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

THE PEOPLES ASTRAL UNION,

Applicant,

v.

THE FEDERATION OF CELESTIAL STATES

Respondent.

March Term

1980

On Submission to the
International Court of Justice

MEMORIAL FOR THE APPLICANT

Agents for the Peoples Astral Union

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STATEMENT OF JURISDICTION

The Government of the PEOPLES ASTRAL UNION and the Government of the FEDERATION OF CELESTIAL STATES have agreed to submit this dispute to the International Court of Justice under the governing rules of law set forth in Article 38 of the Statute of the International Court of Justice. In particular, the Parties agree 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. Both parties expect that the determination of the International Court of Justice shall be final and binding.

QUESTIONS PRESENTED

I

Whether Federation violated international law by failing to fulfill registration requirements for space objects launched into outer space.

II

Whether Federation violated international law with respect to its unauthorized remote sensing of and direct broadcast into PAU territory.

III

Whether PAU complied with international law in conducting peaceful nuclear tests in outer space.

IV

Whether Federation committed an unjustified act of aggression by firing its anti-satellite interceptor at PAU's space object without notice or consultation.

V

Whether Federation is solely responsible for all harm caused by the failure of its decoupling device to perform effectively in outer space.

VI

Whether Federation violated PAU's airspace sovereignty during the landing of its space object.

SUMMARY OF ARGUMENT

Federation violated international law by failing to perform its treaty obligations in good faith throughout the joint venture. Federation must respect the doctrine of pacta sunt servanda if there is to be a continuing joint effort to explore and utilize outer space for the benefit of all humanity.

Federation's failure to keep a permanent and detailed registry of its space objects violated international law and the May 1 Treaty. Registration by Federation is necessary to the maintenance of legal order in outer space.

Federation violated international law by failing to reach a prior arrangement with PAU before transmitting direct television broadcasts from satellites into PAU territory. Federation interfered with PAU's national sovereignty by conducting broadcasts to PAU home receivers even though PAU objected to such broadcasts. Federation's unilateral, nationalistic activity violated the cooperation requirements of the Telecommunications Treaty and customary international law.

Federation's use of the wheat crop data violated PAU's sovereign right to protect information about its natural resources from being used to the detriment of PAU's domestic economy. Federation's use of this data to unfair economic advantage also violated international law requiring states to promote economic stability.

Federation violated the May 1 Treaty by using the multi-spectral scanner to remotely sense PAU's territory. The Treaty restricted the scanner's use to asteroid scanning. Federation violated Article

III of the May 1 Treaty by failing to reveal data acquired from the scanner's tests before its telecommunication to earth. Federation's sensing of earth surfaces at high rates of resolution threatens PAU's national security and is prohibited by international law. These acts demonstrate Federation's bad faith in respecting principles of cooperation and national sovereignty.

PAU's peaceful nuclear tests in outer space complied with the provisions of the May 1 Treaty and other international law. Such tests were discretionary within the meaning of Article VI of the May 1 Treaty. The peaceful tests also complied with the requirements of the Nuclear Test Ban Treaty and other international agreements.

PAU is prohibited by international law from sharing weapons design data. Recognizing the international desire to limit the spread of armaments, PAU cannot disseminate weapons design data under provisions of the May 1 Treaty, the Nuclear Test Ban Treaty and other treaty obligations.

Federation must save PAU harmless for all claims arising from the crash of the nuclear-equipped space object in Federation territory. The crash could have been avoided but for a defective self-destruct mechanism designed by UTS, whose liability has been assumed by Federation.

Federation should be held strictly liable for the failure of the decoupling device. Expressly stated in the May 1 Treaty was Federation's obligation to supply a decoupling device in full and certain working order. By providing a defective device, Federation is liable for all damage caused by the decoupling device.

Federation's firing of the anti-satellite interceptor at PAU's space object constituted an unjustified act of aggression. Federation's failure to consult or notify PAU violated Article VII of the May 1 Treaty and other international law.

PAU is not liable for any damage caused by fragments of its shattered space object to Federation's shopping center, airliner, or citizens. PAU has established that the damage resulted wholly from Federation's gross negligence or acts done with intent to cause damage. This exonerates PAU from absolute liability under the Liability Convention. Since all crashes arose from Federation's negligence and misconduct, total liability rests with Federation.

Federation must indemnify PAU for claims by PAU citizens for injury and property loss on board the airliner since the collision was caused by the negligence and misconduct of Federation.

Federation violated PAU airspace sovereignty by passing over PAU's territory at less than 110 kilometers without good cause.

I. RELIEF PRAYED FOR BY THE PEOPLES ASTRAL UNION

A. INTERIM MEASURES

To ensure protection of the Peoples Astral Union's¹ economic and security interests, Applicant prays the Court, pursuant to its power of interim protection,² to order the Federation of Celestial States³ to discontinue its remote sensing of and direct broadcasting into PAU's territory.

B. FINAL DETERMINATIONS AND REMEDIES

As a basis for continued cooperation, in accordance with the Statute of the Court,⁴ PAU prays the Court to declare that:

(1) Federation has not registered its space objects as required by international law.

(2) Federation violated international law by broadcasting directly to PAU receivers without PAU's prior consent.

(3) Federation's use of information on PAU's wheat crop, violated international law.

(4) Federation's use of PAU's multi-spectral scanner for remote sensing violated the May 1 Treaty and international law.

(5) Federation is responsible for the decoupling failure and is liable for resulting harm to PAU persons and property.

(6) The firing of the anti-satellite interceptor was an act of aggression in violation of international law.

(7) PAU's peaceful nuclear tests in outer space conformed with the requirements of the May 1 Treaty and international law.

1. Hereinafter referred to as PAU or Applicant.

2. I.C.J. Stat., Art. 41.

3. Hereinafter referred to as FEDERATION or respondent.

4. I.C.J. Stat., Art. 36, 42.

(8) Federation violated the May 1 Treaty by passing through PAU's airspace at less than 110 kilometers above PAU territory.

(9) Federation is responsible for all damage caused by space objects to persons and property on earth and in the air.

