4, 18 (Apr. 9) [hereinafter Corfu Channel].
[6] *Id.*
[7] *Compromis*, ¶ 5.
[8] Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda) (Merits), 2005 I.C.J. 156 ¶¶ 4-15 (Dec. 19) [hereinafter DRC v. Uganda], ¶ 156; Case Concerning Application of the Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), 2007 I.C.J., (Feb. 26).

EMI coincided with the overflights of X-12A satellite over Akera[10] and only affected SEA-U receivers that were within communications footprint of Akera.[11] Further, once the X-12 satellite system became fully functional, other communications and digital systems which were tied to the PNT system in Akera suffered deterioration.[12] Further, the EMI affecting the use of SEANAV PNT signals ceased after the destruction of X-12A.[13] Hence, the circumstances prove that the X-12 satellite system was the cause of the harmful EMI.

c. Sain Communications had motive to interfere with the SEANAV satellite system

The ICJ has held that improper purpose or motive is proved by circumstantial evidence.[14] One may deduce that an act was motivated by an improper motive if the act is so unreasonable that no reasonable person with the same discretionary power would have performed it.[15]

Sain Communications had motive to cause harmful EMI to the SEANAV satellite system, as it would facilitate exclusive access to the Langerhans Archipelago. It stood to gain from the success of Peabody Enterprises' exploitation of the Langerhans Archipelago as its compensation was mostly comprised of stock and stock options.[16] Due to the EMI, Akera lost their capability to access Langerhans.[17]

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[9] *Compromis*, ¶ 8.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Compromis* ¶ 16
[14] South West Africa (Ethiopia. v. South Africa; Liberia v. South Africa), 1996 I.C.J. 6, (Jul.18) Judge Van Wyk Separate Opinion.
[15] *Id*.
[16] *Compromis*, ¶ 5.
[17] *Compromis*, ¶ 9.

ii. Negative inference must be drawn from the fact that Mheni has failed to produce any evidence to contradict Akera's assertion

The Eritrea Ethiopia Claims Commission read negative inferences of fact against Ethiopia because it could not present any evidence to rebut Eritrea's circumstantial evidence.[18] Further, it also held that if there is credible evidence to prove that there has been a change of status after the actions of Ethiopia, then the burden of proof for non-attribution shifted to Ethiopia.[19] The commission relied on the same sources of International Law as the ICJ.[20]

Similarly, Mheni at no point has brought about evidence contrary to Akera's claims. Mheni's only response to Akera's claims has been to deny the allegations.[21] It is uncontested that there was a change of status in the situation before and after the launching of the X-12 Satellites.[22] The Court must put the burden of non-attribution on Mheni which has provided no evidence which reasonably proves that the EMI was not caused by Sain Communications.

B. Mheni is internationally responsible for the acts of Sain Communications

i. Mheni is liable for the actions of the X-12 satellites as it is the "launching state"

For a state to be a launching state it has to either launch the space object or procure it or has to be a state from whose territory or facility a space object is launched.[23]

[18] Civilians Claims (Eri. v. Eth,) Partial Award, Central Front, Eritrea Ethiopia Claims Commission, (Perm. Ct. Arb. 2004).
[19] *Id*.
[20] Eritrea-Ethiopia Claims Commission, Rules of Procedure, art.19, (2000).
[21] *Compromis*, ¶ 11.
[22] *Compromis*, ¶ 8.
[23] OST, art. VII; Convention on International Liability for Damage Caused by Space Objects, *entered into force* Oct. 9, 1973, 24 U.S.T. 2389, 961 U.N.T.S. 187 [hereinafter Liability Convention].

a. Mheni procured the launch through its activities of its nationals

'Procure' means to 'actively and substantially participate' in a launch.[24] Procurement by a State occurs when it or its nationals are actively involved in 'acquiring, securing or bringing about the launch'.[25] The State that brings complicity to the launch meets the threshold of procuring the launch[26]. Manufacturing has been acknowledged as falling within the term 'procuring'.[27] The X-12 satellites were developed under Mhenian authorization[28] and used Mheni manufactured equipment.[29] Additionally, Sain Communications was substantially involved in bringing about the launch; this makes Mheni the launching state.[30]

b. By registering the X-12 Satellites, Mheni has acknowledged its liability for their actions

Under the Registration Convention, a space object may be registered on the registry of one State at any given time.[31] Additionally, Article VIII of the OST requires a State party on whose registry an object launched into outer space is carried shall retain jurisdiction and control over

[24] *Travaux preparatoires* to the Liability Convention, *Japan Working Paper* U.N. Doc. A/C.105/C.2/L.61 (June 23, 1969) *in* III MANUAL ON SPACE LAW, 354 (Nandasiri Jasentuliyana & Roy S.K. Lee eds., 1981) [hereinafter III MANUAL ON SPACE LAW]; Carl Q. Christol, *The "Launching State", in International Space Law*, Annuaire de Droit Martime et Aero-Spatial, 372 (1993); Karl-Heinz Bockstiegel, *The Terms "Appropriate State" and "Launching State" in the Space Treaties- Indicators of State Responsibility and Liability for State and Private Space Activities*, 34 PROC. COLLOQ. OUTER SP. 14 (1991).

[25] William Wirin, *Practical implications of Launching State and Appropriate State Definitions, in* PROCEEDINGS OF THE 37TH COLLOQUIUM ON THE LAW OF OUTER SPACE 353,359 (1994); Armel Kerrest, *Remarks on the Notion of Launching State*, 42 Proc. Colloq. Outer Sp. 308, 311 (1999).

[26] Karl H. Böckstiegel, *The Term 'Launching State' in International Space Law*, 31 I.I.S.L PROC. 80, 81(1994); H.A.Wassenbergh, *Public Law Aspects of Private Space Activities and Space Transportation in the Future*, 38 I.I.S.L PROC. 246, 247 (1995).

[27] III MANUAL ON SPACE LAW.

[28] *Compromis*, ¶ 7.

[29] *Compromis*, ¶ 11 ¶ 16.

[30] *Compromis*, ¶ 7.

