

IN THE INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE, THE HAGUE, NETHERLANDS

FEBRUARY, 1980

PEOPLES ASTRAL UNIONApplicant

v.

FEDERATION OF CELESTIAL STATES.....Respondent

MEMORIAL FOR APPLICANT

NO. 23

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JURISDICTION

The Peoples Astral Union and the Federation of Celestial States have agreed to submit their present dispute by way of a special agreement. By virtue of the enabling statutes of the International Court of Justice (Articles 36, 38) this Court may settle the full range of the questions presented.

STATEMENT OF FACTS

The parties have agreed to the statement of facts which have been filed before the International Court of Justice.

- I. WHETHER FEDERATION'S FAILURE TO REGISTER HER SPACE OBJECTS WITH THE UNITED NATIONS SECRETARY-GENERAL WAS A VIOLATION OF HER TREATY OBLIGATIONS AND A CONTRAVENTION OF INTERNATIONAL LAW?
- II. WHETHER FEDERATION'S USE OF A SHUTTLE WAS A VIOLATION OF THE BILATERAL TREATY AND OF INTERNATIONAL LAW?
- III. WHETHER THE PLACING BY FEDERATION OF A SPACE OBJECT IN GEOSTATIONARY ORBIT AND COLLECTING THEREBY DATA ON THE RESOURCES AND WEATHER CONDITIONS OF PAU WITHOUT THE PRIOR CONSENT OF PAU WERE A BREACH OF FEDERATION'S TREATY OBLIGATIONS AND A VIOLATION OF INTERNATIONAL LAW?
- IV. WHETHER THE TRANSMISSION OF DIRECT SATELLITE BROADCASTS BY FEDERATION TO RECEIVERS IN PAU WITHOUT THE PRIOR CONSENT OF PAU WAS A VIOLATION OF INTERNATIONAL LAW?
- V. WHETHER PAU IS LIABLE UNDER INTERNATIONAL LAW FOR THE DAMAGE SUSTAINED BY FEDERATION OCCASIONED BY THE FALLING OF FRAGMENTS OF PAU'S SPACE OBJECT IN THE TERRITORY OF FEDERATION?
- VI. WHETHER PAU'S CONDUCTING OF NUCLEAR EXPERIMENTS AND TESTS ARE PERMISSIBLE ACTIVITIES UNDER THE BILATERAL TREATY AND INTERNATIONAL LAW?

SUMMARY OF ARGUMENT

PAU submits in the first instance that Federation, being a signatory to the Registration Convention, was bound to comply with the requirements of that instrument. As the provisions of the Convention were mandatory, Federation's failure to satisfy them constituted a violation of international law. This is particularly important in view of the basic purpose of the Convention - the identification of space objects causing damage to second or third party nations not involved in the venture into outer space.

PAU further submits that Federation's use of the space shuttle rather than earth based pads in the launching of her space object was in violation of the Bilateral Treaty which specifically provided for the use of space objects only. The space shuttle, being an object which at different phases performs like an airfield and lands on airstrips does not fall within the accepted definition of space objects. Hence, damage caused by it would not be subject to the Liability Convention - a situation not anticipated by the parties. Moreover, Federation's notification to PAU that it would be using earth based pads created a binding international obligation, a violation of which constituted a breach of international law.

Additionally, the placing of a space object in geostationary orbit was a violation of the Outer Space Treaty as well as international law, such activities being an infringement of PAU's sovereign rights over its resources. It is universally accepted that a state has exclusive right over its resources and over the air space above its territory. Federation placing of the object over PAU, its sensing of the weather conditions and resources of PAU, its withholding of the data so collected from PAU and its use thereof to the injury and detriment of the economy of PAU, were all violations of Federation's treaty obligations, particularly

the common interests principle, and international law.

Federation further violated international law by its direct satellite broadcast to receivers in PAU. Such acts also violated the sovereignty and privacy principles and breached Federation's obligations under the Bilateral Treaty to consult with PAU before embarking on such an obviously detrimental venture with possible social, political, economic and cultural consequences to PAU.

PAU further submits that it is not liable to Federation for the injuries sustained by Federation and its nationals, occasioned by fragments of PAU's falling space object landing in Federation's territory. The Liability Convention expressly exonerates a launching state from liability where the claiming party has committed some act of negligence leading to the damage. In the instant case, ITS, for whom Federation has assumed full responsibility, manufactured the defective decoupling device which caused the PAU space object to go out of control, and even then, control could have been regained had Federation not prematurely fired its anti-satellite interceptor device, which rendered the space object beyond any control. Given these factors, PAU is completely exonerated from liability.

Lastly, PAU submits that the nuclear experiments and test conducted by it, being in conformity with the peaceful exploration and use of outer space to the benefit of all mankind, were neither violative of international law nor of her treaty obligations. PAU says that the practice of states and the interpretation given to the relevant provisions of the disarmament and space treaties clearly exclude any prohibition of the activities conducted by PAU with respect to its nuclear experiments and tests.

A R G U M E N T

I. FEDERATION'S FAILURE TO REGISTER HER SPACE OBJECTS WITH THE UNITED NATIONS SECRETARY-GENERAL WAS A VIOLATION OF HER TREATY OBLIGATIONS AND A CONTRAVENTION OF INTERNATIONAL LAW.

A. THE BILATERAL TREATY EXECUTED BETWEEN PAU AND FEDERATION REQUIRES THE SIGNATORIES THERETO TO REGISTER THEIR SPACE OBJECTS IN ACCORDANCE WITH ALL APPLICABLE TREATY AND UNITED NATIONS REQUIREMENTS.

1. The Bilateral Treaty Created A Binding International Obligation Upon Federation To Have Her Space Objects Registered With The United Nations Secretary-General.

