

MANFRED LACHS SPACE LAW MOOT COURT COMPETITION 2008

Team No. 2



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

CASE CONCERNING THE CONTINUED PROVISION OF
LIFELINE SATELLITE SERVICES TO COUNTRIES
IN THE FACE OF SATELLITE OPERATOR INSOLVENCY

THE STATE OF CONCORDIA

THE STATE OF LANDIA

v.

THE KINGDOM OF USURPIA

ON SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE

- MEMORIAL FOR THE JOINT APPLICANTS -

THE STATE OF CONCORDIA

THE STATE OF LANDIA

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Lifeline Satellite Services to Countries

In the Face of Satellite Operator Insolvency

Concordia and Landia

v.

Usurpia

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MEMORIAL FOR THE JOINT APPLICANTS

CONCORDIA AND LANDIA

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QUESTIONS PRESENTED

- A. Whether Usurpia's decision to license and then authorize the relocation of the Satelsat-18 satellite over the objections of Landia is contrary to applicable principles of international law, including, *inter alia*, the 1967 Outer Space Treaty, the 1975 Registration Convention and the GLITSO Agreement.
- B. Whether Landia is entitled to compensation for economic consequences of its loss of basic satellite telecommunications services from Usurpia for the relocation of the Satelsat-18 satellite and from both Concordia and Usurpia as a result of the collision destroying the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.
- C. Whether Usurpia's decision to authorize relocation of the Satelsat-18 satellite over the objections of Concordia is inconsistent with applicable principles of international law, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.
- D. Whether Usurpia is liable to Concordia for the loss of the Satelsat-18 satellite under, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.
- E. Whether Usurpia is obligated to indemnify Concordia for any liability Concordia might owe to Landia for the economic consequences of Landia's loss of basic satellite telecommunications services arising from the collision of the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

STATEMENT OF FACTS

1. The year is 2010. Landia, a landlocked and geographically isolated country, is surrounded by uninhabitable terrain on all of its borders, with few natural resources and limited economic means. Its Gross Domestic Product places it in the lowest 5% of national GDPs in the world.

2. Given its isolated condition, Landia is totally dependent on satellites to meet its basic telecommunications requirements, both for international telecommunications links connecting it to the rest of the world and for providing a critical basic domestic telecommunications infrastructure within Landia. In order to fulfill these basic requirements, Landia recently entered into a long-term, non-preemptible lease with Satelsat, Inc. (“Satelsat”), a private global satellite operator incorporated in the country of Concordia. Pursuant to this lease, Landia, through its state-owned Landia Telecommunications Authority (“LTA”), leases three transponders from Satelsat on the Satelsat-18 satellite. These transponders are used for the following purposes:

(a) to provide links from Landia to all other countries in the world;

(b) to provide backbone internet connectivity within the country, including more than 250 remote and isolated villages located throughout the Landia countryside and access to which, according to the Constitution of Landia, is recognized as a fundamental right of all of its citizens; and

(c) to provide critical infrastructure used to support various of its important governmental activities and functions, including e-government, distance learning and telemedicine.

3. Satelsat operated a fleet of 25 geosynchronous satellites providing satellite services and connectivity on a global basis, operating in the conventional C and Ku-band frequencies available for use by the Fixed Satellite Service. Satelsat is incorporated and has its principal

place of business in Concordia, which also serves as the notifying administration with the International Telecommunication Union (“ITU”) on behalf of Satelsat, although Satelsat does have a major business presence in other countries, including the location of a number of satellite control facilities in the Kingdom of Usurpia. All of Satelsat’s satellites are licensed by the Concordia Communications Commission (“CCC”) and are deployed at orbital locations that Concordia has notified to the ITU on Satelsat’s behalf. All of these satellites were launched from the Concordia Space Center by commercial launch services providers based in Concordia and licensed by the government of Concordia.

4. Over the past 15 years, Satelsat has undergone a number of corporate reorganizations and transformations, having on multiple occasions been successively sold to differing groups of private investors, with the effect of significantly increasing the overall debt level of the company. In 2010, it has debt obligations in excess of \$25 billion with annual debt service of approximately \$3 billion and annual revenues of approximately \$4.5 billion. The bulk of Satelsat’s debt is held by banks located in Usurpia and is secured by the assets of Satelsat, including the entire Satelsat satellite fleet and its satellite control facilities located in Usurpia.

5. Usurpia, Concordia and Landia are also all parties to an international intergovernmental agreement pursuant to which each party commits to provide affordable satellite services to those countries of the world, each having a GDP in the bottom quartile (a “Lifeline Dependent Country”). The agreement, known as the Global Legacy International Telecommunications Satellite Organization Agreement (the “GLITSO Agreement”), was established in 2009 to supersede a number of other international agreements that had previously been in place with respect to the privatization of former international satellite organizations. Pursuant to the GLITSO Agreement, each State party thereto has committed to the principles of maintaining global connectivity and global coverage to all countries of the world on a non-discriminatory basis and supporting the provision of affordable services to all Lifeline Dependent Countries

requiring such services, in order to meet their international or domestic telecommunications services.

6. While GLITSO has overall responsibility for overseeing the adherence to these principles by its member states, it does not possess any binding enforcement authority to compel adherence or to impose remedies in the event that a member state breaches these principles. Moreover, the GLITSO Agreement does not specify any particular means by which a State party thereto must honor its obligations, this being left to the discretion of each State party. In ratifying the GLITSO Agreement, each State party undertakes to issue a Declaration indicating how it intends to adhere to these objectives. In the case of the various satellite licenses that Concordia has issued to Satelsat regarding the Satelsat fleet, Concordia has imposed the affirmative obligation on Satelsat that it must adhere to the principles set forth in the GLITSO Agreement and abide by the conditions set forth in Concordia's ratification Declaration, whenever providing services to any Lifeline Dependent Country.

7. Due to a major downturn in the global economy, a number of Satelsat's major customers have either become insolvent or fallen significantly in arrears in their payments to Satelsat for space segment capacity leased from Satelsat. Consequently, Satelsat has been unable to meet the interest payments on its debt for the past six months, resulting in the breach of a number of covenants in its various debt instruments. Given concerns by the banks holding Satelsat's debt that the prospects for rectifying the situation at any time in the foreseeable future were dim, the banks felt they had no recourse but to place Satelsat under the protection of a bankruptcy proceeding, choosing to do so in their home country of Usurpia. This petition was filed with the Usurpia Bankruptcy Court on June 1, 2010.

8. The petition sought to restructure Satelsat so as to maximize the likelihood that it could continue in business on a profitable basis and meet its debt obligations as restructured through the bankruptcy process, while avoiding a potentially much more disruptive total liquidation of

the company. The reorganization plan put forward would keep Satelsat largely intact, but contemplated redeployment of certain Satelsat satellites to different orbital locations, all of which had previously been notified by Concordia to the ITU. The objective was to be able to achieve utilization levels (and revenue generation) at these new locations that would be significantly higher than achievable at current locations.

9. In particular, one potential customer was prepared to commit to a long-term lease of an entire Satelsat satellite at premium rates, if Satelsat could quickly redeploy one of its satellites to a particular portion of the orbital arc that presently was unserved by any Satelsat satellite. The revenues that would be generated by this transaction would significantly improve Satelsat's future financial prospects. Fortuitously, Concordia happened to have a currently unoccupied, registered orbital slot within the required portion of the orbital arc and which would be acceptable to the potential customer. If, however, a Satelsat satellite could not be redeployed to such a location within a three-month period (by the end of August 2010), the potential customer has indicated that it would make alternate arrangements to provide the service, instead utilizing a new fiber optic cable that had been recently activated.

10. Of all of the satellites in the Satelsat fleet, the one that would be easiest to relocate and have the necessary configuration of transponders to meet this customer's requirements was the Satelsat-18 satellite. However, if the Satelsat-18 satellite were moved to this new orbital location, Landia's current leases could not be maintained. This was both because the Satelsat-18 satellite would be fully dedicated to this new customer and would be unable to provide adequate coverage of Landia from the new orbital location. To address the situation, the banks proposed that Landia's current services be reapportioned among three other Satelsat satellites serving the same region. These satellites, however, were older and less powerful than the Satelsat-18 satellite. As such, the effect of dispersing Landia's services among these three satellites would be to force Landia, at great expense, to modify its current ground segment

infrastructure. Even with these changes, Landia was of the view that the substitute services would be markedly inferior to the current levels of service that it was receiving on the Satelsat-18 satellites. In particular, Landia's ability to operate its internal domestic networks and its external international links on an integrated basis would be substantially impeded.

11. Based on an expedited order issued by the Usurpia Bankruptcy Court approving the proposed reorganization, Satelsat applied to the CCC in Concordia for the necessary authority to relocate the Satelsat 18 satellite to this new orbital location.

12. When notified of these developments, Landia sent a strong diplomatic note to Concordia, protesting the relocation of the Satelsat-18 satellite. In that note, Landia contended that it was entitled to special consideration as a Lifeline Dependent Country, since this measure would significantly harm the interests of all Landian citizens. Landia's plea struck a responsive chord with certain portions of the Concordian public, resulting in public demonstrations in support of Landia throughout Concordia. Following these demonstrations, the CCC issued an interim order on July 1, 2010 withholding authority for Satelsat to relocate the Satelsat-18 satellite until the CCC could further consider the situation.

13. Fearful that any delay in the relocation of the Satelsat-18 satellite would imperil the entire reorganization plan, the banks devised a revised plan that was submitted to the Usurpia Bankruptcy Court on July 8, 2010. This revised plan sought authority to create a new subsidiary of Satelsat, to be known as New Satelsat, which would take title to certain Satelsat assets, including the Satelsat-18 satellite. This subsidiary would be established under the laws of Usurpia. Without intending to affect the licensing status of the other Satelsat satellites, the banks proposed that the Satelsat-18 satellite be re-licensed by the Usurpian telecommunications Authority ("UTA") as an Usurpian satellite and requested that redeployed to a new, but currently unoccupied orbital location that was currently notified to the ITU by Usurpia, and which was also fully acceptable to the new customer. This revised

plan was approved by the Usurpia Bankruptcy Court on an expedited basis on July 15, 2010. Satelsat immediately notified the CCC of its intent to relinquish its license to operate the Satelsat-18 satellite and any rights it had to locate the satellite at its current orbital location, and simultaneously applied on an emergency basis to the UTA for licensing authority for the satellite. The UTA granted the license request on August 15, 2010, based upon which Satelsat immediately commenced the relocation process for the Satelsat-18 satellite.

