IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE, THE HAGUE, NETHERLANDS

FEBRUARY, 1980

PEOPLES ASTRAL UNION....................Applicant

v.

FEDERATION OF CELESTIAL STATES.......Respondent

MEMORIAL FOR RESPONDENT

NO. 23

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TREATIES AND OTHER INTERNATIONAL AGREEMENTS:

Agreement on The Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched Into Outer Space, April 22, 1968, 19 UST 7570, TIAS 6592, 676 UNTS 119 .... 3, 23

Bilateral Treaty Between Federation and PAU 3, 4, 16, 17, 18, 20, 21

Convention On International Liability For Damage Caused by Space Objects, March 29, 1972, 24 UST 2389, TIAS 7762 ..... 3, 18, 19, 20, 23

Convention on Registration of Objects Launched Into Outer Space, January 14, 1975, TIAS 8480 .... 1, 2, 3, 19, 20, 23

Convention on The Territorial Sea and The Contiguous Zone, 56 UNTS 205, TIAS No. 5639 24

Paris Convention, Art. 35 15

Rome Convention 21

Treaty Banning Nuclear Weapon Test In The Atmosphere, In Outer Space and Under Water, Aug. 5, 1963, 14 UST 1313, TIAS 5433, 480 UNTS 43 .... 14, 15, 16

Treaty of Moscow 15

Treaty on Principles Governing The Activities of States In The Exploration and Use of Outer Space, Including The Moon and Other Celestial Bodies, 18 UST 2410, TIAS 6347, 610 UNTS 207 (1967) 5, 7, 8, 9, 11, 12, 15, 16, 18, 20, 23

United Nations Charter 12, 17

Vienna Convention on The Laws of Treaties, U.N. Doc. A/Conf. 39/27, May 23, 1969 in 8 INT'L LEGAL MAT'L 679 - 727 .... 17, 18

Warsaw Convention 21

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I.C.J. AND P.C.I.J. CASES:

Chorzow Factory Case (1928) P.C.I.J. Ser. A, 100 21

Eastern Greenland Case (Denmark v. Norway), P.C.I.J. Ser. A/B No.53, 3 HUDSON, WORLD COURT REPORTS 148 .... 18, 19

Nuclear Test Cases (Australia v. France (1973) I.C.J. 99; New Zealand v. France, (1973) I.C.J. 135; Australia v. France (Judgment), (1974) I.C.J. 457 .... 18, 19

OTHER CASES:

The Caroline Case, in 2 MOORE, DIGEST OF INTERNATIONAL LAW 412 .... 22, 23

Church v. Hubbart, 2 Cranch 187 (1804) 22

Kennedy v. Geophysical Co., 213 S.W. 2d 707 (Tex. Civ. App. 1948) 8

Phillips Petroleum v. Cowder, 241 F. 2d 586 (5th Cir. 1957) 8

Polpen Shipping Co. v. Commercial Union Assurance Co., 74 LLOYDS LIST REP. 157 (1942) 19

UNITED NATIONS RESOLUTIONS:

Charter on Economic Rights and Duties of States, 1974 U.N.G.A. Res. 3281, OFFICIAL REPORT, Supp. No. 31 (A/9631) 10

Declaration of Legal Principles Governing The Activities of States in the Exploration And Use of Outer Space, U.N.G.A. Res. 1962 (XVII), Dec. 13, 1963 .... 6, 12, 20

Declaration of United Nations Conference on Human Environment, July 3, 1972, U.N.G.A. A/Conf. 48/14 (the Stocholm Principles) 1972 16

International Covenant on Civil and Political Rights, U.N.G.A. Res. 2220A 10, 12

United Nations General Assembly Resolution on International Cooperation on the Peaceful Uses of Outer Space, Dec. 3, 1968, U.N.G.A. Res. 2345 (XXII) 12

U.N.G.A. Res. 1721 (XVI) 10, 12

United Nations General Assembly Resolution 1884 (XVII) 15, 16

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U.N.G.A. Res. 217, U.N. Doc. A/810 12

U.N.G.A. Res. 1963 (XVIII) 12

U.N.G.A. Res. 2600 (XXIV) 8

Universal Declaration of Human Rights, U.N.G.A. Res. 217, U.N. Doc. A/180 (1948) 10, 12

TREATISES:

BISHOP, INTERNATIONAL LAW: CASES AND MATERIALS (3ed. 1976) 24

COLOMBOS, THE INTERNATIONAL LAW OF THE SEA (6ed. 1976) 22

JENKS, AEROSPACE LAW (1965) 3

LAY AND TAUBENFELD, THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE (1970) 2, 8

MATTE, AEROSPACE LAW (1977) 2, 7

METTE AND DESAUSSURE, LEGAL IMPLICATIONS OF REMOTE SENSING (1976) 9, 10

McDOUGAL, LASSWELL AND VLASIC, LAW AND PUBLIC ORDER IN SPACE (1963) 21

SCHWARZENBERGER, A MANNUAL OF INTERNATIONAL LAW (1960) 24

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DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW (1975) 8, 10

DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW (1976) 8

2 MOORE, DIGEST OF INTERNATIONAL LAW 22, 23

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ARTICLES, PERIODICALS AND JOURNALS:

Adams, The Outer Space Treaty: An Interpretation of The Non-Sovereignty Provision, 9 HARV. INT'L L. J. 140, 143 (1968) 9

Amanda, Outer Space Can Help The Peace, 7 INT'L LAWYER 881, 884 (1973) 13

Comment, Direct Satellite Broadcasting and the First Amendment, 15 HARV. INT'L L.J. 514, N. 2 (1974) 14

Cooper, Air Law - A Field For International Thinking, In EXPLORATIONS IN AEROSPACE LAW (ed. Ivan A. Vlastic 1968) 24

Dalfen, The International Legislative Process: Direct Broadcasting and Remote Sensing by Satellite Compared, 1972 CAN. YB INT'L L. 186 7

______, Towards An International Convention on the Registration of Space Objects: A Gestation Process, 1971, CAN. Y.B. INT'L LAW 253 .... 3, 9, 10

DeSaussure, An International Right to Re-Orbit Earth Threatening Satellites, 3 ANNALS OF AIR & SPACE LAW 383, 386 (1978) 4, 9, 16

______, Remote Sensing By Satellite: What Future For an International Regime, 71 AM. J. INT'L L. 707, (1976) 6, 7, 9, 10

Doyle, Remote Sensing by Satellite: Technical and Operational Implications For International Cooperation, In LEGAL IMPLICATIONS OF REMOTE SENSING 7 (1976) 11

Diedericks - Verschoor, Observations On Remote Sensing Satellite, In LEGAL IMPLICATIONS OF REMOTE SENSING FROM OUTER SPACE, 69-76 (1976).

