THE 2008 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

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

Concordia and Landia v Usurpia

PART A: INTRODUCTION

The 17th Manfred Lachs Space Law Moot Court Competition was held during the Glasgow IISL Colloquium. The *Case concerning the Continued Provision of Lifeline Satellite Services to Countries in the Face of Satellite Operator Insolvency (*Concordia and Landia v Usurpia*)* was written by Ricky Lee. Preliminaries were held at regional level in Europe, North America and in the Asia Pacific region. The Finals were judged by two Judges of the International Court of Justice, Judge A. Koroma and Judge P. Tomka, and by IISL Board Member Professor F. Lyall.

The final was hosted by the Glasgow City Council Shettleston, City Chambers.

The organizations that graciously supported the World Finals are:
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Results of the world finals:

Winner: University of New South Wales, Australia (Madeleine Ellicott, Tamara Phillips, Katrina Taylor; Coach: Mr Pouyan Afshar)

Runner-up: University of Augsburg, Germany (Christian Odehnal, Melanie Ortlieb, Maximilian Widmann; Coach: Mrs. Sarah Schumann)

2nd runner-up: Georgetown University, USA (Jonathan Reisman, Robert Gajarsa; Coach: Prof. Paul Larson)

Eilene M. Galloway Award for Best Written Brief: University of Augsburg, Germany

Sterns and Tennen Award for Best Oralist: Ms Madeleine Ellicott (University of New South Wales)

Lee Love Award for members of the Wining team: University of New South Wales, Australia

Participants in the regional rounds

In North America:
1. George Mason School of Law
2. University of Mississippi School of Law
3. Catholic University of America School of Law
4. McGill University
5. University of Nebraska College of Law
6. Georgetown University Law Center
7. University of Virginia School of Law
8. Drexel University Earle Mack School of Law

In Europe:
1. University of Leiden, The Netherlands
2. University of Inner Temple, London, UK
3. Riga Graduate School of Law, Latvia
4. John Paul II Catholic University of Lublin, Poland
5. University of Strathclyde, Glasgow, Scotland
6. University of Augsburg, Germany
7. Catholic University of Leuven, Belgium
8. University of Paris XI, Sceaux, France

In the Asia Pacific:

1. Amity Law School, New Delhi (India)
2. Army Institute of Law, Mohali (India)
3. Bangalore University Law College, Bangalore (India)
4. Beijing Institute of Technology, Beijing (China)
5. China University of Political Science and Law, Beijing (China)
6. Dr Ram Manohar Lohiya National Law University, Lucknow (India)
7. Government Law College, Mumbai (India)
8. Government Law College, Ernakulam (India)
9. Gujarat National Law University, Gandhinagar (India)
10. Indian Law Society Law College, Pune (India)
11. Murdoch University, Perth (Australia)
12. National Academy of Legal Studies and Research, Hyderabad (India)
13. National Law Institute University, Bhopal (India)
14. National Law University, Jodhpur (India)
15. National University of Juridical Sciences, Kolkata (India)
16. National University of Singapore (Singapore)
17. Padjadjaran University, Bandung (Indonesia)
18. Parahyangan Catholic University, Bandung (Indonesia)
19. Tamil Nadu Dr Ambedkar Law University, Chennai (India)
20. Trisakti University, Jakarta (Indonesia)
21. Pelita Harapan University, Banten (Indonesia)
22. University College of Law, Dharwad (India)
23. University of Kyoto, Kyoto (Japan)
24. University of New South Wales, Sydney (Australia)
25. University of Sydney, Sydney (Australia)
26. University of Tokyo, Tokyo (Japan)

Judges for written briefs:

- Mr. Ian Awford , Australia
- Dr. Peter van Fenema, The Netherlands
- Dr. Martha Mejia-Kaiser, Mexico/Germany
- Mr. Larry Martinez, USA
- Mr. Fabio Tronchetti, The Netherlands
- Dr. Yun Zhao, Hong Kong

Judges for semi finals:

- Prof. Dr. Stephan Hobe, Germany
- Prof. Dr. Maureen Williams, Argentina
- Mr. K.R. Sridhara Murthi, India

Judges for finals:

- H.E. Judge Abdul Koroma, ICJ
- H.E. Judge Peter Tomka, ICJ
- Prof. Francis Lyall, UK

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PART B: THE PROBLEM

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 to 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 Satellite- 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 leaseagreement 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 Orbitsat 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.

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.