The Bilateral Treaty entered into by Federation and PAU provides at Article V, inter alia:

"Each party shall register its space object used in the Joint Venture under this Treaty in accordance with all applicable treaty and United Nations requirements."¹

The Bilateral Treaty, like all other law making treaties properly executed and attested to by states, created a binding international obligation.² Under the basic terms of that obligation, as quoted supra, Federation undertook to give obedience to all treaties and United Nations requirements relative to the registration of all space objects launched into outer space from her territory and connected with or related to the Joint Venture. This obligation is made clear in the Vienna Convention on the Laws of Treaties, to which Federation is also a signatory. It provides that a state which has undertaken a treaty obligation has created upon itself a binding commitment,³ the performance of which the

1. BILATERAL TREATY BETWEEN FEDERATION AND PUA, Art. v.

2. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, Art. 38; VIENNA CONVENTION ON THE LAW OF TREATIES, Art. 26, U.N. DOC. A/Conf. 39-27, May 23, 1969 in 8 INT'L LEGAL MAT'L 679-727; Kazimierz, "Soviet Theory of Treaties" in ESSAYS ON THE LAW OF TREATIES (ed. Dr. S.K. Agrawala) 197, 201.

3. VIENNA CONVENTION AND THE LAWS OF TREATIES, Art. 26.

state must pursue in good faith.⁴

Any failure therefore by Federation to have her space objects registered in accordance with applicable treaty and United Nations requirements would not only constitute an act of bad faith but also a breach of international law.⁵

B. THE REGISTRATION CONVENTION TO WHICH FEDERATION IS A PARTY REQUIRES THE REGISTRATION OF ALL SPACE OBJECTS LAUNCHED INTO OUTER SPACE.

The Convention on the Registration of Objects Launched Into Outer Space stipulates that any state party thereto which launches a space object into earth orbit or beyond shall have such space object registered into an appropriate registry which it is required to maintain.⁶ The Convention further requires the launching state to inform the Secretary-General of the United Nations of the establishment of such a registry.⁷

Thus a state must, immediately upon the signing of the Convention, establish a registry to be used for the registration of all space objects launched into outer space. Whether the Registry so established be kept as a secret document or as public record⁸ is not of essence as long as the Convention requirements are with.

The facts of the case, to which the parties have stipulated, reveal that there was no compliance by Federation with these requirements. These acts of omission, done with a deliberate intent, were violative

4. Ibid.

5. See: Quincy Wright, "The maintenance of Treaty Obligations" in ESSAYS ON THE LAW OF TREATIES, p. 139.

6. CONVENTION ON THE REGISTRATION OF OBJECTS LAUNCHED INTO OUTER SPACE, Art. 1, Jan 14, 1975, TIAS 8480 (hereinafter Registration Convention).

7. Ibid.

8. 1974 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 398.

both of the Registration Convention and the Bilateral Treaty.⁹

Similarly, Federation violated Article IV of the Registration Convention by its failure to supply the United Nations Secretary-General with information relative to its space object. That Article provides:

"1. Each state of Registry shall furnish to the Secretary-General of the United Nations, as soon as practicable, the following information concerning each space object carried on its registry:

- (a) Name of launching state or states;
- (b) An appropriate designator of the space object or its registration number;
- (c) Date and territory or location of launch,
- (d) Basic orbital parameters, including:
 - (i) nodal period
 - (ii) inclination
 - (iii) Apoges, and
 - (iv) Periges
- (e) General function of the space object"¹⁰

These requirements are not discretionary. Contrarily, the history of that document clearly reveals that it was intended to create mandatory obligations upon states parties thereto.¹¹

Moreover, any assertion of discretion relative to the registration of space objects would seem to defeat the very purpose and object of the Registration Convention.

The Registration Convention is said to have, amongst others, the basic protection of non-participating states from damage caused by space objects or by the space activities of another state.¹² The Liability Convention imposed upon states engaged in the exploration

9. REGISTRATION CONVENTION, Art. IV; Bilateral Treaty, Art. V.

10. REGISTRATION CONVENTION, Art. IV.

11. Nicolas Mette, AEROSPACE LAW 178-9 (1977).

12. Stephen Gorove, "Legal Aspects of International Space Flights" 3 ANNALS OF AIR AND SPACE LAW 409, 412 (1978); See also Stephen Gorove, STUDIES IN SPACE LAW: ITS CHALLENGE AND PROSPECTS 131 (1977)

and use of outer space absolute liability where non-participating states are injured by such activities.¹³ The imposition of this liability was necessitated by the large number of space objects being launched into outer space,¹⁴ by the growing incidence of falling debris from such space objects,¹⁵ and by the corresponding increase in the risks to the nations of the earth.¹⁶

As liability can only be imposed if the space object can be traced to the state of registry by an identification process, the Registration Convention became an almost absolute necessary. That basic purpose would not be accomplished - indeed would be defeated - if the registration of space objects was discretionary.¹⁷ The incident of space debris discovered in New Zealand clearly evidence this factor.¹⁸ Both the United States and the Soviet Union denied that the debris were from the remains of a space object launched by one of them, although they seemed the only two likely candidates.¹⁹

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13. CONVENTION ON INTERNATIONAL LIABILITY FOR DAMAGE CAUSED BY SPACE OBJECTS, Arts. II & III, March 29, 1972, 24UST 2389, TIAS 7762.
 14. Nicolas Mette, "The Convention On The Registration of Objects Launched Into Outer Space" In 1 ANNALS OF AIR AND SPACE LAW 231, 232 (1976).
 15. Lay and Tanbenfeld, THE LAW RELATIVE TO ACTIVITIES OF MAN IN SPACE 138 (1970).
 16. Peter Sand, "Space Programmes and International Environment Protection," 21 ICLQ 43 (1972).
 17. Charles Dalfen "Towards An International Convention on the Registration of Space Objects: The Gestation Process" 9 CAN. YB. INT'L.L. 252, 256 (1971).
 18. Paul Haller, "Man-Made U.F.O.'s - The Problem of Identifying the Launching State of a Space Object," 1972 INT'L. LAWYER 900, 902.
 19. Ibid.