14. Landia and Concordia strongly protested these actions, claiming that this was a sham transaction intended to circumvent commitments that previously had been made by Concordia and that national responsibility for the satellite could not be transferred from Concordia to Usurpia without the express consent of Concordia. Usurpia responded by arguing that its actions were entirely appropriate, in that it was acting on the proper application of an Usurpian commercial enterprise to license a satellite in accordance with standard Usurpian procedures. For that reason, it asserted that the prior status of the satellite as having been licensed by Concordia was completely irrelevant to the actions now requested by Newtelsat as a Usurpian company. And while Usurpia is also a member of GLITSO, its licensing procedures only contain a “best efforts” provision with respect to the furnishing of services to any Lifeline Dependent Country.

15. Landia, having now lost the use of the Satelsat-18 satellite and dissatisfied with what it viewed as a wholly inadequate alternate arrangement offered by Satelsat, contacted a second satellite operator, Orbitsat, to determine if Orbitsat could accommodate its requirements. Orbitsat, also licensed by Concordia, did have capacity available on its Orbitsat SpaceStar satellite to meet Landia’s requirements, although the cost of such capacity would be five times the cost of the capacity that Landia has previously obtained from Satelsat. Without knowing how it would be able to handle these additional costs, Landia entered into a provisional lease agreement with Orbitsat, to take effect on September 1, 2010, subject to

Landia's ability to obtain emergency funding from the World Bank or a similar international organization.

16. In light of Landia's and Concordia's protests and concerned about what impact they might have on Usurpia, New Satelsat decided to speed up the relocation of the Satelsat-18 to the new orbital location licensed by Usurpia. Unfortunately, as a direct result of this effort, the Satelsat-18 satellite collided in geosynchronous orbit on August 25, 2010, with the Orbitsat Space Star satellite, completely destroying both satellites.

17. Following the collision, Landia found itself not only lacking the ability to continue to receive services from the Satelsat-18 satellite, but also deprived of the ability to secure appropriate replacement capacity on the Orbitsat SpaceStar satellite. In Landia's view, it was now totally deprived of any suitable means for meeting its internal and external telecommunications requirements, especially given the inferiority of the alternate arrangements that had previously been proposed by the banks.

18. Estimating that it would take at least three years to get adequate replacement capacity from another satellite operator and that, during the interim, Landia would suffer more than \$2 billion in losses to its economic welfare as a result of the disruption of its telecommunications infrastructure, Landia submitted demands for compensation to both Concordia and Usurpia for this amount, contending that both countries were ultimately liable for the loss. Usurpia rejected this demand, disavowing any breach of international law or obligations owed to Landia. Moreover, Usurpia denied that there was any basis under international law for recovery of the type of damages allegedly incurred by Landia. Concordia, which has its own claim for compensation from Usurpia for loss of both the Satelsat-18 and Orbitsat SpaceStar satellites, did not directly deny Landia's claim for compensation, but rather took the position that, to the extent it would be held liable for compensation, it was entitled to indemnification from Usurpia.

19. In an effort to resolve this impasse, Landia, Concordia and Usurpia have agreed to submit this dispute for resolution to the International Court of Justice, which has accepted jurisdiction over the matter. Concordia's damages claim against Usurpia relating to the loss of the Orbitsat SpaceStar satellite has been resolved by negotiation and is not presented for further consideration. However, Concordia's damages claim against Usurpia relating to the loss of the Satelsat-18 satellite has not been resolved. Because of the overall commonality of many of their respective positions, Landia and Concordia have joined forces in opposition to Usurpia in the submission of the dispute to the International Court of Justice.

20. Landia seeks declarations from the International Court of Justice to the effect that:

(i) Usurpia's decision to license and then authorize the relocation of the Satelsat-18 satellite over the objections of Landia is contrary to applicable principles of international law, including, *inter alia*, the 1967 Outer Space Treaty, the 1975 Registration Convention and the GLITSO Agreement; and

(ii) Landia is entitled to compensation for economic consequences of its loss of basic satellite telecommunications services from Usurpia for the relocation of the Satelsat-18 satellite and from both Concordia and Usurpia as a result of the collision destroying the Satelsat-18 and Orbitsat Space Star satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

21. Concordia seeks declarations from the International Court of Justice to the effect that:

(i) Usurpia's decision to authorize relocation of the Satelsat-18 satellite over its objections is inconsistent with applicable principles of international law, including, *inter alia*, the 1975 Registration Convention and the GLITSO Agreement;

(ii) Usurpia is liable to Concordia for the loss of the Satelsat-18 satellite under, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement; and

(iii) Usurpia is obligated to indemnify Concordia for any liability Concordia might owe to Landia for the economic consequences of Landia's loss of basic satellite telecommunications services arising from the collision of the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

22. Usurpia seeks declarations from the International Court of Justice to the effect that:

(i) Usurpia's decision to license the Satelsat-18 satellite and to permit it to be deployed at an Usurpian orbital location over the objections of both Landia and Concordia is consistent with applicable principles of international law, including, *inter alia*, the 1967 Outer Space Treaty, the 1975 Registration Convention and the GLITSO Agreement;

(ii) Landia is not entitled to compensation from Usurpia as a result of the collision that destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement;

(iii) Concordia is not entitled to compensation for the loss of the Satelsat-18 satellite, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement; and

(iv) Concordia is not entitled to indemnification from Usurpia for any financial obligation owed to Landia, as a result of the collision destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

23. All three countries are members of the United Nations and the ITU and are parties to the 1967 Outer Space Treaty, the 1972 Liability Convention and the 1975 Registration Convention. Concordia and Usurpia are members of the World Trade Organization but Landia is not.

24. Both the Satelsat-18 and Orbital Space Star satellites were registered with the Secretary General of the United Nations in accordance with the 1975 Registration Convention, with Concordia listed as the “launching State” and the “State of registry.” Usurpia has placed the Satelsat-18 satellite on the registry it maintains for such purposes and had commenced the process of notifying the Secretary-General of the United Nations in accordance with the 1975 Registration Convention of its status as the State of registry for the Satelsat-18 satellite but had not completed the process at the time of the collision.

25. Concordia and Usurpia are both parties to the Convention on International Interests in Mobile Equipment. However, to date, negotiations regarding a specific Protocol to the Convention on Matters Specific to Space Assets are ongoing, and therefore no such Protocol has yet been opened for signature.

26. For purposes of this problem, participants are to assume that there are no technical coordination matters associated with any of the orbital locations referenced therein.

Appendix A

Relevant Provisions of the GLITSO Agreement and Party Declarations Made Pursuant Thereto

GLITSO Agreement

Preamble:

The State Parties to this Agreement,

Considering the principle set forth in Resolution 1721(XVI) of the General Assembly of the United Nations that communication by means of satellites should be available to the nations

of the world as soon as practicable on a global and non-discriminatory basis,

Considering the relevant provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and in particular Article I, which states that outer space shall be used for the benefit and in the interests of all countries, and

Considering the importance of continuing to assure that, in today’s modern era of satellite telecommunications, all countries of the world, including those that may be uniquely dependent on satellite telecommunications to meet their domestic and international telecommunications requirements, which for purposes of this Agreement are specified as all countries comprising the bottom quartile of countries in the world as determined by level of Gross Domestic Product (“GDP”) and hereinafter referred to as a “Lifeline Dependent Country”, have reasonable access to the satellite telecommunications services they require on fair and equitable terms and conditions,

Agree as follows:

.....

Article II: Purposes and Means for Achievement

Each Party to this Agreement hereby commits to adhere to the following objectives:

- (a) To maintain global connectivity and global coverage, available to all countries on a non-discriminatory basis; and

(b) To support the provision of affordable satellite service to all Lifeline Dependent Countries so requiring such services, in order to meet their international or domestic telecommunications requirements

Each Party to this Agreement shall take such action as it determines to be appropriate, consistent with its national regulatory regime, to achieve the objectives set forth above. In ratifying or acceding this Agreement, each Party shall issue a Declaration indicating the specific measures by which it intends to abide by its commitment to the achievement of these objectives.

Party Declarations

In connection with its ratification of the GLITSO Agreement, Concordia issued the following Declaration, in which it stated:

Concordia views these obligations to be of paramount importance and will include in all licenses issued for satellites licensed by our national regulatory authority, the Concordia Communications Commission, the specific requirement that licensees are obligated to adhere to these principles and must not take any actions inconsistent therewith; moreover, to the extent that any licensee sells or otherwise disposes of any particular satellite asset, as a condition of that sale or transfer, any successor in interest holding that satellite license shall similarly be obligated to adhere to such obligations.

In connection with its ratification of the GLITSO Agreement, Usurpia issued the following Declaration, in which it stated:

Usurpia is fully committed to supporting the objectives of the GLITSO Agreement, while recognizing that such measures must be harmonized with the realities of the

commercial nature of the satellite telecommunications business. Consistent therewith, Usurpia will require all satellite operators to accommodate the objectives in Article II of the GLITSO Agreement on a “best efforts” basis consistent with prudent business practices.

In connection with its ratification of the GLITSO Agreement, Landia issued the following Declaration, in which it stated:

Landia, as a Lifeline Dependent Country, lacks the resources to launch its own satellite and does not expect to have such resources for many years to come. In light of our geographic and economic circumstances, Landia is uniquely dependent on satellite telecommunications services to meet its international and domestic telecommunications requirements and is therefore totally dependent on the commitments made by other Parties to the GLITSO Agreement, and their continuing good will in adhering to their commitments, in order to be able to provide basic telecommunications services to the citizens of our country.

Statement of Additional Facts

1. After New Satelsat was incorporated on 16 July 2010, the Board of Directors of this new company, could not decide on the name for the company and so for some time the company was known as Newtelsat. The two names belong to the same company.
2. Orbitsat is licensed by Concordia and is 100% owned by Concordian private interests.
3. None of the States referred to are parties to the Vienna Convention on the Law of Treaties.
4. Satelsat-18 has 11 transponders on board, of which only 10 were used at all relevant times.
5. The front cover to the present *compromis* has been corrected.

