THE 2016 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

TEAM No. 4

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE

PEACE PALACE, THE HAGUE

Case Concerning Space Debris, Commercial Spaceflight Services and Liability

THE REPUBLIC OF BANCHÉ

(*Applicant*)

v.

THE REPUBLIC OF RASTALIA

(*Respondent)*

ON SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE

MEMORIAL FOR RESPONDENT

THE REPUBLIC OF RASTALIA

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QUESTIONS PRESENTED

1. Did Rastalia violate international law by refusing to return Couleur and Commander Borsch to Banché and refusing the earlier return of Ms. Paula to Banché?
2. Is Rastalia liable under international law for the damage to Couleur?
3. Is Banché liable under international law for the costs of recovery of Couleur, the rescue and medical expenses for Commander Borsch, the costs of the evacuation of Lake Taipo, and the deaths of both Mr. Thomas and Mr. Barton?

STATEMENT OF FACTS

1. The Republic of Rastalia, a developing country, is landlocked with rich natural resources. In 2024, Rastalia set up a national plan for space entitled "Beyond the Earth's Surface", focused on making extensive use of satellite technologies for various purposes and expanding the satellite market.[1]

2. The Republic of Banché, on the other hand, is a highly developed country with a long history and technical expertise in space exploration and exploitation. Its state-owned space station, Mira, placed in a north-south polar orbit, has been operating for nearly ten years. As evidence of its advancement in space operations, Banché initiated a long-term national program "Open the Gateway for Mankind" to encourage its private enterprises to provide international commercial spaceflight operations.[2]

3. Banché and Rastalia share a border and have experienced hostilities in the past. Although Rastalia has not adopted a commercial spaceflight program, Banché considers it a significant rival in the commercial space marketplace and maintains strict export controls over high technologies. For unknown reasons, Banché considers Rastalia a potential national security threat as well. The Banché Congress enacted the Export Control Act on 1 February 2026, which stipulated strict national license controls over nuclear materials, nuclear reactors and laser technology. By special order, space cooperation between the Banché government and Rastalian public and private entities is prohibited.[3]

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[1] Compromis, ¶1.
[2] *Id*., ¶2.
[3] *Id*., ¶3 & 4.

4. Jardon Tech. Co. Ltd. ("Jardon"), a satellite company, was founded and registered in Rastalia in 2023. Jardon received the authorization certificate to conduct commercial launching services from Rastalian government facilities pursuant to its National Space Commercial Launching Act.[4]

5. On 20 January 2027, Rastalia announced plans to launch three satellites (Lavotto-series) within three years. The primary functions of these satellites were to provide commercial telecommunications, disaster monitoring, and medical data relaying services for rural and remote areas where conventional communications or other services are not available.[5]

6. On 15 January 2028, Jardon launched the first scientific satellite (Lavotto-1) from Rastalian territory and placed it in low Earth orbit ("LEO"). The structural material of Lavotto-1 was the first operational use of Jardon's latest composite research achievement. For end-of-life purposes, Jardon equipped Lavotto-1 with a capability either to de-orbit or to be maneuvered to a so-called "parking orbit." Rastalia registered Lavotto-1 both in a national register within one month after the launch and with the UN two months after the launch.[6]

7. On 18 May 2028, four months after achieving full operational capability, Lavotto-1 experienced a rare solar windstorm and ceased most of its functions, including its de-orbit capability. Jardon immediately reported this failure to the Rastalian government and predicted that there was still the possibility to maneuver the barely functional satellite to a higher parking orbit. Rastalia's State Department spokesman held a press conference to announce this incident to the international community and indicated that Jardon was endeavoring to repair the propulsion

[4] *Id.*, ¶5.
[5] *Id.*, ¶6.
[6] *Id.*, ¶7.

system of the satellite to boost it into an orbit which would not pose a threat to other space traffic, and protect the space environment by reducing risks of on-orbit collision.[7]

8. On 25 May 2028, Rastalia announced that although end-of-life capabilities were installed, Lavotto-1 could not be boosted towards the expected parking orbit because the satellite power and thermal systems damaged by the solar windstorm had failed during the orbit-altering maneuver. Jardon reported to Rastalia that Lavotto-1 would pose a collision hazard to the Mira Space Station, which was at the same or slightly lower altitude to the Lavotto-1. Rastalia confirmed these findings and held a press conference where it reported that the collision probability would be greater if there was an attempt to use another Rastalian spacecraft to capture the satellite and de-orbit it because the Lavotto-1 was too fragile for such a mission.[8]

9. The Moso Space Traffic Monitoring and Awareness Center ("Moso Center") kept close track of Lavotto-1 before and after the malfunction. The Moso Center is located in Mosolia, a state highly advanced in space technologies. On 28 May 2028, the Moso Center reported that it was the rare solar windstorm that led to the malfunction of Lavotto-1 and confirmed Rastalia's own report of the spacecraft's collision risks to Mira.[9]

10. On 30 July 2028, after the conclusion of ongoing diplomatic negotiations, Rastalia announced it was unable to resolve the malfunction of Lavotto-1. Later that day, Banché's Minister of Defense held a press conference and announced that Banché would unilaterally remove Lavotto-1 from its current orbit with the latest advanced robotic seizing and removing technologies, which

[7] *Id.*, ¶8.
[8] *Id.*, ¶9.
[9] *Id.*, ¶10.

will be implemented as part of its upcoming manned space flight.[10] It made no mention of any other technology it would attempt to utilize if the grappling arm failed.

11. Solare Travel Services Ltd. ("Solare"), a company registered in Mosolia, has its principal office in Banché. Solare successfully qualified the spacecraft Couleur for commercial spaceflight services in early February 2025 and on 1 July 2028, selected a Mosolian citizen named Ms. Erin Paula and a Rastalian citizen named Mr. Andrew James among a number of applicants for its first launch, with a Banché astronaut, Mr. Mario Borsch as the commander.[11]

12. The Mosolian government provided full funding for Ms. Paula to participate in the mission, while Mr. James provided his own funding. Commander Borsch previously served in the Banché Ministry of National Defense, serving as chief program director and engineer in charge of the Banché Anti-satellite Weapons ("ASAT") project. [12]

13. On 1 August 2028, the Banché government signed a contract with Solare, which stipulated Solare would use the spacecraft Couleur to remove Lavotto-1 using the latest robotic seizing and removing technologies to be provided by the Banché Space Agency.[13]

14. On 1 January 2029, Couleur was launched from the Banché spaceport and rendezvoused with Lavotto-1. On 3 January 2029, Commander Borsch broke Lavotto-1 into two parts while using the robotic grappling arm, leaving a piece in orbit. The piece of Lavotto-1 that remained in orbit posed a collision risk to Mira and Couleur and to other space objects in or intersecting the same orbit. On the same day that Lavotto-1 broke apart, Commander Borsch decided to use the Global-Orbiting Deflection Apparatus ("GODA") Laser Satellite Removal System which was

[10] *Id*., ¶11.
[11] *Id*., ¶12.
[12] *Id*., ¶13.
[13] *Id*., ¶14.

equipped by the Banché Ministry of National Defense before the launch of Couleur.[14] Neither Banché nor any of its military, defense or science divisions made reference to Couleur being equipped with a laser system on board, nor of its intention to utilize it on Lavotto-1.