In conjunction with such declaratory relief, PAU prays the Court to order Federation to discontinue its unauthorized remote sensing of and direct broadcasting into PAU's territory, and future intrusions into PAU's airspace. Prior cases have recognized injunctions as an appropriate remedy.⁵

Additionally, PAU respectfully requests reparation for the anti-satellite interceptor destruction of its space object, for the inflation caused by Federation's remote sensing activities, and for the wrongful deaths of PAU citizens in the airliner crash. To make PAU whole again,⁶ full monetary recovery is necessary due to the serious harm caused by the illegal activities of Federation.

II. FEDERATION VIOLATED INTERNATIONAL LAW REGARDING REGISTRATION OF SPACE OBJECTS

A. THE RECORD STATES THAT FEDERATION VIOLATED THE CONVENTION ON THE REGISTRATION OF OBJECTS LAUNCHED INTO OUTER SPACE

Registration by Federation is necessary to the maintenance of legal order in outer space.⁸ Its failure to satisfy the requirements of the Registration Convention undermines the purposes of the

5. See Anglo-Iranian Oil Co. Case (Interim Measures of Protection) (U.K. v. Iran) (1951) P.C.I.J. sec. A, No. 17.

6. Charzow Factory (Indemnity) Case (1928) P.C.I.J. sec. A, No. 17; Convention on International Liability for Damage Caused by Space Objects, 29 March 1972, 24 U.S.T. 2389, T.I.A.S. 7762, Art. XII.

7. 1980 Jessup International Moot Court Competition Problem, Statement of Facts, p. 1 [hereinafter cited as Facts]..

8. N. MATTE, AEROSPACE LAW 175 (1977); see also O. OGUNBANWO, INTERNATIONAL LAW AND OUTER SPACE ACTIVITIES 157 (1975).

Convention⁹ and the United Nations Charter.¹⁰ This failure also constitutes a violation of Article V of the May 1 Treaty.¹¹

B. FEDERATION EXHIBITED BAD FAITH IN FAILING TO FULFILL ITS TREATY OBLIGATIONS

Under the doctrine of pacta sunt servanda Federation is bound to perform its treaty obligations in good faith.¹² Federation's press announcements are not a good faith fulfillment of the Registration Convention's requirement of a permanent and detailed registry.¹³ Federation's failure to meet requirements, its failure to use the same type of launch as that announced,¹⁴ and the nondisclosure of its space objects' general function¹⁵ demonstrate Federation's bad faith in upholding international obligations.

Federation violated the Telecommunication Treaty¹⁶ by failing to register the assignment of the geostationary object to UTS with the International Telecommunications Union. Contrary to this obligation, the assignment was consummated in a "separate, unpublished agreement,"¹⁷ further demonstrating Federation's bad faith respect-

9. Convention on the Registration of Objects Launched into Outer Space, 14 January 1975, 28 U.S.T. 697, T.I.A.S. 8480, Art. IV(i)(e) [hereinafter cited as Registration Convention].
10. U.N. Charter, 24 October 1945, Art. 1.
11. TREATY BETWEEN FEDERATION OF CELESTIAL STATES AND PEOPLES ASTRAL UNION, Concerning the Launching, Operation, and Joint Experiments of a Space Laboratory, 1 May 1979, Art. V [hereinafter cited as May 1 Treaty].
12. Vienna Convention on the Law of Treaties, 23 May 1969, U.N. Conf. Doc. Al Conf. 39/27; 8 INT'L L. MAT. 679-727, Art. 26. [Hereinafter cited as Vienna Convention.]; see also W. BISHOP, JR., INTERNATIONAL LAW 141 (3rd ed. 1971).
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16. International Telecommunications Convention, Geneva, 21 December 1959, 12 U.S.T. 176, T.I.A.S. 4892, and Radio Regulations Annexed thereto, 12 U.S.T. 2377, T.I.A.S. 4893, Art. 4(2)(2), Art. 10(k)(1), Art. 12(1)(a) [hereinafter cited as Telecommunication Treaty].
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ing its treaty obligations.

III. FEDERATION'S DIRECT BROADCASTING AND REMOTE SENSING ACTIVITIES VIOLATE THE MAY 1 TREATY AND OTHER INTERNATIONAL LAW

A. FEDERATION'S DIRECT TELEVISION BROADCASTING FROM SATELLITES INTO PAU'S TERRITORY VIOLATES INTERNATIONAL LAW

1. Principles of International Cooperation and National Sovereignty Require Federation to Obtain PAU's Prior Consent Before Transmitting Broadcasts

a. Principles of International Cooperation Require Prior Arrangements Between Broadcasting and Receiving States

Article III of the Outer Space Treaty obligates Federation to conduct its use and exploration of outer space in a spirit of international cooperation.¹⁸ To promote international cooperation, Federation's direct broadcasting activities must be based on the principles of consultation, mutual understanding, and friendly relations.¹⁹ Specifically, to avoid frequency interference, all parties must agree to a coordination of the frequency spectrum.²⁰ Consultation is required to prevent transmissions which interfere with PAU's cultural, moral and political integrity. Federation violated its duty to cooperate under the Outer Space Treaty by failing to consult with PAU before transmitting broadcasts into PAU's territory.

b. Federation Violated PAU's National Sovereignty By Transmitting Direct Broadcasts to PAU Receivers Without PAU's Prior Consent

Federation has breached its obligation under Article 2 of the United Nations Charter to refrain from interfering with PAU's sovereign

18. Treaty on the Principles Governing the Activities of States in the Exploration of Outer Space, including the Moon and Other Celestial Bodies; 27 January 1967, 18 U.S.T. 2410, T.I.A.S. 6347, Art. III [hereinafter cited as the Outer Space Treaty].

19. Id., Art. II, Art. IX, Preamble.

20. Gal, Positive and Negative Aspects of the Law of DTB from Space, 16th COLLOQUIUM ON THE LAW OF OUTER SPACE, 71, 72 (1973).

right to control its domestic jurisdiction.²¹ Television broadcasts to home receivers, when controlled by foreign standards, have the potential to affect the development and public order of the receiving State's society.²²

Therefore, the basic right to receive and impart information²³ must be balanced against a nation's sovereign right to set domestic standards for broadcasts received within its borders.²⁴ Even the United States, the most ardent proponent of the free flow of information, recognizes the need to exercise considerable discretionary power in the regulation of public broadcasting through its Federal Communications Commission.²⁵ Federation is thus bound by the United Nations Charter to respect PAU's right to regulate broadcasts and is required to consult with PAU to assure that broadcasts are compatible with PAU's national security interests and domestic standards.

