THE 1980 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

PEOPLES ASTRAL UNION

V.

FEDERATION OF CELESTIAL STATES

THE PROBLEM

The Government of the PEOPLE'S ASTRAL UNION and the Government of the FEDERATION OF CELESTIAL STATES have submitted the following controversy for resolution by the International Court of Justice.

The Applicant is the PEOPLE'S ASTRAL UNION and the Respondent is the FEDERATION OF CELESTIAL STATES.

The parties have stipulated that the information in the Statement of Facts is true. The memorials to be prepared need not include a Statement of Facts, although the participants may do so if they wish.

On February 15, 1980 the International Court of Justice entered a preliminary order disposing of all jurisdictional questions sua sponte.

This is a hypothetical problem drafted exclusively for the purposes of the 1980 Jessup Competition.

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JESSUP 1980

GENERAL SETTING OF THE PROBLEM

Two space powers, the FEDERATION OF CELESTIAL STATES (FEDERATION) and the PEOPLES ASTRAL UNION (PAU), entered into an agreement on May 1, 1979, to couple their space objects in outer space, and to operate the coupled space objects as a space laboratory, devoted to peaceful purposes. A copy of the agreement between FEDERATION and PAU is appended.

The United Nations General Assembly, on December 13, 1979, adopted a resolution declaring that the outer space activities of all member States of the United Nations shall be in accordance with the fundamental principles of law, in particular with the principle that outer space is the province of mankind and the celestial bodies are a part of the common heritage of mankind, and their exploration and use shall be for the benefit of all mankind.

In the discussion in the General Assembly with respect to this resolution, numerous States noted that the fundamental principles, noted above, have been "adopted" in the draft Treaty on the Moon, and in the draft text (Rev.1), called the Informal Composite Negotiating Text, being developed in the Law of the Sea Conference.

The Resolution called upon the Secretary General of the United Nations to monitor compliance, and declared that any non-compliance practice would, prima facie, constitute an "act of aggression" that the Secretary-General might refer to the Security Council for prompt and appropriate action under Chapter VII of the United Nations Charter. The resolution was adopted without negative vote by the General Assembly, with abstentions coming from FEDERATION, PAU, and two other nations.

FEDERATION and PAU successfully launched and established their joint research venture. The FEDERATION research is partially supported with money, personnel and equipment, provided by United Technical Services, Inc. (UTS). UTS is a large multi-national corporation, domiciled in FEDERATION, but with its principal space research facilities and personnel located in ORBITAL, a state that shares a common boundary with FEDERATION.

FEDERATION has not satisfied the requirements of the Convention on the Registration of Objects Launched into Outer Space, and has not, in the past notified the Secretary-General of its launchings. FEDERATION announces its launches in the press, but has no formal procedure for United Nations notification. PAU has satisfied the registration convention requirements in full. FEDERATION uses a space shuttle for the purposes of launching its space module. FEDERATION had notified PAU it would be launching from earth-based

pads, but at the time of launching used the shuttle. PAU has used earth-based pads for launching.

The space laboratory was equipped to launch while in orbit space objects designed to conduct scientific experiments. Each of these were to be conducted, pursuant to the agreement between FEDERATION and PAU, on a joint arrangement, with personnel from both states participating, and with the scientific knowledge obtained to be available to both States and for the public domain.

Without the knowledge of PAU, FEDERATION designed a space object with performance capabilities that were not revealed to PAU. This object, its activities and the data collected by it could not be monitored by the jointly operated equipment aboard the space laboratory. This object was placed in geostationary orbit - again without the knowledge of PAU - and once in operation collected data relating to the resources and weather from the territory of PAU.

The data collected by the FEDERATION object enabled FEDERATION to monitor, among other things, the wheat crop in PAU, and to learn that a wheat virus and other adverse crop conditions would mean a major crop failure for PAU. FEDERATION was able to buy wheat and provide its own at preferred prices on the world market, timing its own purchases, sales and resales, to profit, while contributing to inflation in PAU.

During the spaceflight, UTS personnel, aboard the FEDERATION space object, operated a multi-spectral scanner, originally intended, under the joint agreement, to be used jointly for asteroid scanning. The FEDERATION team used it to collect data regarding surface features and resources of PAU, ORBITAL, FEDERATION and other States at a very high rate of resolution, varying between 10 and 50 meter resolution, and to test the scanner generally. The data relating to the scanner's tests were not revealed to PAU, and that data relating to the earth was telecommunicated to FEDERATION receiver stations. There it was processed and openly disseminated at cost to all purchasers, but without the consent of or notice to any of the sensed States. FEDERATION data were included. Members of the FEDERATION team also photographed the territories of PAU and ORBITAL during these orbits.