15. On 4 January 2029, Commander Borsch used the GODA laser system to fire a continuous beam on the remaining piece of Lavotto-1, causing an explosion which resulted in a cascade of debris fragments. Shortly after, Couleur was struck by a debris fragment, which damaged the functioning of Couleur's communications and flight control systems. Commander Borsch received permission from Solare to land at the Banché spaceport.[15]

16. After Couleur was unable to land at the Banché spaceport and without sufficient ability to communicate with the ground control center, Commander Borsch decided to land in the territory of Rastalia. He landed Couleur near Lake Taipo, a major Rastalian tourist destination in the south. During the landing process, a piece of spacecraft shell, damaged by the debris collision, detached and hit a campsite and caused the death of a Rastalian, Mr. Dave Thomas.[16]

17. The Rastalian Foreign Minister issued a formal statement strongly condemning the Rastalian Government use of the GODA Laser as a weapon of mass destruction, and its belief that such device must have been powered by nuclear materials. Therefore, the Rastalian Government ordered the evacuation of all persons within a 300 kilometer radius of Lake Taipo. Sometime thereafter, a Rastalian Rescue and Recovery Team located and reached the landing site of Couleur. The passenger cabin was relatively intact although the remainder of the craft was severely damaged. Commander Borsch, Ms. Paula, and Mr. James were successfully rescued and sent to

[14] *Id.,* ¶15.
[15] *Id*., ¶16.
[16] *Id*., ¶17.

the hospital for medical treatment. The evacuation order for Lake Taipo was lifted three months later.[17]

18. On 11 January 2029, the Rastalian Foreign Ministry spokesman announced that the unscheduled landing of Couleur caused the death of another Rastalian citizen, Mr. Barton, who was under the flight path and suffered a fatal heart attack while witnessing the Couleur pass overhead. It additionally stated that the GODA Laser system was an illegal weapon, and it had the right to fully examine the spacecraft no matter how long it took to complete that process. Further, Commander Borsch would be held pending criminal charges, and Ms. Paula would be returned to Banché after Banché reimbursed Rastalia for the costs and damages incurred as a result of Couleur's illegal acts, including costs of recovery of the spacecraft, rescue costs and medical expenses for the personnel of the spacecraft, the costs of the evacuation of Lake Taipo, and the deaths of Rastalians, including both Mr. Thomas and Mr. Barton.[18]

19. On 12 January 2029, Commander Borsch asked for political asylum in Rastalia and refused to be sent back to Banché. Banché insisted on the return of Commander Borsch even though political asylum was sought.[19]

20. Following diplomatic negotiations, Rastalia released Ms. Paula to Banché. Both Couleur and Commander Borsch remain in Rastalia.[20]

21. Following such events, Banché initiated these proceedings by Application to the International Court of Justice. Rastalia accepted the jurisdiction of the Court, and the parties submitted an Agreed Statement of Facts.[21]

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[17] *Id*., ¶18.
[18] *Id*., ¶19.
[19] *Id*., ¶20.
[20] *Id*., ¶23.
[21] *Id.,* ¶ 24.

22. Rastalia and Banché are both parties to the Outer Space Treaty, the Rescue Agreement, the Liability Convention, the Registration Convention, the UN Charter, as well as active members of the United Nations Committee on the Peaceful Uses of Outer Space ("UNCOPUOS").[22]

[22] *Id*., ¶3, ¶26.

SUMMARY OF ARGUMENT

The Republic of Rastalia, Respondent, has not violated international law by refusing the return of Commander Borsch, the Couleur spacecraft, and the earlier return of Ms. Paula. The Respondent is under no obligation – neither through Article 4 of the Rescue Agreement nor Article V of the Outer Space Treaty – to return Commander Borsch given the fact that his landing was intentional and not owing to accident, distress, or emergency. Likewise, Ms. Paula was a passenger on board Couleur, rather than an astronaut or personnel of the spacecraft, and therefore her return is not mandated by the Rescue Agreement and Outer Space Treaty. Respondent has not violated international law by holding Couleur as Article 5 of the Rescue Agreement allows Respondent to examine the spacecraft for the presence of a hazardous or deleterious material before returning to Applicant.

Respondent is not liable for the damage caused to the Couleur. Both Article VII of the Outer Space Treaty and Article III of the Liability Convention require a finding of fault before a party is liable to pay compensation for damages. Respondent was not at fault for the damage caused to Couleur as Applicant utilized its own laser weapon in space to cause the explosion and resulting debris fragments that struck and damaged Couleur. Further, even if Respondent was the cause of the damage to Couleur, Applicant is precluded from recovering compensation on the basis that it violated international law, namely Articles I, III and IX of the Outer Space Treaty, when it acted in such a way as to not pay due regard to the interests of other States. Lastly, under general international law, Respondent cannot be held responsible for the actions of Lavotto-1 after it was rendered inoperable as a result of a solar windstorm on the basis of *force majeure* as articulated in Article 23 of the Articles on State Responsibility.

Under Article II of the Liability Convention, Applicant is absolutely liable for damage caused by Couleur on the surface of the Earth, including the deaths of two Rastalian citizens and the Lake Taipo evacuation. Under Article VI of the Liability Convention, Applicant cannot be exonerated from liability, because Respondent's launching and operation of Lavotto-1 did not amount to gross negligence and Applicant's destruction of Lavotto-1 was a violation of the Outer Space Treaty. Similarly, Applicant is liable for the rescue and medical expenses of Commander Borsch under general international law, as this damage flowed from Applicant's internationally wrongful act of destroying Lavotto-1. Respondent's expenses incurred in the recovery of Couleur should be borne by the Applicant under Article 5 of the Rescue Agreement. Finally, Applicant is liable under general international law for all damage in Rastalia under general international law, because such damage was caused by Applicant's destruction of Lavotto-1, an internationally wrongful act.

ARGUMENT

I THE REPUBLIC OF RASTALIA, RESPONDENT, ACTED IN CONFORMITY WITH INTERNATIONAL LAW BY REFUSING TO RETURN COULEUR AND COMMANDER BORSCH AND THE EARLIER RETURN OF MS. PAULA TO BANCHÉ, APPLICANT.

Applicant alleges Respondent violated international law, but Respondent's actions are consistent with Respondent's obligations and rights under international law. First, Respondent's refusal to return Borsch complied with international law, because Borsch's landing in Rastalia was intentional and not caused by accident, distress, or emergency. Second, Paula is neither an astronaut nor personnel of a spacecraft thus her return is not governed by international space law. Finally, Respondent has a right to fully examine Couleur for hazardous and deleterious materials, including nuclear weapons before returning the spacecraft to Applicant. Therefore, this honorable Court should find in favor of Respondent, and hold that it acted in conformity with international law by refusing to return Couleur and Borsch, and the earlier return of Paula.

A Neither the Rescue Agreement nor the Outer Space Treaty govern the return of Borsch and Paula

As a primary source of international law,[23] treaty obligations are legally binding upon the parties to the treaty.[24] As State Parties[25] to the Rescue Agreement of 1968[26] and the Outer Space

[23] Statute of the International Court of Justice, Jun. 26, 1945, 33 U.N.T.S. 993 [hereinafter ICJ Statute], art. 38(1); Case Concerning the Continental Shelf (Tunis. v. Libya), 1982 I.C.J. 18, 38 (Feb. 24).
[24] Nuclear Test (Austl. v. Fr.), 1974 I.C.J. 253, 268 (Dec. 20); Vladimir Kopal, *United Nations and the Progressive Development of International Space Law* 7 FIN. Y.B. INT'L L 1, 3 (1996).
[25] Compromis, ¶26.
[26] Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, Apr. 22, 1968, 19 U.S.T. 7570, 672 U.N.T.S. 119 [hereinafter Rescue Agreement].

Treaty of 1967[27] both Applicant and Respondent are required to comply with their provisions;[28] however, their provisions do not govern the return of Borsch and Paula in this case. Article 4 of the Rescue Agreement states "if owing to accident, distress, emergency or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party…, they shall be safely and promptly returned to representatives of the launching authority."[29] Article V of the OST provides a similar framework.