Galloway, Applicability Of Space Treaties To The Uses of Outer Space, I ANNALS OF AIR & SPACE LAW 205, (1976) 6, 7

______, Present Status In The United Nations of Direct Television Broadcasting Satellites, 2 ANNALS OF AIR & SPACE LAW 269 (1977) 6

______, Remote Sensing From Outer Space: Legal Implications of World Utilization and Dissamination of Data, In LEGAL IMPLICATIONS OF REMOTE SENSING FROM OUTER SPACE (ed. Nicolas Matte and Hamilton DeSaussure 1976) 91 .... 6, 8

Page

Geodhuis, Some Observations on the Problem of the Definition and/or The Delimitation of Outer Space, 2 ANNAL OF AIR & SPACE LAW 287 (1977) 10

Gorove, Arms Control Provisions in the Outer Space Treaty: A Scrutinizing Reapprisal, 3 GEO. J. INT'L & COMP. L. 114 (1973) 15

______, Legal Economic Complications of Remote Sensing From Outer Space - Focus on Latin American, In LEGAL IMPLICATIONS OF REMOTE SENSING FROM OUTER SPACE, 75 (1976) 6, 9

______, Sovereignty And The Law of Outer Space Re-Examined, 2 ANNALS OF AIR & SPACE LAW 313 (1977) 9

McDougal, The Emerging Customary Law of Space, 58 N.W. U. L. Rev. 618 (1964).. 9

Margo, Some Aspects of Insuring Satellites, 681 Insurance L.J. 555 (1979) 19

Mette, The Convention on Registration of Objects Launched Into Outer Space, In ANNAL OF AIR & SPACE LAW 231 (1966) 3

Morley, Remote Sensing Satellites - What Do They Actually Measure and How Sensitive is the Information, In LEGAL IMPLICATIONS OF REMOTE SENSING 14 (1976) 12

Mossinghoff & Sloup, Legal Issues Inherent In Space Shuttles Operations, GEO. J. SPACE L. 65 (1978) 19

Reijnen, Remote Sensing by Satellites and Legality, in LEGAL IMPLICATIONS OF REMOTE SENSING FROM OUTER SPACE 23 (1976).. 8

Stoebner, Remote Sensing of Earth Resources: Techniques and law, in LEGAL IMPLICATIONS OF REMOTE SENSING RROM OUTER SPACE 40 (1976) 8

Vekeshchetin, On The Principle of State Sovereignty in International Space Law, in 2 ANNALS OF AIR & SPACE LAW 429, 430 (1977) 5

Vlasic, The Evolution of the International Code of Conduct To Govern Remote Sensing By Satellite: Progress Report, 3 ANNALS OF AIR & SPACE LAW 561 (1978) 8

Satellites Expected to do Battle, Akron Beacon Journal At. A - 12, Col. 1 (Sept. 10, 1978) 23

J. Air. L. & Com. 34-35 (1970) 3

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OTHER AUTHORITIES:

Burt, New Killer Satellite Make Sky War Possible, NEW YORK TIMES, June 11, 1978 23

DEPT. STATE BULLETIN, VOL. LXXX, No. 1828, July 8, 1974 1

Draft Convention On The Definition of Aggression, U.N. DOC. No. A/AC. 77/L/4 (1956) 14

McNamara, Address To The Board Of Governors Of The World Bank Group, Copenhagen, Sept. 2, 1970 13

Report of the Legal Subcommittee on The Work of Its 17th Session (13 March - 7 April 1978) U.N. DOC. A/AC. 105/218 (April 13, 1978) 8

U.N. DOC. A/AC. 105/98 (Dec. 1971) 7

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.

QUESTIONS PRESENTED

I. WHETHER FEDERATION'S FAILURE TO SATISFY THE REQUIREMENTS OF THE THE REGISTRATION CONVENTION CONSTITUTED A VIOLATION OF ANY INTERNATIONAL OBLIGATIONS UNDERTAKEN BY HER?

II. WHETHER FEDERATION VIOLATED ANY TREATY OBLIGATIONS OR PRINCIPLES OF INTERNATIONAL LAW BY PLACING ITS SPACE OBJECT IN GEOSTATIONARY ORBIT AND COLLECTING DATA ON THE WEATHER CONDITIONS AND RESOURCES OF PAU WITHOUT THE PRIOR KNOWLEDGE AND CONSENT OF THE LATTER?

III. WHETHER FEDERATION'S TRANSMISSION OF DIRECT SATELLITE BROADCASTS TO RECEIVERS IN PAU WAS A VIOLATION OF INTERNATIONAL LAW?

IV. WHETHER PAU'S EXPERIMENTS WITH AND CONDUCTING OF NUCLEAR TESTS ABOARD HER SPACE OBJECT WHILE IN EARTH ORBIT WERE VIOLATIONS OF INTERNATIONAL LAW?

V. WHETHER FEDERATION'S USE OF THE SPACE SHUTTLE IN THE LAUNCHING OF HER SPACE OBJECT WAS IN VIOLATION OF THE BILATERAL TREATY OR OF INTERNATIONAL LAW?

VI. WHETHER PAU IS FULLY RESPONSIBLE AND LIABLE UNDER INTERNATIONAL LAW FOR THE DAMAGE SUSTAINED BY FEDERATION AND ITS NATIONALS OCCASIONED BY PAU'S FALLING SPACE OBJECT IN FEDERATION'S TERRITORY?

VII. WHETHER THE PASSAGE OF FEDERATION'S SPACE OBJECT AT POINTS LESS THAN 110 KILOMETERS ABOVE PAU'S TERRITORY WITHOUT ITS PRIOR CONSENT WAS A VIOLATION OF INTERNATIONAL LAW?

SUMMARY OF ARGUMENT:

Federation submits that her failure to satisfy the requirements of the Registration Convention relative to the registration of her space objects did not constitute a violation of the Convention, of the Bilateral Treaty with PAU or of international law. There is no principle of international law which makes such registration mandatory and the provisions of the Registration Convention basically leaves it to discretion of the state to decide on its own mode or time in respect of the registration of its space objects. Moreover, the basic objectives and intent of the Registration Convention were met by Federation's publication of its space activities in the newspapers.

Federation submits at the second level that the launching and placing in geostationary orbit a space object and the collection of data on PAU's resources were neither in violation of the Bilateral Treaty nor of international law. The Outer Space Treaty declares outer space to be the province of all mankind, subject to no exercise of sovereignty or means of appropriations. As such it guarantees the complete exploration and use thereof, making no distinction whether the "use" be "earthward looking" or "outward looking". The practice of states clearly attest to this conclusion and shows the activity to be permissible use of outer space. Nor in such use is a state forbidden from engaging in remote sensing over a country, such activity being no infringement of the sovereignty of PAU as a state sovereignty does not extend to the outer reaches of space. Similarly, there is no violation on the right of PAU to the exercise of control over its natural resources.

In addition, Federation satellite broadcasts to the territory of PAU is sanctioned by international law, including the U.N. charter, the Universal Declaration of Human Rights and the Practice of States, all

of which are aimed basically at the free flor of information regardless of frontiers.

Federation further says that PAU'S nuclear tests in outer space were in violation of the many treaties to which she was a signatory and of basic principles of international law. Henoe, the damage done to Federation, its nationals and property, attributable to PAU's international violations must be compensated for by PAU.