SUMMARY OF ARGUMENTS

I. Usurpia’s decision to license and then authorize the relocation of the Satelsat-18 over the objections of Landia is contrary to the Outer Space Treaty, The GLITSO Agreement and the Registration Convention.

- A. Usurpia violated Article I of Outer Space Treaty by conducting its space activities since it disregarded and harmed Landia’s interests. Its actions were also detrimental to Landia and thus not “for the benefit of all countries” as required by Article I of the Outer Space Treaty.
- B. Usurpia violated Article IX of the Outer Space Treaty as it did not conduct its activities in outer space with due regard to Landia’s corresponding interests.
- C. The authorization of the relocation of Satelsat-18 was contrary to the GLITSO Agreement as Usurpia did not require its nationals to further the objectives of the GLITSO Agreement on a “best efforts” basis, but unlawfully terminated Landia’s lease agreement concerning three transponders on the Satelsat-18 satellite, defeating the purpose of the GLITSO Agreement.
- D. Usurpia violated the Registration Convention by registering Satelsat-18 as Usurpian satellite since only launching states are permitted to register a satellite pursuant to the Convention.

II. Landia is entitled to compensation for its loss of basic satellite telecommunications services from Usurpia for the relocation of the Satelsat-18 satellite and from both Concordia and Usurpia as a result of the collision, pursuant to the Liability Convention, the Outer Space Treaty and customary international law.

- A. Usurpia has to be treated like a launching State according to the Liability Convention since it effectively controls the Satelsat-18 satellite and it *de facto* acted like a launching State.
- B. Landia's losses fit within the definition of damage of Article 1(a) of the Liability Convention. The relocation proximately caused Landia's damages and violated Landian property rights. Landia is entitled to full compensation according to Article XII of the Liability Convention.
- C. Usurpia is internationally liable for the Landian losses under Article VII of the Outer Space Treaty since Usurpia breached international law and therefore was at fault during the relocation of Satelsat-18 and the collision of Satelsat-18 and Orbitsat SpaceStar.
- D. Landia can invoke Usurpia responsibility for its unlawful acts according to Article VI of the Outer Space Treaty and the regime of State responsibility. Usurpia and its nationals breached international law by relocating Satelsat-18 and destroying Satelsat-18 and Orbitsat SpaceStar. Furthermore, Usurpia violated its duty to continually supervise its nationals under Article VI of the Outer Space Treaty.
- E. Concordia as launching State of Satelsat-18 is absolutely liable to Landia under the Liability Convention.

III. Usurpia's decision to authorize the relocation of the Satelsat-18 satellite over the objections of Concordia is inconsistent with the Registration Convention, the Outer Space Treaty, the GLITSO Agreement and customary international law.

- A. According to the Registration Convention, only launching states can retain jurisdiction and control over objects launched into outer space. Usurpia lacks jurisdiction over the

Satelsat-18 as it is not a launching state. It is consequently barred from relocating the satellite.

- B. Usurpia was not allowed to change the status of ownership and actively take control over Satelsat-18 without explicit consent of Concordia. Satelsat-18 was within the area of Concordia's exclusive enforcement jurisdiction. Usurpia thereby violated the fundamental principles of state sovereignty and non-intervention.
- C. By contributing to the destruction of Satelsat-18, Usurpia caused substantial harm to Concordian nationals. Usurpia thereby violated the basic principle not to cause harm to other states.

IV. Usurpia is liable to Concordia for the loss of the Satelsat-18 satellite under the Outer Space Treaty and customary international law.

- A. Usurpia is internationally liable to Concordia pursuant to Article VII of the Outer Space Treaty since Usurpia has to be treated like a launching State and the collision was due to Usurpian fault.
- B. Concordia is also entitled to compensation according to Article VI of the Outer Space Treaty and customary international law. Usurpia breached its duty to continually supervise its nationals under Article VI as well as international law. The acts in question are attributable to Usurpia.

V. Usurpia is obligated to indemnify Concordia for any liability Concordia might owe to Landia for its loss of basic satellite telecommunications services arising from the collision of the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to the Liability Convention, the Outer Space Treaty and general principles of international law.

- A. Usurpia is obligated to indemnify Concordia since Landia can claim compensation from Concordia according to the Liability Convention.
- B. Since Usurpia has to be treated like a launching State, it has to bear the obligations stipulated in Article V(2) of the Liability Convention.
- C. Landia's damages did solely occur due to Usurpian fault. Thus, Usurpia has to pay the full amount of the Landian compensation to Concordia according to the Liability Convention.
- D. By breaching rules of the *corpus juris spatialis* and general principles of international law, Usurpia incurred responsibility under Article VI of the Outer Space Treaty and under general international law. Since Concordia has to pay compensation due to Usurpia's unlawful acts, Usurpia has to fully compensate Concordia for its sustained losses.

ARGUMENT

I. USURPIA’S DECISION TO LICENSE AND THEN AUTHORIZE THE RELOCATION OF THE SATELSAT-18 SATELLITE OVER THE OBJECTIONS OF LANDIA IS CONTRARY TO THE OUTER SPACE TREATY, THE GLITSO AGREEMENT AND THE REGISTRATION CONVENTION.

A. Usurpia’s decision violates the Outer Space Treaty.

1. Article I of the Outer Space Treaty is violated.

Usurpia’s decision to license and authorize the relocation of the Satelsat-18 satellite violated Article I of the Outer Space Treaty¹ because it was not “in the interest and for the benefit of” Landia.

a) Usurpia’s activities are not “in the interest of” Landia.

Article I(2) of the Outer Space Treaty stipulates that outer space “shall be free for exploration and use by all States”. However, there are limitations upon States’ activities. According to Article I(1) of the Outer Space Treaty, “the exploration and use of outer space . . . shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development”.

According to Article 31(1) of the Vienna Convention on the Law of Treaties,² a “treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” Although the V.C.L.T. is not directly applicable in this case as none of the States is a party to it, and notwithstanding that the Outer Space Treaty was concluded before the V.C.L.T. entered into force,³ Article 31(1) of the V.C.L.T. is applicable as it reflects customary international law.⁴

¹ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, 610 U.N.T.S. 205 (1976) [Outer Space Treaty].

² Vienna Convention on the Law of Treaties (1969), 1155 U.N.T.S. 331, Article 31(1).

³ *Id.*, Article 4.

As early as 1961, the United Nations General Assembly mandated that satellite telecommunication services should be made available on a global basis.⁵ This principle was included in U.N. General Assembly Resolution 1962 (XVIII),⁶ which was incorporated into the Outer Space Treaty.⁷

Pursuant to this principle, Article I of the Outer Space Treaty prohibits States from disregarding or harming the interests of any other country when conducting space activities.⁸ They are particularly obliged to respect the interests and needs of developing countries in their use of outer space for all purposes, including satellite communications.⁹ Due to the attempted relocation of Satelsat-18, telecommunication services are no longer available to Landia at an affordable price.¹⁰ The alternate arrangement proposed by the Usurpian banks to reapportion Landia's services among three other Satelsat satellites is wholly inadequate since Landia would have to modify its current infrastructure at great expense.¹¹ Furthermore, the services would be noticeably inferior to the current level of services; Landia's ability to operate its networks would be substantially impeded.¹² This constitutes a failure to respect the interests of Landia.

b) Usurpia's activities were not "for the benefit" of Landia.

Article I of the Outer Space Treaty stipulates that the exploration of Outer Space must be "for the benefit of all countries". This requires States to share the benefits resulting from

⁴ *Territorial Dispute (Libya v. Chad)*, 1994 I.C.J. 6, 21; *Kasikili/Sedudu Island (Bots. v. Namib.)*, 1999 I.C.J. 1045, 1059, Stefan Lorenzmeier / Christian Rohde, *Völkerrecht – schnell erfasst* (2003), 42.

⁵ UNGA Res. 1721 (XVI)(D) (1961).

⁶ Preamble to the UNGA Res. 1962 (XVIII) (1963).

⁷ Preamble to the Outer Space Treaty, *supra* note 1.

⁸ Edwin W. Paxson, *Sharing the Benefits of Outer Space Exploration: Space Law and Economic Development*, 4 Mich. J. Int'l L. 487, 494 (1993).

⁹ Ram Jakhu, *Safeguarding the Concept of Public Service and the Global Public Interest in Telecommunications*, 5 Sing. J. Int'l & Comp. L. 71, 94 (2001).

¹⁰ *Id.*, at 85.

¹¹ *Compromis*, para. 10.

¹² *Compromis*, para. 10.

the exploration of outer space on an equitable basis not only with States operating in outer space but especially with those not so technically advanced.¹³ Therefore, States are, at a minimum, required not to harm States which do not operate in outer space.¹⁴ Thus, a developing country may under no circumstances be deprived of the means to provide services important for the general well-being of its citizens.¹⁵ The Third United Nations Conference on the Exploration and Peaceful Use of Outer Space stated that it is essential “[t]o improve public health services by expanding space-based services for telemedicine . . . [t]o promote . . . rural education by improving . . . educational programs and satellite-related infrastructure [and t]o improve knowledge-sharing by giving more importance to the promotion of universal access to space-based communication services.”¹⁶

Landia is totally dependent on satellites to meet its basic telecommunications requirements. It used three transponders on Satelsat-18, *inter alia*, “to provide critical infrastructure used to support various of its important governmental activities, including e-government, distance learning and telemedicine.”¹⁷ As a result of Usurpia’s actions, Landia is no longer able to do so. Within the country, 250 remote and isolated villages can no longer be provided with internet connectivity.¹⁸ Furthermore, Landia’s citizens are completely cut off from the rest of the world. Hence, the deprivation of the satellite services dramatically imperils the general well-being of Landia’s citizens and thus violates Article I of the Outer Space Treaty.

¹³ Bess C.M. Reijnen, *The United Nations Space Treaties Analysed* (1992), 89 [Reijnen].

¹⁴ Bueckling, *Bemerkungen zur Bedeutung der Kommunklauseln des Weltraumvertrags*, 25 Ger. J. Air & Space L. 101 (1976).

