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Manfred Lachs Space Law Moot Court Competition 1997

Case Concerning Commercial Very High Resolution Remote Sensing Systems

OPENSKEY vs. ANTIPAPADIA

General Issues Presented

Whether the downgrading of spatial resolution of a remote sensing satellite image in the case of a specific country is in conformity with international law;

Whether remote sensing satellite data may be intercepted by a state without approval of the operator state of the satellite;

Whether remote sensing data which proves to be incorrect can result in liability under international law of the state which is responsible for the satellite operation.

Statement of Facts

The Republic of Starstripe licensed the private company Goldstar to construct and sell the commercial remote sensing satellite Golden Eye to the Kingdom of Openskey. Golden Eye is capable of delivering Very High Resolution (VHR) data with a ground resolution between 1 and 5 meters.

The instruments on board Golden Eye have an optical capacity and an active synthetic aperture radar (SAR) capability and there is limited on board processing and recording of data. Also the satellite is equipped with an optical telecommunication transponder for intersatellite links which makes high bit data relay possible with the command station.

Golden Eye was successfully launched by the State Secondandia from the territory of the Republic Starstripe and subsequently was sold to the private company Superview Inc., which has its headquarters in Openskey, but is incorporated elsewhere.

Superview Inc. is a typical large multinational company and has shareholders all over the world. Superview Inc. is licensed by Openskey to carry out commercial VHR activities in conformity with international law including space law. Superview, Inc. pays Openskey 10% of the revenue it receives from the sale of sensed data. Openskey has a national space law which contains the provisions in the Annex. Agreements have been concluded between Superview Inc. and the governments of Papadia and Antipapadia to receive data directly from Golden Eye. In these agreements, which also were approved by the Foreign Ministry of Openskey, technical assistance is provided by Superview Inc. to Papadia and Antipapadia, and ground stations are delivered by Openskey to the respective countries. Both agreements refer to the conditions of the license of Superview Inc. as an integral part of the agreement.

Papadia and Antipapadia, which were separated from each other after a lengthy civil war, are located in the same geographic region and are both comprised of a group of small islands. The sea area in which they are situated contains many minerals, and large oil fields are supposedly located in the disputed territorial sea between Papadia and Antipapadia. Two oil companies, Drillwell Inc. and Sinkbetter, Inc., have long-standing close contacts with the governments of Papadia and Antipapadia respectively, due to the existence of these strategic oil fields. Drillwell Inc. is incorporated under the law of Papadia, and Sinkbetter Inc. is incorporated under the law of Antipapadia.

The first large client of Papadia for VHR data is Drillwell, Inc. which, based on the data delivered through the ground station of Papadia, started to search for oil in a small coastal area in the middle of the disputed territorial sea between Papadia and Antipapadia.

Antipapadia at the same time contracted with Sinkbetter Inc. and Sinkbetter, based on the data gathered through the ground station of Antipapadia, starts an oil search some 12 kilometers (8 miles) east of the area where Drillwell Inc. is searching. This area, as well, is situated in the middle of the disputed territorial sea between Papadia and Antipapadia. Both Drillwell and Sinkbetter are licensed through the respective Papadian and Antipapadian ministries to carry out exploratory drilling and subsequently to exploit any oil fields they find in the disputed areas.

The ground stations of Papadia and Antipapadia for receiving the VHR data from Golden Eye are technically different. Papadia, which still maintains close political and economical ties with its former colonial power Starstripe, purchased from Openskey the latest technology and software for processing all the data. Antipapadia, which after its separation from Papadia became part of the movement of progressive former colonial countries, has only limited access to space technology, due to limited economic resources. Consequently it was only able to purchase much less advanced hardware and software for processing the VHR data. Moreover, in the license of Goldstar to export Golden Eye to Openskey, a provision was included which gave Starstripe the right to demand a

downgrading of the data in furtherance of the national security interests of Starstripe. This provision was also included in the licence from Openskey to Superview, Inc. and was made known to Papadia and Antipapadia when they signed the agreements with Superview, Inc.

Tensions have arisen between Papadia and Antipapadia due to the plans of both oil companies to start exploratory research in the disputed sea areas by sending special ships for experimental drilling. Both countries send warships to the disputed zones. A situation of international tension is reported by the press.

The data received from Golden Eye, according to press reports, also has military significance and enables both countries to monitor the other country's military activities. Papadia requests Starstripe to intervene in the conflict and also requests the Secretary General of the United Nations to discuss the situation in the Security Council. The Security Council subsequently adopts a Resolution calling upon the two countries to refrain from any further controversial actions in the disputed area and to enter directly into negotiations concerning the disputed sea area. The Resolution does not mention space activities nor the use of satellite derived information.