PART C: FINALISTS BRIEFS

MEMORIAL FOR THE APPLICANTS LANDIA AND CONCORDIA

University of New South Wales, Australia (Madeleine Ellicott, Tamara Phillips, Katrina Taylor; Coach: Mr Pouyan Afshar)

ARGUMENT

1. Usurpia's decision to license and then authorise the relocation of Satelsat-18 over the objections of Landia and Concordia breached international law

1.1 Usurpia breached its obligations under *GLITSO* to provide Landia with affordable satellite services in a non-discriminatory manner

Landia, Concordia and Usurpia are all States parties to *GLITSO*,[1] under which each party commits to providing affordable satellite services to lifeline dependent countries ('LDCs').[2] Article II of *GLITSO* requires States parties to 'maintain global connectivity and global coverage available to all countries on a non-discriminatory basis and; to support the provision of affordable satellite services to all LDCs so requiring such services.'[3]

Landia's Gross Domestic Product ('GDP') is in the lowest 5% of national GDPs in the world, making it an LDC under *GLITSO*. In addition, Landia's landlocked and geographically isolated position makes it totally dependent on satellite services to meet its basic telecommunications requirements. Usurpia's authorisation of Satelsat-18's relocation, and subsequent failure to offer Landia a viable alternative service constituted a breach of its *GLITSO* obligations.

(a) Usurpia circumvented the Concordian Declaration to *GLITSO*

1 *Compromis* ¶5.
2 *Compromis* ¶1.
3 *Compromis,* Appendix A.

by which New Satelsat was bound under international law

GLITSO requires each State party to issue a Declaration upon ratification of the treaty specifying how it intends to adhere to these objectives.[4] In connection with its ratification of *GLITSO*, Concordia issued a Declaration stating that for all satellites licensed by the CCC, 'licensees are obliged to adhere to these *[GLITSO]* principles and must not take any actions inconsistent therewith.' The Declaration provides that to the extent that any Concordian licensee disposes of its 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.'[5]

Therefore, New Satelsat's acquisition of Satelsat-18 was conditional upon its strict compliance with the principles in *GLITSO*. The restructuring of Satelsat and Usurpia's re-licensing of Satelsat-18 were part of a sham transaction designed to circumvent the stringent obligations imposed on New Satelsat by Concordia's Declaration. This act was contrary to the international law doctrine of abuse of rights as Usurpia exercised its rights 'in such a way as to cause damage to another States, or in a way which may impair the rights of other States'.[6] This Court stated in the *Case of the Free Zones of Upper Savoy and the District of Gex* that if a State attempted to avoid its contractual obligations by resorting to measures that had the same effect as a specifically prohibited act, an abuse of rights would result.[7] In this case, Usurpia deliberately licensed Satelsat-18 as a means of avoiding Satelsat's international obligations under Concordia's *GLITSO* Declaration. This act constituted an abuse of rights, as it enabled New Satelsat to act in breach of Concordia's *GLITSO* commitment by depriving Landia of satellite services.

(b) In the alternative, Usurpia failed to adhere to its obligations under *GLITSO* on a 'best efforts' basis in accordance with its own Declaration

Usurpia's Declaration in connection to its ratification of *GLITSO* commits it to requiring its satellite operators 'to accommodate the objectives in Article II of *GLITSO* on a 'best efforts' basis consistent with prudent business practices.'[8] Although this Court has not had the occasion to interpret the meaning of 'best efforts', it may refer to the practice of States[9], as well as to judicial decisions and the writings of the most highly qualified publicists.[10] These authorities establish that the 'best efforts' standard requires a high standard of performance.

The 'best efforts' standard is commonly employed in space contracts.[11] Bernhard Schmidt-Tedd has stated that it is 'not a green light for the launch service provider's non-performance of its contractual obligations.'[12] Rather, the phrase requires that parties behave 'with the greatest commitment and the highest quality standards' in performing their obligations.[13] This is also reflected in domestic case law. For example, American Courts have stated that 'best efforts' will not prevent a party from giving reasonable consideration to its own

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4 *Compromis* ¶6.

5 *Compromis*, Appendix A.

6 Ian Brownlie, *Principles of Public International Law* (5th ed, 1999) 444. See also L. Oppenheim, *International Law: A Treatise* (8th ed, 1955) 345.

7 *Case of the Free Zones of Upper Savoy and the District of Gex* (*France* v *Switzerland*) (1932), PCIJ (ser. A/B) No 46, 167.

8 *Compromis* ¶14, Appendix A.

9 *Vienna Convention*, opened for signature 23 May 1969, 1155 UNTS 331 art 31(3)(b), (entered into force 27 January 1980).