[31] Convention on Registration of Objects Launched into Outer Space, *entered into force* Sept. 15, 1976, 28 U.S.T. 695, 1023 U.N.T.S. 15 [hereinafter Registration Convention].

such object.[32] Article II of the Registration Convention establishes that the "launching state" shall register the space object.[33] The VCLT requires a treaty to be interpreted in good faith and in the light of its objects and purposes.[34] Mheni has acknowledged its liability for the launch of the X-12 Satellites by registering them in accordance with Registration Convention.[35]

ii. Mheni is responsible under Article VI of the Outer Space Treaty

Under Article VI of the OST, States parties have assumed direct responsibility for acts that would normally not be attributable to them, specifically, private space activities.[36] Additional evidence of this is found in Article XI OST, where State duties are triggered by the activities of the State or its nationals.[37]

The use of preparatory works and State Practice is recognized as customary rule of international law[38], and is recommended by eminent jurists[39], and by the ICJ[40]. An examination of the *travaux* shows that the intent of the parties to the OST was to allow private space activities only under

[32] OST, art. VIII.
[33] Registration Convention, art. II.
[34] Vienna Convention on Law of Treaties, *entered into force* May 23, 1969, art. 31(3), 1155 U.N.T.S. 331 [hereinafter VCLT].
[35] *Compromis*, ¶ 7.
[36] Bin Cheng, *International Responsibility and Liability for Launch Activities*, 6 AIR & SPACE L. 297, 301 (1995); A.Christenson, *Attributing Acts of Omission to the State*, 12 MICH. J. INT'L L. 312, 194, 195 (1991).
[37] OST, art. IX.
[38] Maritime Delimitation and Territorial Questions (Qatar v. Bahr.), 2001 I.C.J. 18 2001 (Mar. 16); SIR IAN SINCLAIR, THE VIENNA CONVENTION OF THE LAW OF TREATIES 153 (1982).
[39] Hugh Thrilway, *The Law and Procedure of the International Court of Justice*, 3 BRIT. Y.B.INT'L L., 25 (1991); SIR IAN SINCLAIR, THE VIENNA CONVENTION ON THE LAW OF TREATIES 117 (1982).
[40] Temple of Preah Vihear (Cambodia v. Thai), 1961 I.C.J. 27, 32 (July 28); Border and Transborder Armed Activities (Nigeria v. Honduras) 1988 I.C.J. 84, 84-5 (Dec. 28).

the compromise that national governments would assume responsibility for non-governmental activity.[41]

The practice of States is to assume responsibility for their nationals. Under the International Space Station Intergovernmental Agreement, the partner states are responsible for ensuring that their nationals abide by the Crew Code of Conduct.[42] There was similar assumption by nations in the US-ESRO agreement concerning activities abroad the Spacelab.[43]

Additionally, State practice demonstrates that States authorise space activities involving their nationals wherever they are carried out.[44] Licensing is one of the primary methods by which States carry out their duty to authorise and supervise private space activities under Article VI,[45] and is thus "subsequent practice which establishes the consensus regarding interpretation."[46]

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[41] The Declaration of Soviet Delegate Fedorenko, Legal Subcommittee on the Peaceful Uses of Outer Space, U.N. Doc. (A/AC.105/PV.22) (Sept. 13 1963); ANDREW J. YOUNG, LAW AND POLICY IN THE SPACE STATIONS ERA 148 (1989); ANDREW G. HAILEY, SPACE LAW AND GOVERNMENT 232 (1963).

[42] Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of the Japan, The Government of the Russian Federation, and the Government of the United States of the America Concerning Cooperation on the Civil International Space Station, *entered into force* Jan. 29, 1998, art. 11, Temp. St. Dep't No. 01-52, CTIA No. 10073.000.

[43] *Agreement between the Government for the United States of America and Member States of the European Space Research Organisation, for a Cooperative Programme Concerning Development, Procurement and the Use of Space Laboratory in Conjunction with the Space Shuttle System, in* SPACE STATIONS : LEGAL ASPECTS OF SCIENTIFIC AND COMMERCIAL USE IN A FRAMEWORK OF TRANSATLANTIC COOPERATION, 239 (Karl-Heinz Bockstiegel ed., 1985).

[44] Review of the Concept of the Launching State, UN Secretariat, UNCOPUOS, U.N. Doc. No. A/AC.105/768 (2002); Space Activities Act, (No. 123) part 1, div.3, (1998 as amended) (Aust.); About Space Activity, Decree No 104, art. 9(2) (1993) (Russ.); Space Affairs Act, art.1, (No. 84 of 1993), (S. Afr.); Outer Space Act, ch.38, S.1, (1986) (U.K.); Commercial Space Launch Act, 49 U.S.C. 701, 70101 (7), (1984) (U.S.).

[45] Commercial Space Launch Act, 49 U.S.C. 701, 70101 (7) (1984) (U.S.); PETER P.C. HAANAPPEL, *Possible Models for Specific Space Agreements*, *in* SPACE STATIONS: LEGAL ASPECTS OF SCIENTIFIC AND COMMERCIAL USE IN A FRAMEWORK OF TRANSATLANTIC COOPERATION 63 (Karl-Heinz Bocksteigel ed., 1985).

[46] VCLT, art. 31(3).

Mheni will be liable for all acts of Sain Communications as it is a Mhenian corporation founded, owner and controlled by Mhenian nationals.[47] The fact that the launch of X-12 satellites took place outside the Mhenian territory[48] is of no consequence in light of the aforementioned practice.

a. The launch and operation of the X-12 Satellite system is a "national activity" of Mheni

National activities are activities carried out within the jurisdiction of a State, including personal jurisdiction, territorial jurisdiction and quasi territorial jurisdiction.[49] Under Article VI of the OST, states are responsible to the same extent for private national activities as they are for public international activities.[50] The ICJ has held that a company is considered to be a national of the State in which it is incorporated.[51] The State which has registered the space object has "effective jurisdiction" over the activities of the non-governmental agencies which have launched the space object.[52] Hence, the activities of Sain Communications in outer space are "national activities" of Mheni.

b. Mheni is the "Approriate State" for the purposes of the OST

[47] *Compromis*, ¶ 5.
[48] *Compromis*, ¶ 7.
[49] IAN BROWNLIE, SYSTEM OF THE LAW NATIONALS STATE RESPONSIBILITY PART I, 607 (2001).
[50] Frans G. Von der Dunk, *Liability versus Responsibility in Space Law: Misconception or Misconstruction?*, 35 I.I.S.L PROC. 367 (1992).
[51] Barcelona Traction, Light and Power Co., Ltd. (Belg. v. Spain), 1970 I.C.J. 3 (Feb. 5) [hereinafter Barcelona Traction].
[52] OST, art. VI; Bernard Schmidt-Tedd & Stephan Mick, *Article VIII*, I COLOGNE COMMENTARY ON SPACE LAW 176 (Stephan Hobe, Bernhard Schmidt-Tedd eds., 2009).

The "appropriate State" is required to authorize and continually supervise the launch activities of non-governmental entities.[53] The "Appropriate State" is the State where the private company carrying on space activities has its principal place of business, the State under whose laws the company is incorporated or the State where the production of instruments takes place.[54] As the State with effective control and the strongest jurisdictional tie to the launch,[55] Mheni must bear responsibility for all of the launch activities that occurred and is therefore the "appropriate state".

