



THE 2013 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

BETWEEN

THE REPUBLIC OF LYDIOS
(APPLICANT)

AND

THE REPUBLIC OF ENDYMION
(RESPONDENT)

JOINTLY NOTIFIED TO THE COURT

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

ENTRE

LA RÉPUBLIQUE DE LYDIOS
(REQUÉRANT)

ET

LA RÉPUBLIQUE DE ENDYMION
(RÉPONDANT)

NOTIFIÉ CONJOINTEMENT À LA COUR



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Case concerning the Operation of a Lunar Station

Statement of Agreed Facts:

1. The Republic of Lydios and the Republic of Endymion are both advanced space faring nations with a long history of competition, rivalry and occasional warfare into the early 20th century. The relationship between the two States has much improved over the past several decades through a series of joint economic, cultural, and science and technology projects.
2. Since 2001, both Lydios and Endymion have been two of the 15 member States of the Artemis Operation Agency (AOA). AOA is an international intergovernmental organization which established and operates a lunar orbiting platform named Artemis pursuant to the Artemis Implementing Agreement (AIA). The Artemis platform is used to conduct scientific experiments, deploy satellites into lunar orbit, and to deploy other spacecraft such as interplanetary probes. Manned and unmanned reusable spacecraft were used to ferry satellites from Earth to the Artemis platform for deployment. Artemis was registered with the United Nations by the AOA in accordance with the AIA.
3. The Artemis project was very successful, resulting in a demand, even from non-members of the AOA, to use Artemis because of the relatively low cost for the launch of satellites from the platform. The commercialization of the Artemis platform was also pursued by the AOA to decrease its operational cost. Thus, the AIA was amended to allow the commercial use by a non-member to the AOA upon approval of not less than three quarters of the member States.
4. Lydios had conducted several missions to explore the Moon including a series of rovers called Messenger, and established and operated a manned complex, Luna-1, located near the south polar region of the Moon. The Luna-1 site was selected due to its proximity to lunar ice deposits that can be processed to produce hydrogen and oxygen for propellants, water and life support. The Luna-1 facility was comprised of several structures, each of which had a docking port to accommodate shuttle transport vehicles between the Earth and the Moon. Each of the Lydios spacecraft launched from the Earth to Luna-1 as well as the lunar facilities constructed at Luna-1 were registered by Lydios and entered into the UN registry. None of the facilities at Luna-1 were constructed solely from lunar resources.
5. In the last decade of the 20th century, the Lydios economy suffered a substantial decline, which resulted in the reduction of the budget for Luna-1. To raise revenues, Lydios auctioned off several of its space artifacts and historical assets, including the Messenger rovers and other items sent to the Moon. Mr. Amytas Billippo, a wealthy business person of Endymion who is known for his enthusiasm for space, purchased the Messenger-3 lunar rover at one of the



THE 2013 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

auctions. Messenger-3 was an exploratory spacecraft, which was sent to scout possible locations for the structures that comprise Luna-1, and was operated for several months in 1988. Mr. Billippo received a certificate of title to Messenger-3 prepared and signed by the auction company. A right to physical possession of Messenger-3 was not specified on the certificate of title. The location was described in the auction catalogues as being somewhere between 78 and 88 degrees south lunar latitude.

6. Hekate is a non-governmental pro-environment organization founded and headquartered in Lydios in 1990. Hekate has a small but vociferous membership, substantial financial resources, and is politically active within Lydios. Since its founding, Hekate has opposed exploration and use of the Moon, including the Luna-1 project. Ten years after the initiation of full operation of Luna-1, Hekate declared that it intended to procure and place its own remote sensing satellite in lunar orbit to more closely monitor activities that could disrupt the environment of the Moon.

7. The Kingdom of Kandetta is an island nation that is politically isolated. It has diplomatic relations with only a handful of States. One such State is Endymion, although the two governments are not closely allied. Kandetta has been developing its own indigenous space capability, including launch vehicles and satellites. At the time of the Hekate announcement, Kandetta had successfully launched three satellites into Earth orbit, and one into lunar orbit. Kandetta also suffered failed launches, which outnumbered the successful missions by a two to one ratio. Kandetta had sought to enter the international launch services market, but most States refused to allow their nationals to launch payloads on the unreliable Kandetta launch vehicles, citing safety and foreign policy reasons. Kandetta was determined to be a pre-eminent space faring nation, however, and announced its goal to achieve successful manned spaceflight. Kandetta's only test of a prototype launch vehicle for manned missions ended in disaster when the rocket exploded three seconds after lift-off.