Moreover, the lack of compulsory registration could have disastrous effects with respect to the exercise of jurisdiction over space objects guaranteed by Article VIII of the Outer Space Treaty.²⁰ States could find themselves asserting conflicting claims of jurisdiction over space objects which are not identifiable because of the lack of compliance with the Registration Convention.

In addition, both the United States and the Soviet Union, as well as other nations engaged in the exploration and use of outer space have, since the conclusion of the Convention, registered their space objects - including even those launched into outer space prior to the Convention - with the United Nations Secretary-General,²¹ evidencing the compulsory nature of the Convention.

The only discretionary provision is Article IV(2) which states that a party may provide additional information on the space objects from time to time.²²

C. INTERNATIONAL LAW MANDATES THE REGISTRATION OF SPACE OBJECTS LAUNCHED INTO OUTER SPACE.

1. United Nations Resolutions And The Practice of States Forming Customary International Law Make It Compulsory For States to Register Their Space Object.

Under the terms of the Bilateral Treaty, mentioned supra, Federation undertook to comply with international law and with United Nations requirements dealing with the exploration and use of outer space.

20. Outer Space Treaty, Art. 8.

21. Mette, Supra, Note 14, p. 233.

22. REGISTRATION CONVENTION, Art. IV(2).

One such source of these requirements are the United Nations Resolutions.

The United Nations General Assembly in 1961 adopted Resolution 1721 calling upon states launching objects into orbit and beyond to furnish information promptly to the Outer Space Committee through the Secretary-General for the registration of launchings, and requesting the Secretary-General to maintain a public registry of the information so furnished.²³

Although traditional international law is silent as to the exact status, in terms of law making ability and potential, of the United Nations General Assembly Resolutions, yet where adopted with unanimity, they do provide a source relative to the practices of states; and where repeated with sufficient frequency and bearing the characteristic of opinion juris, can assume the status of customary international law.²⁴

This has been the case with U.N. Resolution 1721, which since its adoption has been repeatedly adhered to and made pronouncement of by the substantial majority of the nations of the world.²⁵ This Resolution, having thus attained the status of customary international law, was binding on Federation. This even more so since Federation raised no opposition to its adoption.

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23. United Nations General Assembly Resolution 1721 (XVI), Dec. 20, 1961, on The Peaceful Uses of Outer Space.
 24. See: Higgins, "The U.N. and Law Making: The Political Organs", 64 Pro. Am. Soc. INT'L. 38 (1970); McWhinney, "The New Countries & The New International Law: The U.N.'s Special Conference on Friendly Relations Among States" 6 AM. J. INT'L L. 30-32 (1966); Dissenting Opinion of Judge Tanaka, South West Africa Case (Liberia v. South Africa; Ethiopia v. South Africa.)
 25. Lubes Persu " Scientific Criteria For The Delimitation of Outer Space" 5 J. SPACE L. 111, 117 (1977); Mette, Supra, Note 15, at p. 233.

D. FEDERATION'S CONTRAVENED THE REGISTRATION CONVENTION AND INTERNATIONAL LAW BY NOT CONFORMING TO THE PROVISIONS OF THE REGISTRATION CONVENTION.

1. Federation's Announcement in The Newspaper Of The Launching of Her Space Objects Did Not Meet The Requirements of The Registration Convention.

As stated supra, the provisions of the Registration Convention are compulsory. They expressly provide that the Secretary-General of the United Nations be notified of the launching of a space object and supplied certain basic information on the said object. These requirements were not met. Instead, Federation's launchings were announced in the newspaper. PAU submits that such announcement did not meet the requirements of the Registration Convention, especially as there is no evidence that the information contained in the newspapers conformed to those required to be supplied the Secretary-General of the U.N. Neither the intent nor the purpose of the Convention was accomplished thereby.

Federation therefore violated international law and breached her treaty obligations to PAU both in respect of the Bilateral Treaty and the Registration Convention.

II. FEDERATION'S USE OF A SHUTTLE WAS A VIOLATION OF THE BILATERAL TREATY AND OF INTERNATIONAL LAW.

- A. THE ONLY OBJECTS SANCTIONED BY THE BILATERAL TREATY ARE SPACE OBJECTS.

The Bilateral Treaty between Federation and PAU states that the only objects that were to be used in the Joint Venture were space objects.²⁶ Indeed, throughout the Treaty, reference is made only to

26. BILATERAL TREATY, Art. I, para. 1.

space objects, and there is nothing contained therein which makes it permissible to use any other objects. Federation was therefore under an international obligation to use only those objects which are internationally defined as space objects.

B. THE SHUTTLE IS NOT A SPACE OBJECT AND ITS USE BY FEDERATION WAS THEREFORE A BREACH OF THE BILATERAL TREATY.

1. The Internationally Accepted Définition of a Space Object Is Not Applicable to a Shuttle.

Under the definitional terms of both the Liability and Registration Conventions, a Space object may be viewed as a spacecraft and its component parts and launch vehicle.²⁷

The shuttle, referred to as a transportation vehicle and a cargo carrier, although consisting of an orbiter and two solid fuel rockets, has attached thereto an object of the form of an aircraft.²⁸ As such and to a large extent, the shuttle functions like an aircraft.²⁹ Indeed it is undisputed that upon its completion of its mission and its return in earth's atmosphere, the shuttle's orbiter goes into horizontal flight for an air-craft-type approach and lands on a landing strip.³⁰

The argument that to the extent that the orbiter of the shuttle goes into orbit the shuttle may be characterized as a space object or a space craft³¹ is without legal merits since after orbital operations the orbiter reenters the earth's atmosphere and executes an aircraft-

27. LIABILITY CONVENTION, Art. I(d); REGISTRATION CONVENTION, Art. I(b).

28. METTE, *Supra*, Note, *Supra*, Note 11, at 82.

29. *Ibid.*

30. Rod Margo "Some Aspects of Insuring Satellites" 681 INS. L.J. 555, 562 (1979).

31. W.F. Foster, "The Convention On International Liability For Damage Caused By Space Objects" 1972 CAN. YB. INT'L L. 137, 175.

type landing. "This atmospheric phase of its operations may thus lend the orbiter to characterization as an 'aircraft'."³² The fact that the shuttle spends some of its operational time in outer space does not serve to deprive it of its functions as an aircraft.