Federation also contends that its use of the space shuttle was not a violation of the Bilateral Treaty and of international law. The space shuttle is by definition a space object; it is designed basically for performance in space. The fact that it operates, when in the earth atmosphere, the same as an airplane, does not serve to deprive it of its status as a space object. Nor was there any violations of the airspace of PAU in the descent of the object since international law does not sanction PAU'S claim to airspace just below 110 kilometers. Contrarily, there has been overwhelming objections to any state making such claim.

Lastly, Federation submits that PAU must be held strictly liable in damages for the injury sustained by Federation and its national, occasioned by PAU's falling object. The various relevant space treaties expressly state that the launching state shall be liable for damages caused by its space objects. PAU's object was under its own control; its engineer was negligent and most incompetent in the performance of his duties; and the damage was caused by acts attributable to PAU. No evidence is presented that other factors were responsible therefor. Nor is PAU relieved from liability because of Federation's

firing of its anti-satellite intercepter device, it being clear that Federation, having determined that the space object was falling in the direction of her territory, was vested with every right to defend its territory.

ARGUMENT

I. FEDERATION'S FAILURE TO SATISFY THE REQUIREMENTS OF THE REGISTRATION CONVENTION DID NOT CONSTITUTE A VIOLATION OF ANY INTERNATIONAL OBLIGATION.

A. THE PROVISIONS OF THE REGISTRATION CONVENTION DO NOT CREATE A COMPULSORY REGISTRATION FRAMEWORK.

1. The Basic Provisions of the Registration Convention Create Discretionary obligations only.

Article II of the Convention on Registration of Objects Launched Into Outer Space, which forms the basis for registration of space objects provides that in the event of a launching of a space object the launching State shall record in a national registry the fact that a given object has been launched into earth orbit or into outer sustained space transit.[1] The only basic purpose of this provision is to encourage every state engaging in space activities to establish and maintain an orderly national record of launchings.[2]

The registry, whatever its form decided by the state, may be maintained as a public document or given no publicity at all,[3] and the contents and form thereof are solely within the prerogative of the state concerned. The United States, for example, although reporting most launches, has withheld the reporting of certain manned and unmanned orbital flights carried out in full view of the world, especially

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1. Convention on Registration of Objects Launched Into Outer Space, Art II(1), Jan. 14, 1975, TIAS No. 8480 (hereinafter Registration Convention).

2. DEPT OF STATE BULLETIN, VOL. LXXI, No. 1828, July 8, 1974, pp. 68-72; also 1974 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 398 (hereinafter U.S. DIGEST).

3. U.S. DIGEST

4. REGISTRATION CONVENTION, Art. II(3).

where there is a military design or object, or where these involve high altitude nuclear tests and observation Satellites.[5] The same is true of the U.S.S.R., which basically reports only those space activities that are successful. Moreover, no time for the setting up of such registry is specified; nor is there any requirement as to the time at which such registration should occur.[6]

As stated by Nicolas Matte, "Compulsory international registration systems have still to be achieved"[7] At most, the Registration Convention constitutes only a "constructive basis on which a more complete and binding convention can be shaped."[8] A logical conclusion then, is that the failure by Federation to satisfy these non-mandatory provisions of the Registration Convention does not constitute a violation of any international obligation, especially where the basic intent of the convention has been met.

2. The Registration Convention Does not Prescribe any Specific Mode By Which the U.N. Secretary-General May Be Informed of Objects Launched Into Outer Space.

The Registration Convention, without prescribing any time or mode, stipulates only that a launching state shall inform the U.N. Secretary General of the setting up of a national registry and furnish him with certain information about a space object carried on its registry.[9] As

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5. 1974 DIGEST OF UNITED STATES PRACTICE INTERNATIONAL LAW 400; LAY AND TAUBENFELD, THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE (1970)

6. IBID.

7. NICOLAS MATTE AEROSPACE LAW 184 (1977).

8. IBID.

9. REGISTRATION CONVENTION, Arts. II(1) and VI.

no time is specified for a state to set up a registry or to register the space object in such registry, no obligation is created to give such information to the U.N. Secretary-General until after the registry has been set up and the space object registered therein.

Moreover, as no mode is specified as to how such information should be transmitted, Federation submits that the publication in the Press sufficiently informed the U.N. Secretary-General of its space activities.

B. FEDERATION HAS MET THE BASIC INTENT OF THE REGISTRATION CONVENTION.

The basic reasons for the Registration Convention have generally been stated to be three-fold: Effective management of traffic, enforcement of safety standards and imputation of liability for damage.[10] In addition, the Registration Convention has been said to also have a quasi-jurisdictional purpose for the launching state relative to the control over its space objects and for the proper adherence to the Rescue Agreement,[11] and the Liability Convention.[12]

It may be said then that the intent of the Registration Convention is identification of space objects.[13] Federation submits that the

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10. Nicolas Matte, "The Convention On Registration of Objects Launched Into Outer Space" in 1 ANNALS OF AIR & SPACE LAW 231 (1976).

11. Agreement On The Rescue Of Astronauts the Return of Astronauts And The Return of Objects Launched into Outer Space, April 22, 1968, 19 UST 7570, TIAS 6592, 676 UNTS 119; See also 36 J. AIR LAW & Com 34-35 (1970).

12. Convention On International Liability For Damage Caused By Space Objects, March 29, 1972, 24 UST 2389, TIAS 7762. See also JENKS, SPACE LAW 221-22 (1965).

13. CHARLES DALFEN, "Towards An International Convention On the Registration of Space Objects: A Gestation Process" 1971 CAN. YB. INT'L Law 253, 254.

revelation of its space activities in the Press met this basic intent since in fact notification is thus given for identification purpose. Indeed, there is no allegation that the information so released in the press failed to meet those required to be "furnished" the U.N. Secretary-General. Nor is there any allegations that Federation has launched space objects without making that fact known to the world.

C. FEDERATION HAS COMMITTED NO ACTS CONSTITUTING A VIOLATION OF THE BILATERAL AGREEMENT.

Federation submits that under Art V of the Bilateral Agreement between it and PAU, it was required to register only those space objects used in the Joint Venture and only in accordance with applicable Treaty and U.N. requirements.[14]

Under the Registration Convention, the launching state need not be the state of registry.[15] As the Bilateral Treaty covers only those space objects used in the joint venture, Article II(2) of the Registration Convention is rendered the applicable provision. That provision leaves it to the parties to a joint venture space project to decide which of the launching states would be the state of registry. The Bilateral Treaty does not specify which of the two states would be the state of registry. Notwithstanding PAU undertook to do such registration, and by inplication designated itself as the state.

In any event the reasons stated earlier, supra, clearly show no violation by Federation.

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14. Bilateral Treaty, Art. V.

15. Registration Convention, Art. II (2).

II. FEDERATION VIOLATED NO TREATY OBLIGATIONS OR ANY PRINCIPLES OF INTERNATIONAL LAW BY PLACING ITS SPACE OBJECT IN GEOSTATIONARY ORBIT AND COLLECTING DATA ON THE WEATHER CONDITIONS OF PAU WITHOUT THE PRIOR KNOWLEDGE OR CONSENT OF THE LATTER.