8. Representatives from Hekate contacted Toriton Space Co., a corporation headquartered in Kandetta. A majority of Toriton Space Co. shares is owned by the Kingdom of Kandetta. Toriton Space Co. contracted with Hekate to build a lunar orbiting satellite with a 0.5 meter multi-spectral resolution. The satellite, to be named Toriton-1, was to be built for Hekate on a cost-only basis, provided that it was launched from a Kandetta launch vehicle and that images could only be taken by that satellite with prior approval of Kandetta. In addition, the contract specified that all images shall be furnished to Kandetta prior to any distribution or public use by Hekate.

9. At the time of the Hekate-Toriton contract, the Lydios government had not allowed any of its nationals to use Kandetta launch vehicles as a matter of foreign policy. The Hekate managing board concluded that a license to operate Tortion-1 would not be granted by Lydios, and formed



THE 2013 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

a new organization with the same name, Hekate-K, in Kandetta. Hekate then transferred all its assets to Hekate-K leaving just the shell of the original entity in Lydios. However, there was no significant change in the composition of the management board or membership of Hekate-K, as compared to Hekate. The managing board and membership remained overwhelmingly comprised of citizens and nationals of Lydios.

10. In September 2002, Hekate-K and Kandetta held a joint press conference where the Science Minister of Kandetta declared that Toriton-1, and five additional small satellites for Endymion, would be transported to Artemis from Kandetta territory by its new manned space launch vehicle, named Bennu, for deployment from the Artemis platform. He added that the Bennu would have the capability to travel from Earth orbit to lunar orbit and also to installations on the lunar surface, and that the use of the Artemis platform by Kandetta was secured by an affirmative response from Endymion and 12 additional members of the AOA.

11. The government of Lydios did not make any official comment on the Kandetta announcement other than to object in the AOA according to the terms of the AIA. Informally, Kandetta assured Endymion that in the event Endymion decided to engage in lunar exploration, development and use, the Toriton-1 satellite would not be used to monitor those activities

12. In 2004, the first successful launch of the Bennu to Artemis resulted in the placement of Toriton-1 in an elliptical orbit with a perigee of 75 km above the lunar surface. The five small satellites for Endymion were also successfully placed into orbit. That success helped reassure Kandetta's potential customers about Bennu's services. Toriton-1 was not registered.

13. The Lydios economic downturn continued into the 21st century, and in 2005 Lydios declared that it was terminating its lunar program and was abandoning the Luna-1 facility "to the States parties to the Outer Space Treaty." In January 2006, Endymion announced that it was embarking on a program to establish a lunar station for tourists to visit the abandoned structures of Luna-1. Mr. Billippo held a press conference to publicly grant his consent to Endymion to use Messenger-3 for that purpose and said that he hoped to visit the rover himself. Endymion subsequently announced that it had chosen one of the Luna-1 structures, named Fortuna, as its primary tourist facility, as it was near the area where Messenger-3 was believed to be located. Lydios did not acknowledge or respond in any way to Endymion's announcements.

14. Endymion sent crews to Fortuna to conduct a series of preparatory missions for its Luna-1 tourist program. The lunar tourist package developed by Endymion proposed to utilize Fortuna as a base camp. Short excursions would be conducted to other Luna-1 buildings and structures as well as the lunar surface area in proximity to the complex. Tourists, staff and other visitors would arrive by a fleet of spacecraft which employed a Lydios proprietary docking port design



THE 2013 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

which were compatible with the docking ports constructed by Lydios in Fortuna and each of the other inhabitable Luna-1 structures. The docking ports in the Luna-1 structures also were compatible with certain docking mechanisms other than Lydios' proprietary design, however the Lydios proprietary design was the most economical to manufacture and operate. Lydios licensed the right to use this docking port design to the AOA. Lydios, Endymion and the three other member States of the AOA which operated manned reusable transport vehicles to the Artemis platform utilized this standardized common docking port design. Lydios substantially benefited from royalty fees from this intellectual property.