1 Couleur's landing in Rastalia was intentional and not due to accident, distress, or emergency

After Couleur was struck by a piece of Lavotto-1 debris fragment, Borsch received permission from his private employer, Solare, to land in Banché.[30] Ultimately, Borsch decided to land in Rastalia rather than Banché.[31] The terms "accident, distress, emergency, or unintentional" are not defined in the Rescue Agreement or OST. The Vienna Convention on the Law of Treaties ("VCLT") of 1969 dictates that the interpretation of a treaty must be "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context."[32] Although the VCLT is non-retroactive and came-into-force after the Rescue Agreement and OST, the VCLT simply codified existing custom; therefore, the principles outlined in the VCLT are applicable to the Rescue Agreement and OST.[33] The understandings of these terms are the same for both treaties,

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[27] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 [hereinafter Outer Space Treaty or OST].
[28] Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 311 [hereinafter VCLT], art 26.
[29] Rescue Agreement, art. 4.
[30] Compromis, ¶17.
[31] *Id.*, ¶17.
[32] VCLT, art. 31.
[33] Gabčikovo-Nagymaros *Project* (Hung. V. Slovk.), 1997 I.C.J. 7, 38, ¶46 (Sept. 25) [hereinafter Gabčikovo-Nagymaros].

because the preamble to the Rescue Agreement states that its purpose is to "develop and give further concrete expression" to the obligations on parties in the OST as it relates to astronauts.

Each of these terms describe situations that usually occur suddenly and call for immediate action.[34] When there is accident, distress, or emergency during space flight, "there can be little doubt that such events must be the major cause or preponderant reason for the landing."[35] Although Couleur suffered damage in outer space,[36] this damage did not cause an immediate landing and more specifically, did not cause the landing in Rastalia. After missing his first attempt to land at the Banché spaceport, Borsch decided to land in Rastalia rather than the Banché Spaceport or an alternate location in Banché.[37]

Both applicable provisions[38] require the landing in Rastalian territory be unintentional and not caused by accident, distress, or emergency. Although damage resulting from Couleur's destruction of Lavotto-1 did require Couleur to make an urgent landing,[39] there is no evidence this damage forced Couleur to land in Rastalia instead of Banché. Rather, Borsch decided to land in Rastalia.[40] Borsch's subsequent refusal to be returned to Banché and his request for political asylum[41] are further evidence that his landing in Rastalia was caused by his intentional decision.[42]

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[34] William Doolittle, *The Man in Space: The Rescue and Return of Downed Astronauts*, 9 U.S.A.F. JAG L. REV. 4, 7 (1967).
[35] Stephen Gorove, *Legal Problems of the Rescue and Return of Astronauts*, 3 INT'L L. 898, 900 (1968-1969) [hereinafter Gorove, *Rescue and Return of Astronauts*].
[36] Compromis, ¶16.
[37] *Id.*, ¶17.
[38] Rescue Agreement, art. 4. OST, art. V.
[39] Compromis, ¶16.
[40] Compromis, ¶17.
[41] *Id.*, ¶20.
[42] Gorove, *Rescue and Return of Astronauts*, at 900. (A contracting party may grant political asylum to astronauts or personnel of a spacecraft who intentionally and not due to accident, distress, or emergency land in its territory).

Borsch's intentional decision to land in Rastalia absolves Respondent of any obligation to return him to Applicant pursuant to Article 4 of the Rescue Agreement and Article V of the OST.[43]

2 Passengers on spacecraft are not "personnel of a spacecraft" nor astronauts

Neither "astronaut" nor "personnel of a spacecraft" are defined in any of the United Nations multilateral treaties on outer space.[44] Article 31 of the VCLT provides that treaty terms can be interpreted by the "meaning of a term as it was understood at the time the treaty was entered into."[45] At the time of negotiations the term "astronaut" was a "highly trained state-employed professional, and not simply anyone who might go into space."[46] Past State practice shows that astronauts need three elements: training, altitude, and selection. [47] Similarly, "personnel of a spacecraft" was understood to encompass trained spacecraft pilots, scientists, and physicians assigned as mission specialists, so it does not cover regular passengers[48] such as Paula.

While Paula was a well-known scientist, funded by her government, and selected by Solare for the commercial space flight, she should be considered a passenger. There is no evidence she received the necessary formal training, had official responsibilities, or performed scientific experiments in outer space. Her selection for the flight was the result of winning an award. An example of the training and qualifications required for selection as an astronaut were included in a 2008 press release by the European Space Agency Astronaut Corps. The Press Release provided a preferred age, competence in specific disciplines, and a host of other qualifications including

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[43] MANFRED LACHS, THE LAW OF OUTER SPACE: AN EXPERIENCE IN CONTEMPORARY LAW-MAKING 77 (Nijhoff Publishers, 2010) (1972) [hereinafter Lachs].
[44] BIN CHENG, STUDIES IN INTERNATIONAL SPACE LAW 457 (Oxford Scholarship Online, 2012) (1997) [hereinafter Cheng, *Space Law*].
[45] VCLT, art. 31.
[46] Francis Lyall, *Who is an astronaut? The inadequacy of current international law*, 66 Acta Astronautica 2 (2010).
[47] Lyall and Larson, at 131-132.
[48] Gorove, *Rescue and Return of Astronauts*, at 899.

medical and mental stability.[49] Her status aboard Couleur is most similar to a space flight participant as defined in United States domestic law as anyone who is not a member of the flight crew.[50] Under this distinction, Paula would not be entitled to protection under the Rescue Agreement.

Just as Respondent had no international obligation to return Borsch, it has no obligation to return Paula because the return of passengers does not fall within the scope of either the Rescue Agreement or the OST. As a result, the timing of Paula's return to Applicant was not a violation of international law.

B Further, Respondent has no obligation to return Borsch to Applicant after he claimed political asylum

In the *Lotus* case, the Permanent Court of International Justice recognized that a state has the right to enforce its laws within its territory. [51] It is universally recognized that a State may exercise jurisdiction when a foreign national[52] commits a crime within its territory,[53] including its airspace.[54] Furthermore, Article 1(1) of the U.N. Declaration on Territorial Asylum states that "asylum granted by the State, in the exercise of its sovereignty…. Shall be respected by all other States."[55]

Any decisions regarding criminal prosecution for actions occurring within Rastalian territory or grants of asylum within the territory of Rastalia are within the discretion of Respondent,

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[49] Lyall and Larsen, at 131. *See* http://www.esa.int/esaHS/SEMPQG3XQEF_index_0.html and http://www.esa.int/SPECIALS/Astronaut_Selection/index.html.
[50] *Id.*, at 494.
[51] Case of the S.S. "Lotus," 1927 P.C.I.J. Series A. No. 10, p. 10 (Sep. 7) [hereinafter Lotus].
[52] *Id.*, ¶10.
[53] BROWNLIE'S PRINCIPLES OF INTERNATIONAL LAW 303 (James Crawford ed., 8th ed. 2012) [hereinafter Brownlie].
[54] *Id.*, at 116.
[55] U.N. Declaration on Territorial Asylum, G.A. Res. 2312 (XXII), 22 U.N. GAOR, Supp. No. 16, U.N. Doc. A/6716 (1967) at 81.

because Borsch entered the territory intentionally.[56] This position was put forward clearly by the Austrian and French delegates during the negotiation of Article 4 of the Rescue Agreement.[57] The delegates agreed to Article 4 based on the understanding that the rights of aliens under national law regarding asylum were not impaired when the astronaut arrived in its territory intentionally and not by emergency or accident.[58] The delegates' concerns are directly applicable to this case, because Borsch did not enter Rastalia by emergency or accident. The position is also supported by the text of Article 4 of the Rescue Agreement which requires the Contracting Party to safely and promptly return the personnel only when their landing is caused by accident, distress, or emergency. Absent these conditions, Respondent has the authority according to its territorial jurisdiction to grant Borsch asylum or in other words, Applicant can allow Borsch to "remain in its territory even if his own State objects."[59] Additionally, as a member of the United Nations, Respondent's actions comply with the Universal Declaration of Human Rights (UDHR) of 1948.[60] Indeed, had the Respondent returned Borsch to Applicant it would have acted contrary to Borsch's human right to asylum; according to Article 14 "everyone has the right to seek and to enjoy in other countries asylum from persecution."[61]