10 *Statute of the International Court of Justice*, art 38(1)(d).

11 *Hughes Communications Galaxy, Inc., v United States*, (2000) 47 Fed Cl 236, *American Satellite Co. v United States*, (1993) 998 F 2d 950; See also K.H. Bockstiegel, 'The Law Applicable to Contracts' (1982) 25 *Proceedings of the 25th Colloquium on the Law of Outer Space* 207; Julian Hermida, *Legal Basis For A National Space Legislation* (2004), xxii.

12 Bernhard Schmidt-Tedd, 'Best Efforts Principle and Terms of Contract in Space Business'(1988) 31 *Proceedings of the 31st Colloquium on the Law of Outer Space* 330, 330.

13 Ibid, 336.

interests but imposes an obligation to act in 'good faith and to the extent of its own total capabilities'. [14] The Australian High Court interpreted the term as being measured by what is reasonable in the circumstances, having regard to the nature, capacity, qualifications and responsibilities of the contracting party in the light of the particular contract.[15] Similarly, Canadian[16] and English Courts[17] have held that 'best efforts' means doing all that can reasonably be done in the circumstances.

In determining whether Usurpia acted reasonably in the circumstances, it is necessary to have regard to the prudent business practices employed by other major satellite operators.

Intelsat, one of the largest satellite service providers is a party to the ITSO Agreement[18] which provides for affordable satellite services to developing countries under Article III. Intelsat is required to provide services to developing countries on an affordable, non-discriminatory basis. These obligations are accorded such importance that even in the event of the company falling into receivership 'its insolvency would not excuse it from fulfilling its public service obligations to developing countries'.[19] EUTELSAT, another large satellite service provider, is bound by Article III(d) of its Convention to provide non-discriminatory telecommunications services.[20] EUTELSAT's management report of 30 June 2006 highlights its respect for the principle of non-discrimination, stating that it must be factored into the operational activities of the company.[21] The commercial practices of these satellite operators reveal that the provision of services to lifeline countries and a practice of non-discrimination is an essential element of prudent business practice in the satellite industry.

Usurpia failed to meet the high standard imposed by its best efforts declaration. Whilst Satelsat had a large fleet of 25 satellites,[22] Usurpia specifically chose to relocate Satelsat-18 to meet the high-paying customer's demands. It did so with the knowledge that Landia relied entirely on Satelsat-18 to meet its telecommunications requirements. Rather than exercising its best efforts, Usurpia simply adopted the '*easiest*' solution to Satelsat's financial difficulties, unreasonably failing to consider any alternatives which would not have infringed its obligations to Landia. Given the large number of satellites in Satelsat's fleet, Usurpia should have at least explored alternative restructuring options involving various satellites, before approving a solution which it knew would adversely compromise Landia's vital communications services.

While Usurpia did offer Landia an alternative service, this was inadequate and practically unusable by Landia. This proposed substitute would have been markedly inferior to

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14 *Bloor v Falstaff Brewing Corp*, 601 F.2nd 609 (2nd cir. 1979); *Pips (Leisure Productions) Ltd v Waltons* (1980) 43 P & CR 415.

15 *Transfield Pty Ltd v Arlo International Ltd* [1998] HCA 15; for a similar interpretation see *Hospital Products Ltd v U.S. Surgical Corporation* (1984) 156 CLR 41.

16 *Atmospheric Diving Systems Inc v International Hard Suits Inc* [1994] 89 BCLR (2d) 356.

17 *Terrell v Mabie Todd & Co Ltd [1952]* 69 RPC 234.

18 *Agreement Relating to the International Telecommunications Satellite Organization* <http://www.itso.int/htmldocs/agreement.htm> at 10 June 2008 ('*ITSO Agreement*').

19 Kenneth Katkin, 'Communication Breakdown? The Future of Global Connectivity after the Privitisation of INTELSAT' (2005) 38 *Vanderbilt Journal of Transnational Law* 1323, 1373.

20 *Convention Establishing the European Telecommunications Satellite Organization EUTELSAT* <http://www.eutelsatigo.int/en/docs/Amended_Convention.pdf> at 19 July 2008.

21 *Management Report of Consolidated Accounts at 30 June 2006* (2006) EUTELSAT Communications < http://www.eutelsat.org/investors/docs-0506.html> at 19 July 2008.