Even if one assumed, as some international scholars have, that a shuttle may be both a space object and an aircraft at different phases of its flight,³³ it would still not qualify under the Bilateral Treaty as that instrument provides for the use of objects exclusively characterized as space objects. Federation's use of the space shuttle was therefore a violation of the Bilateral Treaty.

This assertion is even more important in respect of the Liability Convention. The Convention applies only to space objects and not to aircrafts. Damage done by the shuttle while ascending or descending would thus not be covered by the Liability Convention since at the time the shuttle would be operating as an aircraft.³⁴ The parties to the Bilateral Treaty expressly anticipated that international space treaties, international law and United Nations requirements relative to the exploration and use of outer space would cover their space activities,³⁵

32. Margo, *Supra*, Note 30, at p. 562.

33. Tamna, *COLLOQUIUM OF THE INTERNATIONAL INSTITUTE OF SPACE LAW*, Vols. XVI and XVII, pp. 45 & 252.

34. G.P. Sloup, "A Guide For Space Lawyers to Understanding The NASA Space Shuttle and the ESA Space Lab." 26 *Zeitschrift Fur Luftund Weltraumrecht* 196 (1977); Stephen Gorove "Legal Aspects of the Space Shuttle", 7 *Zeitschrift Fur Luftund Weltraumrecht* 196 (1978); Mossinghoff and Sloup, "Legal Issues Inherent In Space Shuttle Operations" 6 *J. SPACE L.* 47 (1978); Dula, "Management of Inter-party and Third Party Liability For Routine Space Shuttle Operations" 26 *DRAKE L.R.* 741 (1976-7); Diederiks-Verschoor, "The Legal Aspects of the Space Shuttle" 1 *ANNALS OF AIR AND SPACE LAW* 197 (1976).

35. *BILATERAL TREATY*, Preamble and Arts. III(2) and X.

especially with respect to the damage caused by such activities. The use of the space shuttle by Federation defeats those objects and purposes and hence violates the Bilateral Treaty.

C. FEDERATION'S USE OF THE SHUTTLE WAS A VIOLATION OF ITS INTERNATIONAL UNDERTAKING IN THE NOTICE SENT TO PAU AND HENCE A VIOLATION OF INTERNATIONAL LAW.

1. Federation's Notification to PAU That It would be Using Earth Based Pads Created a Binding Obligation Upon It.

Although most international agreements are said to be given birth through the treaty making process, it is not the only mode acceptable for establishing internationally binding obligations.³⁶ As stated by Philip C. Jessup, International Law," not being a formalistic system, holds states legally bound by their undertakings in a variety of circumstances ..."³⁷ This position was stated very succinctly by the International Court of Justice in the Nuclear Test Cases.³⁸ The court therein declared:

"It is well recognized that declarations made by way of unilateral acts concerning legal or factual situations, may have the effect of creating legal obligations..., the state being therefore legally required to follow a course of conduct consistent with the declaration. Any undertaking of this kind, if given publicly ... eventhough not made within the context of international negotiations, is binding. In these circumstances, nothing in the nature of a *quid pro quo* nor any subsequent acceptance of the declaration nor even any reply or reaction from other states is required for the declaration to take

36. James E. Vaughan, "Nuclear Diversion: An International Problem in Need of International Solution." 17 *ATOMIC L.J.* 179, 210 (1975).

37. Separate Opinion of Judge Philip C. Jessup, South West Africa Case (1962) *I.C.J. Rep.* 319, at 411.

38. Nuclear Test Cases (Australia v. France) Judgment of Dec. 20, 1974, *I.C.J.* 457.

effect.... Thus interested states may take cognizance of the unilateral declaration and place confidence in them and are entitled to require that the obligation thus created be respected."³⁹

Such binding obligation was recognized in international law as far back as 1938 by the Permanent Court of International Justice in the Eastern Greenland Case.⁴⁰ In a like manner the practice of states have given credence thereto.

2. Federation's Use of the Shuttle in Violation of Its Binding Undertaking to PAU Constituted A Violation of International law.

Federation was aware or should have been aware that the notification given by it to PAU to the effect that it would use earth based pads in the launching of its space object would endenger reliances and high expectations.⁴¹ PAU had every reason to regard it as a deliberate expression of state policy constituting a commitment that Federation was embarking upon a course of future conduct with PAU in respect of their Joint Venture which PAU could rely upon.⁴² An international obligation was thus created, the binding effect of which has been recognized for centuries in international law. Federation's use of the shuttle in violation of this obligation was therefore a violation of international law. Hence even assuming the Bilateral Treaty to be ambiguous as to the type of object which was to be used in the

39. Ibid 472-73.

40. Eastern Greenland Case (Denmark v. Norway) P.C.I.J., Ser. A/B, No. 53; 3 HUDSON WORLD CT. REP. 148.

41. COMMENT, "World Made Law: The Decision of the I.C.J. in The Nuclear Test Cases", 69 Am. J. INT'L. L. 612, 616. (1975).

42. Thomas Frank and Edward Weisband, WORLD POLITICS: VERBAL STRATEGY AMONG THE SUPER POWERS 120-21. (1970).

Joint Venture, Federation still contravened international law by the use of the shuttle.

III. THE PLACING BY FEDERATION OF A SPACE OBJECT IN GEOSTATIONARY ORBIT AND COLLECTING THEREBY DATA ON THE RESOURCES AND WEATHER CONDITIONS OF PAU WITHOUT THE PRIOR CONSENT OF PAU WERE A BREACH OF FEDERATION'S TREATY OBLIGATIONS AND A VIOLATION OF INTERNATIONAL LAW.

A. THE OUTER SPACE TREATY LIMITS A STATE'S EXPLORATION AND USE OF OUTER SPACE IN RESPECT OF REMOTE SENSING FROM OBJECTS PLACED IN GEOSTATIONARY ORBIT.