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[56] Paul Dembling & Daniel Arons, *Rescue and Return of Astronauts*, 9 WM. & MARY L. REV. 630, 653 (1968) [hereinafter Dembling and Arons].
[57] VCLT, art. 32. (Supplementary means of interpretation may be employed when the ordinary meaning as determined by VCLT, art. 31 is ambiguous or obscure, or leads to a manifestly absurd or unreasonable result.) *See* Territorial Dispute (Libyan Arab Jamahiriya/Chad), [1994] ICJ Rep. 6, pp. 6, 27. (*Travaux préparatoires* may aid in the interpretation of a treaty.)
[58] FRANCIS LYALL AND PAUL LARSEN, SPACE LAW: A TREATISE 140 (Surrey: Ashgate, 2009) [hereinafter Lyall and Larsen] (citing Dembling and Arons, at 652-53).
[59] ANTHONY AUST, HANDBOOK OF INTERNATIONAL LAW 170 (2d ed., 2010) [hereinafter Aust].
[60] Universal Declaration of Human Rights of 1948, G.A. Res. 217 (III), U.N. Doc. A/Res/3/217A (Dec. 10, 1948), art. 14. While UNGA resolutions are not binding they may constitute evidence of *opinio juris* when dealing with general norms of international law. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 100 [hereinafter Nicaragua].
[61] *Id.*

Borsch's decision to land in Rastalia led directly to the death of two Rastalian citizens.[62] While it is unclear whether Borsch is criminally liable for the deaths of Barton and Thomas under Rastalian national law, it is universally recognized that States, as a result of their sovereignty, have the authority to exercise jurisdiction regarding criminal actions within their territory.[63] Respondent's decision to hold Borsch in its territory to determine whether he violated its national laws does not violate international law.[64] Similarly, Respondent is entitled to exercise its sovereignty regarding Borsch's asylum request and is under no obligation to return him to Applicant.

C The Rescue Agreement does not require a prompt return of Couleur

Article 5 of the Rescue Agreement requires that when a launching authority requests another Contracting Party to recover and return a space object or its component parts found within its territory, the Contracting Party must "take such steps as it finds practicable to recover the object or component parts" and return them to the launching authority.[65] Unlike Article 4 regarding the rescue and return of personnel, Article 5 requires the recovery and return of space objects to be made when requested by the launching authority. Whether the space object landed by accident, distress, emergency, or intentionally are of no consequence to the provisions of Article 5.

Under the Rescue Agreement, the launching authority is the State responsible for launching the space object.[66] Applicant is clearly the launching authority for Couleur, as it was launched from its territory, contained components provided by Applicant, and a part of its mission was

[62] Compromis, ¶17, ¶19.
[63] Aust, at 254.
[64] Lotus, at 10.
[65] Rescue Agreement, art. 5.5.
[66] *Id.*

procured by Applicant through contract.[67] Although "space object" is not defined under the Rescue Agreement or any other United Nations space law treaty, highly respected publicists have reviewed the matter and Article 38 of the Statute of the ICJ states their teachings can be consulted as subsidiary means for determining rules of law.[68] Professor Bin Cheng explains that the term includes spacecraft, satellites, and anything human beings launch or attempt to launch into outer space.[69] As a spacecraft launched into outer space with persons aboard, Couleur is a space object.

Furthermore, Respondent suspects Couleur carried a nuclear weapon that was used in orbit.[70] A nuclear weapon would be of a hazardous and deleterious nature and if its existence is confirmed, it would be a violation of Article IV of the OST. Respondent has a right to inspect a space object found in its territory for a "hazardous or deleterious nature" under Article 5 of the Rescue Agreement.[71] State practice under Article 5 supports Respondent's actions, since at least three recovering States exercised this right when space objects were found in their territories. Each of these States (South Africa, United States, and Japan) inspected the recovered space objects for a hazardous or deleterious nature before returning the space object to the launching authority.[72] While the phrase "hazardous or deleterious nature" is not defined, it is reasonable and logical to assume the phrase includes nuclear material or weapons. Although the Respondent may request the assistance of the launching authority to eliminate possible dangers of harm, it is under no obligation to make such a request.[73]

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[67] Compromis, ¶14, 15.
[68] ICJ Statute, art. 38(1)(d).
[69] Bin Cheng, *International Responsibility and Liability for Launching Activities*, XX AIR AND SPACE LAW 297 (1995) [hereinafter Cheng, *International Responsibility*].
[70] Compromis, ¶18.
[71] Rescue Agreement, art. 5.4.
[72] Frans von der Dunk, *A Sleeping Beauty Awakens: The 1968 Rescue Agreement after Forty Years*, 34 J. SPACE L. 411, 427-430 (2008).
[73] Rescue Agreement, art. 5.5.

Furthermore, Respondent suspects that Couleur has a nuclear weapon that was used in orbit and will verify its existence before returning Couleur to Applicant. Respondent's actions are supported by the Japanese delegate's words during the negotiations of the Rescue Agreement. The delegate argued that the agreement does "not place an obligation on a contracting party to recover and return a space object intended primarily for the development of a bombardment system to be placed into any kind of orbit."[74] Article 5 of the Rescue Agreement does not require Respondent to return Couleur to Applicant before a determination regarding the suspicion of a nuclear weapon is resolved..

II RASTALIA IS NOT LIABLE UNDER INTERNATIONAL LAW FOR THE DAMAGE TO COULEUR.

A Rastalia is not liable for the damage to Couleur under the Outer Space Treaty

Respondent did not violate any of the provisions of the OST and is therefore not internationally liable for the damage sustained by Couleur. Respondent is not at fault for the damages caused to Applicant's space object as Applicant's own actions caused the damage.

1 Article VI of the Outer Space Treaty does not apportion liability

Article VI of the English text of the OST merely provides that a State is responsible for its space objects; it does not address liability. While a finding of liability always entails responsibility, a finding of responsibility does not necessarily entail liability.[75] Therefore, Respondent cannot be liable to Applicant solely under Article VI of the Outer Space Treaty.

2 Article VII of the Outer Space Treaty does not apply because Rastalia was not at fault

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[74] *Travaux préparatoires* to the Rescue Agreement, art. 5, U.N. Doc. A/AC. 105/C.2/SR.86 (14.12.67) *reprinted* in Cheng, *Space Law*, at 283-284.

[75] Cheng, *International Responsibility*, at 308. ("[R]esponsibility can mean simply a factual relation of authorship. … [R]esponsibility implies a person's answerability for his or her own acts." *See also* "[B]reaches of applicable legal norms causing damage to another *create liability*, which consists in an obligation to make integral reparation to the other person for the damage caused.")

Article VII asserts a launching State is internationally liable for damage to another State. "Internationally liable" simply means liability in the form that is used under international law, namely fault-based liability.

Although fault is not defined in the OST, the definition can be found in the general rules of international law, as referenced and incorporated by Article III of the OST.[76] The ordinary meaning of fault in general international law is the infringement of the duty of due diligence or due care.[77]

It is outside the scope of due diligence or due care to expect Respondent to prevent its space object from being manipulated by another State; it is even further outside the scope of "fault" to hold a manipulated State responsible for the damage caused by the manipulation of another State. Respondent could not have predicted, nor would it have been reasonable for it to predict, that another State would attempt to interfere with its space object and that the interference would cause damage. Therefore, Respondent is not at fault for the damage caused to Couleur when Couleur interfered, manipulated and was subsequently damaged by Lavotto-1.

3 The mere possibility of damage does not amount to liability

Under international law, the simple possibility of damage is not enough to demonstrate

[76] Carl Christol, *International Liability for Damage Caused by Space Objects*, (1980) 74 AM. J. INT'L L. 346, 359 at 369 [hereinafter Christol].