2. Federation's Direct Broadcasting Violates Regulations Established By the International Telecommunications Union²⁶ and Other International Law

21. UN Charter, Art. 2, para. 1 and para. 7; Gal, supra n. 20, at 72.
22. Sarkar, Requirements for Establishing a Broadcasting-Satellite System, id., 85, 87.
23. International Declaration of Human Rights, Art. 19, UN GAOR 3rd session (I), Res. A/810 at 71 (1948); 43 AM. J. INT'L LEGAL SUPP. 127 (1949).
24. Powell, Direct Broadcast Satellites: The Conceptual Convergence of the Free Flow of Information and National Sovereignty, 6 CA. W. INT'L L.J. 1, 13 (1975-76).
25. See 47 USCA 307 (a) (1964) which states that under the Federal Communications Act of 1934 licenses for broadcasting stations are granted by the FCC provided that "the public convenience, interest, or necessity will be served thereby".
26. International Telecommunications Union, [hereinafter cited as ITU], established in 1865, became a UN organization in 1947, and convened in 1961 to adopt the Telecommunication Treaty and annexed Radio Regulations. This Union convenes periodically to consider specific telecommunications questions and to update and amend Radio Regulations. Its main purpose is to allocate broadcasting frequencies and assign specific orbital positions for satellites on an international level.

a. The ITU Has Adopted a Regulatory Allocation System Which if Adhered to Makes Deliberate Broadcast Into Foreign States Technically Impossible²⁷

In 1972 UNESCO²⁸ adopted The Declaration of Guiding Principles on the Use of Satellite Broadcasting for Free Flow of Information.²⁹ The Declaration mandates that States "reach or promote prior agreements" before any broadcasts are transmitted from satellites.³⁰ The proposal has been accepted by a majority of States³¹ and its principles were adopted by the ITU at the 1977 World Administrative Radio Conference.³²

This Conference allocated positions in the geostationary orbit and designated particular frequency bands to establish a "system in which direct television broadcasting from satellites can only be used for national service, unless States specifically agree otherwise."³³ The allocation system was premised upon respect for the sovereignty of States and the desire to minimize unavoidable spillover.³⁴ Specifically, direct television broadcasting from satellites

27. Butler, World Administrative Radio Conference for Planning Broadcasting Satellite Service, 5 JOURNAL OF SPACE LAW 93, 96 (1977).

28. United Nations Educational, Scientific and Cultural Organization.

29. Records of the General Conference, UNESCO 17th Session (1972); reprinted in U.N. Doc. A/AC.105/109 (1973).

30. Id., Art. IX(1).

31. Sarkar, supra n. 22, at 85.

32. Final Acts of the World Administrative Radio Conference for the Planning of the Broadcasting-Satellite Service in Frequency Bands 11.7-12.2 GHz in Regions 2 and 3 and 11.7-12.5 GHz in Regions 1, Geneva, 1977 [hereinafter cited as WARC 1977].

33. First allocated and adopted at the International Telecommunications Convention (Malaga-Torremolinos, 1973) 23 U.S.T. 1527, T.I.A.S. No. 7935; Galloway, Telecommunications, National Sovereignty and the Geostationary Orbit, 20th COLLOQUIUM ON THE LAW OF OUTER SPACE 226 (1977); see also statement of R.E. Butler, Deputy Secretary-General of the ITU, on the Implications of the 1977 WARC Conference, Legal Subcommittee of the UN Comm. on the Peaceful Uses of Outer Space, New York, March, 1977, noted in Galloway, id., at 227.

34. Galloway, id., at 228.

was limited to the 12 GHz frequency band so as to restrict reception to community receivers.³⁵ Federation's television broadcasts into home receivers thus violates the regulations adopted in the Final Acts of this Conference.

Federation and PAU, as parties to the Telecommunications Treaty and all amendments,³⁶ are required to enforce and comply with this regulatory system.³⁷ Federation and PAU are thus bound by ITU Radio Regulation 428A, adopted in 1971,³⁸ which a majority of States maintain has established a prior consent rule for all direct television broadcasts from satellites.³⁹ Regulation 428A states:

"[A]ll technical means available shall be used to reduce to the maximum extent practicable, the radiation over the territory of other countries unless⁴⁰ an agreement has been reached with such other countries".⁴⁰

This regulation, together with the allocation system, restricts direct broadcasting into foreign States absent prior consent.⁴¹

b. The Customary Practice of States Under the Technical Requirements of the ITU Regulations Has Established Prior Consent for Foreign Broadcasts as the Rule of International Law

An international custom is a concordant and recurring practice of numerous States in the domain of international relations generally

35. WARC 1977, supra n. 32.

36. 1980 Jessup International Moot Court Problem, Appendix A, item 9.

37. Colino, International Cooperation Between Communications Satellite Systems: An Overview of Current Practices and Future Prospects, 5 JOURNAL OF SPACE LAW 65, 71 (1977).

38. Partial Revision of the Radio Regulations, Geneva, 1971 and Final Protocol: Space Telecommunications, 17 July 1971, 23 U.S.T. 1527, T.I.A.S. No. 7435 at 47, (effective 1 January 1973) [hereinafter cited as Radio Regulations].

39. Freeman, Toward the Free Flow of Information: Direct Television Broadcasting via Satellite, 13 INT'L L. AND ECON. 329, 340 (1979); Daus, Direct Television Broadcasting by Satellites and Freedom of Information, 3 JOURNAL OF SPACE LAW 59, 65 (1975).

40. Radio Regulations, supra n. 38, Regulation 428A.

41. Butler, supra n. 27, at 22.

recognized as obligatory among nations.⁴² International compliance with the regulatory system of the ITU, adopted by one hundred-eleven world governments,⁴³ has established State's recognition of prior consent for direct broadcasting as an obligation under international law. Federation has thus violated its legal obligation to obtain prior consent from PAU before broadcasting directly into PAU's territory.