1. The Right of a state to the Exploration And Use of Outer Space is Made Subject to Regulations Embodied In International Law.

Although the Outer Space Treaty grants to a state freedom in the exploration and use of outer space without discrimination⁴³ and pursuant thereto to conduct scientific investigations,⁴⁴ it is generally accepted that this right is not an unlimited one.⁴⁵ The Treaty provides expressly that exploration and use be in accordance with international law, including the United Nations Charter;⁴⁶ that there be due regard for the corresponding interests of other states;⁴⁷ that they be for the benefit of mankind;⁴⁸ and that outer space not be subject to appropriation or claim of sovereignty by means of use, occupation or other means.⁴⁹

43. 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 UST 2410, TIAS 6347, 610 UNTS 205.

44. Ibid.

45. Thomas Adams, "The Outer Space Treaty: An Interpretation in the Light of the No Sovereignty Provision" 9 HARV. INT'L L.J. 140, 145 (1968).

46. Outer Space Treaty, Arts. I and III.

47. Ibid. Art. IX.

48. Ibid. Art. I.

49. Ibid. Art. II.

Thus, any activity likely to contravene or done in contravention of those principles would be a prohibited activity. Hence the placing of a space object in geostationary orbit would fall within the realm of such prohibited activities, unless coordinated with the other states whose interests are involved.⁵⁰

2. The Basic Purpose For and the Placing of Space Objects in Geostationary Orbit And the Conducting of Remote Sensing Violate General Principles of International Law.

A basic purpose for placing space objects in geostationary orbit is to engage in the remote sensing of various conditions on earth. The natural results: A states sovereignty over its natural wealth and resources is infringed upon, both in violation of international law and in contravention of U.N. Resolutions 626 (VII), 1314 (XIII), 1803 (XVII), 2158 (XXI) and 2692 (XXV);⁵¹ a state's sovereignty and security is compromised and its privacy invaded with harmful consequences affecting vital state interests without their consent, beyond their control and in violation of Article IX of the Outer Space Treaty;⁵² and a state thus subject to commercial exploitation and espionage activities, both to its detriment and in violation of international law.⁵³

50. Marks Markoff, "Disarmament and *Peaceful Purposes* Provisions in The 1967 Outer Space Treaty" 4 J. SPACE L. 3, 16 (1976).

51. Charles Dalfen, "The International Legislature Process: Direct Broadcasting and Remote Earth Sensing by Satellite Compared, 1972 CAN. YB. INT'L L. 186, 197; Mettè, Supra, Note 11, at 116.

52. Ibid, at 192; Ivan A. Vlasic, "The Evaluation of the International Code of Conduct to Govern Remote Sensing by Satellite: Progress Report" 3 ANNALS OF AIR AND SPACE LAW 561 (1978).

53. Diederiks - Verschoor, "Observations on Remote Sensing Satellites" in LEGAL IMPLICATIONS OF REMOTE SENSING FROM OUTER SPACE, (ed. Nicolas Mettè and Hamilton DeSaussure, 1976) 69, 70.

a. Remote Sensing Violates the Corresponding Interests Principle.

Moreover, geostationary activities without consent violate the corresponding interests principle. As stated by Markoff: "The geostationary orbit constitutes a limited natural resource, and no lawful use of it could be duly recognized, if not coordinated with the legally protected interests of other countries."⁵⁴ Thus, for Federation to have secured information by this method without the knowledge and consent of PAU and the appropriation of that information to the selfish benefit of Federation, are acts constituting a deprivation of the PAU'S right to the use and disposition of its natural wealth and resources, and a violation of international law.⁵⁵ This is given added dimension since Federation used the information gathered by her to the detriment and injury of PAU's economy - a use not only forbidden by the Outer Space Treaty,⁵⁶ but constituting an act of aggression and a violation of international law.⁵⁷

b. Remote Sensing Violates the Principle of State Sovereignty.

It is universally accepted that a state has a right to the exercise of sovereignty over its air space and over its wealth and resources.

The exercise of that sovereign right has not been deminished or dis-

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54. Ibid; Edlene Galloway, "Present Status in The United Nations of Direct Television Broadcast Statlites" 2 ANNALS OF AIR AND SPACE LAW 269, 278 (1977); D. Goedhuis, "Some Observations On the Problem of the Definition and/or the Delimitation of Outer Space", 2 ANNALS OF AIR AND SPACE LAW, 287, 289-91 (1977); International Telecommunication Convention, U.N. DOC. A/AC. 105/C.2/Sr. 281, p.5.
55. PUBLIC ORDER IN SPACE 540 (1963); UN.G.A. Res. 1803 (XVII); UN G.A. Res. 2600 (XXIV) Dec. 16, 1969.
56. Outer Space Treaty, Art. IX.
57. Draft Convention On the Definition of Aggression, Art. 1, U.N. Doc. No. A/AC. 79/L/A (1956).

positioned by the freedom of exploration and use of outer space pronouncement as used in the Outer Space Treaty. Contrarily, Articles XV and VII of the Outer Space Treaty "fully support the contention that the exercise of sovereign prerogatives in outer space has not been abolished"⁵⁸ The exercise of that sovereignty is only prohibited where this would amount to national appropriation.⁵⁹ The remote sensing by Federation was a violation of the exercise of this sovereign right by PAU.

B. FEDERATION'S REMOTE SENSING ACTIVITIES DIRECTED AT PAU IS A VIOLATION OF THE BILATERAL TREATY.

The Bilateral Treaty imposed on Federation the obligation to consult with PAU in respect of any activity not fully covered by the Treaty.⁶⁰ Federation violated this obligation when it designed a space Object with performance capabilities not known to PAU, placed it in geostationary orbit and without the knowledge and consent of PAU, commenced monitoring and collecting data on its weather conditions and resources. These violations were particularly made manifest by Federation's use of the multi-spectral scanner intended originally to be used jointly for asteroid scanning as provided by the Bilateral Agreement,⁶¹ by Federation's denial of access to the data by PAU, and by Federation's

58. Stephen Gorove, "Sovereignty and the Law of Outer Space Re-Examined", 2 ANNALS OF AIR & SPACE LAW 311, 314-15 (1977); U.S. Vereshchetin "On the Principle of State Sovereignty in International Space Law", 2 ANNALS OF AIR & SPACE LAW 429, 433-34 (1977); LAY AND TAUBENFELD, THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE 52 (1970).