22 Making it one of the largest satellite telecommunications providers in the world, following only Intelsat and SES who in 2007 possessed 51 and 36 satellites respectively; Peter de Selding, 'The List: Top Fixed Satellite Service Operators', *Space News* (New York), 25 June 2007, 12.

the services Landia had received from Satelsat-18, and would have impeded Landia's ability to operate its internal domestic networks and its external international links on an integrated basis.[23] Further, in order to utilise this substitute service, Landia would have had to modify its ground segment infrastructure at great expense, which it could not afford given its limited economic means.[24]

Thus, in authorising the relocation of Satelsat-18, and failing to provide Landia with an appropriate replacement service, Usurpia adopted the most convenient and profitable course of action, and clearly failed to exercise its 'best efforts' to support the principles in *GLITSO.*

1.2 Usurpia breached the customary international law principle not to discriminate against developing countries

In addition to its *GLITSO* obligations, Usurpia is concurrently bound by a principle of customary international law requiring it not to discriminate against developing countries in the provision of telecommunications services. [25] This customary principle is evidenced by the requisite State practice and *opinio juris.*[26]

Evidence of widespread and consistent state practice[27] is found in the large number of States parties to treaties and international organisations espousing the principle of non-discrimination. For example, the *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies* has been ratified by 98 States and provides in Article I that the exploration and use of outer space should be carried out 'for benefit and in the interests of all countries, irrespective of their degree of economic or scientific development.'[28] Publicists have described the benefit of all mankind principle as a 'central tenet of international space law.'[29]

The principle of non-discrimination also forms an integral part of the *Principles Relating to Remote Sensing of the Earth from Space.*[30] Principles II, IV and XII require States to 'take into particular consideration the needs of developing countries' and to supply data on a 'non-discriminatory basis and on reasonable cost terms.'

Furthermore, the International Telecommunications Union ('ITU') (with 191 member States) enshrines the principle of equitable access to the orbital spectrum in Article 33(2) of the *ITU Convention*, requiring member States such as Usurpia to conduct space activities 'taking into account the special needs of developing countries and the geographical situation of particular countries.'[31] Moreover, the *ITU Constitution* requires telecommunications service providers to give priority to all telecommunications concerning safety of life and government functions.[32] Also, the World Trade Organisation ('WTO') (of which Usurpia is a member) promotes the assistance of developing countries in regard to the provision of telecommunications.[33]

Additionally, the importance of the non-discrimination principle has been confirmed by many resolutions of the United Nations General

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23 *Compromis* ¶10.

24 Ibid.

25 *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States) (Merits)* [1986] ICJ Rep 14, ¶177.

26 *North Sea Continental Shelf Cases (Germany v Denmark; Germany v Netherlands)* [1969] ICP Rep 3.

27 *Asylum Case (Columbia v Peru)* [1950] ICJ Rep 266.

28 Opened for signature on 27 January 1967, 610 UNTS 205(entered into force 10 October 1967) ('*OST*').

29 Nandasiri Jasentuliyana, 'Ensuring Equal Access to the Benefits of Space Technologies for All Countries' (1994) 10(1) *Space Policy* 7, 7.

30 UN Doc GA Res 41/65, UN GA, 95th plen mtg, UN Doc A/Res/41/65.

31 *International Telecommunication Convention*, opened for signature Nairobi, 6 November 1982 (entry into force 1 January 1984).

32 *ITU Constitution* arts 40-41.

33 See, eg, *Fourth Protocol to the General Agreement on Trade in Services,* opened for signature 30 April 1996, art IV (entered into force 5 February 1998).

Assembly,[34] which constitute evidence of a customary rule.[35] In particular, Resolution 1721(XVI) recognised that 'satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis.'[36] International support for this objective culminated in the conclusion of the *GLITSO Agreement* in 2009.

Although it is difficult to ascertain whether a customary rule has crystallised mandating the active provision of satellite services to developing countries, there is significant state practice and *opinio juris* in support of the principle of non-discrimination against developing countries in the provision of telecommunications services. Landia is a developing country completely reliant on satellite services to satisfy its telecommunications requirements, including e-government and telemedicine.[37] Thus, Usurpia's approval of the relocation of Satelsat-18 to a customer with greater economic capabilities breached this customary principle.