15. Starting in early 2007, Endymion was occupying Fortuna on a full time basis. During that time, several other nations implemented programs to occupy abandoned structures at Luna-1, without formal objection by Lydios. These additional programs were in varying stages of completion at any given period of time. However, even the most advanced project had not progressed beyond initial preparatory missions, and none of the structures of Luna-1 utilized by these nations were operational or effectively occupied.

16. In December 2007, following general elections in Lydios which changed the ruling party, the Lydios government declared its intention to return to the Moon and to reactivate a lunar resource processing facility, Diana, at Luna-1. By November 2008, Lydios had returned to Diana and was processing lunar resources to produce oxygen and hydrogen. Diana is 200 km east of Fortuna, and those two structures are situated at the opposite ends of the Luna-1 complex. Accordingly, personnel of the two countries did not encounter each other during the reactivation of Diana.

17. In August 2010, Kandetta announced that it would launch two twin probes from the Artemis platform to explore Comet Donkelson, a short-period comet with an orbit of 20 years that would come within 0.0628 AU from Earth. These probes would be transported to Artemis using its Bennu spacecraft. Three months later, Lydios discovered that Kandetta based the design of Bennu on elements derived from several of Lydios' spacecraft. Certain elements, such as the docking mechanism had been copied without modification from the Lydios original proprietary designs. This docking mechanism was indistinguishable from the docking port licensed to the AOA. Not being a member of the AOA, it was clear that Kandetta had surreptitiously obtained the design drawings and specifications.

18. In June 2011, Hekate released dramatic images obtained by Toriton-1, which showed that Luna-1 development activities by Lydios had caused changes to the lunar surface and subsurface. Such images sparked large protests in Lydios and elsewhere.



THE 2013 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

19. In January 2012, urged by the predominant public opinion in Lydios, the President of Lydios formally declared that the Luna-1 program would be terminated by the end of 2012. She further stated that “all activities on the Moon, especially commercial activities, shall be superseded by the utmost necessity to take precautionary measures to preserve the highly fragile environment of the Moon.” Lydios decided to take staged steps to terminate operations at the Luna-1 facility. Diana was planned to be operational until the end of that process. Lydios declared that it intended to take active measures to safeguard the Moon’s historical and scientific heritage, and to protect landing and return sites, rovers, robots, scientific equipment, and specific vestiges such as footprints and rover tracks.

20. Lydios promulgated the Moon Protection Act (MPA) in April 2012. The MPA designated 23 three-dimensional buffer zones requiring prior approval of Lydios to enter, including the Luna-1 and Messenger-3 area consolidated into one zone, and 16 additional zones for separate objects launched by Lydios, as well as the six sites of the United States’ Apollo landings. The MPA prohibited tourism and other commercial activities until specific international agreements are adopted to regulate them. The buffer zones were designated as one to five km in all three dimensions from the designated object or area, with the size and altitude of individual buffer zones determined pursuant to the size, nature, and scientific and historic importance of the specific artifacts. The final provision of the MPA reaffirmed Lydios’ jurisdiction and control of the Luna-1 facility, and demanded that all States occupying or using any structure within Luna-1 cease and desist their activities and vacate the zone within six months.

21. Endymion informed Lydios by diplomatic note that it did not recognize the authority of Lydios to impose the MPA on Endymion’s activities, and that Endymion would not be bound by the MPA. Endymion began to advertise tours to Luna-1 including an excursion to Messenger-3. In September 2012, Endymion sent a group of government officials to Fortuna for a one-week tour of Luna-1 and the surrounding areas. Included in the tour sites visited were Messenger-3 and other buildings within Luna-1.

22. In November 2012, Kandetta conducted the second launch of the Bennu transport vehicle to Artemis, with three persons, one of which was Mr. Billippo as a paying tourist. Bennu also carried the two comet probes for deployment. During pre-deployment checkout of the two twin probes while Bennu was en route to Artemis, the crew determined that one of the probes had developed a very slow propellant leak. Bennu’s crew had the ability to repair the leak and refill the probe’s fuel tank with propellant from Bennu’s own tanks. However, if that was done, Bennu would not have sufficient propellant to dock at Artemis, deploy both space probes, and safely return to Earth. Bennu had the capability to travel directly to Luna-1 and refuel from resources processed at its facilities. If refueling was successful, Bennu could dock at Artemis,



THE 2013 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

deploy both probes and safely return to Earth. If the refueling was not successful, however, Benu would have barely sufficient propellant to return to Earth.