59. Gorove, *Supra*, Note 58.

60. Bilateral Treaty, Art. VII.

61. *Ibid*, Art. VI.

use thereof to the injury of the economy of PAU,⁶² all of which contravened the intent and purpose of the Bilateral Treaty.

IV. THE TRANSMISSION OF DIRECT SATELLITE BROADCASTS BY FEDERATION TO RECEIVERS IN PAU WITHOUT THE PRIOR CONSENT OF PAU WAS A VIOLATION OF INTERNATIONAL LAW.

A. DIRECT SATELLITE BROADCASTS TO RECEIVERS IN A STATE WITHOUT THE PRIOR CONSENT OF THE STATE IS AN INFRINGEMENT OF ITS SOVEREIGN RIGHTS.

1. A State is Vested with the Right to Control and Regulate The Sources and Content of Information Beamed To It.

Sovereignty is a fundamental right of a state over its territory and forms a component principle of international law.⁶³ As such it is universally recognized that a state has the sovereign right to the control of all activities within its jurisdiction.⁶⁴ Inclusive in this sovereign prerogative is the exclusive right to control all sources - foreign and local - of information which comes within the domestic jurisdiction,⁶⁵ and to decide for itself what information may be supplied to its populace.⁶⁶ This right is recognized both in the International Telecommunication Convention⁶⁷ and Radio Regulation to which Federation is a signatory and by the practice of the members states of the International Telecommunication Union.⁶⁸ The exercise of this right is even

62. Vereshohetin, Supra, note 58, at 435.

63. UNITED NATIONS CHARTER, Art. 2; BISHOP, INTERNATIONAL LAW: CASES AND MATERIALS (3rd. ed. 1971) p. 398.

64. Jon T. Powell, "Direct Broadcast Satellites: The Conceptual Convergence of the Free Flow of Information and National Sovereignty" 6 CAL. WES. INT'L L.J. 1, 13 (1975).

65. BORIS BELISTSKY, INTERNATIONAL SPACE LAW 185 (1976).

66. Kathryn Queeney, DIRECT BROADCAST SATELLITES AND THE UNITED NATIONS 35 (1978).

67. International Telecommunication Convention, Reg. 428A.

68. Richard Burtler, "World Administrative Radio Conference For Planning Broadcasting Satellite Service" 5 J. SPACE L 93, 96 (1977).

more important since broadcasting has generally developed as a government service.⁶⁹ Their unregulated employment could pose a substantial threat to national sovereignty and to the ability of a state to determine the character of its own television system.⁷⁰

2. The Possible Adverse Use of The Satellite Broadcast System Requires That Prior Consent be Obtained.

While this technology potends obvious benefits for international communication and for health, education, culture and national economies,⁷¹ the satellite broadcast system could also be used for commercial exploitation, cultural imperialism, unwanted propoganda;⁷² the system could be used to incite hatred, make religious beliefs or cause dissatisfaction by raising socio-economic expectations;⁷³ it could likewise be used to erode the cultural independence of a country by a continuous flow of television programs from foreign sources.⁷⁴ National values and traditions would be lost and replaced by super-power domination.⁷⁵ This one-way flow of information or communication could be used to the destruction of a nation or a government, especially in the absence of an international regulatory system.⁷⁶

69. Powell, Supra. Note 64, at 13 - 14; Queeney, Supra, Note 66, at 35 and 43.

70. Comment, "Direct Satellite Broadcasting And the First Amendment", 15 HARV. INT'L L.J. 514, 515 (1974).

71. Galloway, Supra, Note 54, at 270.

72. 15 HARV. INT'L L.J., Supra, Note 70, at 515.

73. Charles Delfen, "The International Legislative Process: Direct Broadcasting and Remote Earth Sensing by Satellite Compared," 1972 CAN. YB. INT'L. L. 186, 192.

74. Powell, Supra, Note 64, at pp. 21-24.

75. Queeney, Supra, Note 66, at pp. 48-49.

76. LAY Nnd TAUBENFELD, Supra, Note 15, at 112-113.

3. The Right to Regulate Broadcast Activities Is Not Diminished By the Free Flow of Information Concept.

Although both the United Nations Charter and the Universal Declaration of Human Rights and International Convention on Civil and Political Rights provide in principle that states promote respect for and observance of human rights and fundamental freedom and that everyone has the right to freedom of opinion and expression and freedom "To seek, receive and impart information and ideas through any media and regardless of frontiers,"⁷⁷ these instruments were never intended to vest in any country a right to disregard the basic and inalienable right of state sovereignty.⁷⁸

The UNESCO DECLARATION clearly espoused this position:

"It is necessary that states, taking into account the principle of freedom of information, reach or promote prior agreements concerning direct satellite broadcasting to the population of countries other than the country of origin of the transmission."⁷⁹

The same position is taken in other international agreements.⁸⁰

B. DIRECT SATELLITE BROADCASTS WITHOUT THE PRIOR CONSENT OF THE RECEIVING STATE IS A VIOLATION OF THE OUTER SPACE TREATY AND PRINCIPLES OF INTERNATIONAL LAW.

Art. IV of the Outer Space Treaty expressly stipulates that the space activities of a nation must be conducted with due regard to the corresponding interests of all the states parties to the Treaty.⁸¹ As direct satellite broadcasting is said to be a space activity, the

77. UNIVERSAL DECLARATION OF HUMAN RIGHTS, Art. 19, UN GAOR 3rd. Sess, G.A. Res. 217, U.N. DOC. A/811 at 1 (1948); INTERNATIONAL CONVENTION OF CIVIL AND POLITICAL RIGHTS, Art. 16 to 26.