¹⁵ *Id.*

¹⁶ UNISPACE III SPACE/V/9, *The Space Millennium: Vienna Declaration on Space and Human Development*, 1(b) (1999).

¹⁷ *Compromis*, para. 2.

¹⁸ *Compromis*, para. 2.

2. The authorization is contrary to Article IX of the Outer Space Treaty.

Usurpia violated its duty to conduct all outer space activities with due regard to the corresponding interests of all other parties to the treaty pursuant to Article IX of the Outer Space Treaty. This is a general rule of international law and was applied by this Court in the 1974 *Fisheries Jurisdiction* case.¹⁹ According to that ruling, a State has to take into consideration legitimate interests of other States when it exercises its freedom of action.

As a direct result of the relocation of Satelsat-18 and the crash, Landia's telecommunications infrastructure has been totally disrupted, and its economic welfare will suffer tremendously.²⁰ Usurpia deliberately ignored these legitimate interests of Landia when it authorized the relocation. Therefore, Usurpia violated Article IX of the Outer Space Treaty.

B. Usurpia's authorization of the relocation was contrary to its treaty obligations owed to Landia under the GLITSO Agreement.

Usurpia's obligation under Article II of the GLITSO Agreement²¹ is to further the objective "to support the provision of affordable satellite service to all Lifeline Dependent Countries" [LDCs], meaning countries having a GDP in the bottom quartile.²² Usurpia declared that it would "require all satellite operators to accommodate [these objectives] on a 'best efforts' basis consistent with prudent business practices."²³ Usurpia did not comply with this obligation and therefore unlawfully terminated Landia's lease agreement with Satelsat.

1. Usurpia did not require New Satelsat to use "best efforts".

The Party Declarations to the GLITSO Agreement constitute unilateral declarations that create legal obligations for the declaring parties. States concerned are entitled to require

¹⁹ *Fisheries Jurisdiction Case (U.K. v. Ice.)*, 1974 I.C.J. 1, 26-7.

²⁰ Compromis, para. 18.

²¹ Compromis, Appendix A.

²² Compromis, para. 5.

²³ Compromis, Appendix A, Usurpia's Party Declaration.

that such obligations be respected.²⁴ To determine the legal effects of a unilateral declaration, it is important to take account of the context and circumstances in which the declaration was made.²⁵ In this case, the Party Declarations were made in connection with the ratification of the GLITSO Agreement. Thus, any interpretation of Usurpia's Party Declaration must be in accordance with Usurpia's commitments made under the GLITSO Agreement, namely to maintain global connectivity and global coverage, available to all countries, and to support the provision of affordable satellite services to all LDCs.²⁶ Thus, by ratifying the GLITSO Agreement, adherence to the objectives contained in it became part of the stated policy of all parties to the GLITSO Agreement.

The requirement to use "best efforts" must therefore be interpreted in light of those commitments. The term "best efforts" is commonly used in company law and has often been interpreted as "requiring that [one] pursue all reasonable methods"²⁷ and perform one's duties "to the best of [one's] abilities".²⁸

Thus, when Usurpia declared that it would require all satellite operators to use "best efforts", this invariably meant that Usurpia would impose the obligation on its nationals to pursue all reasonable methods to maintain the provision of satellite services to Landia. Hence, Usurpia is obliged to require the Usurpian Telecommunications Authority [UTA] to pay due regard to the objectives of the GLITSO Agreement when it issues a license. This is especially true if the license permits the relocation of a satellite which renders the provision of telecommunications services to a LDC impossible. Usurpia failed to comply with this

²⁴ Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations, ILC Report U.N. Doc. A/61/10 (2006), Nr. 1.

²⁵ *Frontier Dispute Case (Burk. Faso v. Mali)*, 1986 I.C.J. 554, 574.

²⁶ Compromis, Appendix A.

²⁷ *Kroboth v. Brent*, 215 A.D.2d 813, 814 (N.Y. App. Div., 1995); *Coady Corp. v. Toyota Motor Distributors, Inc.*, 361 F.3d 50, 59 (1st Cir. 2004).

²⁸ *Hughes Communications Galaxy, Inc. v. U.S.*, 47 Fed.Cl. 236, 239 (2000).

obligation since it granted a license to New Satelsat without any conditions at all and thus acted contrary to the GLITSO Agreement.

2. Usurpia unlawfully terminated Landia's lease agreement.

Satelsat's bankruptcy does not permit a transfer of its assets free of the company's commitments to LDCs.²⁹ Bankruptcy can not excuse a satellite service provider operating in a State that is party to the GLITSO Agreement from complying with its legal obligations.³⁰ The objectives of the GLITSO Agreement can only be served by maintaining uninterrupted service to existing customers of satellite operators.³¹ Thus, any transfer of assets must give effect to Landia's existing rights under its lease agreement. Therefore, the Usurpia Bankruptcy Court was prohibited from unilaterally terminating the lease agreement with Landia, and the UTA was not allowed to authorize the relocation of the Satelsat-18 satellite as this rendered the provision of satellite service to Landia impossible. Hence, Usurpia's actions were contrary to its treaty obligations owed to Landia under the GLITSO Agreement.

C. Usurpia's decision to license and authorize the relocation of Satelsat-18 over the objections of Landia constitutes a violation of the Registration Convention.

Article II(1) of the Registration Convention³² explicitly states that launching States are the only ones eligible to register a space object.³³

Concordia is the State of registry within the meaning of Article VIII of the Outer Space Treaty and a launching State within the definition contained in Article I of the Registration Convention. Article I of the Registration Convention provides that a launching

²⁹ Cf. Kenneth D. Katkin, *Communication Breakdown?: The Future of Global Connectivity After the Privatization of INTELSAT*, 38 Vand. J. Transnat'l L. 1323, 1374 (2005).

³⁰ Cf. *Applications of Verestar, Inc. for Assignment of Licenses to SES Americom, Inc.*, 19 FCC Rcd. 22750, 22755 [*Applications of Verestar*]; *LaRose v. FCC*, 494 F.2d 1145, 1146 (D.C. Cir., 1974).

³¹ Cf. *Applications of Verestar*, *supra* note 30, at 22755.

³² Convention on the Registration of Objects Launched into Outer Space, 1023 U.N.T.S. 15 (1975) [Registration Convention].

³³ Stephan Mick, *Registrierungskonvention und Registrierungspraxis* (2007), 52 [Mick].

State is “[a] state which launches or procures the launching of a space object”, or “[a] State on whose territory a space object is launched.” The Satelsat-18 satellite was launched from Concordian territory by a Concordian commercial launch service.³⁴ Consequently, Concordia meets the requirements set forth in the Registration Convention while Usurpia fails to meet any of these criteria and is therefore not a launching state with regard to Satelsat-18.

It has been advocated that Article II(2) of the Registration Convention should be interpreted to allow subsequent changes after initial registration.³⁵ However, such a broad interpretation can only be justified if it does not contradict the wording of Article II(2) of the Registration Convention. If the Convention would be read to permit subsequent changes of registration, it would only permit subsequent changes among launching States. Although there have been few occurrences involving a change of registration, for example from the U.K. to China, such rare examples can not be considered sufficient consistent and wide-spread state practice³⁶ so as to constitute customary international law.

Therefore, Usurpia’s decision to license Satelsat-18 and authorize its relocation constitutes a breach of international law.

³⁴ Compromis, para. 3.

³⁵ Mick, *supra* note 33, at 138-9.

³⁶ Kay-Uwe Hörl / Julian Hermida, *Change of Ownership, Change of Registry? Which Objects to Register, what Data to be Furnished, when, and until when?*, 46 I.I.S.L. Proc. 454, 457 (2003) [Hörl / Hermida].

II. LANDIA IS ENTITLED TO COMPENSATION FOR ITS LOSS OF BASIC SATELLITE TELECOMMUNICATIONS SERVICES FROM USURPIA FOR THE RELOCATION OF THE SATELSAT-18 SATELLITE AND FROM BOTH CONCORDIA AND USURPIA AS A RESULT OF THE COLLISION, PURSUANT TO THE LIABILITY CONVENTION, THE OUTER SPACE TREATY AND CUSTOMARY INTERNATIONAL LAW.

A. Landia is entitled to compensation from Usurpia pursuant to the Liability Convention, the Outer Space Treaty and customary international law.

1. Landia is entitled to compensation pursuant to the Liability Convention.

a) Usurpia has to be treated as a launching State for purposes of the Liability Convention.

The Liability Convention³⁷ imposes liability on launching States. Usurpia controlled Satelsat-18 through its control facility³⁸ and thus has to be treated as a launching State. When the Convention was drafted, it was not foreseeable that private entities would engage in space activities and much less transfer satellites in orbit to other private entities.³⁹ In the *Polish Postal Service Case*, the Permanent Court of International Justice [P.C.I.J.] stated “that words have to be interpreted in the sense that they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd”.⁴⁰ If only the original launching States were liable and not the State that actually controlled a space object, this would lead to an unreasonable result, because the State which effectively controls the space

³⁷ Convention on International Liability Caused by Space Objects, 961 U.N.T.S. 2389 (1972) [Liability Convention].

³⁸ Compromis, para. 3, 4.

³⁹ Michael Chatzipanagiotis, *Registration of Space Objects and Transfer of Ownership in Orbit*, 56 Ger. J. Air & Space L. 229, 236 (2007); Armel Kerrest, *Remarks on the Responsibility and Liability for Damages Caused by Private Activity in Outer Space*, in: 40 I.I.S.L. Proc. 134, 134-5 (1997) [Kerrest].

⁴⁰ *Polish Postal Service in Danzig, Advisory Opinion*, 1925 P.C.I.J. (ser. B) No. 11, at 39; *South West Africa Cases (Eth. v. S. Afr.; Liber. v. S. Afr.)*, 1962 I.C.J. 319, 336.

object and causes harm would be free from liability.⁴¹ Thus, “international liability for damage caused by certain space activities should be borne by States who exercise effective control over them.”⁴²

Furthermore, Usurpia acted like a launching State. In the *North Sea Continental Shelf* case, this Court noted that “a very definite, very consistent course of conduct” can have binding effects⁴³ if there is “a real intention to manifest acceptance or recognition of the applicability of the conventional regime”.⁴⁴ Usurpia has shown such acceptance. Usurpia held itself out as having jurisdiction; it registered Satelsat-18 in its domestic registry; it tried to register it with the U.N.; and it expedited the relocation by permitting the UTA to grant a license for Satelsat-18 on an emergency basis.⁴⁵ For each one of these individual acts, Usurpia would have to be the launching State of Satelsat-18 under the rules of the *corpus juris spatialis*.⁴⁶ Usurpia’s conduct was definitely and consistently aimed at availing itself of the status of a launching State. Therefore, Usurpia can now not claim that the Liability Convention’s obligations do not apply to it.