B. FEDERATION'S REMOTE SENSING ACTIVITIES VIOLATED TREATY OBLIGATIONS OF COOPERATION, MUTUAL ASSISTANCE, AND RESPECT FOR NATIONAL SOVEREIGNTY

1. Federation's Use of Information Gathered By its Geostationary Object Violated International Law

a. Federation's Use of Information on PAU's Agricultural Conditions Violated the Conference on Security and Cooperation in Europe: Final Acts⁴⁴

The Helsinki Accords recognized trade as an essential sector of State cooperation⁴⁵ and provided that trade should be conducted so as not to cause disruption in other countries' domestic markets of similar products.⁴⁶ The Accords obligate parties to promote the dissemination of economic information as quickly as possible, especially that which allows for forecasts of the economy and aids in trade promotion.⁴⁷ Federation, as a party, had a duty to disseminate the data relating to PAU's wheat crop virus as quickly as possible to help prevent the spread of the wheat virus⁴⁸ and to assist

42. HUDSON, THE PERMANENT COURT OF INTERNATIONAL JUSTICE, 1920-42 609 (1943).

43. Colino, supra n. 37, at 66.

44. Conference on Security and Cooperation in Europe: Final Act [hereinafter cited as Helsinki Accords] reprinted in 14 INT'L LEGAL MAT. 1292 (1975).

45. Id., Commercial Exchanges, General Provisions.

46. Id.

47. Id.

48. Id., Science and Technology, Fields of Cooperation, Agriculture.

in forecasting its effect on PAU's economy.⁴⁹

The Helsinki Accords define economic coercion as "an act designed to subordinate a foreign State's rights inherent in its sovereignty to its own interest and thus to secure advantages of any kind".⁵⁰ Federation used the wheat crop data to secure an unfair advantage in the world wheat market, "contributing to inflation in PAU",⁵¹ thus subordinating PAU's sovereign right to control its own economy and the disposition of wheat crop information. Consequently, Federation violated the provisions in the Helsinki Accords promoting trade cooperation.

b. Federation's Use of the Wheat Crop Data Violated PAU's National Sovereignty and International Law

In direct violation of Article IX of the Outer Space Treaty, Federation failed to utilize information gained through its outer space activities with "due regard for the corresponding interests of all other States."⁵² States that make use of space technology for the purpose of studying earth resources must respect the sovereignty of other States, especially their inalienable right to control their own natural resources and information concerning those resources.⁵³ Federation violated PAU's sovereign right to protect the information about its natural resources from being used to the detriment of PAU's domestic economy.⁵⁴

49. Id., Commercial Exchanges, General Provisions.

50. Id., Matters related to giving effect to certain of the above Principles, Section (b) (i).

51. Facts, at 2.

52. Outer Space Treaty, supra n. 18, Art. IX.

53. United Nations General Assembly Resolution on the Permanent Sovereignty Over Natural Resources, U.N. GAOR 1803, U.N. DOC. A/Res/1803 (XVII), 14 December 1962; UN Charter, Art. 2, para. 1 and 7.

54. Facts, at 2.

The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States,⁵⁵ to which Federation and PAU are parties, sets forth the principles that States have a duty to cooperate with one another and to promote international economic stability. Consequently, all forms of interference against a State's economic elements violate international law.⁵⁶ Federation violated the sovereign right of PAU to conduct its agricultural activities in accordance with reasonable economic and trade expectations.

2. Federation's Use of PAU's Multi-Spectral Scanner Violated the Requirements of the May 1 Treaty

a. The May 1 Treaty Prohibited Federation's Use of the Multi-Spectral Scanner for Remote Sensing of PAU's Territory

Article VI of the May 1 Treaty required that the multi-spectral scanner be used, in particular, for asteroid scanning.⁵⁷ This Article must be interpreted so as to give effect to the intent of the parties at the time the treaty was signed.⁵⁸ Intent can be established by viewing the express language of the treaty in light of its purpose and the Parties' previously declared policies.⁵⁹

PAU had declared in the United Nations General Assembly that remote sensing of its natural resources would be regarded as unlawful without prior consent.⁶⁰ The language of Article VI was designed to preclude the potential misuse of the scanner and to expressly

55. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, G.A. Res. 2625 (XXV) 24 Oct. 1970, U.N. GAOR 25th Sess., Supp. No. 28 (A/8028), p. 121.

56. Id.

57. May 1 Treaty, supra n. 11, Art. VI.

58. Vienna Convention, supra n. 12, Art. 31.

59. I.L. OPPENHEIM, INTERNATIONAL LAW 953 (8th ed. H. Lauterpacht ed. 1955).

60. Facts, at 3.

allow only asteroid scanning. Federation, having notice of PAU's General Assembly declaration, cannot now claim that the multi-spectral scanner can be used for unrestricted sensing.

Other uses of the scanner required consultation under Article VII. Federation, by using the scanner to sense PAU's territory without consultation, has acted in bad faith and violated Articles VI and VII of the May 1 Treaty. Failure to consult also violated the cooperation requirements of Article III.

b. Federation Was Required By the May 1 Treaty to Reveal the Remote Sensing Data to PAU Before Its Telecommunication to Earth

Remote sensing data is of two kinds: primary data, gathered directly from the sensing equipment, and analyzed information, the result of an extensive work product which filters, condenses, and interprets the data.⁶¹ In direct violation of Article VI of the May 1 Treaty, requiring "the results and detailed explanation" of each test to be available to both Parties, none of the data acquired was revealed to PAU.⁶² Only the analyzed information, to be distinguished from the actual test results, was made available by Federation.⁶³ Federation's failure to reveal the primary data to PAU violated the May 1 Treaty.

3. Federation's Remote Sensing at High Rates of Resolution Threatened PAU's National Security and Thus Violated the Outer Space Treaty

Under Article III of the Outer Space Treaty, States are expressly required to conduct all outer space activities "in the interest of

61. Moore, Information From Space: An Ethereal Resource for All Mankind, 20th COLLOQUIUM ON THE LAW OF OUTER SPACE, 368, 371 (1977).