[77] Lighthouse Case between France and Greece, 31 PCIJ 59, 17 March 1934. *See* Brownlie at 552. ("There is a general agreement among writers that the rule of non-responsibility cannot apply where the government concerned has failed to show due diligence.") *See* Giuseppe Palmisano, *Fault*, MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶16, <http://opil.ouplaw.com/home/EPIL>. *See also* Black's Law Dictionary (2nd e), *What is Due Diligence*, *available at* http://thelawdictionary.org/due-diligence/. ("Due diligence is the "measure of prudence, activity or assiduity as is properly to be expected from… a reasonable and prudent man under the particular circumstances.") *See also* Black's Law Dictionary (2nd e), *What is Due Care*, *available at* http://thelawdictionary.org/due-care/. ("Due care is "just, proper and sufficient care, so far as the circumstances demand it; the absence of negligence.")

liability.[78] Applicant cannot rely on the fact that Lavotto-1 posed a mere threat to Mira to argue Respondent is liable for the damage caused to Couleur. Actual damage must flow from a particular action to trigger liability.[79] Lavotto-1 never actually collided with Mira nor did it cause any damage to Mira. Therefore, Respondent never caused any damage to Applicant as the potential possibility never materialized. Rather, Applicant interfered, manipulated and damaged Lavotto-1: first when Couleur broke Lavotto-1 into two pieces with its grappling arm, and second when Couleur exploded Lavotto-1 with its laser weapon.

4 Even if Respondent violated the Outer Space Treaty, Applicant is precluded from compensation as Applicant violated Articles I, III and IX of the Outer Space Treaty

When a State violates international law, it cannot rely on that violation to claim compensation for subsequent events.[80] Applicant violated the OST when it decided to interfere, manipulate and destroy Lavotto-1 rather than simply maneuver Mira out of harm's way if Lavotto-1's potential threat ever materialized.[81]

Article I of the OST stipulates that the use of outer space shall be in the interests of all countries. Applicant's use of an untested laser weapon in outer space created a cloud of debris that will likely limit the ability of other States to effectively utilize outer space in the future[82], a clear

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[78] International Law Commission Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), 53 UN GAOR Supp. (No. 10) at 31, U.N. Doc. A/56/10 (2001) [hereinafter Articles on State Responsibility], at p. 35.

[79] Articles on State Responsibility, at p. 36. ("… [I]nternational responsibility is not engaged by conduct of a State in disregard of its obligations unless some further element exists, in particular, "damage" to another State.")

[80] Articles on State Responsibility, at p. 93. (Gabcikovo-Nagymaros outlines the principle that a State which has failed to mitigate its damage would be precluded from recovery.)

[81] NASA, Space Debris and Human Spacecraft, 30 July 2015, *available at* http://www.nasa.gov/mission_pages/station/news/orbital_debris.html.

[82] COMMITTEE FOR THE ASSESSMENT OF NASA'S ORBITAL DEBRIS PROGRAMS, LIMITING FUTURE COLLISION RISK TO SPACECRAFT: AN ASSESSMENT OF NASA'S METEOROID AND ORBITAL DEBRIS PROGRAM, Chapter 13: Preparing for the Future, (Washington DC: National Academy Press, 2011) at 91.

violation of Article I.

Article III of the OST specifies a State party must conduct its space activities "in accordance with international law" and "in the interest of maintaining international peace and security and promoting international cooperation and understanding."[83] Applicant's unilateral decision to de-orbit a space object over which it had no jurisdiction, demonstrates its failure to promote international cooperation and understanding.[84] Further, its undisclosed use of a laser weapon, even if its intentions were for peaceful purposes, could be misinterpreted as an act of aggression,[85] such that Applicant used armed force against "the sovereignty, territorial integrity or political independence" of Respondent. Such an interpretation may lead to an outer space arms race which would run counter to the requirement to maintain international peace and security as well as general international consensus on preventing an arms race in outer space.[86]

Article IX of the OST provides that States must conduct their outer space activities with "the principle of cooperation and mutual assistance" and "with due regard to the corresponding interests of all other States Parties"[87] in mind. While "due regard" is not defined in the OST, it implies concern for other States interests; it is a principle of equity that requires the balancing of

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[83] OST, art. III.
[84] OST, art. IX.
[85] United Nations, G.A. Res. 3314 (XXIX), Definition of Aggression, (14 December 1975), Annex: Article 1. (This court has determined that part of the definition reflects custom. (Nicaragua, at 14); Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda), Judgment, 2005 I.C.J. 168, (Dec. 19) [hereinafter Congo].)
[86] United Nations, G.A. Res. 69/31, Prevention of arms race in outer space, A/69/438 (2 December 2014); United Nations, G.A. Res. 69/32, No first placement of weapons in outer space, A/69/438 (2 December 2014). Theresa Hitchens, 'Space Weapons: more security or less?' in JAMES CLAY MOLTZ, ED., *FUTURE SECURITY IN SPACE: COMMERCIAL, MILITARY, AND ARMS CONTROL TRADE-OFFS* (Monterey, CA: Mountbatten Centre for International Studies, 2002). (The presence of one State placing weapons in space would very likely cause an arms race in space, as other States would move quickly to close the technological and military gap.)
[87] OST, art. IX.

State interests.[88] In the *Fisheries Jurisdiction* case for example, this honorable Court held that Iceland could not unilaterally extend its fishing jurisdiction and exclude the United Kingdom from such extended territory, as both States have an obligation to pay due regard to the interests of other States in the conservation and the equitable exploitation of fisheries resources.[89]

Applicant failed to cooperate with and provide assistance to Respondent when it unilaterally decided to break off all relations with Respondent regarding its space programs. Applicant further failed to consult with Respondent before issuing a unilateral decree blocking any technological exports and forbidding cooperation between the two State's national space agencies. Applicant further failed to engage in a mutual effort to rectify the issues associated with Lavotto-1 and instead decided to act unilaterally. While such actions, individually, may be acceptable under international law, their cumulative effect, culminating with the unlawful interference of Respondent's space object, violated Respondent's sole jurisdiction over Lavotto-1.[90] Respondent concedes the potential threat to Mira from Lavotto-1; however, there were quantifiable risks and viable assessments of the likelihood of harm.[91] Applicant's internal, unilateral and secretive decision to utilize the laser weapon,[92] despite having diplomatic channels to discuss the threat of this collision, demonstrates it lack of due regard. This failure to show due regard or to cooperate with other States is a violation of the OST – one that led to tangible consequences. Thus, Couleur's damage is the direct result of Applicant's actions and a reflection of its lack of due regard to other States' interests.

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[88] *See* Fisheries Jurisdiction Case (U.K. v. Ice.), Declaration of Judge Singh, 1974 I.C.J. 3, 40 (Jul. 25).
[89] *Id*., Merits Judgement at p. 34.
[90] Articles on State Responsibility, art. 15; OST, art. VIII.
[91] Compromis, ¶9-11.
[92] *Id*., ¶18.

Applicant violated these articles when it acted in its own interest and decided, of its own accord, to de-orbit Lavotto-1 rather than investigate the possibility of maneuvering Mira out of harm's way, if that harm ever truly materialized. Applicant's decision to interfere, manipulate and destroy Lavotto-1 caused the destruction of Lavotto-1 and the subsequent debris that will negatively affect the interests of other space faring nations, thus violating its international obligations. Applicant's violation of the OST precludes it from recovering compensation.[93]

B Respondent is not liable for the damage to Couleur under Article III of the Liability Convention

The Liability Convention deals specifically with issues of liability, developing the notion in Articles VI and VII of the OST. The Respondent notes the legal maxim *lex specialis derogat legi generali*, which states that a more specific law governing a particular legal issue takes precedence over a more general law.[94] As State Parties to the Liability Convention, both Applicant and Respondent are bound to the outer-space specific description of liability espoused in the treaty.[95]

According to Article III of the Liability Convention, in the event of damage being caused elsewhere than on the surface of the Earth to a space object of a launching State by a space object of another launching State, the latter shall be liable only if the damage is due to its fault.[96] Respondent is not liable to Applicant for the loss of Couleur under Article III of the Liability Convention, because the damage caused to Couleur is not due to Respondent's fault.

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[93] Gabcikovo-Nagymaros, at 133. (Discussing the concept of e*x injuria jus non oritur* and *ex turpi causa non oritur actio*, the former stating violations cannot create law and the latter stating violations cannot form the basis of an action (the "clean hands" doctrine).)

