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The Case Concerning International Liability
Utopia v. Friendlistan

STATEMENT OF FACTS

Spaceliner Inc., a private company incorporated in the State of Utopia, operates from its home port in Utopia which it owns as well as from air/spaceports which it serves in other places mentioned herein, a fleet of three similar transportation vehicles for both passengers and cargo from its equatorial port to the International Space Station (ISS), the Moon and several points on the surface of the Earth. In order to capture a highly profitable market, Spaceliner Inc. uses exclusively one of these vehicles for the carriage of high paying business passengers between different cities on the Earth as Spaceliner can reach its destination on the other side of the globe within an hour by passing through both air space and outer space. Its flight path takes it through the airspace of all of the states named herein. There exists an open sky policy with respect to all reusable vehicles that can be operated in airspace and outer space. Under Utopia law no flight plan is required and Utopia as a matter of practice does not notify the United Nations of each flight.

Utopia is located on the equator and does not have a strong financial position. The World Bank financed the operations of Spaceliner Inc. up to 65 percent with a view to encourage private enterprises in this developing country and on the condition that at least 25 percent of the remaining financing should come from foreign private investors. Only 10 percent of the shares of Spaceliner Inc. are owned by the private sector in Utopia. Being a member of the World Trade Organization, Utopia is committed to total privatization and deregulatory industrial policies in all economic activities and the Spaceliner Inc. venture is not an exception. Thus, as a matter of practice, Utopia adopts a somewhat hand-off regulatory policy towards Spaceliner Inc. Utopia does not carry insurance, nor does it require Spaceliner Inc. to carry insurance or obtain an airworthiness certificate for its fleet of Spaceliner transporters. Utopia Law requires Spaceliner Inc. to include in its transportation contracts with all passengers and cargo shippers a provision limiting its liability in accordance with the 1929 Warsaw Convention (i.e. the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, October 12, 1929). In addition, passengers are able to purchase higher coverage limits in the private

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insurance market should they so desire. Utopia and a few of its equatorial neighbors provide limited navigational services. It routinely relies upon the Global Positioning Satellite (GPS) system, operated by the State of Friendlistan, which is the only such system available for use by aircraft, ships and other various vehicles worldwide. However, the system was encrypted on 1st July 2030 due to anonymous threats of terrorism directed toward Friendlistan. On the same day, Friendlistan issued a worldwide notification that GPS signals would not be available for the near future.

On 2nd June 2030, Utopia signed a five-year agreement worth US\$200 million with the State of Equatorian to image remotely certain areas of Friendlistan. In this agreement, Spaceliner Inc. was named the prime contactor for actually performing such imagery activities when a Spaceliner passes over Friendlistan territory, though with some technical help from the Equatorian remote-sensing experts. Equatorian is friendly towards, but is in economic and industrial competition with, Friendlistan. Friendlistan, a rich and strong space-faring nation, objected to such imaging because the areas to be imaged were possibly highly profitable mining areas and Utopia refused to provide copies of the imagery to Friendlistan and its companies. Friendlistan sent Utopia a formal diplomatic note objecting to the capture of the imagery unless copies were made available to Friendlistan. The Utopian Embassy in Friendlistan replied to this note stressing that international law allows its citizens to carry out all remote sensing activities, Spaceliner Inc. would continue such activities, and would not make the copies of the captured imagery available to Friendlistan and its companies, since under the June 2nd agreement the State of Equatorian is exclusively entitled to all proprietary rights in all forms of the collected remote sensing data.

On 4th July 2030, a Spaceliner vehicle commenced its journey from Utopia and after a short stopover in Equatorian picking up an Equatorian passenger, it continued flying with 40 passengers and a crew of 5 with the ISS as immediate destination and Equatorian as the return destination. Nine of the passengers were officials from various nations on an inspection mission of the ISS, one was an Equatorian remote sensing expert and the remaining 30 from various nations were tourists who were to spend twenty four hours on the ISS before returning to Earth. The flight path of the Spaceliner took it over Friendlistan at an altitude of 110 kilometers (approximately 70 miles). While the Spaceliner was at this altitude over Friendlistan territory, a Friendlistan Air Force station lit a laser beam illuminating the Spaceliner in an attempt to frustrate the capturing of imagery. As a result of this illumination, several computers and other electronic equipment on board the Spaceliner malfunctioned. Such malfunctions caused the Spaceliner to be unstable but it continued its flight towards the ISS.

Learning about the instability of the Spaceliner, the Commander of the ISS refused to allow it to dock with the ISS even though the Captain of the Spaceliner had declared an emergency. Having no other choice, the Spaceliner began its journey back to Earth. Being unstable and uncontrollable, the right wing of Spaceliner hit Milsat, a private remote sensing satellite belonging to Davidson Corporation, which was carrying out reconnaissance activities under a multi-million dollar commercial contract with several like-minded States, including Friendlistan. Davidson Corporation is a multinational corporation having its headquarter in Equatorian but 70% of its shares are owned by the citizens of Friendlistan. Within a few minutes of the accident, Milsat developed a serious malfunction and all communications with the ground stations

stopped. It was later discovered that in the accident with Spaceliner, the antennae and solar arrays of Milsat were damaged. Consequently, Milsat had to be declared totally dead. The destruction of Milsat forced Davidson Corporation to declare bankruptcy, as it was unable to pay its creditors due to the lack of sufficient and timely cash flow.