Among the purchasers of the data were business directors of large multinational corporations domiciled in PAU, including agricultural businesses and mining companies, some of which were intending to engage in deep sea bed mining as soon as the data were processed. Military leaders of PAU and ORBITAL have complained to their governments however concerning the possible espionage that they allege occured with regard to military facilities and installations on the territories of these two States. However, the business directors of these two States insisted on free and continuing access to the data of interest to them.

In addition, the FEDERATION space object placed in geostationary orbit was designed to transmit, and soon transmitted direct broadcasts, including television broadcasts, to receivers in PAU. By a separate, unpublished agreement, FEDERATION assigned this space object to UTS "in partial compensation for UTS supplying personnel, funds, and equipment for the space laboratory." PAU had declared in the United Nations General Assembly, and in diplomatic conferences seeking to establish international regulations of remote sensing of resources and direct television broadcast satellites, that such activities would be unlawful, unless prior consent were obtained of the state concerned. They also had declared that under general international law and the "fundamental principle" of sovereignty extending over resources would be treated pursuant to their own laws.

PAU in an experiment known to FEDERATION launched from the space laboratory a space object with nuclear fissionable material aboard. This nuclear material was furnished for two reasons: some was used to supply power to the space object and enable it to move or change orbits and trajectories on command, and, in particular to conduct reconnaissance activities by approaching and moving around the space laboratory; secondly, some of the material was provided for peaceful nuclear tests in outer space, conducted by PAU. With respect to the nuclear tests, PAU had claimed in its literature, extending over a decade, that further exploitation of outer space "for the benefit of mankind" would be impossible unless such tests could be conducted. FEDERATION objected to these tests because it believed they were "inconsistent with international law", but PAU insisted that they were among those to be included among the "discretionary tests", allowed under their joint venture agreement, and not subject to FEDERATION "veto."

PAU carried out in earth orbit two nuclear tests, which served to change its orbit. The nuclear tests also produced data some of which was useful for weapons design. These data were not provided to FEDERATION. Control of this space object was lost during the attempt to test "reconnaissance" of the space laboratory, because the nuclear equipped object collided with the space laboratory, causing the PAU object to lose orbital velocity and then to crash in the territory of FEDERATION. The accident did not adversely affect the orbital operation capabilities of the space laboratory.

Pieces of the object scattered over a 300 square mile area of FEDERATION causing severe damage to farms, rural industrial property, and a nuclear power plant. Associated with the crash was a radioactive cloud of debris. Unique weather conditions, leading to an inversion over several communities of FEDERATION, caused the debris to be present over a two week period. Over 10,000 people were exposed to 1000 millirem from the nuclear radiation.

At the time the accident occurred, PAU first claimed that the nuclear risks were very low because there was "almost no nuclear material left," and also because the "object had a self-destruct mechanism", designed by UTS, that had been activated to prevent such risks. The PAU self-destruct mechanism was a nuclear explosive device, but it proved to be inoperable. FEDERATION public officials relying upon PAU's declaration, did not take prompt measures to protect its public.

The space laboratory had been coupled with coupling devices provided by UTS under FEDERATION specifications pursuant to the Treaty between the Parties. The actual coupling and decoupling process of the space modules of FEDERATION and PAU was under procedures established by PAU and the on board supervision of a PAU engineer.

The coupling device, while workable during coupling, developed internal defects and failed to perform effectively during the decoupling in preparation for the separate landing of the two space objects. This was important because it was intended to have personnel aboard both space objects to ensure safe landing, and the decoupling failure could lead to a risky landing on the part of both or one of the space objects.

An attempt to rectify the decoupling failure by the PAU engineer failed because the directions that he was required to follow were so inadequate that they proved unworkable in practice. Notwithstanding the defective device, the decoupling, according to UTS engineers, could have been made to operate correctly through customary engineering procedures. PAU engineers disagreed. As a safety precaution, personnel aboard the PAU object were transferred to the FEDERATION space object. Disengagement of the two space objects was then effected. The PAU space object proceeded separately to earth with no personnel aboard.

Immediately aware of this situation, the FEDERATION flight control center ordered an anti-satellite intercepter device to be fired at the PAU space object, without giving notice, or seeking the consent of PAU, because it "appeared that it would fall upon FEDERATION territory causing serious damage and loss of life." The attempt to destroy the PAU space object was not fully successful The main part of the PAU space object continued along the descent flight path without change. A part of the PAU space object was shattered, but a second portion separated from the space object and took a different descent path.