C. Mheni has committed an internationally wrongful act by causing of harmful interference which prevented access to the SEANAV satellite PNT signals

i. *Mheni's actions amount to contraventions of its obligations under the ITU Constitution*

The Convention of the ITU, the Constitution of the ITU ("ITU Constitution") and the Radio Regulations lay down the procedure for frequency and spectrum allocation.[56] These instruments seek to ensure efficient and economic use of the same and prevent harmful interference.[57] "Harmful interference" is "interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a

[53] OST, art. VI.
[54] PETER P.C. HAANAPPEL, THE LAW AND POLICY OF AIR, SPACE AND OUTER SPACE: A COMPARITIVE APPROACH 60 (2003); Bin Cheng, *Article VI of the 1967 Space Treaty Revisited: International Responsibility, "National Activities", and "The Appropriate State"*, 26(1) J. Space. L. 7, 28 (1998); Ricky J. Lee, *Liability Arising From Article VI of the Outer Space Treaty: States, Domestic Law and Private Operators*, 48 Proc. Colloq. Outer Sp. 216 (2005).
[55] *Compromis* ¶ 5, ¶ 8.
[56] Constitution of the International Telecommunications Union, *entered into force* July 1, 1994, art. 4.1 (29), 1825 U.N.T.S. 331, [hereinafter ITU Constitution].
[57] ITU Constitution, art. 45.

radiocommunications service operating in accordance with the Radio Regulations."[58] Member states must take all practicable measures to prevent such interference.[59] By causing the EMI, Mheni has contravened its obligations undertaken by it under the ITU Constitution.[60]

ii. ***Alternatively, even if Mheni was compliant with the ITU regulations, it is not absolved of International responsibility***

The membership to the ITU and an assumption of compliance cannot absolve Mheni of its liability because the ITU instruments do not provide against situations when the Member State is itself complicit in the harmful interference. They provide for procedures to prevent harmful interference, but the onus is placed on the State administration.[61] In the event of disagreements during the coordination phase, the entry of the frequency band may be made into the Master International Frequency Register ("MIFR") with 'unfavourable findings' and the disagreement by another administration remains unresolved.[62]

Thus, the fact that Mheni is a member of the ITU instruments[63] is insignificant insofar as the prevention of harmful interference is concerned, as the coordination process itself does not efficiently prevent harmful interference as it is merely a bilateral negotiation between the concerned States which may put Member States at a disadvantage.[64]

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[58] *Id.*
[59] ITU Constitution, art. 45(3).
[60] *Compromis*, ¶ 18.
[61] ITU Constitution, art. 6.1,45,48; Convention of the International Telecommunications Union, *entered into force* January 1, 1975, art. 10,12, 1825 U.N.T.S. 390; World Radiocommunications Conference -2012 Radio Regulations of the International Telecommunications Union, art. 1.169, 4.5, 4.10, 11.42 [hereinafter Radio Regulations].
[62] Radio Regulations, art. 11.41.
[63] *Compromis*, ¶ 18.
[64] Radio Regulations Board Report to World Radiocommunication Conference – 2000, Resolution 80, World Radiocommunications Conference - 2007, RES80-2.

The ITU further fails to provide an effective method to prevent harmful interference after the recording of an assignment. The burden to eliminate this interference lies solely with the administration whose assignments were the basis of unfavourable findings.[65] If the administration fails to do this, there exists no provision for imposing sanctions on Member States.[66] The Regulations Bureau is merely supposed to make an analysis of the situation and send a non-binding recommended action.[67] The only effective medium to resolve disputes with certainty is the Optional Protocol on the Compulsory Settlement of Disputes Relating, which Mheni rejected.[68]

The need for an increased obligation on Member States was recognized in the World Radiocommunication Conference 2012.[69] However the amendments did not empower the ITU to take unilateral action against non-compliant States[70], and the obligation to remove the interference remains with the State, requiring it to 'ascertain the facts, fix the responsibility, and take the necessary action.'[71]

This is ineffective against a State which is complicit in the harmful interference. The ITU regime allows Mheni to escape liability by merely denying the liability of the X-12 satellite system in causing the interference.[72] This was demonstrated when harmful interference from Iran

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[65] Radio Regulations, art. 11.42.
[66] Ram S. Jakhu, *Dispute Resolution under the ITU Agreements*, Institute of Air and Space Law, McGill University, http://swfound.org/media/48115/Jakhu-Dispute%20resolution%20under%20the%20ITU%20agreements.pdf.
[67] Radio Regulations, art. 15.46.
[68] *Compromis* ¶ 12.
[69] Article 11.42, 15.21, Radio Regulations.
[70] Zachary T. Eytalis, *International Law and the Intentional Harmful Interference with Communication Satellites*, Institute of Air and Space Law McGill University, August 2012, http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1394783657002~773.
[71] Radio Regulations, art. 15.21.
[72] *Compromis*, ¶ 11.

hampering the EUTELSAT satellite operations could not be stopped despite the WRC-12 amendments or RRB[73] as Iran denied being the source of the interference.[74]

iii. ***Mheni's actions are in contravention of its obligations under the Outer Space Treaty***

Mheni violated Article I of the OST[75] when it interfered with Akera's SEANAV satellite system. Mheni's action of causing harmful EMI against Akera's satellite directly interfered with Akera's ability to use and explore outer space thereby violating Article I of the OST. Mheni's actions violated Article IX of the Space Treaty.[76] Akera had an interest in maintaining its satellite in orbit for use in commercial and government endeavours and was heavily reliant on it.[77] It is uncontested that Akera suffered economic loss due to the loss of access to the SEANAV PNT Signal.[78] The I.C.J. has recognized that a State must respect the economic well-being of another State.[79] Mheni failed to give due regard Akera's interests in its operation of X-12 satellites.

iv. ***Mheni interfered with Akera's right to Remote Sense its own territory and the Langerhans Archipelago***

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[73] Radio Regulation Board – 61, (November 2012); Radio Regulation Board – 62, (March 2013) *in* Yvon Henri, *The ITU – Challenges in the 21st Century: Satellite Harmful Interference/Jamming*, (2013), http://www.unidir.ch/files/conferences/pdfs/radiofrequency-interference-the-potential-impact-of-intentional-and-accidental-interference-for-space-security-en-1-833.pdf.

[74] Peter B. de Seldding, *ITU Implore Iran to Help Stop Jamming*, SPACE NEWS (26 March 2010), http://www.spacenews.com/policy/100326-itu-implores-iran-help-stop-jamming.html; Press Release, *ITU Radio Regulations Board urges Iran to end interference hampering EUTELSAT satellite operations*, INTERNATIONAL TELECOMMUNICATIONS UNION, (26 March 2010), http://www.itu.int/newsroom/press_releases/2010/14.html.

[75] OST, art. I. BIN CHENG, STUDIES IN INTERNATIONAL SPACE LAW 234 (2004); Ram Jakhu, *Legal Issues Relating to the Global Public Interest in Outer Space*, 32 J. SPACE L. 31, 37 (2006).

[76] OST, art. IX.

[77] *Compromis*, ¶ 2.

[78] *Compromis*, ¶ 9.

[79] Fisheries Jurisdiction Case (U.K. v. Ice.) 1974 I.C.J 1, 26-27 (July 25).