62. Facts, at 2.

63. Id.

maintaining international peace and security" and, under Article IX, "with due regard for the corresponding interest of all other States." Remote sensing satellites with resolution capabilities between 10 and 50 meters can provide information about military installations such as location, size, type of aircraft and movement.⁶⁴ As the gathering of such information threatens the national security of PAU,⁶⁵ Federation's remote sensing at high rates of resolutions is prohibited by the Outer Space Treaty.

IV. PAU'S PEACEFUL NUCLEAR ACTIVITIES IN OUTER SPACE COMPLIED WITH INTERNATIONAL LAW

A. PAU'S PEACEFUL NUCLEAR TESTING COMPLIED WITH ITS OBLIGATIONS UNDER THE MAY 1 TREATY

The experiment conducted by PAU involved the launching from the space laboratory of a space object with nuclear fissionable material aboard.⁶⁶ Through PAU's compliance with consultation requirements of the May 1 Treaty, Federation had full knowledge of this experiment and did not protest the launch of the nuclear-equipped object. It was the specific purpose of the experiment, nuclear tests, to which Federation objected.⁶⁷ However, the May 1 Treaty expressly authorizes the exercise of full discretion regarding the specific object or purpose of any experiment contemplated by either Party.⁶⁸ PAU therefore had the power to determine the specific purpose of the experiment, and no basis for Federation's objection may be found in the Treaty.

64. Vereshchetin, On the Principle of State Sovereignty in International Space Law, II ANNALS OF AIR AND SPACE LAW 429, 435 (1977).

65. Fiorio, International Implications of Earth Resources Surveys by Satellites, 1 JOURNAL OF SPACE LAW 1, 3 (1973).

66. Facts, at 3.

67. Id.

68. May 1 Treaty, supra n. 11, Art. VI.

B. PAU DID NOT VIOLATE INTERNATIONAL LAW BY CONDUCTING THE PEACEFUL NUCLEAR TESTS

1. The Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water ⁶⁹ does not prohibit PAU's Peaceful Nuclear Tests

PAU has not undertaken to test any "nuclear weapon" within international standards,⁷⁰ but has merely conducted peaceful tests with nuclear material.⁷¹ No mention of a nuclear explosion appears in the record, although an explosion was associated with the nuclear testing. The Test Ban Treaty only prohibits nuclear weapons tests and nuclear explosions which contaminate the environment.⁷²

2. Assuming Arguendo that the Explosion was Nuclear, PAU Has Not Violated the Test Ban Treaty

The Test Ban Treaty's prohibition on nuclear explosions must be viewed in light of the Treaty's object and purpose.⁷³ The Preamble to the Treaty states this purpose: to ban nuclear weapon test explosions and avoid contamination of the environment.⁷⁴ A peaceful nuclear explosion, benefitting all humanity with its research value and resulting in an insignificant amount of radiation in outer space, does not violate the stated purposes of the Test Ban Treaty.

69. Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water, 5 August 1963, 14 U.S.T. 1313, T.I.A.S. 5433, 480 U.N.T.S. 43 [hereinafter the Test Ban Treaty].

70. See definitions of "nuclear weapon" in Treaty for the Prohibition of Nuclear Weapons in Latin America, U.N. Doc. A/C.1/946 (1967), and Atomic Energy Act of 1954, as amended, sec. 11(d) 42 U.S.C. sec. 2014(d) (1964)..

71. Facts, at 3.

72. Test Ban Treaty, supra n. 69, Art. I.

73. Vienna Convention supra n. 12, Art. 31(1); see also T.O. ELIAS, THE MODERN LAW OF TREATIES 74-75 (1974).

74. Test Ban Treaty, supra n. 69, Preamble.

3. Nuclear Explosions for Peaceful Purposes are Contemplated By International Law

Professor McDougal has justified the United States' Pacific testing as reasonable use of the high seas and subjacent airspace by virtue of their minimal interference with use of the high seas, and the importance of the testing to the free world.⁷⁵ Similarly, PAU's peaceful testing in outer space did not interfere with other States' free use and exploration. More importantly, PAU's tests for the development of nuclear energy as a power source are essential in solving the world energy shortage.

In 1958, the United Nations informed the international public about the "possibility, importance and advisability of using nuclear explosions for non-military purposes."⁷⁶ Recent research has uncovered various potential uses: creation of underground reservoirs for natural gas and oil; excavation of dams; and for construction of highways and railroads.⁷⁷ Thus, international law contemplates peaceful nuclear explosions where the danger of contamination is relatively low. As explained in PAU's literature, such tests are vital⁷⁸ and should be encouraged by the international community.

C. PAU is Prohibited by International Law from Sharing Weapons Design Data

1. The May 1 Treaty Does Not Allow PAU to Share Weapons Design Data

PAU's peaceful nuclear tests produced as an incidental by-product

75. McDougal and Schlei, The Hydrogen Bomb Tests in Perspective: Lawful Measures for Security, 64 YALE L. J. 648 at 682-683, and at 689-690 (1955); see also D'Amato, Legal Aspects of the French Nuclear Tests, 61 AM. J. INT'L L. 74 (1967).

76. SIPRI, NUCLEAR PROLIFERATION PROBLEMS 215 (1975).

77. Id., at 219.

78. Facts, at 3.

certain data useful for weapons design.⁷⁹ The May 1 Treaty states that test results shall be made available to both parties,⁸⁰ but this provision must be considered in light of the entire context of the treaty.⁸¹ The preamble to the Treaty states that the parties are striving for cooperation in the exploration and use of outer space for peaceful purposes and for the benefit of mankind.⁸² To conform with this purpose, PAU may not disclose weapons information.

2. The Test Ban Treaty Prohibits the Release of Weapons Design Data

The Test Ban Treaty prohibits activities which would encourage the production of weapons.⁸³ Since release of the data on weapons design would increase States' ability to produce weapons, nondisclosure is required.