A. THE TREATIES ON THE USE OF OUTER SPACE TO WHICH FEDERATION AND PAU ARE SIGNATORIES TACITLY PERMIT THE LAUNCHING AND PLACING OF SPACE OBJECTS IN GEOSTATIONARY ORBITS.

1. The Outer Space Treaty Grants To States Complete Freedom in the Exploration And Use of Outer Space for Peaceful Purposes.

The Treaty on Principles Governing The Activities of State in the Exploration And Use of Outer Space, including The Moon and Other Celestial Bodies, done in 1967, and which by 1977 had been ratified or adhered to by 69 states[16] expressly provides in paragraph 2 of Article 1 that "Outer Space, including the Moon and Other Celestial Bodies, shall be free for exploration, and use by all states without discrimination of any kind on the basis of equality and in accordance with international law...."[17] In addition, the Treaty stipulates that "/T/here shall be freedom of Scientific Investigation in Outer Space ...."[18] and that "outer space, including the Moon and other Celestial bodies, is not subject to national appropriation by claim of Sovereignty, by means of use or occupation, or by any other means."[19]

Under the provisions quoted above, states are free to engage not only in the "exploration" but also in the "use" of the outer reaches

16. V.S. Vereshchetin, "On The Principle of State Sovereignty in International Space Law," 2 ANNALS OF AIR & SPACE LAW 429, 430 (1977).

17. TREATY ON PRINCIPLES GOVERNING THE ACTIVITIES OF STATES IN THE EXPLORATION AND USE OF OUTER SPACE, INCLUDING THE MOON AND OTHER CELESTIAL BODIES, ART. 1, 18 US.T. 2410, TIAS 6347, 610 UNTS 207 (1967).

18. IBID, at p. 208.

19. IBID, Art. 2 at p. 208.

of space.[20] Indeed, by its very wording, the Outer Space Treaty recognizes and re-affirms the many declarations[21] and United Nations Resolutions[22] that Outer Space is res-nullius and thus free to all States whether they be engaged in activities characterized as "earth looking" or "outward looking."[23] There is nothing in the negotiating history of the Treaty that suggests that the words "exploration" and "use" were to apply only to outer space and not to the impact they were making on activities on earth.[24]

Indeed, long before and during the formulation of the Outer Space Treaty, Intelsat was underway as a commercial activity utilizing geo-synechronous orbits, as was the case with other space activities of the U.S. and the U.S.S.R.[25] Had any distinction been intended between "earth looking" and "outward looking" activities or activities relative to geostationary orbiting space objects, mention would have been made

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20. HAMILTON DeSAUSSURE, "Remote Sensing By Satellite: What Future For An International Regime," 71 AM.J. INT'L L. 707, 710 (1977).

21. Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, UNGA 1962 (XVIII) dated Dec. 13, 1963.

22. United Nations General Assembly Resolution 1962 (XVIII), dated Dec. 13, 1963, on International Cooperation in the Peaceful Uses of Outer Space; UNGA Resolution 2345 (XXII) dated Dec. 3, 1968.

23. EILENE GALLOWAY, "Present Status in the United Nations of Direct Television Broadcast Satellites", 2 ANNALS OF AIR & SPACE LAW 269, 279 (1977).

24. EILENE GALLOWAY, "Applicability of Space Treaties To The Uses of Outer Space," 1 ANNALS OF AIR & SPACE LAW 205, 207 (1976).

25. EILENE GALLOWAY, "Remote Sensing From Outer Space: Legal Implications of World Wide Utilization and Dissemination of Data" IN LEGAL IMPLICATIONS OF REMOTE SENSING FROM OUTER SPACE (ed. Nicolas Mateesco MATTE & Hamilton DeSaussure 1976) p. 91, 98; Stephen Gorove "Legal And Economic Implications of Remote Sensing from Outer Space - Focus on Latin America," LEGAL IMPLICATIONS OF REMOTE SENSING FROM OUTER SPACE, 75, 82 (1976).

thereof.[26] Instead, the only inhibitions contained in the Outer Space Treaty are that the exploration and use be for peaceful purposes;[27] that they be carried out in accordance with international law, including the United Nations Charter;[28] and that there be no appropriation of the air space.[29] The placing of space object in geostationary orbit is therefore a permissible use of outer space.

2. Remote Sensing From a Space Object Placed in Geostationary Orbit Is a Legitimate Use Covered By The Outer Space Treaty.

Remote Sensing has been universally acceptedly defined as "a system of methods for identifying the nature and/or determining the condition of objects on the earth's surface and of phenomena on, below or above it by means of observations from airborne or space borne platforms."[30]

From this definitional perspective the United Nations Penal Committee on The Establishment and Implementation of Research Programmes in Remote sensing concluded that there exist no "principle or rule of international law .... that makes it unlawful for a country to freely observe everything and anything it regards worth observing in another country, so long as it carries out its observations from beyond the limits of national sovereignty."[31] This conclusion is supported by the fact that the U.S. used meteorological satellites on a daily basis with the participation of more than 70 countries; conducted the manual orbiting laboratory (MOL), the manual mercury gemini and appollo

26. DeSaussure, supra, Note 20, at p. 6; Charles M. Dalfen, "The International Legislative Process: Direct Broadcasting and Remote Sensing by Satellite Compared" 1972 CAN. YB. INT'L L. 186, 196; METTE, AEROSPACE LAW 116 (1977).

27. Outer Space Treaty, Art. IV.

28. IBID, Art. III.

29. IBID, Art II.

30. U.N. Doc. NAC. 105/98 Dec. 1971 par. 3: MATTE, supra, note 7, at p. 2, 115 (1977).

31. U.N. Doc. A/Ac. 105/98 Dec. 1971, par. 167.

programs focusing on the earth's resources and environment, again with some "international participation".[32] Yet no objections or exceptions to such activity was made in the Outer Space Treaty. Moreover, the Practice of States since the coming into force of the Outer Space Treaty, especially with respect to the United States Landsat program and the Soviet Union Soyuz-Salyet program,[33] the United Nations Directives to the UN Outer Space Committee,[34] and the Sub-Committee's Draft Principles on Remote Sensing of the Earth From Space,[35] clearly support Federation's contention that remote sensing is a "use" and as such a permissible space activity clearly sanctioned by and within the scope of the Outer Space Treaty.[36]

(a) Remote Sensing from Outer Space does not Violate the Sovereignty of any of the sensed States.

The Outer Space Treaty expressly provides that outer space, including the Moon and other celestial bodies, are not subject to national

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32. GALLOWAY, supra, note 25; DeSaussure, supra, note 25; See also Audre Stoebner "Remote Sensing of Earth Resources: Technique and Law" in LEGAL IMPLICATIONS at p. 35.

33. Ivan A. Vlasic, "The Evolution of the International Code of Conduct To Govern Remote Sensing by Satellite: Progress Report" 3 ANNALS OF AIR AND SPACE LAW 561 (1978); See also 1976 DIGEST OF U.S. PRACTICE IN INT'L LAW 412; LAY AND TAUBENFELD, supra. note 21, at 117.