In 1986 the U.N.G.A. adopted the Principles Relating to Remote Sensing of the Earth from Outer Space.[80] The ICJ has held that when a U.N.G.A. resolution declares principles of customary international law; the resolution is binding *erga omnes*.[81] Even if it is not binding, the resolution has normative value providing "evidence important for establishing the existence of a rule or the emergence of *opinio juris*"[82]

The Principles reflect customary international law since they reaffirm respect for international law and treaties such as the U.N. Charter, the OST, and the Registration Convention[83], reaffirm the principles of freedom of outer space[84], international responsibility for space activities[85] and respect for State sovereignty.[86] They were adopted by consensus and without objection.[87] The Principles "achieved a balance"[88] and represented "equitable legal relations"[89] as it convinced the "sensed" states of the benefits that could be derived from the technology.[90] The Principles were therefore grounded in existing State practice before being adopted by consensus.[91] The EMI caused by the X-12 Satellites was in violation of the aforementioned principles.

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[80] G.A. Res. 41/65, Annex, U.N. GAOR, 41st Sess., U.N. Doc. A/RES/41/65 (1986).
[81] Military and Paramilitary Activities in Nicaragua (Nicar. v. U.S.) (Merits), 1986 I.C.J. 14 ¶¶ 188,191 (June 27) [hereinafter Nicaragua]; DRC v. Uganda ¶162.
[82] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 ¶ 70 (July 8) [hereinafter Nuclear Weapons].
[83] Principles Relating to Remote Sensing of the Earth from Outer Space, GA.Res. 41/65 U.N. Doc. A/41/64, princ. III, XI.
[84] *Id.* at princ. IV.
[85] *Id.* at princ. XIII.
[86] *Id.* at princ. IX.
[87] CARL Q. CHRISTOL, SPACE LAW: PAST, PRESENT AND FUTURE 73 (1991) [hereinafter CHRISTOL]; *Supra* note 49, at 589.
[88] U.N.Doc. A/AC. 105/C.2/SR. 439, at 5, (Apr. 3, 1986) (Brazil's view), *cited in* CHRISTOL at 74.
[89] U.N.Doc. A/AC.105/C.2/SR.440, at 5, (Apr. 8, 1986) (Mexico's view), *cited in* CHRISTOL at 74.
[90] CHRISTOL at 74.
[91] *Id.* at 93.

v. *Mheni breached customary international law by harmfully interfering with beneficial and efficient use of res communis*

Jurisdictional competence over *res communis* has historically been recognized.[92] These special jurisdictional zones vest the right to reasonably use part of a global common area, but they do not vest any sovereignty rights over those areas.[93] The semi-exclusive use must be reasonable and not unduly hamper or interfere with another State's freedom to use the commons.[94] The causing of harmful interference by Mheni violated the right of Akera to use the global common area. It also violates a fundamental principle of International law that requires a State to use its property in such a way so as to not harm others.[95]

vi. *The EMI violated the principle of non-intervention*

The principle of non-intervention has been recognised as part of international law[96] and includes the prohibition on a state preventing another from exercising sovereignty over its economic and other resources.[97] The ICJ has opined that "[t]he element of coercion, which defines, and indeed forms the very essence of, prohibited intervention".[98] By denying access to SEANAV PNT signals, Mheni has violated the principles of non-intervention.

vii. *Mheni's actions were in violation of the prohibition on the Use of Force*

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[92] F.Kenneth Schwetje, *Protecting Space Assets: A Legal Analysis of "Keep-out Zones"*, 15 J. SPACE L. 131, 141 (1987).
[93] *Id.*
[94] *Id.*
[95] Trail Smelter Arbitration (U.S. v. Canada) 1938/1941, R.I.A.A. 1905; Lake Lanoux Arbitration (Fr. V. Spain), 24 I.L.R. 101 (1957); Corfu Channel; Settlement of the Gut Dam Claims (U.S. v. Can.), 8 I.L.M 118 (1969).
[96] Nicaragua, ¶ 202.
[97] Declaration on Non-Intervention, G.A. Res. 2131 (XX) A/RES/36/103, (1981).
[98] Nicaragua, ¶ 205; OPPENHEIM'S INTERNATIONAL LAW 1 432 (Robert Jennings & Arthur Watts eds., 2008).

The harmful interference caused by Sain Communications amounted not only to an illegal use of force, but also to an armed attack against Akera. This has been established in the subsequent contention as a justification for Akeran actions.

II. AKERA ACTED IN CONFORMITY WITH INTERNATIONAL LAW BY DISABLING THE X-12A SATELLITE.

A. Mheni has violated the Obligation to refrain from Use of Force under Art. 2(4) of the UN Charter

Art. 2 (4) of the UN Charter requires that States should refrain from "the threat or use of force against territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations"[99]. This is as a rule of customary international law[100] as well as a *jus cogens* norm.[101] The article proscribes all use of force irrespective of the motivation behind it.[102] This view is supported by the *travaux,*[103] finds support in the resolutions of the U.N. Security Council[104] and the U.N. General Assembly[105]. Hence, the use of force, for purposes other than self-defence or without the authority of the U.N. Security Council is illegal.

[99] U.N. Charter, art. 2, para 4.
[100] Nicaragua, ¶ 100-101; RANDELZHOLFER, THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 112 (2002).
[101] Nicaragua, ¶ 100; Oil Platforms (Iran v. U.S.) 2003 I.C.J. 161, 330 (Nov. 6) Judge Simma Separate Opinion.
[102] Corfu Channel, ¶ 109.
[103] BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 266 (1963).
[104] S.C. Res. 545, U.N. Doc. S/Res/545 (Dec. 20, 1983); S.C. Res. 455, U.N. Doc. S/RES/455 (Nov. 23, 1979); S.C. Res. 332, U.N. Doc. S/RES/332 (Apr. 21, 1973).
[105] G.A. Res. 3314 (XXIV), U.N. Doc. A/RES/29/3314 (1974).

i. Non-kinetic weapons qualify as "use of force" under Art. 2(4) since they have the effect of use of force

The aforementioned duty on states to refrain from using force is not weapon specific.[106] Subsequent practice reveals that use of certain dual-use non-kinetic weapons such as biological or chemical agents are treated as a use of force under Article 2(4).[107] This is based on their ability to destroy life and property.[108]

The criterion recognized to establish whether a new technology has become a form of warfare is "whether the technique is associated with the armed forces of the State that uses it"[109]. This is in furtherance of the VCLT which requires interpretation of a treaty by taking into account subsequent practice of the parties regarding its interpretation.[110]

The United States Joint Vision 2020 expressly refers to the employment of non-kinetic *weapons* in the area of international operations.[111] The 2004 National Military Strategy of the United States of America refers to "weapons of mass effect" which "rely more on disruptive impact than destructive kinetic effects".[112] The Russian Federation has stated that it does not consider information warfare against the Russian Federation or its armed forces as a non-military phase of

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[106] Nuclear Weapons ¶ 39.
[107] Nicaragua, ¶ 228; Convention on the Prohibition of Military or any Hostile Use of Environment Modification Techniques, G.A. Res. 31/72 (Dec. 10, 1976).
[108] Nuclear Weapons ¶¶ 38-39; Brownlie, *supra* note 103, at 362.
[109] D.B.Silver, *Computer Network Attack as a Use of Force under Article 2(4) of the United Nations Charter*, *in* COMPUTER NETWORK ATTACK AND INTERNATIONAL LAW 84 (M.N.Schmitt & B.T.O'Donnell eds., 2001).
[110] VCLT, art. 31 para 3(b).
[111] JOINT VISION 2020 - AMERICA'S MILITARY: PREPARING FOR TOMORROW, 23 (2000), www.fs.fed.us/fire/doctrine/genesis_and_evolution/source_materials/joint_vision_2020.pdf.
[112] THE NATIONAL MILITARY STRATEGY OF THE UNITED STATES OF AMERICA-A STRATEGY FOR TODAY; A VISION FOR TOMORROW, 1 (2004), www.defense.gov/news/mar2005/d20050318nms.pdf.

a conflict regardless of the absence of casualties.[113] Estonia equated cyber blockades to naval blockades on ports preventing a state's access to the world.[114] These instances of state practice clearly prove that the states have consider use of non-kinetic weapons analogous to space based jamming as amounting to use of force.