D. FEDERATION MUST SAVE PAU HARMLESS FOR LIABILITY CLAIMS ARISING FROM THE CRASH OF THE NUCLEAR-EQUIPPED SPACE OBJECT

1. Federation Has No Right of Indemnification Under Article III of the May 1 Treaty

The parties have assumed joint and several responsibility under the May 1 Treaty for the consequences of the nuclear experiment as it was part of the joint venture.⁸⁴ However, as to the apportionment of liability for claims arising from the collision between PAU's nuclear object and the space laboratory, Federation is wholly liable and has no right of indemnification.⁸⁵ This was an experimental

79. Facts, at 3.

80. May 1 Treaty, supra n. 11, Art. VI.

81. Vienna Convention, supra n. 12, Art. 31(1); see also T.O. ELIAS, supra n. 73, at 74-75.

82. May 1 Treaty, supra n. 11, Preamble.

83. Test Ban Treaty, supra n. 69, Preamble and Art. I(2).

84. See argument supra, p. 14; see also May 1 Treaty, supra n. 11, Art. III on joint and several responsibility.

85. Indemnification provision in May 1 Treaty, supra n. 11, Art. VIII.

accident and was not due to any negligence or misconduct on the part of PAU.

2. Federation Must Save PAU Harmless For All Liability Arising From Federation's Negligent Failure to Mitigate Damages
 - a. Federation Must Save PAU Harmless For Claims Arising Out of the Failure of the UTS-Designed Self-Destruct Mechanism

Proper functioning of the mechanism would have avoided the crash and direct radiation damage to the earth, but the mechanism proved to be inoperative.⁸⁶ Since Federation has assumed responsibility for UTS,⁸⁷ Federation must save PAU harmless for damage flowing from the negligent design of the mechanism.

- b. Federation Negligently Failed to Notify PAU of Radiation Damage Potential

The Agreement on the Rescue of Astronauts states that a launching State (PAU) shall take effective steps to prevent harm only if the State in which the object falls (Federation) notifies the launching State.⁸⁸ Federation's inaction precluded any possibility of PAU helping to mitigate radiation exposure to Federation nationals, and Federation must save PAU harmless for damage attributable to such negligence.

3. Absolute Liability⁸⁹ is Not Applicable Because FEDERATION is a Joint Launching State

The launching of the nuclear-equipped space object from the space laboratory was a joint launching, since a State from whose

86. Facts, at 4.

87. Facts, at 5.

88. Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, 22 April 1968, 19 U.S.T. 7570, T.I.A.S. 6592, 676 U.N.T.S. 119; Art. 5(4).

89. Liability Convention, supra n. 6, Art. II.

facility a space object is launched shall be regarded as a participant in a joint launching.⁹⁰ The space laboratory was equally the facility of Federation, thus as a joint launching State, Federation cannot assert absolute liability as to claims by its own nationals.⁹¹

V. FEDERATION IS LIABLE FOR DAMAGES FLOWING FROM THE DECOUPLING FAILURE BECAUSE IT PROVIDED A DEVICE THAT PROVED DEFECTIVE

A. FEDERATION IS RESPONSIBLE UNDER STRICT PRODUCTS LIABILITY FOR THE DECOUPLING FAILURE

1. International Law Recognizes the Principle of Strict Products Liability

Each state is internationally responsible for its acts or omissions which cause injuries or damage to other States or their nationals.⁹² This responsibility is now absolute in certain fields marked by dangers analogous to and including those which pervade space activity.⁹³ These principles provide the basis for imposing strict liability upon the manufacturer when a defective product used in outer space exposes the user to an unreasonable risk of harm.⁹⁴ Specific evidence of the emergence of strict products liability in international law came in 1977, when the eighteen-nation Council of Europe agreed

90. Id., Art. V.

91. Id., Art. VII.

92. Trail Smelter Arbitral Decision, reported in 35 AM. J. INT'L L. 684 at 713-714 (1941); see also OPPENHEIM, supra at 250-251.

93. Vienna Convention on Civil Liability for Nuclear Damage, Art. II, International Atomic Energy Document CN-12/46 (May 20, 1963); Convention on Liability of Operators of Nuclear Ships, Brussels, 1962, Art. II, para. 1 in 57 AM. J. INT'L L. 268-269, (1963); Liability Convention, supra n. 8, Art. II; see also H. Berman, Memorial in Demonstration Trial, BELGRADE SPACESHIP TRIAL, 211-212 (1972).

94. De Saussure and Haanapel, A Unified Multinational Approach to the Application of Tort and Contract Principles to Outer Space, 6 SYR. J. INT'L L. and COM. 1, 12-13 (1978); see also N. MATTE, supra at 159; M. LACHS, THE LAW OF OUTER SPACE 124-125 (1972).

upon strict products liability as the desirable unifying principle.⁹⁵

Strict liability is particularly applicable where the user has no opportunity to inspect or test the product prior to its use and therefore must rely upon the skill and judgment of the manufacturer.⁹⁶ The May 1 Treaty imposed sole responsibility on Federation for the design and testing of the decoupling device⁹⁷, and PAU relied on Federation to provide a safe product.

2. Under Strict Products Liability, Federation is Liable For Damage to PAU's Space Object and For Harm to PAU Citizens Aboard the Federation Airliner

The decoupling device, while workable during coupling, developed internal defects and failed to perform effectively during decoupling.⁹⁸ Federation was required to provide a working device with a reasonable life expectancy,⁹⁹ but the mechanism failed in one of the two operations for which it was specifically designed. This failure caused the loss of descent control over PAU's space object and resulted in the destruction of PAU's space object and death and injury to PAU citizens.

B. Federation Has Breached Its Treaty Obligation To Supply a Decoupling Device In Full and Certain Working Order

95. European Convention on Products Liability in Regard to Personal Injury and Death, 27 January 1977, European Treaty Series, No. 91, reprinted in 16 INT. L. MAT. 7 (1977); Goldring, Liability of Manufactures for Defective Goods; Some European Trends, 51 LAW INSTITUTE JOURNAL 240, 244-245 (1977); Wasserman, Council of Europe, Products Liability Convention, 11 JOURNAL OF WORLD TRADE LAW 192 (1977).
96. Goldring, *supra* n. 98, 249; see also J. FLEMING, THE LAW OF TORTS 161-162 (1967).
97. May 1 Treaty, *supra* n. 11, Art. IV.
98. Facts, at 4.
99. W. KIMBLE AND R. LESHNER, PRODUCTS LIABILITY 67 (1979).