PAU's flight control center failed at the point of decoupling to maintain separate control over the PAU space object. It continued to seek control up to the point where the antisatellite intercepter was fired, and the director of the flight control center declared that based on his experience and prior launchings

"he could say with a degree of certainty" that PAU could have gained full control over the PAU space object, bringing it to land in PAU territory, but his efforts to gain control were cut off when the space object was damaged by the antisatellite interceptor firing.

With respect to the two remaining portions of the PAU space object, the following occurred. The first portion of the space object was forced from the planned descent path, struck and damaged an earth launched space object of FEDERATION, launched during the space laboratory orbits, and then crashed out of control upon a shopping center of FEDERATION, causing severe damage to the buildings, injury and loss of life.

The second large fragment that was broken from the PAU space object by the intercepter caused a commercial airliner of FEDERATION to crash in FEDERATION territory. Its passengers included the ambassador of PAU and his military attache, intending to debark for the ambassador's assignment at ORBITAL along with their immediate families, and several employees to work at the embassy of PAU in ORBITAL. All of those persons, and others, amounting to forty in all, died, and sixty passengers on the airliner suffered injuries of varying degrees of severity. The dead and injured included citizens of PAU and FEDERATION. FEDERATION required by its law that all passengers have their seat belts fastened during emergency, and though an emergency was declared, all those passengers who were killed failed to fasten their seat belts, while all of the survivors had had their seat belts fastened.

The FEDERATION space object while landing passed through space at points less than 110 kilometers above PAU's territory. PAU had previously declared that while it recognized space above 110 kilometers to be outer space, it would remain subject to the "prevailing practice under international law" with respect to where outer space begins. While FEDERATION did not have complete control over the descent paths of its space object, it had sufficient control to avoid crossing at points less than 110 kilometers above PAU's territory should it have so desired, and in its Treaty (appended) had agreed to avoid crossing PAU air space unless subjected to emergency conditions depriving it of such control. No emergency conditions were established.

CLAIMS

PAU and FEDERATION have submitted their claims to the International Court of Justice, and have not qualified the jurisdiction or competence of that Court. They both expect that the determination of the International Court shall be final and binding upon both sides. They both agree in particular that the Court may where appropriate decide the issues ex aequo et bono, pursuant to Paragraph 2 of Article 38 of the Statute of the International Court of Justice. All other affected states have agreed with

FEDERATION and PAU to submit their particular disputes to arbitration and to allow FEDERATION and PAU to submit their particular disputes to the International Court of Justice. FEDERATION has assumed responsibility and representation of UTS.

Both PAU and FEDERATION have agreed that the issues that are raised include but are not limited to the following:

1. Whether PAU or FEDERATION have violated any treaty obligations they might have had, including its treaty of May 1, 1979?

2. Whether FEDERATION violated international law in regard to direct broacasting, remote sensing, or airspace sovereignty?

3. Whether PAU violated international law by its nuclear tests and decoupling activities?

4. To resolve liability claims that have arisen as a result of the activities of FEDERATION and PAU.

Both sides are claiming appropriate relief in damages, and such other relief as the Court may direct. Both sides seek declaratory judgment with respect to the issues, as appropriate, to guide their future activities and to clarify the international law with respect to their activities.

PENDIX A

E FOLLOWING IS A LIST OF TREATIES THAT BOTH PAU AND FEDERATION ARE A PARTY TO, AND UNITED NATIONS RESOLUTION'S VOTED FOR BY BOTH PARTIES

1. United Nations Charter

2. Statute of the ICJ

3. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, January 27, 1967. 18 UST 2410, TIAS 6347, 610 UNTS 205.

4. Convention on International Liability for Damage Caused by Space Objects. March 29, 1972. 24 UST 2389, TIAS 7762.

5. Convention on Registration of Objects Launched into Outer Space, Jan. 14, 1975, TIAS No. 8480.

6. 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.

7. Moon Treaty, agreed to by U.N. Committee on Peaceful Uses of Outer Space on July 3, 1979, No. A/AC. 105/113. (In Force and Ratified by Both Parties).

8. 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.

9. The International Telecommunication Convention. TIAS 4892, 12 UST 176 and Radio Regulations Annexed thereto (TIAS 4893, 12 UST 2377) - Geneva, December 21, 1959 (and as amended).

10. Vienna Convention on the Law of Treaties, U.N. Conf.Doc. A/Conf. 39/27 May 23, 1969; 8 Int'l L. Mat. 679-727.

11. Convention on International Civil Aviation, December 7, 1944, TIAS 1591, 3 Bevans 944, 15 UNTS 295.

12. International Declaration of Human Rights (Article 19). UN GAOR 3rd Sess. (L), Res. (A/810) at 71 (1948); 43 AM. J. Int'l L. Supp. 127 (1949).