[94] *See also* Articles on State Responsibility, art. 55. ("These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.")

[95] Compromis, ¶26; VCLT, art. 26.

[96] Liability Convention, art. III.

1 Respondent cannot be liable as it was not at fault

The Applicant's claim against Respondent under Article III of the Liability Convention is untenable, as the damage caused to Couleur was not due to Respondent's fault. Article III of the Convention provides: "In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State… by a space object of another launching State, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible."

When considering the notion of "caused by" under international space law[97], one must consider not only the direct impact or action of an activity but also "the context of causality, which means that there must be proximate causation between the damage and the activity from which the damage resulted."[98] According to Judge Lachs, "[t]o produce legal effect, the 'damage' thus defined must be caused by the space object or component parts of it, or by the launch vehicle or parts thereof."[99] The causal link includes both cause-in-fact and proximate cause.

As a result of Couleur's use of a laser weapon, it caused Lavotto-1 to explode and was damaged as a result of the emanating debris. Respondent did nothing to cause the explosion or the resulting debris that damaged Couleur. Applicant's own decision to unilaterally manipulate and interfere with Lavotto-1 caused it to break apart and explode. To hold Respondent liable for Applicant's actions would be contrary to international law. Lavotto-1 never posed a threat to

[97] This includes the relevant provisions of both the Liability Convention and the OST.
[98] Christol, at 362 (quoting Gorove, *Cosmos 954: Issues of Law and Policy*, 6 J. SPACE L. 141 (1978)). (Christol further notes that "clearly the term 'cause' should only require a causal connection between the accident [or action] and the damage.") *See also* VALÉRIE KAYSER, LAUNCHING SPACE OBJECTS: ISSUES OF LIABILITY AND FUTURE PROSPECTS (2001) at 48 [hereinafter Kayser]. ("Damage which finds its cause in the space object concerned, whether it is primary or secondary, would in principle be covered by the Convention.")
[99] Lachs, at 115.

Couleur until Couleur rendezvoused with Lavotto-1 in space, attempted to de-orbit it with its grappling arm and then caused it explode using its laser weapon.[100] Had Couleur not placed itself in Lavotto-1's orbit, not used its grappling arm and not used its laser weapon, Lavotto-1 would not have exploded and would not have caused damage to Couleur. Therefore, the Respondent was not at fault for the damage caused to Couleur. Without meeting the criteria of fault, Respondent cannot be held liable.

2 Respondent could not reasonably foresee that its space object would explode and cause damage to another space object

Although the debris that damaged Couleur originated from Lavotto-1, Respondent is not at fault. While the causal link outlining the cause-in-fact between the explosion and the damage to Couleur seems determinative, the causal chain leading to that damage in fact began when Couleur attempted to grapple Lavotto-1 with as well as when it fired its laser weapon.

A determination of proximate cause requires an inquiry into the foreseeability of the harm[101] and exists when the consequences of a breach of an obligation are natural and foreseeable.[102] The foreseeability of an act is based on the standard of the reasonable person; therefore it only requires general harm, rather than specific harm.[103] Strict foreseeability is not the criterion for liability in space law, given the difficulty, if not impossibility, of foreseeing all forms of damage that may be caused by a space object.[104] Thus, as long as some form of damage is foreseeable, it does not matter whether the actual form of damage was indeed foreseen.

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[100] Compromis, at ¶15.
[101] Stephan Wittich, *Compensation*, MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶17, *available at* http://opil.ouplaw.com/home/EPIL; Christol, at 362.
[102] CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS, at 250-51 [Cheng, *General Principles*].
[103] *Id*.; *See also* Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania), ICJ Reports, 1949 [hereinafter Corfu Channel].
[104] *See* Christol, at 362.

Although there are always risks associated with launching and operating a space object, Respondent could not have possibly foreseen that another State's space object would attempt to de-orbit its own object, without its permission, and then explode it and subsequently suffer damage. Such damage is not, and never could be, a foreseeable consequence of the normal operation of a space object. Even when Lavotto-1 ceased operating in a normal manner, Respondent could not have reasonably foreseen that it would explode and cause damage to another space object.

3 Applicant could reasonably foresee that using a laser on a space object could cause damage to another space object

Applicant's use of the grappling arm and laser weapon were the proximate cause of the damage to Couleur. It was entirely reasonable for Applicant to foresee that using an untested laser weapon in space could result in damage; foreseeing the circumstances that resulted in damage were elementary.[105] Given that the operation of a laser weapon in space would result in damage, Applicant had assumed the risk that its actions may damage its own spacecraft. Similar to the situation in which the Canadian government failed to notify the US that it had outstanding payments owing for a supply of timber it purchased through an intermediary, "… the Canadian Government, having been able to avoid the grievance arising from [the timber company's] acts, does not seem to be entitled now to hold the United States military authorities in any way responsible for it."[106] In this sense, Applicant assumed the risk associated with its activities and is now precluded from claiming liability against Respondent for damage arising from its predictably risky activity.

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[105] Christol, at 362 (citing William F. Foster, *The Convention on International Liability for Damage Caused by Space Objects*, 10 CANADIAN Y.B. INT'L L. 137, 158 n.65 (1972) [hereinafter Foster]).
[106] Yukon Lumber (U.K. vs U.S.), 6 R Int'l Arb Awards 17, 21 (1913).

C Respondent is not liable for the damage to Couleur under general international law

1 Respondent is not liable under general international law in the absence of a wrongful act; force majeur precludes such a finding

Respondent has failed to show that Applicant committed any internationally wrongful act. An internationally wrongful act is fundamental for liability under general international law as the Permanent Court of Justice stated in the *Chorzów Factory* case[107] and under Article VI of the OST. Simply put, there is no liability under general international law absent a wrongful act. Since Applicant committed no internationally wrongful act, it is not liable under general international law.

If this court finds that Respondent had acted wrongfully, it can be excused from its actions on the basis of *force majeure*. An act is not wrongful if it "is due to *force majeure*, that is, the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation."[108] *Force majeure* is comprised of three elements,[109] each of which Respondent satisfies.

i There was an irresistible force

First, there was an irresistible force.[110] The solar windstorm was a rare natural phenomenon, as confirmed by Mosolia, and was not predicted by Respondent.

ii The irresistible force was beyond Respondent's control

Second, it must be beyond the control of Respondent. The solar windstorm rendered Lavotto-1 inoperable. Respondent took all steps within its capability to regain control of its satellite

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[107] Case Concerning the Factory at Chorzów (F.R.G. v. Pol.), 1928 P.C.I.J., Ser. A, No. 17 (Sept. 13) [hereinafter Chorzow Factory].
[108] Articles on State Responsibility, art. 23(1).
[109] *Id*. at p. 76(2).
[110] JAMES CRAWFORD, THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES, (Cambridge: Cambridge University Press, 2002) at 170. (An irresistible force is characterized as "a constraint which the State was unable to avoid or oppose by its own means.")

but was unable to do so because of the catastrophic damage caused by the solar windstorm. In fact, Respondent tried to both de-orbit its satellite and park it in a higher orbit as originally intended but failed to successfully accomplish either manoeuver because of the damage caused by the solar windstorm. This demonstrates that it could not control its space object after the solar windstorm and thus could not prevent any potential damage it may have posed.

iii The irresistible force made it impossible for Respondent to perform its obligations

Finally, the *force majeure* must make it materially impossible to perform the obligation. While the Respondent did not have any clear international obligation to de-orbit its derelict satellite or move it to a parking orbit, its decision to act in a humanitarian manner for the benefit of other States was hampered by the irresistible force of the solar windstorm. Therefore, Respondent would not be liable for any potential consequences or damages flowing from the loss of control caused by the solar windstorm.