Treating Usurpia as a launching State under the Liability Convention does not mean, however, that Usurpia has acquired the status and the rights of a launching State under the Registration Convention. The doctrine of *ex injuria jus non oritur* is a generally accepted principle of international law, which mandates that no legal right can spring from a wrong.⁴⁷ As the arbitral tribunal in the *Control over the Brcko Corridor* case noted, “acts contrary to

⁴¹ See the Statement of the Russian Federation in UN COPUOS/LEGAL/T.743, 2 (2006).

⁴² Motoko Uchitomi, *State Responsibility/Liability for “National” Space Activities*, 44 I.I.S.L. Proc. 51, 59 (2001) [Uchitomi].

⁴³ *North Sea Continental Shelf Cases* (F.R.G. v. Den., F.R.G. v. Neth.), 1969 I.C.J. 3, 26.

⁴⁴ *id.*

⁴⁵ Compromis, para. 14, 24.

⁴⁶ Outer Space Treaty, *supra* note 1, Article VIII, Registration Convention, *supra* note 32, Article II.

⁴⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, 2004 I.C.J. 136, 254 (Elaraby, J., separate); *Gabčíkovo-Nagymaros Project (Hung. v. Slov.)*, 1997 I.C.J. 7, 76 [*Gabčíkovo-Nagymaros Project*]; Malcolm N. Shaw, *International Law* (5th ed. 2003), 98.

international law can not become a source of legal rights for wrongdoers.”⁴⁸ Usurpia’s registration of Satelsat-18 in its domestic registry was contrary to international law and could not confer on Usurpia the right to exercise jurisdiction and control over Satelsat-18.

b) Landia’s damage is recoverable under the Liability Convention.

Landia’s losses, directly attributable to the relocation of Satelsat-18 and the subsequent destruction of the satellites, are recoverable under the Liability Convention. The requirements for Landia to recover its losses are set forth in Articles I, II and IV(1)(a) of the Convention. Landia’s losses are comprehended by the definition of damage in Article I(a); and the damage was “caused by [a] space object on the surface of the Earth”, as required by Articles II and IV(1)(a).

i. Articles II and IV(1)(a) do not require a physical impact.

Cases decided under the 1952 Third Parties Damage Convention,⁴⁹ Article I of which is similar to Article II of the Liability Convention, have shown that a claimant is entitled to damages upon a showing of causal connection, irrespective of actual physical contact.⁵⁰ The same is true for Article II and Article IV(1)(a) of the Liability Convention as they do not require a physical impact⁵¹ but refer in general to damage on the surface of the Earth.⁵²

⁴⁸ *Republika Srpska v. the Federation of Bosnia and Herzegovina (Control over the Brcko Corridor)*, Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area, 36 I.L.M. 396, 422 (1997).

⁴⁹ *Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface (Oct. 7, 1952)*, 310 U.N.T.S. 182.

⁵⁰ Isabelle H. Ph. Diederiks-Verschoor, *An Introduction to Air Law* (6th ed. 1997), 138; citing to: *Nova Mink Ltd. v. Trans-Canada Airlines*, Supreme Court Nova Scotia (Canada), 1951, 26 M.P.R. 389; see also *United States v. Causby et ux*, 328 U.S. 256, 264-5 (1946); see also W. F. Foster, *The Convention on International Liability for Damage Caused by Space Objects*, 10 Can. Y.B. Int’l L. 137, 155 (1972) [Foster]; Jochen Pfeifer, *International Liability for Damage Caused by Space Objects*, 30 Ger. J. Air & Space L. 215, 242 (1981) [Pfeifer]; both stating that no physical impact is required under Article II of the Liability Convention.

⁵¹ Foster, *supra* note 50, at 155; Pfeifer, *supra* note 50, at 242.

⁵² Bin Cheng, *Studies in International Space Law* (1997), 320 [Cheng].

ii. Article I(a) requires a causal link.

As a preliminary matter, it has to be noted that nothing in Article I(a) explicitly defines “damage” as only including direct damage. If Article I is read in conjunction with other provisions of the Liability Convention, it is evident that the Convention focuses on the causal connection between act and damage.⁵³ This interpretation is in line with the Convention’s victim-oriented purpose⁵⁴ and its *travaux préparatoires*.⁵⁵ During the drafting of the Liability Convention “it did not appear necessary to include an express mention [of indirect damages] in the text of the Convention”, and liability for such damage was accepted by consensus.⁵⁶ Additional support can be found in customary international law, which considers “all indirect losses [to be] covered, provided only that in legal contemplation [the State’s] act was the efficient and proximate cause and source from which they flowed”.⁵⁷ Moreover, Conventions which are concerned with various types of hazardous activities are not limited to direct damage but refer to “any other loss”.⁵⁸

⁵³ Carl Q. Christol, *The Modern International Law of Outer Space* (1982), 97; Pfeifer, *supra* note 50, at 242-3; Foster, *supra* note 50, at 155.

⁵⁴ Peter Malanczuk, *Haftung*, in: Karl-Heinz Böckstiegel, *Handbuch des Weltraumrechts* (1991), 782; Carl Q. Christol, *International Liability for Damage caused by Space Objects*, 74 *Am. J. Int’l L.* 346, 351 (1980).

⁵⁵ Bruce A. Hurwitz, *State Liability for Outer Space Activities*, 16-7 [Hurwitz]; Cheng, *supra* note 52, at 320.

⁵⁶ Aldo Armando Cocca, *From Full Compensation to Total Responsibility*, 26 *I.I.S.L. Proc.* 157, 158 (1983).

⁵⁷ *Administrative Decision No. II, United States-German Mixed Claims Commission (1923)*, 7 *R.I.A.A.* 23, 30 (1954); see also ILC Articles on the Responsibility of States for Internationally Wrongful Acts, GA U.N. Doc. A/56/10 (2001) [Articles on State Responsibility], Article 31(2), which only refers to the causal connection between the damage and the wrongful act.

⁵⁸ See *Convention on Liability of Operators of Nuclear Ships* (1962), 57 *Am. J. Int’l L.* 268 (1963), Article I(7); *Vienna Convention on Civil Liability for Nuclear Damages* (1963), 2 *I.L.M.* 727 (1963), Article I(k)(ii); see also *Agreement Among the Government of the United States of America, Government of Member States of the European Space Agency, the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station* (1988), 16 *J. Space L.* 220-226 (1988), Article 16(c)(4) including indirect and consequential damage.

Since Landia's losses would not have occurred but for the relocation of Satelsat-18 and the subsequent crash, they are sufficiently connected to the Usurpian act of relocation and therefore covered by Article I(a).

iii. Landia's losses represent "loss of or damage to property" under Article I(a).

Landia will incur more than \$2 billion in losses. This represents "loss of or damage to property" under Article I(a).

Usurpia frustrated Landia's lease agreements with Satelsat and Orbitsat. Since the Usurpian bankruptcy proceeding did not lawfully terminate Landia's non-preemptible lease agreement with Satelsat, New Satelsat is still bound by this agreement. Thus, the UTA-authorized relocation of Satelsat-18 led to a breach of contract and represents a violation of protected Landian interests.

Furthermore, Landia's provisional lease agreement with Orbitsat also constituted a Landian right which was harmed by the collision of the satellites. Although the rendering of services was contingent on a loan from the World Bank, the agreement itself was already a valid contract. Landia had acquired the right to require performance from Orbitsat the moment the funding became available. By destroying the Orbitsat SpaceStar, this contractual right was frustrated. Furthermore, it was highly probable for Landia to obtain emergency funding and require performance from Orbitsat, since the World Bank's goal is to strengthen the information and communication technologies of developing countries.⁵⁹

A lease agreement is a contractually-protected interest and the violation of such a property right is compensable under international law.⁶⁰ The arbitral tribunal in the *Shufeldt*

⁵⁹ <http://www.worldbank.org/ict> (follow "About GICT"), stating that the World Bank worked with over 80 countries, thereby funding almost \$2 billion for ICT (information and communication technologies) related projects within the last five years.

⁶⁰ James Crawford, *The International Law Commission's Articles on State Responsibility Introduction, Text and Commentaries* (2002), 229 [Crawford]; see also various arbitral Awards like *Norwegian Shipowners' Claims (Nor. v. U.S.)*, 1 R.I.A.A. 307 (1922); *Amco Asia Corp. And Others v. Republic of Indonesia*, 24 I.L.M. 1022 (1985).

claim stated that “[t]here cannot be any doubt that property rights are created under and by virtue of a contract”.⁶¹ Additionally, the tribunal in the *Rudloff Case* concluded that the “destruction of rights acquired . . . by a contract is as much a wrong, entitling the sufferer to redress, as the . . . destruction of tangible property.”⁶²

Consequently, the relocation and the subsequent crash not only damaged Landia’s future economic welfare but also Landia’s acquired rights arising out of the lease agreements. Since such lease agreements are regarded as property under international law, they fall within the scope of Article I(a).

c) Landia can claim damages pursuant to Article II and Article IV(1)(a) of the Liability Convention.

Both Article II and Article IV(1)(a) establish absolute liability for damage caused on the surface of the Earth. As the damage was caused on the surface, Usurpia is absolutely liable to Landia under Article II. Under Article IV(1), States have joint and several liability. Pursuant to Article IV(2), Landia may claim the entire amount from any or all of the liable States.

d) Landia can claim all of its losses pursuant to Article XII of the Liability Convention.

Usurpia has to compensate Landia for any and all of its losses. Article XII provides that the compensation “shall be determined in accordance with international law”. The P.C.I.J. stated in its judgment in the *Factory at Chorzów* case that “reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which

⁶¹ *Shufeldt Claim (U.S. v. Guat.)*, 2 R.I.A.A. 1083, 1097 (1930); for more cases with the same reasoning see Kenneth S. Carlston, *Concession Agreements and Nationalization*, 52 Am. J. Int’l L. 260 (1958).