1.3 Usurpia breached international law by registering Satelsat-18 and seizing jurisdiction and control of the satellite

Under the *Convention on Registration of Objects Launched into Outer Space*, a space object may only be registered on the registry of one State at any given time.[38] Whilst the *Registration Convention* does not explicitly provide for the transfer of a space object between State registries, State practice suggests that this is possible only where States have agreed to transfer registration.[39] Moreover, States are required to 'jointly determine' the registration of satellites pursuant to Article II of the *Registration Convention.*

In the present case, Concordia as the original State of Registry for Satelsat-18 in accordance with the *Registration Convention*, registered the satellite with the UN Secretary General.[40] Subsequently, Usurpia unilaterally decided to place Satelsat-18 on its national registry, and commenced the process of notification of its status as a State of Registry to the United Nations, in the absence of any agreement with Concordia. Indeed, Concordia unequivocally protested against Usurpia's actions, arguing that national responsibility for the satellite could not be transferred from Concordia to Usurpia without the express consent of Concordia.[41] Therefore, Usurpia's actions in registering Satelsat-18 breached Article II of the *Registration Convention.*

Additionally, Article VIII of the *OST* states that '[a] State party to the treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object.'[42] As Concordia remained the lawful State of registry for Satelsat-18, and did not agree to Usurpia's registration of the

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34 *The Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries,* GA Res 51/122, UN GAOR, 51st sess, 83rd plen mtg, UN Doc A/Res/51/122 (1996).

35 *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States) (Merits)* [1986] ICJ Rep 14, ¶188.

36 *International Co-operation in the Peaceful Uses of Outer Space*, GA Res 1721 (XVI) UNGAOR, 16th sess, 1085th plen mtg, UN Doc A/Res/1721 (1961).

37 *Compromis* ¶2.

38 *Convention on Registration of Objects Launched into Outer Space*, opened for signature 14 January 1975, 1023 UNTS 15, art I(c) (entered into force 15 September 1976) ('*Registration Convention*').

39 See Julian Hermida, 'Transfer of Satellites in Obit: An International Law Approach' (2003) *Proceedings of the 46th Colloquium on the Law of Outer Space* 189, 190; *Practice of States and International Organizations in Registering Space Objects*, UNCOPOUS, UN Doc A/AC.105/C.2/L.266 (2007) 7 which recommends that with regard to the transfer of ownership of space objects in orbit, both States involved in the transfer should furnish information to the UN Secretary General).

40 *Compromis* ¶24.

41 *Compromis* ¶14.

42 *OST*, opened for signature on 27 January 1967, 610 UNTS 205, art VIII (entered into force 10 October 1967).

satellite, Concordia remained entitled to exercise jurisdiction and control over the satellite. Usurpia's interference with Concordia's legitimate jurisdiction and control over Satelsat-18 by way of licensing the satellite and authorising its redeployment to an Usurpian orbital location therefore breached Article VIII of the *OST*.

1.4 Usurpia breached the international obligation to cooperate and consult with respect to activities in Outer Space

In expeditiously authorising the relocation and re-licensing of Satelsat-18 in the face of the Applicants' protests, Usurpia violated the principle of international cooperation and consultation. Cooperation is a fundamental principle of international law, enumerated in Article 74 of the *UN Charter* which emphasises that States are to take into account the 'interests and well-being' of other States.[43] The *OST* also stresses the importance of international cooperation, mentioning it no less than six times.[44]

The requirement to consult forms part of this cooperation obligation. In particular, Article IX of the *OST* stipulates that where a State has reason to believe that an 'activity planned by it or its nationals in Outer Space...would cause potentially harmful interference with activities of other States', then it is required to 'undertake appropriate international consultations before proceeding with any such activity'. Failing to consult where that is required constitutes a material breach of Article IX.[45] The duty to consult extends to activities which may cause 'physical interference' to another object in outer space, as well to activities which might interfere with the 'earthly ingredients' of a State's space activities. It is submitted that the on-earth use of a satellite signal is also covered by this Article.[46]

In light of the Applicants' diplomatic protests to the revised plan, Usurpia clearly had reason to believe that the relocation would harm first Landia's interests, by impeding its ability to operate its telecommunications services, and second Concordia's interests, by undermining the CCC's interim order. Usurpia's failure to cooperate or consult with Landia or Concordia in relation to the possible impacts of the satellite relocation clearly violated international law.

1.5 Creditors of space assets are required to act in accordance with international space law

The Banks' status as creditors of Satelsat does not preclude Usurpia's conformity with its obligations under international law.

The International Institute for the Unification of Private Law ('UNIDROIT') recently completed a *Preliminary Draft Protocol on Matters Specific to Space Assets*[47] to the *Convention on International Interests in Mobile Equipment*.[48] When the *Space Protocol* enters into force, it will provide a legal regime for the international financing of space assets. Until the *Space Protocol* is ratified however, the *Mobile Equipment Convention* has no binding force with respect to the creation of rights for creditors of space assets.[49] Moreover, even when the *Space Protocol* does become effective, creditors of space assets will remain bound by international space law. Article XXI *bis* of the

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43 *Charter of the United Nations*, art 74.