It has been affirmed that the territory of a State shall not be the object, *even temporarily*, of military occupation and other measures of force taken by another state in contravention of the charter.[115] Therefore, denial of communications to the SEANAV satellites *having the specified effect* amounts to use of force within the meaning of Article 2(4).

ii. Mheni's actions were against the political independence of Akera

Attacks on government vessels on high seas constitute a use of force against "political independence" of the State, because they impair the freedom of the State in relation to the unrestricted use of the high seas.[116] In the present case, the acts of Mheni impaired Akera's freedom with respect to the unrestricted use of space, making it an act against Akeran political independence.

This cannot amount to accidental infringement with the political independence as on the basis of past hostility[117] and disagreements with regard to the Langerhans Islands[118], and in the light of

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[113] V.M. Antolin-Jenkins, *Defining the Parameters of Cyberwar Operations: Looking for Law in All the Wrong Places*?, NAVAL LAW REVIEW 51 (2005), 132 (166).
[114] NATO PARLIAMENTARY ASSEMBLY, NATO AND CYBER DEFENSE, 173 DSCFC 09 E Bis, ¶ 59 (2009), www.nato-pa.int/default.asp?SHORTCUT=1782.
[115] G.A. Res. 3314 (XXIX) G.A.O.R. 29th Sess., Supp. No. 31, U.N. Doc. A/9361 (1974).
[116] ASRAT, PROHIBITION OF FORCE UNDER THE UNITED NATIONS CHARTER, A STUDY OF ARTICLE 2(4), 159,160 (1991).
[117] *Compromis*, ¶ 1.
[118] *Compromis*, ¶ 4.

the "pin-prick" doctrine where the legality of force is considered in light of relations between the concerned states[119] the determination of use of force is objectively established.

iii. The harmful EMI caused by Mheni amounted to an "armed attack" against Akera

The ICJ has recognised that a definition of "armed attack" does not exist in the charter and is not part of treaty law.[120] The decisions of the ICJ have indicated that it is the gravity[121] of the use of force and the "scale and effects"[122] of the same that indicate whether the same is an armed attack or not. The effect must also take into account, the effect on *economic and security infrastructure* and its subsequent effect of *substantial impairment of its economy*.[123] The ICJ has qualified the "gravity" or the "scale and effects" doctrine. It has held that had the requirements of attribution of state responsibility been satisfied, Iran would have been guilty of an armed attack for the single incident of the mining of the USS Samuel B Roberts.[124] The Court also extended the same standard to the mining of the Texaco Caribbean.[125]

Since the U.N Charter came into force, a type of aggression that neither produced kinetic effects nor caused physical injury and/or destruction was universally considered capable of qualifying as an armed attack: the naval blockade. Israel asserted that the blockade of the Straits of Tiran

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[119] Nicaragua, ¶ 99; DRC v. Uganda, ¶ 148; Robert Ago, *Addendum to Eighth Report on State Responsibility*, II(1) Y.B. INT'L L. COMM. 13, 69-70 (1980); ROSALYN HIGGINS, THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH POLITICAL ORGANS OF THE UNITED NATIONS 201 (1963).
[120] Nicaragua, ¶ 176.
[121] Nicaragua, ¶ 191
[122] Oil Platforms (Iran v. U.S.) (Merits) 2003 I.C.J. 161, ¶ 51 (Nov. 6) [hereinafter Oil Platforms].
[123] A. CONSTANTINOU, THE RIGHT OF SELF-DEFENCE UNDER CUSTOMARY INTERNATIONAL LAW AND ARTICLE 51 OF THE UN CHARTER, 63-64 (2000).
[124] Oil Platforms, ¶ 72.
[125] *Id.* at ¶ 64.

constituted an armed attack, which allowed it to invoke its Article 51 rights.[126] The International Community accepted this position.[127]

EMI is akin to naval blockades since they both are designed to inhibit access to a common medium, without proximately causing physical injury or destruction, so as to seriously jeopardize a nation's economic and social well-being such that they rise to the level of armed attacks.[128] Since 1999, the United States has maintained that purposeful interference with the U.S. space systems would be an infringement on the sovereign rights of the United States and it may take all appropriate self-defense measures to respond to the same.[129] The use of 'interference" suggests that non-destructive attacks against satellites, such as jamming, could constitute armed attacks the trigger self-defense rights.[130]

Whether a blockade actually threatens such damage is predicated upon the scale and effect of its imposition, consistent with the principle announced by the *Nicaragua* court.[131] In addition to the scale of the blockading force, the vulnerability of the victim state to the effects of a blockade is a key factor in analyzing whether a blockade constitutes an armed attack.[132] Therefore, the scale of the blockade is not the only key factor to adjudicate whether it is an armed attack; it must be contextualized by the degree to which the target relies upon the sea.

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[126] U.N. GAOR, 5th Emer. Sess., 1526th meeting, ¶ 133, U.N. Doc., A/PV. (1967).
[127] Jonathan E Fink, "*The Gulf of aqaba and the Strait of Tiran: The Practice of "Freedom of Navigation" After the Egyptian-Israeli Peace Treaty*, 42 Nav. L. Rev. 121, 127-28 (1995).
[128] G.A. Res. 29/3314, Annex, art. 3, U.N. Doc. A/Res/29/3314 (1974); TOM RUYS, 'ARMED ATTACK' AND ARTICLE 51 OF THE UN CHARTER: EVOLUTIONS IN CUSTOMARY LAW AND PRACTICE 130 (2011).
[129] Memorandum from William Cohen, Sec'y of Def. for Sec'ys of Military Dep't et al., Department of Defense Space Policy, at 3 (July 9, 1999) [hereinafter Space Memorandum]; Dep't of Def. National Security Space Strategy: Unclassified Summary 10 (2011)
[130] Space Memorandum, at 3.
[131] Nicaragua, ¶¶ 191, 195.
[132] Nicaragua, ¶ 197.