23. The commander of Benu, Mr. N. Pekki, decided to request refueling from the Diana facility as that facility was known to have a reserve of processed fuel and was nearest from the navigational point of the Benu when the commander decided to go to the Moon. Mr. Pekki contacted the director of Diana, Ms. G. Ushojon and requested permission to visit Diana and to obtain propellant. This request was denied. Mr. Pekki repeated his request, and added that the propellant was necessary for the lives and safety of the personnel of the spacecraft and that his government would be responsible for the reasonable cost of the fuel. Mr. Pekki also said that personnel of Diana were welcome to visit the Benu craft as representatives of Lydios after the docking. Ms. Ushojon again refused.

24. Mr. Pekki then contacted Fortuna, and requested permission to dock and obtain propellant, which request was granted. Upon arrival, however, a malfunction occurred in the docking mechanism of Fortuna, which prevented Benu from successfully docking. After several attempts, Mr. Pekki aborted the effort as it was consuming and depleting fuel. However, during the attempted dockings, the docking mechanism on Benu was damaged and rendered inoperable. Unable to dock with either Fortuna or Artemis, the Benu returned to Earth. The space probes Benu was transporting could not be deployed, and with the launch window closed, Kandetta declared the mission a failure.

25. An investigation panel convened by the AOA concluded that the inability of Benu to dock with Fortuna was caused by the use of the wrong fluid in a sealed canister in the hydraulic systems of the docking mechanism on Fortuna when it was constructed by Lydios. The correct fluid would support an unlimited number of dockings. The wrong fluid degraded with each use, and eventually failed. The panel further determined that the docking mechanisms of the Diana and the other structures of Luna-1 had utilized the correct fluid.

26. Six months after the AOA investigation panel released its findings, Kandetta filed a formal claim with Endymion for damages for the loss of the twin probes. Endymion promptly delivered a diplomatic note to Lydios demanding that Lydios indemnify Endymion for any amounts it may pay to Kandetta for damages to the two probes. Endymion delivered a formal protest to Lydios for the refusal to grant permission for Benu to dock and stated that such refusal placed the life and safety of Mr. Billippo, as well as the Kandetta crew, in jeopardy. Lydios responded by delivering a letter to the Endymion ambassador stating that Endymion's continued use or occupancy of Luna-1, including Fortuna, was unauthorized and that Endymion must immediately vacate Luna-1. Lydios also stated that it was not responsible for the failed deployment of the twin probes.



THE 2013 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

27. After unsuccessful diplomatic negotiations, Lydios and Endymion have agreed to submit their dispute to the ICJ.

A. Lydios asks the Court to declare that:

- (i) Endymion violated international law by failing to comply with the Moon Protection Act including the failure to vacate Luna-1 when demanded by Lydios;
- (ii) Lydios acted in conformity with international law by declining to grant permission for the Bennu to dock at Diana; and
- (iii) Lydios is not liable for damages for the failed deployment of Kandetta's twin probes.

B. Endymion asks the Court to declare that:

- (i) Lydios violated international law by unilaterally imposing the Moon Protection Act including the demand that Endymion vacate Fortuna;
- (ii) Lydios violated international law by refusing to permit Bennu to dock at Diana; and
- (iii) Lydios is liable for damages for the failed deployment of Kandetta's twin probes.

28. Lydios, Endymion, and Kandetta are Member States of the United Nations. Lydios and Endymion are States Parties to the 1967 Outer Space Treaty, the 1968 Return and Rescue Agreement, the 1972 Liability Convention, and the 1975 Registration Convention. Endymion acceded to the 1979 Moon Agreement in 2005. Kandetta is a State Party to the Return and Rescue Agreement, but not to the other four UN treaties on outer space. Both Lydios and Endymion are States Parties to the Vienna Convention on the Law of Treaties. The AOA declared its acceptance of the rights and obligations of the Registration Convention. A majority of the members of the AOA are States Parties to the Registration Convention and the Outer Space Treaty.