44 *OST*, opened for signature on 27 January 1967, 610 UNTS 205, arts I, II, IX, X, XI.(entered into force 10 October 1967).

45 Jerzy Sztucki, 'International Consultations and Space Treaties' (1975) *Proceedings of the 17th Colloquium on the Law of Outer Space* 147, 159. Istvan Herczeg, 'Introductory Report: Provisions of the Space Treaties on Consultation' (1975) *Proceedings of the 17th Colloquium on the Law of Outer Space* 141; The intended consultation is to take place on a diplomatic level, ideally through the vehicle of an international organisation.

46 Sztucki, above n 45, 159.

47 *Preliminary Draft Protocol on Matters Specific to Space Assets* UNIDROIT Doc Study LXXIIJ (2004) *('Space Protocol')*

48 *Convention on International Interests in Mobile Equipment*, opened for signature 16 November 2001, UN Doc A/AC.105/C.2/2002/CRP.3 (entered into force 1 March 2006 excl art 49) ('*Mobile Equipment Convention*').

49 Ibid, art 49.

current *Space Protocol* provides that the 'Convention as applied to space assets does not affect State party rights and obligations under the existing United Nations Space Treaties or instruments of the International Telecommunications Union.' Thus, neither the Banks nor Usurpia may escape their international obligations under the *OST* or *Registration Convention* by virtue of any rules of international insolvency law.[50] Landia is entitled to compensation for the economic consequences of its loss of basic satellite communications services from Usurpia for the relocation of Satelsat-18, and from both Usurpia and Concordia as a result of the collision destroying Satelsat-18 and SpaceStar

1.6 Usurpia is internationally responsible and liable to compensate Landia for the unlawful relocation of Satelsat-18

It is a well established principle of international law that every internationally wrongful act of a State entails its international responsibility.[51] Article 2 of the *State Responsibility Articles* provides that 'there is an internationally wrongful act of a State when conduct consisting of an action or omission (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the state.'

As discussed above in section 1, Usurpia breached the international obligations it owed to Landia in approving the relocation of Satelsat-18. This unlawful removal of lifeline satellite services from Landia is also attributable to Usurpia. The UBC is a State organ of Usurpia, and its authorisation of the redeployment of Satelsat-18 is imputable to Usurpia pursuant to Article 4 of the *State Responsibility Articles.*[52] Moreover, as an entity empowered to exercise governmental authority to grant satellite licenses, the UTA's conduct in licensing the relocation of Satelsat-18 is also attributable to Usurpia according to Article 5 of that treaty. Finally, in response to Landia and Concordia's diplomatic protest to the actions taken to relocate Satelsat-18, Usurpia responded that 'its actions were entirely appropriate, in that it was acting on the proper application of an Usurpian commercial enterprise.'[53] Thus, Usurpia 'acknowledge[d] and adopt[ed] the conduct in question as its own,' so that it should be considered an act of that State pursuant to Article 11 of the *State Responsibility Articles.* Therefore, the licensing of Satelsat-18 and the authorisation of the relocation was unlawful and attributable to Usurpia, incurring its international responsibility for these actions.

Accordingly, Usurpia is liable to make full reparations for the damage caused by its breaches of international law.[54] Article 36 of the *State Responsibility Articles* provides that a 'State responsible for a wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution' and that 'the compensation shall cover any financially assessable damage.' The relocation of Satelsat-18 clearly caused damage to Landia, by depriving it of services it was entitled to receive under its long term non-preemptible lease.[55] As Satelsat-18 has been destroyed, restitution is impossible. It is predicted that it will take three years for Landia

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50 Paul B Larsen, 'UNIDROIT Space Protocol: Comments on the Relationship Between the Protocol and Existing International Space Law' (2001) *Proceedings of the 44th Colloquium on the Law of Outer Space*, 187, 191.

51 *Articles on Responsibility of States for Internationally Wrongful Acts*, GA Res 56/83, UN GAOR, 56th sess, Supp No 10, art 1, UN Doc A/Res/56/83 (2001) ('*State Responsibility Articles*').

52 In *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* [1999] ICJ Rep 62 the ICJ held that according to a rule 'of a customary character,' courts are State organs and their decisions are attributable to States.

53 Compromis ¶14.

54 *State Responsibility Articles,* GA Res 56/83, UN GAOR, 56th sess, Supp No 10, art 31, UN Doc A/Res/56/83 (2001).