34. UNGA Res. 2600 (XXIV).

35. Report of the Legal Subcommittee on the work of its 17th Session (13 March - 7 April 1978), U.N. Doc. A/AC. 105/218 (April 13, 1978).

36. 1975 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 475; See also Kennedy v. General Geophysical Co. 213 S. W. 2d 707 (Tex. Civ. App. (948); Philips Petroleum Co. v. Cowden 241 F. 2d 586 (5th Cir. 1957).

appropriation by any claim of sovereignty or other means.[37] The general concensus of opinion amongst international scholars and strongly advocated by the leading space nations, is that the Treaty unequivocally prohibits any claim of sovereignty over outer space, meaning the space covered by earth orbiting satellite and the areas beyond.[38] With the exception of a few Latin American Countries, there is a universal acceptance that national frontiers extend to air space and not to outerspace,[39] and the outer space treaties clearly put earth orbiting satellites in the outer space category.

Moreover, extending zones of sovereignty infinitely above a state's boundaries is not technically feasible, firstly because it would create an unintelligible pattern of national sovereignties,[40] and secondly because remote sensing cannot distinguish natural or political boundaries and the imformation can be gathered and studied only on a regional or global basis.[41]

In addition, the assertion of sovereignty would sacrifice the real benefits to many other states,[42] violate the Universal Declaration of

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37. Outer Space Treaty, Art. II.

38. Myres S. McDougal "The Emerging Customary Law of Space," 58 NW. U.L. Rev. 618 (1964); also Stephen Gorove, "Sovereignty And The Law of Outer Space Re-Examined" in 2 ANNALS OF AIR AND SPACE LAW 311, 313 (1977); G.C.M. Reijnen, "Remote Sensing By Satellites and Legality" IN LEGAL IMPLICATIONS OF REMOTE SENSING FROM OUTER SPACE (ed. Nicolas Mette and Hamilton DeSaussure, 1976) p. 23.

39. Audre W. Stoebner, "Remote Sensing of Earth Resources: Techniques and Law" and IN LEGAL IMPLICATIONS OF REMOTE SENSING FROM OUTER SPACE (ed. Nicholas Mette and Hamilton DeSaussure (1976) p. 40; Gorove, supra, note 25, at 76 and 78.

40. Thomas R. Adams "The Outer Space Treaty: An Interpretation of The No-Sovereignty Provision," 9 HARV. INT'L L.J. 140, 143 (1968).

41. DeSaussure, supra, note 20, at p. 7t3.

42. Delfen, supra, note 13, at p. 198.

Human Rights relative to the right of everyone to seek, receive and impart information and ideas through any media regardless of frontiers,[43] curtail scientific exploration and use of outer space in violation of the Outer Space Treaty and create a "fragmentary division of outer space leading to an ever growing erosion of the fundamental principle of outer space."[44]

There is no logical reason for the assertion that remote sensing violates a state's right over its natural resources in violation of the U.N. Resolutions and Principles on the economic rights and duties of States.[45] Since the state retains complete control over its resources and it alone determines whether to grant licenses or not for the exploitation thereof.[46] The information gathered by Federation were openly dissiminated.

(b) Remote Sensing Serves a Legitimate Universal Human Purpose and Benefits All Mankind.

Remote Sensing activities are basically recognized as Civil oriented and beneficial to all mankind and as such a technological necessity.[47] The benefits to mankind are immeasurable.[48] It assists

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43. UNIVERSAL DECLARATION OF HUMAN RIGHTS, Art. 19, UNGA Res. 217, U.N. Doc. A/180 (1948); See also International Conventions on Civil and Political Rights, UNGA Res. 2220A.

44. D. Geodhuis "Some Observations on the Problem of the Definition and/or the Delimitation of Outer Space" In 2 ANNUALS OF AIR AND SPACE LAW 287, 292 (1977).

45. Charter of Economic Rights and Duties of States 1974, UNGA Res. 3281, OFFICIAL REPORT, Supp. No. 31 (A/9631) at 50.

46. Dalfen, Supra, Note 13, at 198.

47. See Diederiks - Verschoor "Observations on Remote Sensing Satellites" in LEGAL IMPLICATIONS, at pp. 69 - 73.

48. DeSaussure, Supra, note 20; See also 1973 DIGEST OF U.S. PRACTICE IN INTERNATIONAL LAW, p. 324.

in the identification of crops and crop yield forecasting; serve to detect crop and animal disease; provide data on forest inventory, fire hazard and geodetic mapping; permits the observation and identification of such natural phenomena as hurricanes, mountains, shorelines; monitor water quality and quantity vegetation for resource management; shows changes in land use and land use practice; it can define pollution control, and locate heretofore undiscovered rich mineral and petroleum reserves,[49] to name only a few. Dissemination of such information benefits all mankind.

III. FEDERATION'S TRANSMISSION OF DIRECT SATELLITE BROADCASTS TO RECEIVERS IN PAU WAS NOT IN VIOLATION OF INTERNATIONAL LAW.

A. THE TRANSMISSION OF DIRECT SATELLITE BROADCASTS TO RECEIVERS IN FOREIGN STATES ARE POSITIVELY SANCTIONED BY TREATIES AND OTHER INTERNATIONAL DECLARATIONS TO WHICH FEDERATION AND PAU ARE SIGNATORIES.

1. The Outer Space Treaty Permits Direct Satellite Broadcasts.

As stated supra, Article I of the Outer Space Treaty guarantees the rights of states both in the exploration and use of outer space.[50] It has been shown also that the use of earth-orbiting satellites in man's conduct of activities in outer space constitutes a use covered by the Treaty.[51] As direct broadcast satellites transmit from outer space, they fall within the ambit of the coverage of the outer space treaty.

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49. Stephen E. Doyle, "Remote Sensing By Satellite: Technical and Operational Implications for International Cooperation," In LEGAL IMPLICATIONS OF REMOTE SENSING, p. 7; See also Lawrence W. Morley "Remote Sensing Satellites - what Do They Actually Measure and How Sensitive Is The Information," In LEGAL IMPLICATIONS OF REMOTE SENSING, pp. 14-17.

50. Outer Space Treaty, Art. I.

51. 1973 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 324-27.

This recognition was clearly made manifest in the U.N. General Assembly Resolution XVIII (1962)[52] on Legal Principles and Resolution XVIII (1963),[53] forerunners of the 1967 Outer Space Treaty. Moreover, in 1963, Relay I broadcast worldwide the death of Pope John XXIII and the convocation of Pope Paul VI. Several U.N. General Assembly opening sessions were carried on a global scale. Similarly in 1962 Telstar I broadcasted the first intercontinental television demonstration between Europe and the United States. Several years later, the Winter Olympics were televised live. Yet no exclusion of these activities were made in the Outer Space Treaty.

2. Direct Satellite Broadcasting is Sanctioned by the U.N. Charter and Declarations Relative to Basic Human Hights and the Free Flow of Information.