⁶² *Rudloff Case (U.S. v. Venez.)* (1903), 9 R.I.A.A. 244, 250 (1959); see also *Siemens A.G. v. Argentine Republic*, ICSID Case No. Arb/02/8 (2007), para. 267.

would, in all probability, have existed if that act had not been committed.”⁶³ This holding was the basis upon which Article XII was drafted.⁶⁴ Consequently, “ ‘any financially assessable damage’, that is, any damage which is capable of being evaluated in financial terms”,⁶⁵ is recoverable. Landia will incur a financially assessable loss, namely a loss in excess of \$2 billion over the next three years.⁶⁶ Usurpia violated internationally protected rights of Landia and caused damage to Landia; therefore Usurpia must compensate Landia in full.

2. Landia is entitled to compensation pursuant to Article VII of the Outer Space Treaty.

Usurpia is liable for the relocation and the collision under Article VII of the Outer Space Treaty since it has to be treated as a launching State in terms of liability. Article VII establishes the international liability of launching States for damage caused by their space objects. International liability is based on the culpable conduct of States.⁶⁷ According to Black’s Law Dictionary, culpable “[i]nvolv[es] the breach of a duty.”⁶⁸ By violating the *corpus juris spatialis*, a State is automatically deemed to have failed to exercise its reasonable duty of care and, thus, is culpable.⁶⁹ Usurpia did not act in accordance with international law and therefore violated Article III of the Outer Space Treaty. Usurpia also violated Article I and Article IX of the Outer Space Treaty, Article II of the Registration Convention and the GLITSO Agreement. Thus Usurpia is internationally liable for the damage Landia has sustained and must pay full compensation.

⁶³ *Factory at Chorzów (Ger. v. Pol.)*, *Merits*, 1928 P.C.I.J. (ser. A) No. 17, at 47 [*Chorzów*]; see also *Lusitania (U.S. v. Ger.)*, 7 R.I.A.A. 23, 39 (1923).

⁶⁴ Bin Cheng, *International Liability for Damage caused by Space Objects*, in: Jasentuliyana / Lee, *Manual on Space Law, Vol. I*, 1979, 130.

⁶⁵ Crawford, *supra* note 60, at 220.

⁶⁶ *Compromis*, para. 18.

⁶⁷ Reijnen, *supra* note 13, at 175.

⁶⁸ Bryan A. Garner, *Black’s Law Dictionary* (7th ed. 1999), 385.

⁶⁹ Elmar Wins, *Weltraumhaftung im Völkerrecht* (2000), 74-5, [Wins]; George T. Hackett, *Space Debris and the Corpus Juris Spatialis* (1994), 180 [Hackett].

3. Landia is entitled to compensation pursuant to Article VI of the Outer Space Treaty and general principles of international law.

Usurpia also has to bear international responsibility for its acts and the acts of its nationals. The responsibility of a State can be invoked if there is a breach of international law and the breach is attributable to a State.⁷⁰ The conduct of Usurpia's officials and of New Satelsat constitute a breach of international law; both are attributable to Usurpia.

a) The acts in question are a violation of international law.

Usurpia infringed the *corpus juris spatialis* as well as general principles of international law; it also violated its duty under Article VI of the Outer Space Treaty. According to that Article, the appropriate State is responsible for the continuing supervision of the activities of its nationals.

While the term "appropriate State" is subject to various interpretations, it has been advocated that this status can only be determined on a case by case basis.⁷¹ To make such a determination, the activities of a State in outer space and the State's relationship to the space object must be considered. Since New Satelsat is a Usurpian national, Usurpia is the only State which could effectively regulate and supervise New Satelsat's acts. Furthermore, New Satelsat was capable of and did actually commence relocating Satelsat-18. Thus, Usurpia can be seen as the territorial State and the appropriate State with respect to Satelsat-18.⁷²

⁷⁰ Articles on State Responsibility, *supra* note 57, Article 1; *United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, 1980 I.C.J. 3, 28-9; *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, at 117-8 [Nicaragua].

⁷¹ Julian Hermida, *Legal Basis for a National Space Legislation* (2004), 43-4 [Hermida]; Karl-Heinz Böckstiegel, *The Terms "Appropriate State" and "Launching State" in the Space Treaties – Indicators of State Responsibility and Liability for State and Private Activities*, 34 I.I.S.L. Proc. 13, 14 (1991).

⁷² Gregory Silvestrov, *On the Notion of "Appropriate" State in Article VI of the Outer Space Treaty*, 34 I.I.S.L. Proc. 326 (1991); Ricky J. Lee, *Liability Arising from Article VI of the Outer Space Treaty: States, Domestic Law and Private Operators*, 48 I.I.S.L. Proc. 216, 219 (2005); Uchitomi, *supra* note 42, at 52; Kerrest, *supra* note 39, at 139.

Continuing supervision means that the appropriate State has the duty to ensure that its nationals adhere to the *corpus juris spatialis*.⁷³ New Satelsat's acts – the relocation, the decision to speed up the relocation and the subsequent crash – were in violation of the *corpus juris spatialis* and are all proof of insufficient Usurpian supervision.

b) The acts in question are attributable to Usurpia.

Whereas under customary international law only official acts are attributable to a State, Article VI of the Outer Space Treaty expands this principle by holding States responsible for every act of their nationals. Thus, under Article VI, New Satelsat's acts are attributable to Usurpia. The relocation and the destruction of the satellites are also attributable to Usurpia as official Usurpian acts since Usurpia failed to adequately supervise New Satelsat's adherence to basic principles of international law. Additionally, the UTA authorized the unlawful relocation of Satelsat-18, which ultimately resulted in the collision and the destruction of the satellites.⁷⁴

Consequently, Usurpia has to bear responsibility for the Landian losses and therefore Landia, as the “injured State[,] is entitled to obtain compensation from the State, [namely Usurpia,] which has committed an internationally wrongful act for the damage caused by it.”⁷⁵

B. Landia is entitled to compensation from Concordia pursuant to the Liability Convention.

Concordia, as a launching State within the meaning of Article I(c) of the Liability Convention, is absolutely liable for damage caused by Satelsat-18 on the surface of the

⁷³ Hermida, *supra* note 71, at 43-4.

⁷⁴ Articles on State Responsibility, *supra* note 57, Article 4(1), stating that executive acts are considered acts of the State; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion*, 1999 I.C.J. 62, 87.

⁷⁵ *Gabčíkovo-Nagymaros Project*, *supra* note 47, at 81; see also *Chorzów*, *supra* note 63, at 27, 47; Articles on State Responsibility, *supra* note 57, Articles 31, 36.

Earth.⁷⁶ The notion of “once a launching State, always a launching State”, meaning that a State always has to bear liability for satellites which were placed in orbit under its administration, is undisputed.⁷⁷ Consequently, Concordia remains the launching State and is liable under the Liability Convention.

It is irrelevant whether Concordia, as the “launching State”, itself breached an international obligation because Articles II and IV impose absolute liability. Thus, Concordia is liable for Landia’s losses under the Liability Convention.

⁷⁶ Compromis, para. 3.

⁷⁷ Statement of Germany to the Legal Subcommittee of the UNCOPUOS, A/AC.105/867 (2006), 4; Edward A. Frankle, *Once A Launching State, Always The Launching State?*, 44 I.I.S.L. Proc. 32, 36 (2002).

III. USURPIA’S DECISION TO AUTHORIZE THE RELOCATION OF THE SATELSAT-18 SATELLITE OVER THE OBJECTIONS OF CONCORDIA IS INCONSISTENT WITH THE REGISTRATION CONVENTION, THE OUTER SPACE TREATY, THE GLITSO AGREEMENT AND CUSTOMARY INTERNATIONAL LAW.

A. Usurpia lacks jurisdiction and control over the Satelsat-18.

Usurpia fails to meet any of the requirements set forth in Article VIII of the Outer Space Treaty or Art I(a) of the Registration Convention to qualify as a launching State. Although Usurpia behaved like a launching State, rendering it liable under the Liability Convention, it can not claim to have acquired the rights of a launching State under the Registration Convention due to the principle of *ex injuria jus non oritur*. Consequently, the registration in its own domestic registry does not entitle Usurpia to exercise jurisdiction and control over Satelsat-18.⁷⁸ Usurpia’s registration of Satelsat-18 as Usurpian satellite is contrary to international law.

Even if a transfer of registration were theoretically possible, such a transfer can only be legitimate if accomplished in accordance with the Registration Convention. It has been advocated that a transfer among launching States is generally possible.⁷⁹ This theory begins with the test of Article II(2) of the Registration Convention, which provides that “where there are two or more launching states . . . they shall . . . determine which one of them shall register the object”.⁸⁰ As there is no specific timeframe set out in Article II (2), it is argued that the provision permits subsequent determination of a State of registry and allows for the possibility of successive registration changes. However, the wording of Article II provides that such possibility only exists among launching states.

⁷⁸ Mick, *supra* note 33, at 26.

⁷⁹ Ricky J. Lee, *Effects of Satellite Ownership Transfers on the Liability of the Launching States*, 43 I.I.S.L. Proc. 148 (2000).

⁸⁰ Registration Convention, *supra* note 32, Article II(2).

If Usurpia were deemed a launching State, Article II(2) would require the launching States to jointly determine which one should register the satellite.⁸¹ Concordia explicitly objected to the relocation and simultaneous re-registration of Satelsat-18 in the strongest possible terms. Consequently, the re-licensing of Satelsat-18 through the UTA constitutes a breach of the Registration Convention.

B. Usurpia’s taking of Satelsat-18 violates Article III of the Outer Space Treaty and customary international law.

According to Article III of the Outer Space Treaty, States must carry out activities in outer space “in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding.”