2 Respondent is not liable for the loss of Couleur under Article 2 of the Articles on State Responsibility

An internationally wrongful act consists of a breach of an international obligation through an act or omission and an attribution of that breach to a State.[111] For conduct to be attributable to a State, it must involve an act or omission by a person or group of people. The general principle is that "States can act only by and through their agents and representatives".[112] The damage that occurred to Couleur is not attributable to Respondent or any of its agents or representatives and therefore Respondent did not commit an internationally wrongful act; the fact that Lavotto-1 is a Rastalian space object does not constitute a wrongful act attributable to Respondent.

3 Even if Respondent is liable, Applicant is precluded from recovering compensation as it violated Articles I, III and IX of the Outer Space Treaty

[111] Articles on State Responsibility, art. 2.
[112] German Settlers in Poland, Advisory Opinion, 1923, P.C.I.J., Series B, No. 6 at 22.

As stated above, Applicant violated Articles I, III and IX of the OST. As such, it is precluded from recovering compensation on the basis of *ex turpi causa non oritur actio.*[113]

III BANCHÉ IS LIABLE UNDER INTERNATIONAL LAW FOR THE COSTS OF RECOVERY OF COULEUR, THE RESCUE AND MEDICAL EXPENSES FOR COMMANDER BORSCH, THE COSTS OF THE EVACUATION OF LAKE TAIPO, AND THE DEATHS OF BOTH MR. THOMAS AND MR. BARTON.

Firstly, Applicant demanded the return of Couleur, thus they are liable for the costs of recovery under Article 5 of the Rescue Agreement. Secondly, Borsch landed in Rastalia intentionally, so Applicant is liable for the rescue and medical costs for Borsch under customary international law. Finally, Applicant is liable for the evacuation costs of Lake Taipo and the deaths of Thomas and Barton under Article II of the Liability Convention.

A Applicant is liable for the costs of recovery of Couleur

After requesting the return of its space object, Couleur, Article 5 of the Rescue Agreement requires Applicant, as the launching authority, to bear "the expenses incurred in fulfilling obligations to recover and return a space object or its component parts."[114] Applicant demanded the return of Couleur and Respondent recovered Couleur hours later, thus Applicant is liable for the costs incurred by Respondent.

1 Applicant is the launching authority

Applicant is the launching authority for Couleur under Article 6 of the Rescue Agreement.[115]

2 Applicant demanded Couleur's return

Applicant formally demanded the return of Couleur on 6 January 2029.[116]

3 Therefore, Banché must bear expenses incurred by Rastalia

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[113] Gabicokovo-Nagymaros, at ¶133 (see note 93).
[114] Rescue Agreement, art. 5.5.
[115] Compromis, ¶17.
[116] *Id*.

The Rescue Agreement provides no time-table for the return of a space object by the Contracting Party to the launching authority. As no prompt return is required, Article 5 allows Respondent to demand an advanced payment[117] for recovery expenses and damage caused by Couleur before returning the spacecraft to Applicant.[118] This interpretation of Article 5 is supported by the substitution of "shall be borne by" for the words "shall be reimbursed by" during the drafting of the Rescue Agreement.[119] Respondent has complied with Paragraphs 2 and 3 of Article 5 of the Rescue Agreement to this point, so Applicant has an unconditional obligation to bear the expenses of the recovery of Couleur.

B Banché is liable for the rescue and medical expenses of Borsch under customary international law

Shortly after Couleur landed in Rastalia, Applicant demanded Respondent rescue Borsch, so Respondent expended significant resources in rescuing him and providing medical care.[120] The Rescue Agreement is silent regarding the recoupment of rescue and medical expenses for personnel. This omission does not preclude recovery under other provisions of international law.[121] As a result, Applicant's obligation to cover the rescue and medical expenses for Borsch arise under customary international law.

Customary international law and decisions of this Court relating to State responsibility culminated in the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, under which a State is internationally responsible for its wrongful

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[117] Lachs, at p. 80.
[118] Cheng, *Space Law*, at 283.
[119] *Travaux préparatoires* to the Rescue Agreement, art. 5, U.N. Doc. A/AC. 105/C.2/SR.86 (14.12.67) *reprinted* in Cheng, *Space Law*, at 280-81.
[120] Compromis ¶18.
[121] There is no evidence or support in the *travaux préparatoires* to support an intention by the parties to preclude recovery. *Haya De La Torre Case* (Colombia v Peru), 1951 I.C.J. 4, 71 (June 13).

acts.[122] Should a State commit a wrongful act, it "is under obligation to make full reparation for the injury caused by the [internationally wrongful] act."[123] In order for an act to constitute an "internationally wrongful act" that triggers reparation, two elements must be satisfied[124]: first, the act must be attributable to the State[125], and second, the act must "constitute a breach of an international obligation of the State."[126]

1 Couleur's actions in outer space are attributable to Applicant

The actions and activities of a space object are attributable to its State. Additionally, actions of a person, authorized by a State to act on its behalf, are actions of that State under international law.[127] As discussed above, Applicant procured the launch of Couleur, and it launched from its territory. As such, Applicant is responsible for the actions of Couleur and Borsch.

2 Couleur's destruction of Lavotto-1 was a breach of Applicant's obligations under the Outer Space Treaty

As discussed above, Applicant's responsibility for the recovery and medical costs for Borsch flow from its breach of the OST.[128] Applicant's decision and actions leading to the destruction of Lavotto-1 was a violation of international law, thus making it obliged to make full reparation for the recovery and medical costs for Borsch.[129] Applicant's payment of reparation in the form of compensation would "as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."[130] Had Applicant not acted illegally in destroying Lavotto-1, Borsch would not

[122] Articles on State Responsibility, art. 1.
[123] *Id*., art. 31. *See also* Chorzów Factory; Congo, at ¶257 and 259.
[124] Articles on State Responsibility, art. 2.
[125] *Id.,* art. 2(a).
[126] *Id*., art. 2(b).
[127] *Id*., art 5.
[128] *Id*., art 1.
[129] *Id*., art 31.
[130] Chorzów Factory, p. 47.

have landed in Rastalia and required Respondent to provide recovery and medical service. Applicant's payment of these costs are the only way to put Respondent back in the place that it would have been had Applicant not destroyed Lavotto-1, because Respondent has already expended the resources for recovery and medical services.

C Banché is liable for the costs of the evacuation of Lake Taipo and the deaths of Thomas and Barton under the Liability Convention

Article II establishes absolute liability, so Applicant need only demonstrate causation attributable to Couleur and legally cognizable damage that flowed directly or immediately from the operation of Couleur.[131] As the launching State of Couleur, Applicant is liable for the compensable damage to the persons and property of Respondent.

1 Lake Taipo evacuation costs constitute compensable damage

As used in Article I(a) of the Liability Convention, damage means "loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical." Even though evacuation costs are not specifically listed in Article I(a), the victim-oriented nature of the treaty supports its inclusion.[132]

Respondent took the necessary action to prevent or lessen the possibility that Couleur and its suspected nuclear material would cause harm. The evacuation costs can be characterized as indirect or consequential damages and are similar to Canada's claim made under the Liability Convention in the *Cosmos 954* incident. In that case, Canada's claim included costs borne from its attempt to mitigate probable damages.[133] The *Cosmos* 954 incident was settled under the

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[131] Canada, Department of External Affairs, Cosmos Case, Canada: claim against the Union of Soviet Socialist Republics for damage caused by Soviet Cosmos 954 18 I.L.M. (1979) 899, at 906. *Travaux préparatoires* to the Liability Convention, art. 4, U.N. Doc. A/AC/105/C.2/L.7 *reprinted* in NANDASIRI JASENTULIYANA & ROY LEE, MANUAL ON SPACE LAW: VOLUME I (1979), p. 249-253 [hereinafter Jasentuliyana, *Manual*]; Christol, at 359.
[132] *See* Lachs, at 115.
[133] Christol, at 362.