The May 1 Treaty expressly warranted that Federation would provide a safe and working device.¹⁰⁰ Under Article IV of the Treaty, Federation had an absolute duty to provide a decoupling device in full and certain working order, the breach of which gives rise to full responsibility for the resulting harm to PAU's space object and citizens.¹⁰¹

C. The Collision Between the Nuclear-Equipped Space Object and the Space Laboratory Did Not Affect the Internal Workings of the Decoupling Device

This collision did not adversely affect the "orbital operation capabilities" of the space laboratory.¹⁰² Since decoupling is an orbital operation, the record shows that this collision had no effect on such capabilities.

VI. FEDERATION'S FIRING OF THE ANTI-SATELLITE INTERCEPTOR DEVICE WAS AN UNJUSTIFIED ACT OF AGGRESSION GIVING RISE TO INTERNATIONAL RESPONSIBILITY

A. The Firing of the Device was an Act of Aggression by Federation

Aggression has been defined as "the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State."¹⁰³ At all times, the space object remained within the sovereignty and jurisdiction of PAU as the registrant state,¹⁰⁴ thus Federation's attack upon the object was an

100. May 1 Treaty, supra n. 13, Art. IV.

101. Statute of the I.C.J., Art. 36 (2)(d), whereby the Court has jurisdiction to determine appropriate reparations for breach of international obligations; see also Charzow Factory (Indemnity) Case, supra n. 6.

102. Facts, at 3.

103. U.N. Draft Resolution on the Definition of Aggression, Art. 1 U.N. Doc No. A/AC 77/L/4 (1956); 12 U.N. GAOR Supp. 16, at 30, U.N. Doc. A/3574 (1957).

104. Outer Space Treaty, supra n. 18, Art. VIII; May 1 Treaty, supra n. 11, Art. IV.

act of aggression. This willful act by Federation gives rise to international responsibility¹⁰⁵ such that Federation is subject to any measures deemed appropriate by the United Nations Security Council to restore international peace and security.¹⁰⁶

B. Federation's Firing of the Anti-Satellite Interceptor Cannot be Classified as Self-Defense Under International Law

1. Federation's Firing of the Interceptor Did Not Qualify as Self-Defense Under the United Nations Charter

Article 2 of the United Nations Charter imposes upon States the obligation to refrain from the threat or use of force.¹⁰⁷ Article 51 states the exception to this rule existing for self-defense against armed attack.¹⁰⁸ However, Federation invoked the right of self-defense at its own peril, and its conduct is subject to subsequent review.¹⁰⁹ As the Nürnberg Tribunal stated: "whether action taken under the claim of self-defense was in fact aggressive or defensive must ultimately be subject to investigation and adjudication if international law is to be enforced."¹¹⁰

Article 51 applies only in cases of armed attack.¹¹¹ Since at the time of firing Federation was not under armed attack, there was no justification for Federation's action. Additionally, Federation's failure to report this action immediately to the Security Council,

105. U.N. Draft Resolution on the Definition of Aggression, supra n. 107, Art. 5(2).

106. U.N. Charter, Art. 39.

107. Id., Art. 2(4).

108. Id., Art. 51.

109. JESSUP, A MODERN LAW OF NATIONS 165 (1948).

110. Fite, The Nurnberg Judgment: A Summary, 16 Dept. of State Bulletin 9-10 (1947); see also JESSUP, supra n. 113, at 165.

111. Kelsen, Collective Security and Collective Self-Defense Under the Charter of the United Nations, 42 AM. J. INT'L L. 791 (1948); see also JESSUP, supra n. 113, at 165-166; and statement of Judge Krylov of the U.S.S.R. in "Report of the 48th Conference of the International Law Association," 1958, New York, pp. 512-513, noted in WHITEMAN'S DIGEST, Vol. 5 (1963), at 982.

as required by Article 51,¹¹² demonstrates Federation's bad faith and breach of its international obligations.

2. Since There was No Imminent Danger to Federation, the Firing of the Anti-Satellite Device was Not Self-Defense Under Other International Principles

Traditionally, a State may resort to self-defense for its protection when its essential rights are endangered by the conduct of another State.¹¹³ However, the danger to these rights must be so imminent that the necessity to resort to self-defense is instant and overpowering.¹¹⁴ When Federation fired its device, immediately after disengagement, no such emergency existed because PAU could have brought its space object under control and landed it safely in PAU territory.¹¹⁵ Sufficient time existed for Federation to consult with PAU, by telephone or otherwise, prior to taking any action.

3. Federation's Belief that the Space Object Would Fall in Its Territory was Unjustified

Eminent authorities have stated that it is a practical impossibility to predict in advance where or when a satellite will come down after an unprogrammed reentry.¹¹⁶ Immediately before the anti-satellite device was fired, Federation had no reasonable basis for believing that PAU's space object was more likely to come down in its territory than elsewhere. Therefore Federation was required under the

112. U.N. Charter, Art. 51.

113. THOMAS AND THOMAS, A WORLD RULE OF LAW 53 (1975); JESSUP, supra n. 113, at 163.

114. 2 MOORE'S DIGEST OF INT'L LAW 412 (1906); see also THOMAS AND THOMAS, supra n. 124 at 53; and JESSUP, supra n. 113, at 164.

115. Facts, at 5.

116. Doyle, Reentering Space Objects: Facts and Fiction, 6 JOURNAL OF SPACE LAW 107, 110 (1978); see also Finch and Moore, The Cosmos 954 Incident and International Space Law 65 A.B.A. JOURNAL 56-57 (1979).

May 1 Treaty¹¹⁷ and Outer Space Treaty¹¹⁸ to consult with other States before taking action.