The Spaceliner continued its return to home base in Utopia. However, On its way back, it collided with the Stationary High Altitude Relay Platform (SHARP) belonging to Airspacecom, a company incorporated in the Peoples Republic of Hitono, a colony of Friendlistan. This unmanned lightweight platform, circling at an altitude of 20 kilometers, was a fuel-less platform powered by microwave energy transmitted from a ground station on Earth. At the time of collision, SHARP was relaying television signals from the final match of World Soccer Competition to a major broadcasting system for global coverage. SHARP was operating with the use of radio frequency band of 47.2 - 47.5 GHz, which had been allocated by ITU World Radiocommunication Conference in 1997 to the Fixed Service for High-Altitude Radio-Relay Platform Stations. SHARP was destroyed and after floating for some time in the air, its debris smashed to the ground in the territory of Hitono creating a large (200 m diameter) crater on a wheat field.

Thereafter, while attempting to return to its home base in Utopia and being even closer to the Earth, the Spaceliner crossed through international air traffic lanes inadvertently due to its inability to navigate and control its descent. As it crossed, there was a near miss with a Friendlistan aircraft, but the resulting air turbulence caused the Captain of the Spaceliner to lose total control and ditch within the territorial waters of Utopia. Although all of the crew and passengers were alive at the time of crash landing it took two days for the Utopian rescue teams to reach the Spaceliner. By that time the Spaceliner had sunk in 600 m of water and everyone had drowned. Friendlistan had refused repeated requests by Utopia for assistance in finding the location of the crash and rescuing the crew and passengers. Friendlistan's refusal was based on its belief that Utopia and Spaceliner, Inc. were operating illegally.

After several unsuccessful attempts to resolve the dispute between the Government of Utopia and the Government of Friendlistan, on 20th September 2031, Utopia commenced this action against Friendlistan before the International Court of Justice.

In particular, the Applicant, Utopia, requests the Court to adjudge and declare:

1. that Friendlistan has violated international law and consistent state practice by objecting to Utopia and Spaceliner Inc's. carrying out of remote sensing activities over the territory of Friendlistan and thereafter illuminating the Spaceliner by laser beam which resulted in the on-board malfunctions of several computers and other electronic equipment;
2. that Friendlistan has violated international law by not providing the requested timely assistance to Utopia and Spaceliner crew and passengers; and
3. that Friendlistan is responsible and liable under international law to adequately compensate Utopia for the loss of the Spaceliner vehicle, its equipment, its crew and passengers, and

4. that Utopia is not responsible or liable under international law for the destruction of Milsat and SHARP and thus for any payment of compensation for the loss suffered by the Friendlistan shareholders of Milsat or the operators of SHARP.

The Respondent, Friendlistan, asks the Court to adjudge and declare:

1. that Friendlistan was not required by any rule of international law or consistent state practice to allow Utopia's Spaceliner to carry out remote sensing of Friendlistan's territory contrary to Friendlistan's vital interests;
2. that Friendlistan is entitled under international law to take unilaterally all precautionary measures to protect its vital interests, and thus the foregoing claims of Utopia in this regard must be rejected;
3. that Utopia and Spaceliner, Inc. were operating illegally and thus Friendlistan had no obligation under international law to assist Utopia and the Spaceliner astronauts following the accident and emergency landing, and
4. that Utopia is responsible and liable under international law for the destruction of Milsat and SHARP and thus must adequately compensate for the loss suffered by the Friendlistan shareholders of Milsat and by the operators of SHARP.

Both States have accepted the jurisdiction of the International Court of Justice without any reservation; there are no issues of exhaustion of local remedies or of the jurisdiction of the Court. All relevant international law and consistent state practice are as they existed on 1 July 2001, and have not during the interim thirty years changed or been revised to take into account the developments and evolution in the use of re-usable space vehicles.

Both the Applicant and Respondent are members of the United Nations, the International Telecommunication Union, the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface of the Earth of 1958, and the International Civil Aviation Organization (i.e., the Chicago Convention of 1944). They are also parties to the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, the 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, the 1972 Convention on International Liability for Damage caused by Space Objects, and the 1975 Convention on Registration of Objects Launched into Outer Space.

On 2nd February 2010, Utopia ratified the 1979 Agreement Governing the Activities of States on the Moon and other Celestial Bodies. Both States had participated in the discussions on and adoption of the UN Principles Relating to Remote Sensing of the Earth from Outer Space, that were adopted without vote on 3 December 1986. The State of Utopia is a party to the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, October 12, 1929, but Friendlistan withdrew from this Convention effective 4th July 2020.
