

**THE PHILIP C. JESSUP INTERNATIONAL LAW MOOT
COURT COMPETITION**

1965

**Case Concerning a Murder on the
Moon, United Kingdom v. United
States, 1965.**

Problem

INTERNATIONAL COURT OF JUSTICE

INCIDENT OF JANUARY 8, 1965

(UNITED KINGDOM v. UNITED STATES OF AMERICA)

APPLICATION INSTITUTING PROCEEDINGS ON BEHALF OF THE GOVERNMENT

OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Foreign Office
London, S.W. 1

February 24, 1965

Sir,

I have the honour to refer to Article 40(1) of the Statute of the International Court of Justice and Article 32(2) of the Rules of the Court and, by direction of Her Majesty's Principal Secretary of State for Foreign Affairs, to submit an application instituting proceedings in the name of the United Kingdom of Great Britain and Northern Ireland against the United States of America in the following circumstances.

1. On December 1, 1964, an informal and secret agreement was reached between the Governments of the United States of America and the United Kingdom concerning the use by the United States of America in its program for investigating outer space of a "breakthrough" development for adding to the thrust power of existing space vehicle engines achieved by the engineers of Her Majesty's Government.

2. The full and complete terms of the agreement were as follows:

(a) Her Majesty's Government would freely, but under conditions of highest secrecy, make available to the Government of the United States all information concerning development and use of the new techniques;

(b) A lunar expedition would be immediately readied by the United States using its space capsule, launch device, and return vehicle, all modified to take advantage of the new techniques;

(c) Such first lunar expedition should leave on or before January 15, 1965 if at all feasible to be certain of arrival before a rumored attempt at the same achievement by the Soviet Union;

(d) For political purposes, a crew of two, one a citizen of the United States and one a citizen of the United Kingdom should make the first voyage. Both were to be scientists of the first order in the fields of space, earth or life sciences. To assure the world of the purely peaceful and scientific nature of the expedition, neither was to be a military officer, or to hold any position with either Government, or even to be under formal contract to either Government. Both were to be volunteers in the strictest sense, it being understood that, as Soviet experiments had indicated, anyone in reasonably good physical condition could make a fully automated space voyage.

3. Thereafter, and in full accordance with the terms of the Agreement, a lunar expedition was created on a top priority basis and Sir Roland Magdalen, F.R.A.S., of the United Kingdom (Cambridge University) and Dr. Jacob Armstrong, of the United States (Massachusetts Institute of Technology), were selected as the crew and were thoroughly trained in space flight techniques. Both met fully the specifications of the agreement.

4. As the world knows, the lunar expedition was duly launched on January 2, 1965, and made a completely successful landing on the lunar surface in a preselected area on January 5, 1965. Both crew members reported themselves in excellent physical condition and immediately left the vehicle, established a base with pre-fabricated equipment, and began scientific investigations.

5. All activities of the crew were monitored by television cameras at stated periods of the day with results being immediately seen at earth stations by scientists and, again at times stated in advance, by media of public communications.

6. At the first period thus made available for transmission to the public on earth, Sir Magdalen, in accordance with prior instructions from Her Majesty's Government, placed a small Union Jack and a United Nations flag in the ground (through the dust cover) just outside the expedition's base and stated: "Mindful of United Nations' Resolutions on the subject, the United Kingdom makes no traditional claims of sovereignty to the moon but thus evidences the priority of the United Kingdom, with the aid of her friend and ally, on and to the moon." The United Kingdom in this manner established her special interests in the moon under conditions fully consonant with General Assembly Resolution 1721 (XVI) of December 1961.

7. Thereafter, and on January 8, 1965, Dr. Armstrong, apparently at odds with Sir Magdalen and brooding over Sir Magdalen's completely correct actions, in full view of the recording cameras and microphones, while on the surface of the moon, outside the base and vehicle, viciously assaulted Sir Magdalen, leading to the almost instant death of Sir Magdalen. Dr. Armstrong also removed the Union Jack from the ground and tore it to shreds.

8. Thereafter, Dr. Armstrong was asked to return to earth by the Government of the United States and, on January 10, 1965, the next favorable date he began his return flight, leaving the body of Sir Magdalen on the moon. Dr. Armstrong's reported plan called for a descent into Lake Michigan near the United States shore.

9. On January 13, 1965, the vehicle made a successful reentry into the earth's atmosphere but its point of landing was in fact within the Canadian territorial waters. Despite the protests of Canadian officials near the site, a helicopter of the United States Air Force made contact with the space vehicle, attached it to the helicopter and flew it to the city of Chicago. Dr. Armstrong was then and is now in excellent health. He has not since left the territory of the United States. He has received a hero's welcome.