13. Conference on Security and Co-operation in Europe: FINAL ACT (Helsinki Accords) Volume 14 Int'l Legal Materials 1292, Sept. 1975.

14. United Nations General Assembly Resolution 1721 (XVI) of Dec. 20, 1961, on the Peaceful Uses of Outer Space.

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

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

United Nations Resolution of the General Assembly 1963 (XVIII) dated Dec. 13, 1963, on International Cooperation in the Peaceful Uses of Outer Space.

United Nations Resolution of the General Assembly 2345 (XXII) dated Dec. 3, 1968.

15. 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).

16. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, 7 U.N. Monthly Chronicle 62-68 (1970).

17. The Treaty Between the Parties, May 1, 1979.

18. Declaration of the United Nations Conference on the Human Environment, July 3, 1972, U.N. General Assembly A/Conf. 48/14 (The Stockholm Principles).

APPENDIX B

TREATY

Between FEDERATION OF CELESTIAL STATES AND PEOPLES ASTRAL UNION, concerning the Launching, Operation, and Joint Experiments of a Space Laboratory, dated May 1, 1979.

The Federation of Celestial States and the Peoples Astral Union, the Parties hereto,

Striving for cooperation in the exploration and use of outer space for peaceful purposes and for the benefit of mankind.

Desiring to make the results of their scientific research, gained from the exploration and use of outer space for peaceful purposes available for the benefit of the peoples of their two countries and of all peoples of the world.

Taking into consideration the application of all provisions of all treaties, agreements, understandings and resolutions with respect to activities in outer space, of the United Nations Charter, and of general international law.

AGREE AS FOLLOWS

ARTICLE I

PURPOSE

The Parties will develop, pursuant to this Agreement, co-operation in the fields of space meteorology; study of the natural environment; exploration of near earth space, and will cooperate on joint experiments to these ends, or to such ends as may benefit all mankind.

ARTICLE II

PROGRAM DESCRIPTION AND RESPONSIBILITIES

The Parties, on or about January 1, 1980, will launch their two separate space objects, to be launched from their respective territories, and to be coupled in outer space for experimental purposes, and decoupled, while in outer space for their descent and return to earth, as hereinafter provided.

- Each Party may assign to the space laboratory no less than eight and no more than ten persons, who may be citizens of the Party or of other States, members of the United Nations. Such personnel may be assigned from military research laboratories, but all work, tests, tasks and experiments undertaken on the space laboratory shall be exclusively devoted to peaceful purposes:

- Each Party shall be fully responsible for the design, performance, launching, and operation of its own space object.

- Each Party shall be responsible for its own personnel. However, PAU shall include in its complement an engineer

fully familiar with the coupling and decoupling apparatus of the space objects, and this apparatus shall be supplied by FEDERATION as indicated in Article IV. FEDERATION shall include a include a competent and experienced physician, or a competent and experienced paramedic.

ARTICLE III

ASSUMPTION OF RISK AND RISK AVOIDANCE

1. The Parties undertake this joint venture with full cognizance of the risks, dangers, and potential harm from mishaps and the circumstances associated with activities in outer space, and agree to take all possible measures to prevent and avoid harmful effects that might arise from their joint activities.

2. The Parties assume jointly and severally full responsibility and fulfillment of all obligations with respect to the activities contemplated by this Treaty, conforming to the fullest extent possible with the standards imposed under international law and under the provisions of this Treaty and Paragraph I of this Article.

3. The Parties agree to consult and exchange information and provide each other with prompt notice of any circumstances of which either is aware relating to risks, dangers and potential harm, and to consider and undertake such measures as they may jointly agree will moderate or avoid them.

4. The Parties agree that they will not launch any earth based space objects until after the space laboratory has returned, in order to ensure the safety and success of the mission.

5. The Parties will encourage international efforts to resolve problems of international law in the exploration and use of outer space for peaceful purposes with the aim of strengthening the legal order in space, and in territorial air space. With the expectation of serving the cause of international cooperation in outer space, and further developing international law, the Parties will cooperate in this joint undertaking.

ARTICLE IV

SPACE FLIGHT OPERATIONS

All operations with respect to coupling and decoupling the space object of the two Parties shall be conducted as follows:

- Equipment for these purposes shall be supplied in accordanc with specifications established by FEDERATION and such equipment shall be tested and determined to be in full and certain working order by FEDERATION prior to its installation.