Akera allocates a significant part of its budget to civil and military space programme.[133] The SEANAV satellite system was created to counter the difficulties in trade and travel because of the dangerous reefs and other natural hazards present in the waters throughout Akera.[134] Resultantly, Akeran economy and security has developed due to the SEANAV system.[135]

The use of EMI by Mheni caused [1] an adverse effect on economic and security infrastructure[136], [2] substantial impairment of economy[137] and [3] loss of life and property[138] as the Akeran economy is built on the export of oil and natural gas. The EMI has had the effect causing substantial reduction in international shipping and transit through Akera's waters because of denial of access to safe navigation.[139] Resultantly, Akeran oil exports and trade declined *significantly*.[140]

B. The actions of Sain Communications are attributable to Mheni

A state is responsible for illegal use of force or an armed attack by non-state actors if the actions that constitute the same are attributable to the state.[141] The ICJ has interpreted this attribution to mean the involvement of a state, in general and not for specific operations, to any non-state actor's movement(s) which resulted in the non-state actor committing illegal uses of force.[142]

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[133] *Compromis*, ¶ 1.
[134] *Compromis*, ¶ 2.
[135] *Id.*
[136] *Compromis*, ¶8, ¶9.
[137] *Compromis*, ¶9.
[138] *Compromis*, ¶8.
[139] *Compromis*, ¶ 9
[140] *Id.*
[141] Nicaragua, ¶ 228; Oil Platforms, ¶ 51
[142] Nicaragua, ¶ 228

The involvement required is "substantial involvement"[143] and the non-state actors do not need to act "by or on behalf"[144] of a state. This includes logistical support and exercise of control over the actions of the non-state actor in order to interfere with another state.[145]

Article VI makes states internationally responsible for activities of their nationals in outer space and places an obligation on states to assure that non-governmental entities comply with the OST and international law.[146]

Mheni was under an obligation to maintain control over the activities of Sain Communications. All of its activities were licensed and authorized by Mheni and therefore it exercised the required direction over Sain Communications.

C. Mheni made no efforts to resolve the dispute through reconciliation

Mheni's attack is in contravention of Article 1(1) of the UN Charter.[147] Rather than directly attack Akera's satellite, Mheni had an obligation to seek reconciliation with Akera under Article 33 of the U.N. Charter.[148]

D. Even if there is a justification or exemption to the use of force by Mheni, it is precluded from claiming them

[143] Military and Paramilitary Activities In and Around Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14 (June 27) Judge Schwebel Dissenting Opinion [hereinafter Nicaragua Schwebel].
[144] Nicaragua, ¶ 195; DRC v. Uganda, ¶ 146; Legal Consequences on the Construction of a Wall in the Occupied Palestine Territory, Advisory Opinion, 2004 I.C.J. 136 (July 9) [hereinafter Wall Case].
[145] Nicaragua, ¶ 228.
[146] OST, art. VI.
[147] U.N. Charter, art. 1, para 1.
[148] U.N. Charter, art. 33.

Belligerent rights may be exercised *only by States* to be consistent with international law.[149] Consequently, non state actors cannot use these arguments to justify the legality of deployment of weapons in outer space[150], though commentators have suggested that State actors have an inherent right to use force in self defence against non-State actors.[151] This principle can also be noticed in the *Hostages Trial (United States of America v. Wilhelm List)*.[152] Regardless of the attribution of the actions of Sain Communications to Mheni, it cannot justify these actions nor can it preclude wrongfulness for the use of force committed by Sain Communications, a non-state actor.

E. Akera used force in Conformity with the UN Charter and associated Customary International Law

Akera used force to defend itself from the harmful EMI caused by Mheni. The right to self-defence is available in case the state exercising it is the victim of an armed attack.[153] Further, the use of force must be necessary and proportionate.[154]

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[149] Gazzini, *The Rules of the Use of Force at the beginning of XXI Centrury*, 11 J CONFLICT SECURITY L 319 (2006); Michel Bourbonniere & Ricky J. Lee, *Legality of Deployment of Conventional Weapons in Earth Orbit: Balancing Space Law and the Law of Armed Conflict*, EJIL ,VOL.18 NO.5, 886 (2007).

[150] *Id.*

[151] Bothe, *Terrorism and the Legality of Pre-Emptive Force*, 14 EJIL 227 (2003); Ruys & Verhoeven, *Attacks by Private Actors and the Right of Self Defence*, 10 J CONFLICT SECURITY L 289 (2005).

[152] Hostages Trial (U.S. v. Wilhelm List et al.) 8 Law Reports of Trials of War Criminals, ¶ 56 (1949); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), *entered into force* June 8, 1977, art. 48, 1125 U.N.T.S.

[153] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 ¶¶ 161,263 (July 8) [hereinafter Nuclear Weapons]; DRC v. Uganda, ¶¶ 143,146; Wall Case, ¶ 139; Oil Platforms, ¶¶ 51,71; Nicaragua, ¶¶ 35,127,191, 210, 211,237.

i. It was Necessary for Akera to use Force to defend itself

Defensive uses of force are necessary when it is the last possible alternative to protect oneself from attack.[155] The ICJ has held that necessity for self-defence must be viewed from the perspective of the defending state.[156] Necessity includes considerations of less destructive alternatives, such as negotiations.[157]

In the present case Akera had exhausted all possible alternatives before taking the measure in question as it has sought to resolve the disputes through negotiations[158], settlements[159] and intervention by the UN[160].

ii. The Akeran Use of Force was proportionate

The concept of proportionality recognizes a State's need to restore equality in power between the parties in order to encourage negotiation towards a solution.[161] The proportionality of defensive force is defined in terms of nature, size and duration of the defensive use of force.[162] It takes into

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[154] Rosalyn Higgins, *International Law and the Avoidance, Containment and Resolution of Disputes-General Course on Public International Law, in* 230 RECUEIL DES COURS 9-342, 296 and 310 (1991); CHRISTINE GRAY, INTERNATIONAL LAW AND THE USE OF FORCE, 128, 148 (2008).

[155] Nuclear Weapons ¶¶ 161,263; YORAM DINSTEIN, WAR, AGRESSION AND SELF DEFENSE, 184 (2001).

[156] Donald Nungesser, *United States' Use of the Doctrine of Anticipatory Self-Defense in Iraqi conflicts*, 16 PACE INT'L L. REV.193, 195 (2004).

[157] Air Services Agreement (U.S. v. Fr.), (1978) 18 R.I.A.A. 1013[hereinafter Air Services Agreement].

[158] *Compromis*, ¶ 10.

[159] *Compromis*, ¶ 12.

[160] *Compromis*, ¶ 13.

[161] Air Services Agreement, at 1025-1026.