Liability Convention, as the claim was made in accordance with its provision. [134]

Rastalia believed nuclear material was on board Couleur when it unexpectedly crashed in its territory, so an evacuation was ordered to mitigate what was believed to be imminent and devastating harm.[135] That no nuclear leak was detected at the crash site is immaterial, because Rastalia had a duty to mitigate expected harm as expressed by the ICJ in the *Gabčikovo-Nagymaros Project* case.[136] An injured State that fails to take the necessary steps to mitigate damage is precluded from recovery for damage that might have been avoided.[137]

While indirect damage was not specifically included in the definition of damage, it was generally accepted by the delegates as an instance of proximate or adequate causality.[138] General international law generally adopts this position and is supported by eminent publicists.[139] As a result, the Lake Taipo evacuation costs are recoverable damage under the Liability Convention if caused by Couleur's landing.

2 The deaths of Thomas and Barton constitute damage

Since the definition of damage under Article II includes loss of life, the deaths of Thomas and Barton are recoverable damage.

3 The evacuation of Lake Taipo was "caused" by Applicant

Article II also specifies that the damage should be "on the surface of the Earth or to aircraft in flight." The Applicant's use of a laser in outer space and its failure to inform other States,

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[134] *Id*.
[135] Compromis, ¶18.
[136] Gabčikovo-Nagymaros, ¶80.
[137] *Id*..
[138] *See Travaux Préparatoires* to the Liability Convention, U.N. Doc. AC. 105/C.2/L.61 (Jun. 23, 1969) *compiled in* Jasentuliyana, *Manual* at 354; *see also* Cheng, *Space Law* at 323.
[139] Administrative Decision No. II (U.S. v. Ger.), 7 R.I.A.A. 23, 29-30 (1923). ("It does not matter whether the loss be directly or indirectly sustained so long as there is a clear unbroken connection between the act of the state and the loss of the injured party").

particularly Respondent, of its use created reasonable concern that the unexpected and potentially catastrophic landing of Couleur would lead to nuclear fallout.[140] There is a direct causal link between Couleur's unexpected landing in Rastalia with nuclear material potentially onboard and the evacuation of the area surrounding Lake Taipo.

4 The deaths of Barton and Thomas were "caused" by Applicant

The detached piece of spacecraft shell directly caused the death of Mr. Thomas when it hit a campsite near Lake Taipo,[141] thus there is a direct causal link between the piece of detached spacecraft slamming into a building on the surface of the Earth and Mr. Thomas being killed by the impact; however, this direct cause is not required.

While direct physical impact is the most straightforward manner in which damage can result, "physical impact with a space object" is not required.[142] Mr. Barton was not hit by the detached piece of spacecraft, but was on "the surface of the Earth" when he witnessed Couleur unexpectedly fly overhead.[143] This observation caused Mr. Barton to suffer a heart attack and die.[144] The Liability Convention does not require a direct, terrestrial impact with the victim when the damage claimed is on the Earth's surface.[145] For example, emanations of nuclear fallout would be a cognizable damage, certainly extending beyond damage of direct impact of a space object.[146] As long as there is some "impairment of health," the Convention covers all injuries no matter if there was "physical impact with a space object."[147]

The cause-in-fact element is satisfied in this case. But for the actions of Banché through

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[140] Compromis, ¶17.
[141] Compromis, ¶17.
[142] Christol at 360, citing Foster at 155.
[143] Compromis, ¶19.
[144] *Id*.
[145] *See* Christol, at 359-60; *see also* Kayser, at 47-48.
[146] *Id*.
[147] Christol, at 360.

Couleur, i.e., unexpectedly landing near Lake Taipo on 4 January 2029, an evacuation would not have been necessary and Thomas and Barton would not have died. The deaths of Barton and Thomas were natural and probable results of Couleur unexpectedly landing near Lake Taipo.

5 Banché is not exonerated from liability

Applicant cannot be exonerated from liability pursuant to Article VI of the Liability Convention, which states that the launching authority may be exonerated from absolute liability if "the damage has resulted either wholly or partially from gross negligence or from an act or omission done with intent to cause damage…." Applicant may only invoke this provision if its actions did not violate international law.

Respondent's actions do not constitute gross negligence, because the actions were not willful or reckless. As a result, Applicant cannot be exonerated. On the other hand, if Respondent's actions were willful or reckless, as earlier noted, Applicant's actions were not in compliance with international law.

The space law treaties do not define gross negligence, but in the *travaux préparatoires* to the Liability Convention, delegates confirmed that gross negligence was similar to a "willful or reckless act or omission" and meant actions more serious than mere negligence.[148] Domestic jurisdictions interpret gross negligence in a related manner.[149]

First, Respondent's actions cannot be characterized as gross negligence. Respondent's

[148] *Travaux préparatoires* to the Liability Convention, U.N. Doc. A/AC/105/C.2/SR.50 (1965), *compiled* in Jasentuliyana, *Manual*, at 471 (statement by U.S. Amb. Sohier). *Travaux préparatoires* to the Liability Convention, U.N. Doc. A/AC/105/C.2/SR.77 (1966) *compiled* in Jasentuliyana, *Manual*, at 487 (statement by Indian Amb. Haraszi).

[149] Jean Limpens et al, *Liability for One's Own Act*, *in* VOL XI (TORTS) INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW 65, 70 (Andres Tunc et al eds., 1983). (Although no distinct definition can be deduced from civil and common law jurisdictions, both systems afford a degree of severity of the conduct necessary to meet the gross negligence standard.)

actions in launching and ultimately failing to de-orbit Lavotto-1 cannot be considered willful misconduct or reckless. Prior to launch, Respondent installed technology that allowed for de-orbit at end-of-life.[150] Unfortunately, Lavotto-1 was made inoperable by a rare solar windstorm which caused Respondent to lose control of the satellite.

Respondent's response to the inoperability of Lavotto-1 was not reckless in immediately announcing to the world that it lost control of the satellite and that there was suspected danger to the Mira space station. Respondent had an obligation to inform (duty to inform) Applicant of potential harm resulting from Lavotto-1.[151] Indeed, Respondent was in compliance with this obligation by utilizing diplomatic channels with Applicant to protect the Mira space station.[152]

Second, Applicant cannot be exonerated, because the damage claimed is a result of Applicant's internationally wrongful act.[153] Even if the Court accepts that Applicant had a legal right to unilaterally remove Lavotto-1 from orbit for the purpose of mitigating harm, the manner in which it did so, insofar as it used the GODA laser system, without any consultation or diplomatic announcement was in violation of international law.[154] Although Applicant was involved in diplomatic talks with Respondent, it never sought the cooperation of Respondent in its plan to use this weapon.[155] As a result of this internationally wrongful act, the Applicant's

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[150] Compromis, ¶7.
[151] *See*, for example, article 8 of the International Convention for the Prevention of Pollution from Ships, 1340 UNTS 184 (1973); Annex 6 of the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea, 1507 UNTS 167 (1992); and article 9 of the Barcelona Convention for the Protection of the Mediterranean Sea, Protocol of Co-operation in Case of Emergency, 1102 UNTS 27 (1976). (The customary nature of the duty to inform emerges from both State practice and *opinio juris* (the two substantial elements of custom). This obligation was established in *Corfu Channel* and later confirmed as binding by the international community by the signing of several international conventions crystalizing said duty.)
[152] Compromis, ¶11.
[153] Liability Convention, art. VI.2.
[154] OST, art. IX.
[155] *Id.,* art. IX.

action cannot be exonerated even if Respondent's actions are seen as contributory.

SUBMISSIONS TO THE COURT

For the foregoing reasons, the Republic of Rastalia respectfully requests the Court to adjudge and declare that:

a. Rastalia acted in conformity with international law by refusing to return Couleur and Commander Borsch to Banché and refusing the earlier return of Ms. Paula to Banché.

b. Rastalia is not liable under international law for the damage to Couleur.

c. Banché is liable under international law for the costs of recovery of Couleur, the rescue and medical expenses for Commander Borsch, the costs of the evacuation of Lake Taipo, and the deaths of both Mr. Thomas and Mr. Barton.