Openskey, after discussions with Starstripe, orders Superview Inc. to switch-off the satellite signals intended for the ground station of Antipapadia. Superview complied with this order.

At the same time, the oil companies Drillwell Inc. and Sinkbetter Inc. published the first results of their test drilling. It appears that Drillwell found an undersea oilfield which will justify commercial exploitation. It is located entirely in the disputed area. Sinkbetter, on the contrary, did not locate any oilfield. After having made an investigation with experts from Antipapadia, the conclusion was drawn that due to the technical inferiority of the ground station and processing facilities, it could not carry out its research with the data obtained through the Antipapadian ground station. It was also discovered that the data received by Antipapadia had been deliberately and constantly downgraded by Superview Inc. on request of the Government of Openskey. In the process of downgrading, some of the data received in Antipapadia was carelessly but unintentionally transformed in such a way that with the processing software Antipapadia possessed the data was being represented incorrectly.

Antipapadia, after having received the experts' report, decided to buy a state-of-the-art mobile ground station. In order to be sure to receive the VHR data in good order, Antipapadia started secretly to operate the mobile ground station from the territorial waters of Papadia. Antipapadia delivered VHR data to Sinkbetter, which, according to press releases, will take one more month to acquire enough data to start new research. At the same time, the Government of Antipapadia published pictures of secret Papadian military bases to the international press, which it claims clearly show the military build-up by Papadia. These pictures were derived from the satellite data obtained from Golden Eye through Antipapadia's recently acquired mobile ground station.

After these publications, Starstripe requests Openskey to switch off Golden Eye when it is in the coverage area of the ground stations in Papadia and Antipapadia until the disputed reception of data

by Antipapadia ends, and until Papadia and Antipapadia resolve their territorial dispute. Based on this request, Openskey decides to suspend the license of Superview Inc. to operate Golden Eye, and its control is taken over by the army of Openskey. Neither Papadia nor Antipapadia have received any data from Golden Eye since this decision.

Openskey and Antipapadia have decided to bring their dispute before the International Court of Justice for resolution of the issues stated below. There are no issues as to the Court's jurisdiction.

Issues before the International Court of Justice

- 1) Whether Antipapadia is violating international law by intercepting and publicly distributing the signals of Golden Eye, and, if so,
 - a) whether Antipapadia is liable to Openskey for the loss of revenue suffered by Openskey due to the switching-off of the satellite while within the coverage areas of the Papadian and Antipapadian ground stations; and,
 - b) whether Antipapadia should stop making this information public and should destroy or return to Openskey all data received.
- 2) Whether Openskey violated international law by switching-off Golden Eye while it was within the coverage of the Antipapadian ground station;
- 3) Whether Openskey violated international law by delivering to Antipapadia a ground station with hardware and software technically inferior to that purchased by and used in the Papadian ground station.
- 4) Whether Openskey violated international law by the intentional downgrading and unintentional transformation of Golden Eye data transmitted to Antipapadia, and, if so,
 - a) whether Openskey is liable for the costs incurred by Antipapadia in the unsuccessful exploratory research; and,
 - b) whether Openskey should compensate Antipapadia for the loss of expected oil revenues suffered by Antipapadia.

Instructions to the students:

You should prepare one memorial for the Applicant (Openskey) and one memorial for the respondent (Antipapadia). You should assume that all of the states referred to in this case are parties to all of the relevant international treaties and conventions and have adopted the United Nations General Assembly Resolution concerning "Principles Relating to Remote Sensing of the

Earth from Outer Space" (G.A. Res. 47/68). None of the States referred to in this case are parties to the UNCLOS III Treaty.

Annex

Openskey Law on Space Activities (Excerpts)

Preamble:

Having Regard the Increasing Commercial Uses of Outer Space and the Obligations for the States Party to the United Nations Space Treaties and Resolutions;

Taking Into Account the Articles of the Outer Space Treaty and especially Articles VI, VII and VIII;

Recalling the United Nations General Assembly Principles Relating to Remote Sensing of the Earth from Outer Space;

Believing that this Law will help strengthen the Leadership of Openskey;

Article 1

This Law applies to activities in outer space (space activities). In addition to activities carried out entirely in outer space, also included in space activities are the launching of objects into outer space and all measures to manoeuvre or in any other way affect objects launched into outer space.

Article 2

Space activities may not be carried out from Openskey's territory by any party other than the Openskey state, without a license. Nor may an Openskey natural or juridical person carry on space activities anywhere else without a license.

Article 3

A license to carry on space activities is granted by the Openskey government.

A license may be restricted in the way deemed appropriate with regard to the circumstances. It may also be subject to required conditions with regard to control of the activity or for other reasons. Inspection of the space activities of license holders is exercised by the authority decided by the Government.