[162] Oil Platforms, ¶ 72; DRC v. Uganda, ¶ 147.

account the series of activities that formed part of a sequence or a chain of events which lead to the act of self-defence.[163] The test of proportionality is *qualitative and not quantitative*.[164]

In the present case, the function of the SEANAV-2 system was to transmit a protected signal[165]. Even though incidentally it led to the destruction of the X-12A satellite[166], its actual purpose was to counteract the EMI[167]. This can be classified as a qualitatively proportionate measure.

iii. *Even if the armed attack is not attributable to Mheni, Akera had a right to self defence*

State Practice shows condonation of a state exercising its right to self-defence against non-state actors by the European Union, Brazil, Chile, Denmark, Algeria, Norway, Jordan, Indonesia, Turkey, Iran, Djibouti, India, and Venezuela.[168] Several states offered USA Military support for Operation Enduring Freedom[169]. The right is available to a state in case the state to which the non-state actor belongs is unwilling or unable to stop the illegal actions of the non-state actor.[170]

The ICJ has never denied the right of self-defence against non-state actors. The Court has stated that where non state actors have perpetrated an armed attack against a state, the right to self-

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[163] MALCOLM N. SHAW, IINTERNATIONAL LAW, 1032 (2003).

[164] *Addendum to the Eighth Report on State Responsibility*, Y.B.INT'L L.COMM'N 13, U.N. Doc A/CN.4/318/Add.5-7 (1980); R. St. J. Macdonald, *The Nicaragua Case: New Answers to Old Questions?*, 24 CAN. Y.B. INT'L LAW 127, 153 (1986).

[165] *Compromis*, ¶ 14.

[166] *Compromis*, ¶ 16.

[167] *Compromis*, ¶ 16.

[168] S.C. Res. 1368, U.N. Doc. S/Res./1368 (Sept. 12, 2001); S.C. Res. 1373, U.N. Doc. S/Res./1373 (Sept. 28, 2001); G.A. Res. 56/44, U.N. GAOR, U.N. Doc A/56.PV44.

[169] David Gerleman and Jennifer Stevens, *Operation Enduring Freedom: Foreign Pledges of Military & Intelligence Support*, CRS Report for Congress, (October 17, 2001), http://fpc.state.gov/documents/organization/6207.pdf.

[170] Kimberley N. Trapp, *Back to Basics: Necessity, Proportionality, and the Right of Self-Defence against Non- State Terrorist Actors*, THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY, VOL. 56, NO. 1 141-156 (2007); Micheal N. Schmitt, *"Change Direction" 2006: Israeli Operations in Lebanon and the International Law of Self-Defense*, MICH. J. INT'L L. 127, 136 (2008).

defence against the state to which the perpetrators belong is only applicable if the actions of the non-state actors are attributable to that state.[171] Separate Opinions have expressed the view that the issue of self defence against non-state actors and not against their state of origin has not been adequately explored by the Court.[172] The existence of such a right resolves the problem of a state being left remediless in case a non-state actor from another state commits an armed attack against the state and this is the reasoning based on which jurists have argued in favour of the existence of this right.[173]

Akera's actions are a valid exercise of their right to self-defence and were taken against Sain Communications which is a non-state actor. They were necessary since Mheni had refused to act to stop Sain Communications.

iv. If the use of force does not amount to an armed attack, Akera's actions were legal forcible countermeasures

The threshold for an armed attack being a grave use of force allows for the possibility of an illegal use of force which did not amount to an armed attack.[174] This would leave the victim state

[171] Nicaragua, ¶ 195; DRC v. Uganda, ¶ 146; Wall Case, ¶ 139.
[172] Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda) (Merits), 2005 I.C.J. 156 ¶¶ 4-15 (Dec. 19) Judge Simma Separate Opinion; Legal Consequences on the Construction of a Wall in the Occupied Palestine Territory, Advisory Opinion, 2004 I.C.J. 136 ¶ 35 (July 9) Judge Koojimans Separate Opinion; Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda) (Merits), 2005 I.C.J. 156 ¶ 9 (Dec. 19) Judge Koroma Declaration; Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda) (Merits), 2005 I.C.J. 156 ¶¶ 19-30 (Dec. 19) Judge Koojimans Separate Opinion.
[173] *Supra* note 170.
[174] Oil Platforms (Iran v. U.S.) 2003 I.C.J. 161, ¶¶ 12,14 (Nov. 6) Judge Simma Separate Opinion.

remediless since it would be unable to respond with any defensive measures.[175] In such cases the victim state had a right to take recourse to forcible countermeasures.[176]

Even if the EMI did not amount to an armed attack, it was an illegal use of force. Akera cannot be without remedy and has the right to take defensive measures. These measures are legal since they are legal forcible countermeasures.

F. In any event, Mheni is foreclosed from claiming Akeran actions as justification for its conduct as it has come to the court with unclean hands

Mheni is foreclosed from making such claims as it has come to Court with unclean hands.[177] The doctrine of clean hands mandates that whosoever seeks the assistance of a court must come to the court with clean hands."[178] The PCIJ[179], the ICJ[180], jurists[181] and state practice[182] have affirmed the same.

Mheni has violated its obligations under international law by seeking equity against acts which it itself is guilty of committing. Firstly, it has breached its obligations under the UNCLOS by mining in a claimed economic zone.[183] Secondly, it has committed internationally wrongful acts

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[175] *Id.*
[176] *Id.*; Nicaragua, ¶ 249.
[177] International Law Commissionn, Summary Record of 2793rd Meeting, *Diplomatic Protection*, [2004] I Y.B. Int'l L. Comm'n 11, ¶4, U.N.Doc. A/CN.4/SR.2793.
[178] Case Concerning Legality of Use of Force (Yugoslavia v. Belg.), 1999 I.C.J. 124 (June 2).
[179] The Diversion of Water from the Meuse (Neth. v. Belg.), 1937 P.C.I.J. (ser.A/B) No.70 (June 28).
[180] Nicaragua Schwebel, ¶ 272; Case Concerning the Arrest Warrant of 11 April of 2000 (Dem. Rep. Congo v. Belg.), 2002 I.C.J. 3, ¶ 35 (Feb. 14) Judge Van den Wyngaert Dissenting Opinion.
[181] G FITZMAURICE, THE GENERAL PRINCIPLES OF INTERNATIONAL LAW, CONSIDERED FROM THE STANDPOINT OF THE RULE OF LAW, 92(2) RDC 1, 119 (1957).
[182] Legality of Use of Force (Yugoslavia v. U.S.), Doc. CR.99/24, ¶3.17 (May 12, 1999) (Oral submissions of Agent of the United States).
[183] *Compromis*, ¶ 9.

in violation of the OST and general international law. It is therefore precluded from claiming reparations.

III. MHENI IS LIABLE TO AKERA FOR THE LOSS OF THE UNMANNED AERIAL VEHICLE, THE DAMAGE TO THE MILITARY FACILITY AND THE DEATHS OF THE TWO AKERAN MILITARY PERSONNEL.