1. Concordia’s exclusive enforcement jurisdiction extends to objects in outer space which are properly registered to it.

The principle that a State enjoys exclusive enforcement jurisdiction within its territory is extended by Article VIII of the Outer Space Treaty to include objects located in outer space registered by a particular State. The core of this principle predates the age of space travel⁸² and originates in the attribution of enforcement jurisdiction to the flag state over a vessel on the high seas.⁸³ In addition, aviation law has recognized a similar principle for aircraft in international airspace.⁸⁴ As of September 2007, 155 States were party to the United Nations Convention on the Law of the Sea⁸⁵ while as of February 2008, 190 States were party to the

⁸¹ Hörl / Hermida, *supra* note 36, at 458.

⁸² George P. Pamborides, *International Shipping Law: Legislation and Enforcement* (1999), 41; Convention on the High Seas (1958), 450 U.N.T.S. 11, Article 4; since 1982 codified in United Nations Convention on the Law of the Sea (1982), 1833 U.N.T.S. 3, Article 91.

⁸³ Malcolm Evans, *The Law of the Sea*, in: Malcom Evans, *International Law* (2003), 623, 638.

⁸⁴ Convention on International Civil Aviation (1944), 15 U.N.T.S. 295, Article 17.

⁸⁵ U.S. Department of State, <http://www.state.gov/s/d/2007/92921.htm>.

Convention on International Civil Aviation.⁸⁶ This widespread and coherent practice regarding jurisdiction in areas free of any territorial jurisdiction constitutes well settled international custom accompanied by *opinio juris*. The high seas and international airspace, as well as outer space, are free of any territorial jurisdiction and accessible to every country necessitating the application of the principle of exclusive enforcement jurisdiction in these areas.

When the space treaties were drafted, due regard to the special characteristics of outer space was paid. As custom is considered to operate alongside the conventions, extending the sphere of validity of certain general rules,⁸⁷ the absence of an explicit reference to the principle of exclusive enforcement jurisdiction does not preclude its application. As jurisdiction on the high seas and in international airspace are well settled, supported by long-term custom and widespread acceptance, a deliberate departure from these principles would have called for explicit provisions to this effect. As the *corpus juris spatialis* contains no such provisions, an intention to deliberately depart from this principle by the international community can not be discerned.

Consequently, Concordia's exclusive enforcement jurisdiction extends to objects in outer space registered to it, pursuant to the Outer Space Treaty, the Registration Convention as well as to customary international law.

2. Usurpia violated the principles of state sovereignty and non-intervention.

International law prohibits a State from exercising its power in any form in the territory of another State.⁸⁸ It is incumbent upon a State not to overstep the limits which

⁸⁶ International Civil Aviation Organisation, <http://www.icao.int/icao/en/leb/chicago.pdf>.

⁸⁷ Gennady Danilenko / Vladlen Vereshchetin, *Custom as a Source of International Law of Outer Space*, in: Francis Lyall, *Space Law* (2007), 122.

⁸⁸ *Case of the S.S. Lotus (Fr. v Turk.)*, 1927 P.C.I.J. (ser. A) No. 9, 18 [*Lotus*].

international law places upon its jurisdiction.⁸⁹ Usurping jurisdiction over a satellite that is within the jurisdiction of Concordia clearly interferes with Concordia's sovereignty.

It is well recognized that "no State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State".⁹⁰ This implies that the assertion of extraterritorial jurisdiction is likely to violate the principle of non-intervention in certain cases.⁹¹

International law governs the question whether the exercise of enforcement jurisdiction over Concordian satellites is an internal affair of Concordia.⁹² Enforcement jurisdiction may not be exercised within the territory of another State without explicit consent of that State.⁹³ Usurpia did not obtain the explicit consent of Concordia to relocate Satelsat-18 and therefore intervened in Concordia's internal affairs.

To be wrongful, an intervention must include the element of coercion. However, as mentioned in *In Re Westinghouse*,⁹⁴ extraterritorial exercise of enforcement jurisdiction will rarely involve the use of force but rather violates the non-intervention principle on a broader basis not necessarily requiring use of force.⁹⁵ This perception is strengthened by state practice, as the principle of non-intervention is frequently invoked as justification to refrain from the exercise of extraterritorial enforcement jurisdiction.⁹⁶

⁸⁹ *Lotus*, *supra* note 88, at 19.

⁹⁰ *Nicaragua*, *supra* note 70, at 108; Declaration on Principles of International Law, Friendly Relations and Co-Operation Among States, UNGA. Res. 2625 (XXV) (1970).

⁹¹ Karl Meessen, *Extraterritorial Jurisdiction in Theory and Practice* (1996), 97.

⁹² *Nationality Decrees Issued in Tunis and Morocco (French Zone) on November 8th*, *Advisory Opinion*, 1923 P.C.I.J. (ser. B) No. 4, at 24.

⁹³ Vaughan Lowe, *Jurisdiction*, in: Malcom D. Evans, *International Law*, 329, 351 [Lowe].

⁹⁴ *In Re Westinghouse Electric Corporation Uranium Contract Litigation*, [1978] A.C. 547 (H.L.) (appeal taken from B.C.).

⁹⁵ Derek Bowett, *Changing Patterns of Authorities over Activities and Resources*, in: Ronald Macdonald / Douglas Johnston, *The Structure and Process of International Law: Essays in Legal Philosophy Doctrine and Theorie*, (Part 1 1983), 567.

⁹⁶ *Lawrence Richard Hape (Appellant) and her Majesty the Queen (Respondent) and Attorney General of Ontario (Intervener)*, 2007 SCC 26, para. 65.

Concordia was solely empowered to exercise enforcement jurisdiction over the ownership structure as well as over the usage of Satelsat-18. The decision of the Usurpian Bankruptcy Court could only take effect if Concordia had recognized the judgment as being enforceable in Concordia.⁹⁷ However, no evidence of such recognition is contained in the Compromis.

Usurpia's decision to authorize the relocation of Satelsat-18 therefore violates the fundamental principle of state sovereignty and the principle of non-intervention.

3. Usurpia violated customary international law by causing harm to another state.

Usurpia's authorization of the relocation and the subsequent attempted relocation of Satelsat-18 constitute a breach of the fundamental principle of international law that a State may not cause harm to other States.⁹⁸ The actions of Usurpia and its nationals resulted in the destruction of the Concordian satellite and hence caused substantial harm to the property of Concordian nationals. Thus, Usurpia breached its duty not to cause harm to foreign property.

C. Usurpia's decision to authorize the relocation of Satelsat-18 over Concordia's objections violates the GLITSO Agreement.

Usurpia violated the GLITSO Agreement because it interfered with Concordia's self-imposed duty under its Party Declaration in which Concordia determined the means by which it would pursue the objectives of the GLITSO Agreement.⁹⁹ Concordia stated in its declaration that all licenses issued by its national regulatory authority would include the requirement that licensees, even after a transfer of a satellite, would be prohibited from taking any actions inconsistent with the objectives of the GLITSO Agreement. When New Satelsat relocated Satelsat-18, the satellite had not been lawfully transferred to New Satelsat and was

⁹⁷ Lowe, *supra* note 93, at 354; Ian Brownlie, *Principles of Public International Law*, (5th Ed. 1998), 310 [Brownlie].

⁹⁸ *Trail Smelter (U.S. v. Can.)*, 3 R.I.A.A. 1905, 1963 (1938 & 1941); *Corfu Channel (U.K. v. Albania), Merits*, 1949 I.C.J. 4, 22.

⁹⁹ Compromis, Appendix A.

still subject to Concordian jurisdiction and licensed to Concordia. Therefore, New Satelsat was precluded from acting contrary to the objectives of the GLITSO Agreement to provide LDCs with affordable satellite services as stated in Concordia's declaration. Since New Satelsat is not under Concordia's jurisdiction, Concordia could not unilaterally enforce these obligations.¹⁰⁰ New Satelsat's relocation of Satelsat-18, based on Usurpia's authorization, is inconsistent with the objectives and terms of the GLITSO Agreement, since it deprives Landia of affordable satellite services. Usurpia's decision to license and relocate Satelsat-18 interfered with the duty Concordia had undertaken under the GLITSO Agreement. Thus, Usurpia's authorization to license and relocate the satellite contrary to Concordia's objections violated international law.

¹⁰⁰ Brownlie, *supra* note 97, at 301; Michael Gerhard, *Transfer of Operation and Control with Respect to Space Objects – Problems of Responsibility and Liability of States*, 51 Ger. J. Air & Space L. 571, 578 (2002).

IV. USURPIA IS LIABLE TO CONCORDIA FOR THE LOSS OF THE SATELSAT-18 SATELLITE UNDER THE OUTER SPACE TREATY AND CUSTOMARY INTERNATIONAL LAW.

A. Concordia is entitled to compensation pursuant to Article VII of the Outer Space Treaty.

1. Usurpia has to be treated as a launching State with respect to liability.

As Usurpia exercised effective control over Satelsat-18, it has to be treated as a launching State. Thus, Article VII of the Outer Space Treaty is applicable and Usurpia is internationally liable to Concordia.

2. Usurpia caused damage to Concordia.

The destruction of the Satelsat-18 satellite caused damage to Concordia, since Satelsat-18 was registered to Concordia and owned by a Concordian national, namely Satelsat, as the Usurpian bankruptcy judgment has not been recognized by Concordia.

3. Usurpia is internationally liable to Concordia for the loss of Satelsat-18.

Usurpia has to compensate Concordia because Usurpia was at fault during the relocation of Satelsat-18 and thus is internationally liable according to Article VII of the Outer Space Treaty. International liability is based on the culpable conduct of States¹⁰¹ and *culpa* as such implies fault.¹⁰² There is “fault” if the act in question was not reasonable and prudent in light of the circumstances.¹⁰³ By violating the *corpus juris spatialis*, a State is automatically deemed to be at fault since a violation of these provisions can neither be reasonable nor prudent.¹⁰⁴ The UTA authorized the relocation of Satelsat-18 and this ultimately led to the collision of the satellites. The authorization and the collision constitute a

¹⁰¹ Reijnen, *supra* note 13, at 175.

¹⁰² Brownlie, *supra* note 97, at 441-4; E.R.C. van Bogaert, *Aspects of Space Law* (1986), 167.

¹⁰³ Hurwitz, *supra* note 55, at 33-4; Morris D. Forkosch, *Outer Space and Legal Liability* (1982), 80-3.

¹⁰⁴ Wins, *supra* note 69, at 74-5; Hackett, *supra* note 69, at 180.

breach of the laws of outer space, as well as, a breach of general international law. Therefore, Usurpia was at fault and is internationally liable.