- All coupling and decoupling procedures and activities shall be under the sole direction and control of PAU and the designated PAU engineer shall be in charge of all such activities.

- The launching, landing and recovery of each Party's space module shall be under the exclusive control and direction of the Party that owns it, and under the direction of that Party's space control center.

ARTICLE V

REGISTRATION

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.

ARTICLE VI

SCIENTIFIC & EXPERIMENTAL PROGRAM

All experiments, tests and scientific work undertaken in this joint venture shall be conducted as follows:

- Each experiment shall be conducted and monitored as the head of the space teams of each Party aboard the space laboratory agree, such experiment then to be conducted jointly, or separately pursuant to that understanding.

- The specific object or purpose of any experiment contemplated by either Party shall be at the discretion of the Party proposing it, but all experiments and tests shall conform to the requirements or obligations imposed under this Treaty.

- The results and detailed explanation of the conduct of each test or experiment shall be available to both Parties, and made available, in general, in conformance with applicable international law to all interested member States of the United Nations or their citizens.

- The equipment to be placed aboard the space laboratory intended to be used solely as a multi-spectral scanner shall be supplied by PAU and belong to PAU, and shall be used, in particular, for asteroid scanning.

ARTICLE VII

CONSULTATION

Each Party prior to taking any action or engaging in any experiment not fully covered by the provisions of this agreement shall consult with the other to ensure that the provisions of this Treaty are met in full. Such consultation shall be in a spirit of cooperation.and shall take place, as required, between the directors of the teams aboard the Space Laboratory or in the

space centers on earth. Such consultation may by mutual agreement determine other areas of cooperation and use of outer space for peaceful purposes, or experiments, in general, that may be pursued.

ARTICLE VIII

INDEMNIFICATION

Each Party shall indemnify the other Party for all expenses, costs or charges of any kind, and save the other Party harmless for any claims arising out of the negligence or misconduct of its personnel.

ARTICLE IX

APPLICABLE LAW

1. The Parties undertake, consistent with their constitutional practices, to enact and apply all law and regulations necessary to fulfill their obligations and responsibilities, and those of their personnel, under this agreement, and to ensure that all persons under their jurisdiction or control, are subject to such requirements.

2. The Parties further agree to enter into such agreements with other States that may be interested in the result of this joint effort to ensure that these States will meet such requirements of this Treaty as may be applicable, but that may call for such separate agreements.

ARTICLE X

RESOLUTION OF DISPUTES

This Treaty shall be governed by the Charter of the United Nations, general international law, and the treaties to which the tw Parties are signatories. Where disputes or disagreements arise, the Parties shall also have recourse to the objectives and purposes of the United Nations Charter, and to the preambles of the outer space treaties, and of this Treaty for resolving uncertainties or ambiguities in the interpretation or application of this Agreement.

ARTICLE XI

REGISTRATION

The Treaty shall be registered with the United Nations Secretary General pursuant to Section 102 of the United Nations Charter.

ARTICLE XII

ENTRY INTO FORCE AND DURATION

This Treaty shall enter into force upon signature pursuant to the constitutional practices of each party and shall remain

in force for the term of the space flight of the space laboratory and for five years thereafter. It may be modified or extended by mutural agreement of the Parties. No reservations shall be taken to any provision in the Treaty.

(Signed this 1st Day of May 1979 by

FEDERATION OF CELESTIAL STATES

and PEOPLES ASTRAL UNION

BIBLIOGRAPHY:

Suggestions for the 1980 Jessup Problem

See Appendix A of the Jessup Problem for cites to Treaties and U.N. Resolutions.

There are a variety of sources in the space law field. Journals are a good source for up to date developments. There are numerous international law journals, some of which are exclusively space oriented.

For a complete bibliography on space law material see Worldwide Space Law Bibliography, Institute and Center of Air and Space Law, McGill University, Canada, 1978.

International Law Yearbooks can be helpful as well as some general books in the area such as:

ANNALS OF AIR AND SPACE LAW, 3 vols. (1976-78), McGill University, Canada.

LAY AND TAUBENFELD, THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE, 1970.

MANUAL ON SPACE LAW, 2 vols. Editors - JASENTULIYANA AND LEE, Oceana Publications, 1979.

C.W. JENKS, SPACE LAW, 1965.

Also see Treatises and Digests:

M. WHITEMAN, DIGEST OF INTERNATIONAL LAW (1970)

J. BRIERLY, THE LAW OF NATIONS (1963)

G. HACKWORTH, DIGEST OF INTERNATIONAL LAW (1948)

H. LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW (1970).