Article I (3) and 55 of the United Nations Charter to which both Federation and PAU have subscribed, commit each member state to promote and encourage a Universal respect for human rights and for fundamental freedom for all.[54] The Universal Declaration of Human Rights, basically regarded as an extension of these Articles of U.N. Charter, provides not only for freedom of speech and belief but stipulates that all peoples have the right to freedom of opinion and to seek, receive and impart information and ideas through any media regardless of frontiers.[55] Direct Broadcast Satellites being medium for the promotion of these

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52. UNGA Res. 1962 (XVIII).

53. UNGA Res. 1963 (XVIII); See also UNGA Res. 2345 (XXII).

54. U.N. Charter, Arts. 1(3) and 55.

55. Universal Declaration of Human Rights, Art. 19, G.A. Res. 217. UN Doc. A/810 at 71 (1948); See also International Covenant on Civil and Political Rights, UNGA Res. 2220A; and G.A. Res. 1721 (XVI).

international undertakings, "international law is permissive as to the activity."[56] There is no international requirement that prior consent be obtained before such activity is allowed.[57] Any such requirement would grant a state veto power and be inconsistent with the Principle of exchange and free flow of information and ideas.[58]

Moreover, the countries of the less developed world are confronted with widespread illiteracy, health and basic educational problems; badly needed medical, technical and agricultural skills are scarce and often must be imported.[59] The consent notion would infringe on those rights and deprive the peoples of these nations those basic needs. Radio Free Europe, VOA and other international stations (including the BBC) have and are still being used for these and other progress. Yet there have been very little protestations in respect to their use.

The only inhibitions are that they conform to international law, that they do not interfere with local waves or transmissions, that they not be used for propaganda purposes, or that they not be intended for incitement to conflict or acts of aggression. The inhibitions are therefore not on the right to broadcast but on the contents of the broadcast. There are no allegations in the instant case that Federation has violated any of these inhibitions. Nor is there committed any acts of aggression as that principle was enshrined in the Draft

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56. 1973 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW.

57. Ibid.

58. 1974 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 407.

59. Robert S. McNamara "Address to the Board of Governors of the World Bank Group" Copenhagen, Sept. 2, 1970, at 20; Edward Amanda "Outer Space Can Help the Peace" 7 INT'L LAWYER 881, 884 (1973).

Convention on the Definition of Aggression,[60] or any infringement on the sovereignty or privacy of PAU, the apprehension of the use of direct satellite is clearly exaggerated and lacking in any merit, especially in the light of economic, social, legal and technical realities.[61]

IV. PAU'S EXPERIMENTS WITH AND CONDUCTING OF NUCLEAR TESTS ABOARD HER SPACE SHIP WHILE IN EARTH ORBIT WAS A VIOLATION OF INTERNATIONAL LAW.

A. MULTILATERAL AND BILATERAL AGREEMENTS ON NUCLEAR TESTING TO WHICH PAU IS A SIGNATORY, PROHIBIT THE CONDUCTING OF NUCLEAR TESTS IN THE ATMOSPHERE.

1. Nuclear Tests and Experiments in Outer Space are Prohibited by the Nuclear Tests Ban and Outer Space Treaties.

(a) The Nuclear Test Ban Treaty.

The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, signed at Moscow on 5 August 1963, and to which both Federation and PAU have subscribed their acceptance, provides at Article I:

> (1) Each of the Parties to this Treaty undertakes to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control:
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> (a) in the atmosphere; beyond its limits, including outer space; or under water, including territorial waters or high seas;
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> (b) in any other environment if such explosion causes radioactive debris to be present outside the territorial

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60. Draft Convention on the Definition of Aggression, U.N. Doc. No. A/AC. 77/L/4 (1956); 12 U.N. GAOR Supp. 16, at 30, U.N. Doc. A/3574 (1957).

61. COMMENT "Direct Satellite Broadcasting and The First Amendment," 15 Harv. INT'L L.J. 514, n. 2 (1974).

> limits of the state under whose jurisdiction or control such explosion is conducted.[62]

The foregoing has been universally accepted to mean that there has been a *complete prohibition on the explosion* of any and all nuclear devices in the atmosphere and in outer space.[63]

The Paris Convention of 1919,[64] the Treaty of Moscow,[65] the United Nations General Assembly on October 7, 1963, forerunners to the Nuclear Test Ban Treaty, all call on states to refrain from conducting tests, transporting or installing weapons of mass destruction "in orbit around the earth" or "in outer space" or in the air in any manner.[66]

(b) The Outer Space Treaty.

In a further reinforcement of the Nuclear Test Ban Treaty, the Outer Space Treaty provides at Article IV that "States Parties to the Treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction..... and that the moon and other celestial bodies shall be used by all states parties to the Treaty exclusively for peaceful purposes.[67]

The Treaty further stipulates that states involved in the exploration and use of outer space should conduct their studies in such a way

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62. Treaty Banning Nuclear Weapon Tests In the Atmosphere, In Outer Space And Under Water, August 5, 1963, 14 UST 1313, TIAS 5433, 480 UNTS 43.

63. Stephen Gorove, "Arms Control Provisions in The Outer Space Treaty: A Scrutinizing Reapprisal, 3 GEO J. INT'L & Comp. L. 1157, 115 (1973).

64. PARIS CONVENTION, Art. 35

65. Treaty of Moscow.

66. United Nations General Assembly Resolution, 7th October 1963, U.N. Res. 1884 (XVII).

67. Outer Space Treaty, Art. IV, January 27, 1967, 18 UST 2410, TIAS 6347, 610 UNTS 205.

as to avoid contamination of outer space and adverse changes in the environment of the earth, or interference with activities of other states parties in the peaceful exploration and use of outer space.[68]

PAU'S two nuclear tests were clear violations of the Outer Space Treaty, the Nuclear Test Ban Treaty and the United Nations Resolution on Disarmament[69] and Declaration on Human Environment,[70] all of which are designed to keep the environment free from contamination by radio-active substance which could eventually affect life and property.[71]

2. PAU's Tests Were in Violation of the Provisions of the Bilateral Treaty Between Federation and PAU.

The Bilateral Treaty between Federation and PAU, entered into on May 1, 1979, provides that only experiments prescribed by the Treaty were to be conducted aboard the Laboratory or any of the space objects involved in the Joint Venture.[72] There was to be consultations and exchanges on any experiments being conducted by any party involving risks, danger or potential harm,[73] and experiments were to be conducted only as the head of each team of the parties had agreed.[74] Where the

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68. Ibid, Art. IX.

69. United Nations General Assembly Resolution 1884 (XVIII), dated Oct. 17, 1963, on the Question of General and Complete Disarmament.

70. Declaration of United Nations Conference On Human Environment, July 3, 1972, UNGA A/Conf. 48/14 (The Stocholm Principles).

71. Hamilton DeSaussure, "An International Right to Reorbit Earth Threatening Satellites," 3 ANNALS OF AIR & SPACE LAW 383, 386 (1978).