55 Compromis ¶2; A non-preemptible lease affords the lessee the highest priority service offered by a satellite company; Timothy Bonds et al, *Employing Commercial Satellite Communications* (2000) 87.

to obtain adequate replacement capacity from another satellite operator, and that in the meantime, Landia will suffer more than an estimated $2 billion in losses to its economic welfare resulting from the disruption of its telecommunications infrastructure.[56] Usurpia is therefore required to compensate Landia for this economic loss, placing it in a position as though it had retained its long term lease of premium satellite services.[57]

1.7 Concordia and Usurpia are liable to Landia for the satellite collision as launching States under the *Liability Convention*

(a) Usurpia is a launching State of Satelsat-18

A launching State is defined in Article I of both the *Liability Convention* and the *Registration Convention* as a State that 'launches or procures the launch of a space object' or 'a State from whose territory or facility a space object is launched.'

As the *Liability Convention* was intended to be victim-oriented, it is appropriate that the definition of the 'launching State' is interpreted broadly, as to enable recovery of compensation from a large number of States.[58] Publicists have argued that 'a plurality of launching States is an advantage for the victims'[59] and that 'no real harm is caused by there being a host of launching States because...States can make provision amongst themselves as to how to apportion damage.'[60] Conversely, a narrow conception of the term would limit the number of States from which a victim of damage caused by space activities could claim.

First, Usurpia should be considered a launching State due to its provision of satellite control facilities to Satelsat. Wirin has suggested that 'launches' or 'facility' could be given a broad interpretation to include any State which assists in any way, for example by providing telemetry support.[61] Ground control facilities are integral in ensuring that a launched satellite achieves its desired orbital trajectory. As Satelsat-18 could not have been launched without the use of the Usurpian control facilities, Usurpia should be considered a launching State for the satellite.[62]

Additionally, Usurpia should be considered a launching State as it procured the launch of Satelsat-18. According to the most highly qualified publicists, procurement by a State occurs when it or its nationals are involved in 'acquiring, securing, or bringing about the launch'.[63] Professor Cheng has argued that 'a State would be one of the launching States of the space object if the launch was effected or procured by a private person, whether natural or corporate, that bears its nationality.'[64] Similarly, Professor Hurwitz has proposed that a State which procures a launch can be a 'State...whose nationals have financed or ordered the launching.'[65] As the ongoing activities of Satelsat have been financed by Usurpian

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56 *Compromis* ¶18.

57 *Factory at Chorzów (Merits)*[1928] PCIJ Series A No 17, 47.

58 Article 31(1) of the *Vienna Convention* requires treaties to be interpreted in light of their object and purpose; Even though the States in this case are not party to the *Vienna Convention*, it has been established that *Vienna Convention* arts 31-32 reflect customary international law; *Case Concerning Sovereignty over the Islands of Litigan and Sipadan (Indodensia v Malaysia)*(2002) ICJ 23-24.

59 Armel Kerrest, 'Remarks on the Notion of the Launching State' (1999) *Proceedings of the 42nd Colloquium on the Law of Outer Space* 308, 311.

60 William Wirin 'Practical Implications of Launching State and Appropriate State Definitions' (1994) *Proceedings of the 37th Colloquium on the Law of Outer Space* 109, 113.

61 Ibid, 111-2.

62 Schmidt-Tedd and Gerhard, 'How to Adapt the Present Regime or Registration of Space Objects to New Developments in Space Applications' (2005) *Proceedings of the 48th Colloquium on the Law of Outer Space* 353, 359.

63 Wirin, above n 60, 111.

64 Bin Cheng, *Studies in International Space Law* (1997) 627.

65 Bruce Hurwitz, *State Liability for Outer Space Activities* (1992) 22.

Banks;[66] Usurpia should be considered to have procured the launch of Satelsat-18.

Moreover, there is support for the proposition that a State which registers a satellite is considered a launching State under the *Liability Convention.* Therefore, even if Usurpia is not considered to be a launching State due to its involvement with Satelsat-18 at the time the space object was launched, it should be deemed to have acquired launching State status due to its registration of the satellite.[67]

Relevant rules of international law applicable between the parties to a dispute may be used in ascertaining the meaning of a treaty provision.[68] The launching State concept also appears in the *Registration Convention*, which provides in Article 1(c) that a 'State of registry means a launching State on whose registry a space object is carried.'[69] The *Registration Convention* was concluded after the *Liability Convention*. The concept of launching State in the later convention thus assists in interpreting the definition of the 'launching State' under the *Liability Convention.*[70] Professor Christol has noted that the launching state referred to in the *Registration Convention* was intended to be the same State as that defined under the *Liability Convention,* in order to achieve consistency and uniformity in the international law of outer space.[71] Moreover, Professor Kerrest has advocated an interpretation of the *Registration Convention* which allows a 'non-original launching state to register a spacecraft... [and] to consider this state as one of the liable launching states'.[72] The Applicants respectfully request this Court to adopt this interpretation.