10. On January 8, 1965, immediately after being notified of Dr. Armstrong's actions, as viewed on television, Her Majesty's Government by Note to the United States, with proper accompanying documents demanded the return of Dr. Armstrong to earth, his immediate trial by the United States, or, in the alternative, his extradition to the United Kingdom in accordance with Treaty, and an indemnity in the sum of \$1,000,000 on account of the insult to the Union Jack and \$1,000,000 for violation of the territory of a Member of the Commonwealth.

11. On January 14, 1965, the Government of the United States formally replied that:

(a) However reprehensible, Dr. Armstrong had done no act cognizable by or provable under the laws of the United States or any political subdivision thereof;

(b) However reprehensible, Dr. Armstrong had done no act cognizable under the law of the United Kingdom and/or any extradition treaty so no demand for extradition could be entertained;

(c) Any invasion of Canadian territory was deeply regretted but was in accord with the duty to rescue astronauts. It was no concern of the Government of the United Kingdom and the Government of Canada had made no protest to date.

(d) The actions of Sir Magdalen with respect to the flag incident were themselves highly regrettable, and are hereby officially protested.

(e) the Government of the United States reserved to itself the right to make further replies.

12. Conversations between the Governments over the next several days proving fruitless, Her Majesty's Government, on January 19, 1965, addressed a new note to the Government of the United States demanding that, since the United States had failed to act, an additional indemnity of \$1,000,000 be paid on behalf of the family of Sir Magdalen. It also declared the agreement of December 1, 1964 to be at an end.

13. Sir Magdalen left surviving a widow and five minor children.

14. On January 27, 1965, the Government of the United States replied by a Note, which is attached to this Application as Annex I, denying all liability and making other pertinent statements.

15. As a result, the Government of the United Kingdom believes that a dispute exists between Her Majesty's Government and that of the United States of America and that this Court has jurisdiction to determine the dispute presented to it by this Application. Both the United States and the United Kingdom have made declarations accepting the compulsory jurisdiction of the Court.

16. Subject to the directions of the Court, the United Kingdom Government, will in subsequent written or oral pleadings, more fully set out the issues of fact and law for the purpose of enabling the Court to determine the matters raised in the present Application and will ask the Court:

1. To require the United States, under international law, to try Dr. Armstrong for the wilful murder of a United Kingdom citizen and insult to the United Kingdom; or, in the alternative,

2. To require the United States to deliver Dr. Armstrong, in accordance with international law and applicable treaties, to the United Kingdom for trial;

3. To award to the United Kingdom damages in the sum of:

\$1,000,000 with interest, for the damage to the United Kingdom done by destruction of the Union Jack,

\$1,000,000 with interest, for damages to the family of a citizen of the United Kingdom,

\$1,000,000 with interest, for damages to the United Kingdom if items first and second, above, are not complied with,

\$1,000,000 for damages to the United Kingdom by the wilful violation of the airspace of a Member of the Commonwealth

4. To declare that the agreement of December 1, 1964 has been ended by the attitude of the Government of the United States and the acts of Her Majesty's Government.

5. Together with any such other reparation and redress as the Court may deem appropriate, including the award of costs against the Government of the United States.

I have etc.

(Signed) Coke O. Littleton

Agent of the Government
of the United Kingdom

ANNEX I

NOTE OF JANUARY 27, 1965 FROM THE GOVERNMENT OF THE
UNITED STATES OF AMERICA TO HER BRITANNIC MAJESTY'S GOVERNMENT
(1386/92)

Department of State
Washington, D.C.
January 27, 1965

The United States Government regrets that it must deny all legal responsibility for the sad death of Sir Roland Magdalen and any incidents connected therewith or with the joint lunar expedition of January 1965. Purely as a matter of grace, with no admissions whatever to be drawn from the act, the Government of the United States is willing to pay the sum of \$100,000 directly to the family of Dr. Magdalen. The Government of the United States, moreover, deeply regrets the acts on the moon which gave offense to Her Majesty's Government. It nevertheless insists that the agreement of December 1, 1964 is in full force today.

If Her Majesty's Government nevertheless wish to bring this matter before the International Court of Justice, the Government of the United States will not raise the objection that the matter is solely within the domestic jurisdiction of the United States as determined by the United States.

I have the honor to be, etc.

(Signed) Dean Rusk
Secretary of State