72. Bilateral Treaty Art. VI.

73. Ibid. Art. III (3).

74. Ibid. Art. VII.

experiment being conducted was not fully covered by the provisions of the Bilateral Treaty, there was to be consultation to ensure that the provisions of the Treaty were met in full.[75]

In the instant case there was no such consultation or agreement by the parties on the nuclear experiments undertaken by PAU. This unilateral act taken by her was contrary to the provisions, spirit and intent of the Treaty. There is nothing contained in the Treaty giving PAU the discretion to conduct any experiments, with the obvious detriment to Federation and in violation of International Law.

Contrarily, the Bilateral Treaty, in its preambular paragraphs, clearly recognizes the application of the provisions of all treaties, agreements, understanding and resolutions with respect to activities in outer space, of the United Nations Charter and of general international law. The treaties, resolution and agreements mentioned supra demand that the experimental activities carried out by PAU involve the peaceful uses of outer space. The nuclear tests carried by PAU cannot be so characterized.

3. PAU Nuclear Tests, Being in Violation of Her Treaty Obligations, were thus in Violation of International Law.

Treaties and Conventions are international agreements; form a part of international law, and as such create binding obligations upon the states signatory thereto. All states parties to treaties are obligated to the performance thereof in good faith.[76] As a signatory

75. Ibid, Art. VII.

76. VIENNA Convention on the Laws of Treaties. Art. 26 U.N. Doc. A/Conf. 39/27 May 23, 1969, In 8 INT'L L. MAT. 679-727.

to the Vienna Convention, PAU was under an international obligation to fulfil its undertaking in the treaties to which it was a party, including the Bilateral Treaty. Its non-compliance with and violations of the provisions of those agreements were tantamount to a violation of international law.

4. PAU is therefore Liable in Damages for the Injury caused Federation and its Nationals and Property.

The Outer Space Treaty provides at Article VII that a state is internationally liable for its space activities.[77] So too does the Convention of International Liability for Damage Caused by Space Objects.[78] PAU is therefore rendered liable not only for violations of its treaty obligations and of international law, but also for the damages done to Federation and its nationals and property.

This is even more important since the damage could have been minimized had PAU not represented that there was no danger, causing Federation thereby not to take any action.[79]

V. FEDERATION'S USE OF THE SPACE SHUTTLE IN THE LAUNCHING OF HER SPACE OBJECT WAS NOT IN VIOLATION OF THE BILATERAL TREATY OR INTERNATIONAL LAW.

A. THE BILATERAL TREATY DOES NOT PROHIBIT THE USE OF A SPACE SHUTTLE IN THE LAUNCHING OF A SPACE OBJECT.

1. The Space Shuttle is a Space Object.

The Bilateral Treaty between Federation and PAU specifies only that each of the contracting parties shall launch its own space object

77. Outer Space Treaty, Art. VII.

78. Convention on International Liability For Damage Caused By Space Objects, Art. 11, March 29, 1972. 24 UST 2389, TIAS 7762.

79. Eastern Greenland Case (Denmark v. Norway), P.C.I.J. Ser. A/B No. 53, 3 Hudson, World Court Report 148; also the Nuclear Test Cases, (New Zealand v. France; Australia v. France).

to be used in the Joint Venture;[80] it does not specify by what mode or method the space object should be launched or which specific space device should be used. Under the definitional terms of both the Liability and Registration Conventions, the space shuttle qualifies as a space object.[81] A space object includes its component parts and launch vehicle.[82] The fact that the space shuttle has the capacity to leave the ground, re-enter the earth atmosphere and land as an aircraft does not deprive it of its status as a space object;[83] nor does this render it both an aircraft and a spacecraft, its real work being to explore and use space.[84]

2. The Bilateral Agreement Does Not Specify the Use of Any Paricular Space Object or Launching Vehicle in the Joint Venture Operations.

As the Bilateral Agreement does not stipulate any particular space object to be used and as the space shuttle is a space object, its use is permissible. The fact that Federation had originally informed PAU that it would be using earth based pads, in no way forbits it from using the space shuttle as there was no binding commitment created by the statement;[85] nor is there any assertion that PAU was motivated

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80. Bilateral Treaty, Art. II.

81. Liability Convention, Art. I(d); Registration Convention, Art.I(b).

82. Ibid.

83. Rod Margo, "Some Aspects of Insuring Satellites" 681 INSURANCE L. J. 555, 561-62 (1979). See also G.P. MOSSINGHOFF AND G.P. SLOUP' "Legal Issues Inherent in Space Shuttles Operations" G.J. SPACE L. 65-6 (1978). See also Polpen Shipping Co. v. Commercial Union Assurance Co., 74 Lloyds List Rep. 157 (1942).

84. METTE, Supra Note 7, at 82.

85. See Nuclear Test Cases (New Zealand v. France; Australia v. France) and Eastern Greenland Case (Denmark v. Norway).

thereby to use earth based pads or that any damage resulted from Federation's use of the space shuttle.

The shuttle is a more economical, more spacious and more convertible space launching device than the earth based pad. Moreover, it is capable of being re-used and as such seems to present a lesser damage risk to space and the earth. There is nothing in the Bilateral Treaty which forbids one of the parties using a more cost saving, less risky space device for launching its space object. In addition PAU has clearly acquiesced in its use.

VI. PAU IS FULLY RESPONSIBLE AND LIABLE UNDER INTERNATIONAL LAW FOR THE DAMAGE SUSTAINED BY FEDERATION AND ITS NATIONALS OCCASIONED BY PAU'S FALLING SPACE OBJECT IN FEDERATION'S TERRITORY.

A. TREATIES TO WHICH FEDERATION AND PAU HAVE SUBSCRIBED AND GENERAL PRINCIPLES OF CUSTOMARY INTERNATIONAL LAW IMPUTE LIABILITY TO THE LAUNCHING STATE FOR DAMAGE CAUSED BY ITS SPACE OBJECT.

1. PAU's Ownership and Launching of the Space Object Renders It Strictly Liable for the Damage Caused.

The Liability Convention, to which both Federation and PAU are parties, provides that a launching state shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft in flight.[86] The same is true relative to the Outer Space Treaty,[87] and The Declaration of Legal Principles Govening the Activities of State in the exploration and use of outer space.[88] No proof of negligence is required other than that the space object caused the damage.

86. Liability Convention, Art. II.

87. Outer Space Treaty, Art. VII.

88. UNGA 1962 (XVIII), Dec. 13, 1963, par. 8.

The liability concept is not a new one. In the Wharrow Factory case, the Court held that it was a principle of international law that any breach of an engagement involves an obligation to make reparation.[89] Simarly, the Warsaw and Rome Conventions recognize as an international principle that whoever owns, manufactures or controls objects which are intrinsically dangerous is liable for damages caused by that object;[90] and international scholars attest thereto.[91]

PAU, as the sole owner and launching state of the space object, is thus rendered liable for the damage occasioned by Federation.