Moreover, Article IX of the Outer Space Treaty provides that States have to pay due regard to the interest of other States, which under Article I enjoy the general right to use outer space. Thus, Article I grants States the right to orbit satellites, and a collision impairs this right.¹⁰⁵ When destroying Satelsat-18, Usurpia failed to pay due regard to Concordia's interests, violated Article IX and consequently was at fault.

Additionally, should this Court hold that the appropriation and destruction of Satelsat-18 by Usurpia and New Satelsat did not violate any rules of international law, Usurpia would still be at fault and thus liable. Liability under Article VII and the duty to pay compensation are not necessarily connected to an international wrong.¹⁰⁶ New Satelsat decided to speed-up the relocation of Satelsat-18 in order to forestall further Landian and Concordian protests.¹⁰⁷ Thus, the decision to overhastily traverse Orbitasat SpaceStar's orbital location resulted in the collision of the satellites. Both satellites were lawfully registered to Concordia and no Concordian fault can be inferred from the *Compromis*. The collision was due to Usurpian fault since the transiting Satelsat-18 has to be deemed the sole cause of the accident.¹⁰⁸ As Usurpia has to be treated as a launching State within the meaning of Article VII of the Outer Space Treaty, Usurpia has to bear liability for these acts. Consequently, Usurpia has to compensate Concordia for the loss of Satelsat-18.

¹⁰⁵ Elmar Vitt, *Questions of International Liability in the Case of Collisions Suffered by Satellites in the Geostationary Orbit*, 37 Ger. J. Air & Space L. 46, 52 (1988).

¹⁰⁶ Karl Zemanek, *Causes and Forms of International Liability*, in: Bin Cheng / E. D. Brown, *Contemporary Problems of International Law: Essays in honour of Georg Schwarzenberger on his eightieth birthday*, 319 (1988); Pfeifer, *supra* note 50, at 230-1.

¹⁰⁷ *Compromis*, para. 16.

¹⁰⁸ See for example collisions between moving and anchored ships and the presumption of fault on the moving vessel: *Skidmore v. Grueninger*, 506 F2d 706, 721 (1975); *Award in the Tribunal of the Matter of the Lindisfarne, American and British Claims Arbitration*, 7 Am. J. Int'l L. 875, 877 (1913).

B. Concordia is entitled to compensation pursuant to Article VI of the Outer Space Treaty and under customary international law.

Concordia is entitled to invoke Usurpia's responsibility since the Usurpian acts breached international law and are attributable to Usurpia.¹⁰⁹

Pursuant to Article VI of the Outer Space Treaty, Usurpia is the appropriate State Party responsible for ensuring that Usurpian nationals adhere to the *corpus juris spatialis*.¹¹⁰ The speeding-up of the relocation and the subsequent crash caused by New Satelsat violated these rules. Thus Usurpia not only violated international law when it authorized the relocation that led to the collision but also violated its duty under Article VI of the Outer Space Treaty.

The collision is attributable to Usurpia under Article VI of the Outer Space Treaty as well as under customary international law. Both the failure to sufficiently supervise the relocation and the judgment of the Usurpia Bankruptcy Court are official acts, which are considered acts of Usurpia.¹¹¹ Furthermore, these official acts resulted in the loss of Satelsat-18. Consequently, Usurpia has to bear responsibility for the destruction of Satelsat-18 and compensate Concordia.

¹⁰⁹ Articles on State Responsibility, *supra* note 57, Article 1 and Article 2.

¹¹⁰ Hermida, *supra* note 71, at 43-4.

¹¹¹ Articles on State Responsibility, *supra* note 57, Article 4.

V. USURPIA IS OBLIGATED TO INDEMNIFY CONCORDIA FOR ANY LIABILITY CONCORDIA MIGHT OWE TO LANDIA FOR ITS LOSS OF BASIC SATELLITE TELECOMMUNICATIONS SERVICES ARISING FROM THE COLLISION OF THE SATELSAT-18 AND ORBITSAT SPACESTAR SATELLITES, PURSUANT TO THE LIABILITY CONVENTION, THE OUTER SPACE TREATY AND GENERAL PRINCIPLES OF INTERNATIONAL LAW.

A. Usurpia is obliged to indemnify Concordia pursuant to Article V(2) of the Liability Convention.

Landia can claim compensation from Concordia since Concordia is the launching State of Satelsat-18. Thus, Concordia is entitled to indemnification under Article V(2) of the Liability Convention from Usurpia for any compensation it will have to pay to Landia. Since Usurpia has to be treated as a launching State for purposes of the Liability Convention, it also has to bear the obligations set forth in Article V(2).

1. In the absence of an agreement between the parties, compensation under Article V(2) has to be apportioned based on fault.

Article V(2) stipulates that “[a] launching state which has paid compensation . . . [has] the right to present a claim for indemnification to other participants in the joint launching”. Usurpia has to indemnify Concordia under Article V(2) since Article V applies to all launching States contemplated by Article I(c).¹¹² Under Article V(2), States “may conclude agreements regarding the apportioning among themselves of the financial obligation”. No such agreement was concluded between Concordia and Usurpia concerning Satelsat-18. If such an agreement had been concluded, Concordia would not have taken over any liability in the event of another State’s exercising effective control over Satelsat-18. Although Article V(2) does not expressly state how the compensation shall be apportioned in the absence of an

¹¹² Cheng, *supra* note 52, at 328; Wins, *supra* note 69, at 110; Hurwitz, *supra* note 55, at 39; an interpretation as proposed by Foster which exempts States procuring a launch from joint and several liability has to be rejected; Foster, *supra* note 50, at 166.

agreement, the compensation has to be fault-based. Such an interpretation is not only in line with the reasoning of Article IV(2)¹¹³ but is also justified because Concordia “strongly protested [against the Usurpian] actions”.¹¹⁴ Concordia can not be obliged to pay damages for these actions and then find itself without recourse to the State which committed the acts.

2. Usurpia was at fault during the relocation and destruction of Satelsat-18.

Without explicitly defining it, the Liability Convention refers to fault which can be understood as “a failure to exercise the degree of prudence considered reasonable under the circumstance”.¹¹⁵ Usurpia’s conduct and the conduct of New Satelsat, which is attributable to Usurpia, violated rules of the *corpus juris spatialis* and general rules of international law. Acts which violate rules of international law are neither prudent nor reasonable. Thus, Usurpia was at fault when it wrongfully exercised jurisdiction over Satelsat-18, authorized its relocation and destroyed Satelsat-18.

Concordia can demand indemnification from Usurpia for the full amount of the compensation it will have to pay to Landia, pursuant to Article V(2), since Concordia was not in any way involved in the relocation and the Landian losses solely resulted from Usurpia’s fault.

B. Concordia can claim indemnification from Usurpia under Article VI of the Outer Space Treaty and under general principles of international law.

Usurpia is responsible for the acts of New Satelsat as Article VI of the Outer Space Treaty states that “[p]arties . . . bear international responsibility for national activities in outer space”. Usurpia, as the appropriate State, failed to ensure that its national activities complied

¹¹³ Article IV(2) of the Liability Convention, *supra* note 37, states that the burden of compensation shall be apportioned “with the extent to which [the States] were at fault”.

¹¹⁴ Compromis, para. 14.

¹¹⁵ Hurwitz, *supra* note 55, at 33.

with the *corpus juris spatialis*.¹¹⁶ A breach of these provisions – either by the State itself or by its nationals – will always result in a State’s responsibility under Article VI of the Outer Space Treaty.¹¹⁷ Usurpia is also responsible under the customary rules on State responsibility as the failure to sufficiently supervise New Satelsat and the judgment of the Usurpia Bankruptcy Court are official Usurpian acts.

International law states that “the responsible State is under an obligation to make full reparation for the injury caused by the international wrongful act.”¹¹⁸ Due to Usurpia’s illegal acts, Concordia lost two high-value communications satellites and may also have to pay \$2 billion in compensation to Landia since it is absolutely liable as a launching state. According to Article 31(2) of the Articles on State Responsibility, “injury includes any damage . . . caused by the international wrongful act”. Landia’s damages were caused by Usurpia’s breach of the GLITSO, Articles I, VI and IX of the Outer Space Treaty, the Registration Convention and general provisions of international law.

If Concordia has to compensate Landia for its losses, Usurpia will have to bear responsibility for causing damage to Concordia by its unlawful acts and accordingly will have to fully indemnify Concordia.

¹¹⁶ Outer Space Treaty, *supra* note 1, Article VI; Karl-Heinz Böckstiegel, *Die Nutzung des Weltraums*, 287-8, in: Karl-Heinz Böckstiegel, *Handbuch des Weltraumsrechts*, 265 (1991); Mick, *supra* note 33, at 146.

¹¹⁷ Frans von der Dunk, *Space Law and the Expanding Role of Private Enterprise with Particular Attention to Launching Activities*, in: 5 Sing. J. Int’l and Comp. L. 22, 26-7 (2001).

¹¹⁸ Articles on State Responsibility, *supra* note 57, Article 31; *Chorzów*, *supra* note 63, at 47.

SUBMISSIONS TO THE COURT

For the foregoing reasons, the Government of Landia, Applicant, respectfully requests the Court to adjudge and declare that:

1. Usurpia's acts concerning the Satelsat-18 satellite over the objections of Landia are inconsistent with applicable principles of international law.
2. Landia is entitled to compensation from Usurpia and Concordia for the relocation of Satelsat-18 and for the collision destroying the Satelsat-18 and the Orbitsat SpaceStar satellites, pursuant to applicable principles of international law.

For the foregoing reasons, the Government of Concordia, Applicant, respectfully requests the Court to adjudge and declare that:

3. Usurpia's acts concerning the Satelsat-18 satellite over the objections of Concordia are inconsistent with applicable principles of international law.
4. Concordia is entitled to compensation from Usurpia for the loss of the Satelsat-18 satellite, pursuant to applicable principles of international law.
5. Concordia is entitled to compensation from Usurpia for any financial obligation owed to Landia, as a result of the collision which destroyed the Satelsat-18 and the Orbitsat SpaceStar satellites, pursuant to applicable principles of international law.