78. Brian Dickson, "Effects of 1977 I.T.U. World Administrative Radio Conference on the Formulation of U.N. Draft Principles on Direct Broadcast Satellites (DBS)". 2 ANNALS OF AIR AND SPACE LAW, 255, 256 (1977).

79. DECLARATION OF GUIDING PRINCIPLES ON THE USE OF SATELLITE BROADCASTING.

80. See: Report of the Committee on the Peaceful Uses of Outer Space (20th Session, June 21 - July 1, 1977) Official Records; 39th Session, Supp. No. 20(N/32/20), at one Annex V. p. 28.

81. Outer Space Treaty, Art. IX; see also 1975 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW, 472.

provision evidently implies that there must be prior consent before broadcasts are beamed to the territory of another country.⁸²

In a like manner the Bilateral Treaty calls for the consultation before a state party thereto embarks upon a course of action affecting the interest of the other state. Federation's disregard of these requirements constitute a violation of the Bilateral Treaty, the Outer Space Treaty and International Law.

V. PAU IS NOT LIABLE UNDER INTERNATIONAL LAW FOR THE DAMAGE SUSTAINED BY FEDERATION OCCASIONED BY THE FALLING OF FRAGMENTS OF PAU'S SPACE OBJECT IN THE TERRITORY OF FEDERATION.

- A. THE STRICT LIABILITY CONCEPT IS INAPPLICABLE WHERE THE INJURED STATE HAS CAUSED OR CONTRIBUTED BY ITS NEGLIGENCE OR OTHER ACTS TO THE ACCIDENT.

The Draft Treaty on the Moon, to which both Federation and PAU are signatories, reiterates and recognizes the liability provision of the Outer Space Treaty.⁸³ Article VII of the Outer Space Treaty, which basically repeats the wording of Article VIII of the U.N. Declaration of Legal Principles of December 13, 1963,⁸⁴ provides:

"Each state party to the Treaty that launches or procures the launching of an object into outer space, including the moon and other celestial bodies... is internationally liable for damage to another state party to the Treaty or to its natural or juridical persons by such object or its component parts on the earth, in the airspace or in outer space...."⁸⁵

In further emphasis, the Liability Convention provides that a launching state shall be absolutely liable to pay compensation for such damaged referred to above.⁸⁶ The Convention further provides, however,

82. Bilateral Treaty, Art. VII.

83. Moon Treaty, Art. XIV Agreed to by U.N. Committee on Peaceful Uses of Outer Space on July 3, 1979, No. A/Ac. 105/113.

84. United Nations Resolution of the General Assembly 1962 (XVIII), Dec. 13, 1963, On the Declaration of Legal Principles Governing Activities of States in the Exploration and Use of Outer Space, Art. XIII.

85. Outer Space Treaty, Art. VIII.

86. LIABILITY CONVENTION, Art. II.

that a launching state is exonerated from liability if the damage resulted wholly or partially from gross negligence or from an act or omission done with intent to cause damage on the part of a claimant state or its natural or juridical persons.⁸⁷ The concept of strict liability does not therefore apply where the claimant state or its nationals have caused or contributed to the accident as occurred in the instant case.

1. UTS Defective Manufacturing of the De Coupling Devices caused the Malfunction in PAU Space Object and Relieves PAU For the Damages Resulting Therefrom.

Under the doctrine of product liability, enunciated in the *MacPherson v. Buick Motor Company* Case, the manufacturer of a defective component part of an object is liable for the damage caused thereby.⁸⁸ The facts reveal that there was defect in the decoupling device manufactured by UTS under Federation's specifications, and that this substantially attributed to the difficulties encountered by PAU's space object which went out of control. The testimony of PAU's engineer, whose competence and supervision were never questioned during the entire mission up to the incident mentioned above, clearly attest that the defect caused the difficulties developed in the space object. PAU would only be liable if gross negligence was shown by it.⁸⁹

87. Ibid, Art. IV.

88. *MacPherson v. Buick*, 217 N.Y. 382, III N.E. 1050 (1916).

89. See: 10 CAN. YB. INT'L. L. 160-64 (1972).

B. FEDERATION'S UNILATERAL FIRING OF AN ANTI-SATELLITE DEVICE AT PAU'S SPACE OBJECT IN VIOLATION OF THE BILATERAL TREATY WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE ACCIDENT.

1. Federation's Firing of the Anti-Satellite Interceptor Device was in Violation of the Bilateral Treaty and Unjustified in International Law.

The Bilateral Treaty expressly provides for consultation between the two nations where situations of risks, danger or potential harm has developed.⁹⁰ Federation's firing of the anti-satellite interceptor device was a clear violation of this treaty provision and of Article I(a) and (b) of the Outer Space Treaty, this especially being so since its action was most premature. As stated by PAU's director of the flight control center, control could have been gained of the space object. This statement clearly finds support amongst nations engaged in space activities.⁹¹

Moreover, the mutual assistance provisions of the Rescue and Return Agreement and the Moon Treaty were also violated.⁹²

Nor can Federation's action be justified under the concept of self-defense. Not every situation of anticipated danger gives rise to the institution of measures on the basis of self-defense, especially where such action is aimed at another's territory or object over which that state has jurisdiction.⁹³ Federation's firing of anti-satellite occurred without any examination of the situation and with such haste as not to be justified. It was this action that caused the disintegration of the

90. Bilateral Treaty, Art. III.

91. Margo, *Supra*, Note 30, at p. 557.

92. Agreement On the Rescue of Astronauts, The Return of Astronauts and the Return of Objects Launched Into Outer Space, Art. I; Moon Treaty, Art. X.

93. Bishop, *Supra*, note 63, at p. 917-918.

space object and the resulting damage. Given basic legal and equitable principles, PAU must be relieved from all liability.

VI. PAU'S CONDUCTING OF NUCLEAR EXPERIMENTS AND TESTS ARE PERMISSIBLE ACTIVITIES UNDER THE BILATERAL TREATY AND INTERNATIONAL LAW.