2. PAU Exercised Complete Control Over its Space Object.

The facts of the case are not in dispute. PAU was not just the mere launching state of the space object. It exercised complete control over the space object. All experiments and other performances in the space object were conducted by PAU. In addition PAU had undertaken, under the terms of the Bilateral Treaty, to provide a competent engineer to supervise the coupling and decoupling activities of the space objects. As the space object was under its exclusive control, PAU must assume the full responsibility for the damages caused by the object, especially as there is no evidence that the damage was due to any act or omission of gross negligence by Federation or UTS.

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89. Warrow Factory Case (1928) P.C.I.J. Ser. A, No. 17.

90. WARSAW CONVENTION
ROME CONVENTION

91. See MCDOUGAL, LASSWELL AND VLASIC, LAW AND PUBLIC ORDER IN SPACE 615 - 16 (1963).

B. FEDERATION'S FIRING OF AN ANTI-SATELLITE INTERCEPTER DEVICE IS SANCTIONED IN INTERNATIONAL LAW AND IN NO WAY RELIEVES PAU OF ITS ABSOLUTE LIABILITY FOR THE DAMAGE CAUSED BY ITS SPACE OBJECT.

1. Federation was Internationally Vested with Every Right to the Use of an Intercepting Device Against PAU s Falling Space Object.

A basic prudential consideration in all interstate relationship is national self preservation - the right of a sovereign state to defend itself against external damages.[92] Whether the damages be within or without the territory of the state is not of essence. In the words of U.S. Chief Justice Marshall:

> "A nation's power to secure itself from injury could be exercised beyond the limits of its territory... The authority of a nation within its own territory is absolute and exclusive but the power to secure itself from injury may certainly be exersised beyond the limits of its territory."[93]

This position finds general universal support. Thus, Hamilton DeSaussure writes:

> "Whenever a state's space object begins to threaten the earth because of a marcescent orbit and that state lacks the capacity to remove the threat, it is too great a peril to deny to another state the right to take safeguarding measures."[94]

A Satellite which begins to fall from orbit may be compared to the shipwrecked or derelict vessel on the high sea, abandoned by those in charge without hope of recovering it or returning to it.[95]

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92. The Caroline Case In 2 MOORE, DIGEST OF INTERNATIONAL LAW 412

93. Church v. Hubbart Z., 2 Cranch 187 (1804).

94. DeSaussure, Supra, Note 71.

95. COLOMBOS, THE INTERNATIONAL LAW OF THE SEA (6th ed. 1976) p. 310.

The prevention of its entry into atmospheric space is not only a humanitarian mission benefiting all mankind, but an obligation for the state directly threatened by such space object; and it is the prerogative of that state to decide whether the circumstances require an instant and overwhelming necessity for self-defense.[96]

In such an instance where serious harm is imminent, the jurisdiction and control which the Outer Space Treaty, the Rescue Treaty, the Liability Treaty and the Registration Convention vest in the state of Registry, are no longer thereby applicable.[97]

In the case at bar severe faults had developed in the PAU space object. The head of the space object decided to abandon it, and so did, along with its crew. All hope for control was thus given up. Indeed, PAU's own director of the Flight control stated that he could say with only a degree of certainty "that PAU could have gained full control over the space object." Under such circumstances and in the face of an obvious inability on the part of PAU's ground stations to gain control of the space object, Federation was under no international obligation to stand by and watch its destruction by the nuclear space object. The firing of the anti-satellite interceptor device in no way relieved PAU of the liability for its space activities.

Nor is PAU relieved from such payment to Federation's nationals killed in the airplane merely because they did not have their seat belts fastened at the time as requested. There is no evidence that the emergency had been triggered by any knowledge of the space object's approach or that there were acts or omissions of total or partial

96. 2 MOORE, Supra, Note 92, at p. 412.

97. Burt, "New Killer Satellites Make Sky War Possible," NEW YORK TIMES, June 11, 1978; see also Akron Beacon Journal "Satellites Expected to Do Battle," in Akron Beacon Journal, at A-12, Col. 1, (Sept. 10, 1978).

gross negligence done with intent to cause damage on the part of Federation or its nationals.

International Law and the Principles of Justice and equity would thus require that PAU make full adequate and effective reparation of the damage done as well restore the persons, natural and juridical, to the original positions.

VII. THE PASSAGE OF FEDERATIONS SPACE OBJECT AT POINTS LESS THAN 110 KILOMETERS ABOVE PAU'S TERRITORY WITHOUT ITS PRIOR CONSENT WAS NOT A VIOLATION OF INTERNATIONAL LAW.

A. THERE IS NO PRINCIPLE OF INTERNATIONAL LAW PROHIBITING THE PASSaGE OF SPACE OBJECTS AT POINTS LOWER THAN 110 KILOMETERS ABOVE A STATE'S TERRITORY.

As mentioned earlier, outer space is res communis, res omnium communis, res nullius, and, like the high seas, res extra commercium; hence incapable of being owned by any nation.[98] And although international law does not define the extent of a nation's airspace,[99] there has been no acceptance of PAU's proclaimed 110 km limits. Contrarily, states have flown and continue to fly space objects at such height without substantial objections.

Moreover, the Geneva Convention on Innocent Passage[100] states that the passage, as in the instant case, is innocent so long as it is not prejudicial to peace, good order or the security of the state. Federation space object breached none of these requirements in passing at points less then 110 kilometers.

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98. SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 111 (1960).

99. JOHN COBB COOPER, "Air Law - A Field For International Thinking" In EXPLORATIONS IN AEROSPACE LAW (ed. IVAN A. VLASIC, 1968) p.7-8.

100. CONVENTION ON THE TERRITORIAL SEA and THE CONTIGUOUS ZONE, Art. 14(4) Geneva 1958, 56 U.N.T.S. 205, TIAS No. 5639; BISHOP, INTERNATIONAL LAW CASES AND MATERIALS (3rd ed. 1971). p. 616.

CONCLUSION

WHEREFORE, in view of the legal and factual reasons set forth in the foregoing pages, Respondent most respectfully prays that the International Court of Justice will render judgment in favour of the Federation of Celestial States, finding that:

1. That the requirements of the Registration Convention are not mandatory and Federation's failure to satisfy them is not a violation of international law. Moreover, the basic intention of the Convention have been basically complied with, her space activities cannot be questioned.

2. That Federation violated no treaty obligations or principles of international law by placing a space object in geostationary orbit and collecting data on the weather condition and resources of PAU without the consent of the latter, there being no international prohibitions relative to such activities.

3. That Direct Satellite Broadcast is a legitimate use of outer space permissible under the Outer Space Treaty and international law, and hance Federation's broadcasts to receivers in PAU without the prior consent of the latter did not violate international law.

4. That PAU violated its Treaty obligations and international law in conducting nuclear tests in outer space.

5. That the use of the space shuttle by Federation and the passage of Federation's space object at points lower than 110 kilometers were not in violation of international law.

6. That PAU is liable in damages for the injury sustained by Federation and its nationals occasioned by the falling of PAU's space object into Federation's territory; and that the firing of an anti-satellite device at the space object, being a legitimate act of self-defense, did not relieve PAU of such liability.

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C E R T I T I C A T E

We certify that, by our count, this memorial contains no more than 25 pages.

Respectfully submitted,

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