VII. PAU IS NOT LIABLE FOR ANY DAMAGE CAUSED BY FRAGMENTS OF ITS SHATTERED SPACE OBJECT

A. FEDERATION'S ACTIONS EXONERATE PAU FROM ABSOLUTE LIABILITY

The Liability Convention provides for exoneration from absolute liability when a launching State establishes that the damage has resulted either wholly or partially from gross negligence or from an act or omission done with the intent to cause damage on the part of the claimant State.¹¹⁹

1. The Firing of the Anti-Satellite Interceptor was an Act Intended to Cause Damage

The record states that an attempt was made to destroy the PAU space object.¹²⁰ The interceptor, as intended, caused damage to the PAU object and resulted in damage on and above Federation territory.

2. Additionally, Federation's Gross Negligence Caused the PAU Fragments to Harm Persons and Property

Intentional acts which are wrongful in the circumstances are classified in international law as gross negligence.¹²¹ Concern lies more with the nature of the act and its unjustifiability than with the actor's state of mind.¹²² The entire sequence of acts beginning with Federation's deployment of its interceptor, was wrongful.

¹¹⁷. May 1 Treaty, supra n. 11, Art. III(3), Art. VII.

¹¹⁸. Outer Space Treaty, supra n. 18, Art. IX.

¹¹⁹. Liability Convention, supra n. 6, Art. VI(1).

¹²⁰. Facts, at 4.

¹²¹. Cheng, Willful Misconduct from Warsaw to the Hague and From Brussels to Paris, II ANNALS OF SPACE LAW 55, 64-65 (1977).

¹²². Id., at 73.

(a) Federation intentionally interfered with the PAU space object¹²³ with the foreseeability that damage would result. The unjustified destruction of the object with knowledge that there were persons below constitutes gross negligence.

(b) Federation's launch of a space object during the joint venture caused harm on earth. The Federation object, launched in violation of Article III of the May 1 Treaty,¹²⁴ collided with a PAU fragment that had been forced into its path. This collision, caused by Federation's gross negligence, resulted in a descent trajectory into the shopping center.

(c) Federation's failure to curtail flight of its airliner in the airspace of the ascending interceptor and the descending fragment was grossly negligent. It was foreseeable that firing the interceptor could cause pieces of the target space object to fall into the path of the airliner, exposing persons to an unreasonable risk of harm.

3. PAU is Totally Exonerated From Absolute Liability

Had Federation never fired the interceptor, PAU would have regained full control over the object and would have landed it safely in PAU territory with no harm to Federation.¹²⁵ However, the impact of the interceptor eliminated any possibility of controlling the object and caused it to crash. Since the damage resulted wholly from the acts of Federation, PAU is totally exonerated from absolute liability¹²⁶ for damage to the shopping center, airliner, and all persons.

123. See argument supra p. 19.

124. May 1 Treaty, supra n. 11, Art. III(4).

125. Facts, at 4.

126. O. OGUNBANWO, supra n. 8, at 154; see also N. MATTE, supra n. 8, at 160.

B. THE ACTS WHOLLY EXONERATING PAU FROM ABSOLUTE LIABILITY ALSO ESTABLISH FEDERATION'S SOLE RESPONSIBILITY FOR DAMAGE CAUSED BY FRAGMENTS OF PAU'S SPACE OBJECT

The Indemnification Clause states that a party shall save the other party harmless for claims arising out of the negligence or misconduct of its personnel.¹²⁷ Because the damage on and above Federation occurred wholly as a result of the negligence and misconduct of Federation personnel, Federation must save PAU harmless for all claims arising from the fragment crashes.

VIII. FEDERATION IS LIABLE TO PAU FOR CLAIMS OF PAU CITIZENS FOR PERSONAL INJURIES AND PROPERTY LOSS ABOARD THE AIRLINER

The Indemnification Clause provides that Federation will indemnify PAU for all costs and expenses arising out of the negligence of FEDERATION personnel.¹²⁸ Since the misconduct and negligence of Federation caused the airliner to be hit and thereafter to crash,¹²⁹ Federation must indemnify PAU for all claims of PAU citizens arising out of the airliner crash.

IX. FEDERATION VIOLATED THE MAY 1 TREATY BY CROSSING PAU AIRSPACE AT LESS THAN 110 KILOMETERS

The record states that Federation had sufficient control over its space object to prevent it from crossing PAU territory at points below 110 kilometers.¹³⁰ This crossing thus violated the airspace sovereignty provision of the May 1 Treaty.¹³¹

^{127.} May 1 Treaty, supra n. 11, Art. VIII.

^{128.} Id.

^{129.} See argument supra, p. 23.

^{130.} Facts, at 5.

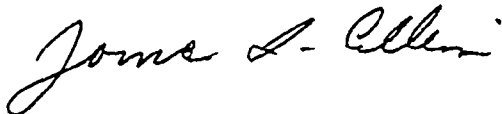
^{131.} May 1 Treaty, supra n. 11, Art. XIII.

CONCLUSION

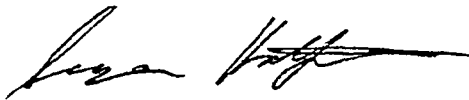
It is respectfully requested that this honorable Court:

1. Order Federation to discontinue its unauthorized remote sensing of and direct broadcasting into PAU territory.
2. Grant PAU a declaration that its peaceful nuclear testing did not violate international law, and find that Federation must save PAU harmless for resultant damage.
3. Find Federation strictly liable for damage resulting from the decoupling failure, and declare that Federation's firing of an anti-satellite interceptor was an unjustified act of aggression.
4. Find that Federation must save PAU harmless for all claims arising out of the shopping center and airliner crashes, and must indemnify PAU for all claims of PAU citizens aboard the airliner.

All of which is respectfully submitted,



JAMES I. COLLINS



GEORGE HATFIELD



RONALD R. LAMB



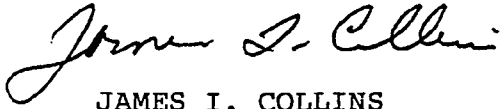
JOEL LEVY



TERESA WILLIAMS

CERTIFICATE

We certify this memorial complies with the 1980 Rules of this competition.



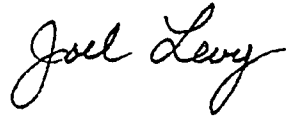
JAMES I. COLLINS



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TERESA WILLIAMS