A. THE NUCLEAR TEST BAN TREATY AND THE OUTER SPACE TREATY DO NOT PROHIBIT THE CONDUCTING OF PEACEFUL NUCLEAR EXPERIMENTS AND TESTS.

The Nuclear Test Ban Treaty, to which PAU is a signatory, provides amongst other things, that the parties thereto should refrain from nuclear weapon test explosions in the atmosphere, including outer space.⁹⁴ This, it is widely acknowledged, is designed to keep the atmosphere and outer space free from use as nuclear bases. There is nothing in the Treaty which prevents peaceful experiments with nuclear materials, carried out for the benefit of all mankind, pursuant to the "peaceful exploration and use" provisions of the Outer Space Treaty.⁹⁵

The limited application is clearly evidenced by the fact that both the Soviet Union and the United States have constructed weapons - and tested them - with use designed to travel through outer space, which use has not been forbidden.⁹⁶ Thus the U.S. Defense Department Manned Orbiting Laboratory (MOL) is said not to fall within the prohibition of the Treaty.⁴⁷ Such activity, wrote Edeard G. Welsh, Executive Secretary of the National Space Council, "is a program that will increase our knowledge of man's usefulness in space and will relate that ability to

94. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in OUTER SPACE AND UNDER WATER Art. I, Aug. 5, 1963, 14UST 1313, TIAS 5433, 48 UNTS 43.

95. Outer Space Treaty, Art. I.

96. Belistky, Supra, Note 65, at p. 135.

97. LAY & TAUBENFELD, Supra, Note 58, at p. 98.

national defense."⁹⁸ The Defense Department activity, he said, was to maintain the peace; NASA's are to enable us to live better in space."⁹⁹

Such activity is not prohibited by the Outer Space Treaty as the basic intent of Article IV thereof is to curtail arms competition - "no bomb in orbit".¹⁰⁰ The use of such nuclear experiments was clearly designed for peaceful purposes and for the benefit of all mankind. This is sanctioned by Article II of the Bilateral Treaty.¹⁰¹

Moreover, the basic design of such tests were for reconnaissance purpose. As stated by Thomas R. Adams "Spy-in-the-sky Satellites are thus left in an undetermined state."¹⁰² So too we excluded ICBM and the Russian Missile Systems; and nothing contained in the experiments show a violation of the Nuclear Non-proliferation Treaty.¹⁰³ These clearly reveal that PAU's activity in respect of her nuclear tests was a permissible one.

B. THE TESTS CONDUCTED BY PAU WERE WITHIN THE AMBIT OF THE DISCRETIONARY PROVISION OF THE BILATERAL TREATY.

Since, in any event, the Bilateral Treaty provided for discretionary tests by any of the parties thereto, Federation is precluded from complaining of the conducting of such test; and being aware of the risks assumed by the parties, can not assert total damage therefrom.

98. Welsh, Speech of Oct. 28, 1964, in Astronautics and Aeronautics, 1964, at 494 (1965).

99. MISSILES AND ROCKETS, Jan. 8, 1962, p. 12.

100. U.N. General Assembly Resolution - in 1967 HEARING 132.

101. BILATERAL TREATY, Art. II.

102. Adams, Supra, note 45, at 149.

103. Treaty On the Non-Proliferation of Nuclear Weapons, Arts. II and III.

CONCLUSION

WHEREFORE, in view of the legal and factual reasons set forth in the foregoing pages, Applicant most respectfully prays that the International Court of Justice will render judgment in favour of the Peoples Astral Union, finding:

1. That Federation was under an international obligation to satisfy the requirements of the Registration Convention, the provisions of that Convention being mandatory in nature; that a failure by Federation to register her space objects would circumvent the provisions both of the Outer Space Treaty and the Liability Convention since the possibility of identification would be made difficult by Federation's non-compliance with the Registration requirements. The Convention being a basic instrument of international law, a violation thereof was a violation of international law.

2. That Federation's use of the space shuttle was a violation of the Bilateral Treaty which provided for the use of space objects by the parties signatories thereto. The space shuttle is basically a functional aircraft and therefore falls without the ambit of the Bilateral Treaty; that moreover, Federation's notification to PAU that it would be using earth based pads constituted a binding international obligation upon Federation to act in accordance with that representation - PAU having relied thereon. The use by Federation of the space shuttle, in complete disregard of that representation was a violation of international law.

3. That Federation violated international law by the placing of her space object in geostationary orbit and collecting data on the weather conditions and resources of PAU which it used to the detriment of the economy of PAU; that these acts were in violation of the sovereignty, common interest and privacy principles, all of which are recognizable in international law; and that in consequence thereof, Federation is liable in damages.

4. That the transmission of direct satellite broadcast by Federation to receivers in PAU, without the prior consent of the latter, was an infringement on the sovereign rights of PAU to determine what programs and systems should be permitted into its territory, especially considering the possible adverse economic, political and cultural effects which such activities could have on the country and its people.

5. That under the principle of contributory negligence and Article IV of the Liability Convention, PAU is exonerated from any liability for the injury suffered by Federation and its nationals, occasioned by fragments of PAU's falling space object in the territory of Federation; that the defective manufacture of the decoupling device and the premature firing by Federation of its anti-satellite interceptor device, partially demolishing PAU's falling space object, were the primary contributing factors to the accident.

6. That PAU's conducting of experiments and nuclear tests from its space objects were not violative of international law, in view of state practice and the interpretations of relevant disarmament and nuclear weapons agreements.

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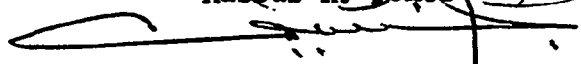
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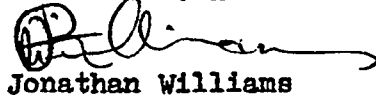
Respectfully submitted,


Ken E. Ballantyne


Marcus R. Jones



Boniface M. Kimulson


Jonathan Williams