A. Mheni is liable under the provisions of the Liability Convention

i. Mheni is liable under Article II of the Liability Convention

The Liability Convention provides that a State which suffers damage or whose natural or juridical persons suffer damage, may present a claim for compensation for such damage.[184] It provides for absolute liability for damage caused on the surface of the Earth.[185] While the term "caused" is not defined in the Liability Convention, the drafters of the Convention recommended that it should be interpreted flexibly.[186] The phrase "caused by" used in the definition of damage under the Liability Convention, requires only a causal connection between the accident and the damage caused, irrespective of physical impact.[187] In fact, the *travaux préparatoires* indicate that originally the term "collision" was used which was later rephrased as "caused by" due to the mutual agreement by States that not all damage was a result of physical contact.[188] This implies that a physical impact is not necessary for a claim under the Liability Convention. Such an interpretation is supported by the victim-oriented purpose of the Convention.[189] The drafters

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[184] Liability Convention, art. VIII (1).
[185] Liability Convention, art. II.
[186] CARL Q. CHRISTOL, THE MODERN INTERNATIONAL LAW OF OUTER SPACE 96 (1982).
[187] Jochen Pfeifer, *International Liability for Damage Caused by Space Objects*, 30 GER. J. AIR & SPACE L. 242 (1981); WF Foster, *The Convention on International Liability for Damage caused by Space Objects*, 10 CANADIAN YEARBOOK OF INTERNATIONAL LAW 155 (1972) [hereinafter Foster].
[188] U.N. GAOR, 9th Sess., at 52, UN Doc. A/AC.105/C.2/SR.94 (July. 3rd, 1968) (French, Canadian & Italian delegate).
[189] CHRISTOL at 211; BIN CHENG, STUDIES IN INTERNATIONAL SPACE LAW 314 (2004).

contemplated "adequate causality", as opposed to direct causality as opposed to direct causality, as sufficient to justify compensation for damages.[190]

It is uncontested that the EMI was responsible for the crash of the UAV[191] . The Liability Convention covers the *additional consequences* produced as a result of the initial damage caused by a space object.[192]. The EMI was the "cause" for the damage to Akeran property and personnel[193]. Mheni is liable since it was the launching state for the X-12 satellites.

ii. Alternatively, Mheni is liable under Article III of the Liability Convention

Article III provides for fault-based liability when damage is caused by one space object elsewhere than on the surface of the Earth. The Liability Convention does not explicitly define fault.[194] States may incorporate general principles of international law to elaborate unclear portions of the Space Treaties.[195] The principle of 'fault' refers to a failure to comply with a legal duty or obligation.[196] States are held at fault if they have breached an international obligation and if another State has suffered damages as a result.[197] Further, 'Property' is not confined to tangible assets and extends to any right which can be subject to a commercial transaction.[198]

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[190] Bin Cheng, *Convention on International Liability for Damage Caused by Space Objects*, in MANUAL ON SPACE LAW 83 (1979).
[191] *Compromis*, ¶ 8.
[192] Foster at 137,159; BRUCE HURWITZ, STATE LIABILITY FOR OUTER SPACE ACTIVITIES 22(1992).
[193] *Compromis*, ¶ 8.
[194] CARL Q CHRISTOL, THE MODERN INTERNATIONAL LAW OF OUTER SPACE 117 (1982).
[195] OST, art. III; Carl Q. Christol, *The Legal Common Heritage of Mankind: Capturing an Illusive Concept and Applying it to the World Needs*, *in* PROCEEDINGS OF THE 18TH COLLOQUIUM ON THE LAW OF OUTER SPACE 48 (1976).
[196] BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 218 (1953).
[197] MALCOLM N. SHAW, INTERNATIONAL LAW 542 (1997).
[198] Amoco Int'l Fin. Corp. v. Iran, Iran-U.S. Cl. Trib. Rep. 189 (1987) ¶ 108; Shufeldt Claim (U.S. v. Guat.), 2 RIAA 1083, 1097 (Perm. Ct. Arb. 1930).

In the present case, EMI caused damage to the "property" of Akera as it interfered with the access to remote sensing data thereby causing damage to its utility with respect to the PNT signals. The damage to the UAV was caused due to loss of the PNT signal and consequentially there was loss caused to Akeran property and personnel. Even if this court were to adopt a requirement based on foreseeability and avoidability of risk,[199] Mheni would still be liable for the damage.

B. Additionally, Mheni is internationally liable under Article VII of the Outer Space Treaty

The Liability Convention states that its provisions do not affect other agreements in force.[200] In the event of this court holding that Akera is precluded from claiming damages under the Liability Convention. Mheni can be held liable for "fault liability" under the OST. Article VII of the OST provides for international liability of a launching state when the space object of a launching State damages the interests of another State Party to the Treaty "on the Earth, in air space or in outer space". [201]

[199] Overseas Tankship (U.K.), Ltd.v. Miller Steamship Co. Pty. Ltd., (1966) 2 All E.R. 709 (Privy Council); Marshall v. Nugent, 222 F.2d 604 (5th Cir. 1955); Jay Ginsburg, *The High Frontier: Tort Claims and Liability for Damages Caused by Man-Made Space Objects*, 12 SUFFOLK TRANSNAT'L L. L.J. 515 (1989); Administrative Decision No II (*U.S. v. Ger.)*, 7 RIAA 23, 29-30 (1923).
[200] Liability Convention, art. XXIII.
[201] OST, art. VII.

C. Mheni is liable for the loss of property and life under general International Law

Additionally, Akera is entitled to claim damages under general International law wherein a State is at fault for damages caused to another state if it fails to carry out an international obligation.[202] In the *Chorzow Factory Case*, the PCIJ ordained three elements necessary to prove fault in international law: (1) a legal obligation imputable to a state, (2) a breach of the obligation by that State; and (3) a discernible link between the illicit act and the harm suffered.[203] Each of these applies to Mheni, making it liable for the damage caused.

The *Trail Smelter Arbitration* established that every State has a duty not to cause damage to the property of other States.[204] The violation of this duty is a wrongful act.[205] If a wrongful act is attributable to the State from which claim is sought[206] that State[207] is under an obligation to make reparation.[208] Thus, the act of interfering with the SEANAV satellite system is attributable to Mheni who is under an obligation to make reparations for the damage as there is a discernible link between the illicit activity and the harm suffered. This court has found monetary damages to be an appropriate remedy where there has been a breach of International law.[209]

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[202] Corfu Channel (UK v. Albania) (Assessment of the amount of compensation due from the People's Republic of Albania to the United Kingdom of Great Britain and Northern Ireland) 1949 I.C.J. 244-251(Dec. 15).
[203] Chorzow Factory, 29.
[204] Trail Smelter Arbitration (U.S. v. Canada) 1938/1941, R.I.A.A. 1905.
[205] BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 436 (1953).
[206] *Id*. at 180.
[207] Articles on State Responsibility, at art. 1.
[208] *Id.*
[209] Corfu Channel, at 14, 23.

SUBMISSIONS TO THE COURT

For the foregoing reasons, the Akeran Federation, Applicant, respectfully requests the Court to adjudge and declare that:

1. Mheni is liable under international law for the harmful EMI preventing access to the SEANAV satellite PNT signals.
2. Akera acted in conformity with international law by disabling the X-12A satellite.
3. Mheni is liable to Akera for the loss of the unmanned aerial vehicle, the damage to the military facility, and the deaths of two Akeran military personnel.

Respectfully submitted on behalf of the Applicant,

Agents for the Applicant.