Interpreting the term 'launching State' broadly also accords to the realities of the space industry. In today's commercial space industry, the launching entity will generally not continuously operate and control the satellite, as predominantly occurred in the past where States were the key space actors. It has been noted that 'if a launching State is required to be an original launching State, this could mean that none of the States subject to international liability under the *Liability Convention* have the ability to prevent damage being caused by the space object in question.'[73] These considerations will become even more important when the *Mobile Equipment Convention* enters into force in relation to space assets, and the transfer of possession of space objects becomes even more frequent. A narrow interpretation of the term 'launching State' has been described as 'a serious flaw in the logic of the liability regime'[74] and as 'an injustice' to the launching State which continues to incur liability when it no longer has any control or influence over the operation or control of the satellite.[75]

In light of these concerns, in meetings of UNCOPUOS, a number of States have recommended that a State which comes to own or operate a space object should be liable for the damage caused by it, even if that State is not directly involved in the launch phase.[76] Indeed, agreements concluded as part of State practice support the notion that a State which operates a

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66 *Compromis* ¶4.

67 *Compromis* ¶24.

68 *Vienna Convention*, opened for signature 23 May 1969, 1155 UNTS 331 art 31(3)(c), (entered into force 27 January 1980); see above n 58.

69 *Registration Convention*, opened for signature 14 January 1975, 1023 UNTS 15, art 1(c) (entered into force 15 September 1976).

70 *Vienna Convention*, opened for signature 23 May 1969, 1155 UNTS 331 art, 30(2) (entered into force 27 January 1980).

71 Carl Q Christol, *The Modern International Law of Outer Space* (1982) 240.

72 Kerrest, above n 59, 309.

73 Kai-Uwe Schrogl and Charles Davies, 'A New Look at the Launching State – The results of the UNCOPUOS Legal Subcommittee Working Group "Review of the concept of the launching state (2000-2002)"' (2002) *Proceedings of the 45th Colloquium on the Law of Outer Space* 286, 295.

74 Frans von der Dunk, 'The Illogical Link: Launching, Liability and Leasing' (1993) *Proceedings of the 36th Colloquium on the Law of Outer Space*, 349, 354.

75 Ricky J Lee, 'Liability Convention and National Licensing Regimes' (Paper presented at the United Nations/Republic of Korea Workshop on Space Law, Daejeon, Republic of Korea, 4 November 2003) 443.

76 *Review of the concept of the 'launching State,'* UNCOPOUS Legal Subcommittee, UN DOC A/AC.105/768 (2002) 16.

satellite should be liable for any damage caused. For example, in order to define the respective liabilities of parties involved in the 1990 launch of the ASIA-I satellite from China, a liability agreement was concluded between China and the UK.[77] Under this arrangement, China was made liable for damage caused to third countries during the launch phase of the satellite, whilst the UK assumed liability for any damage occurring after the satellite's successful launch, as the State which owned and operated the space object whilst it was in orbit. Similar agreements have been since employed by China, as well as other space actors including the European Space Agency, reflecting international acceptance that a State which controls the activities of a space object should be held liable for any losses which arise from its actions.[78] Further, State practice in the sale of satellites also supports the idea that a State of registry should bear liability. The satellite BSB-1A was originally registered with the UN by the United Kingdom. However, following Sweden's purchase of the satellite in orbit in 1996, it was listed as Sirius-1 on the Swedish national register and this was conveyed to the UN.[79] According to Swedish law, its national registry is to be used for space objects for which Sweden is considered the launching State in accordance with Article I of the *Registration Convention*.[80] The UN's acceptance of Sweden's registration reflects recognition of the fact that a State which registers a satellite is a launching State for that space object.

Thus, there is international support for the proposition that a state which registers a satellite is one of the liable launching States under the *Liability Convention*. This Court should respectfully adopt the view that a 'launching State is not required to be an original launching State'[81] and that a State which purchases a payload already in orbit 'should be considered a launching State even though this status occurs after the launch.'[82] Usurpia unlawfully seized jurisdiction and control of Satelsat-18. It then placed Satelsat-18 on its national register and commenced the process of notifying the UN of its status as a State of registry. This was a unilateral act which evinced Usurpia's intention to be recongised as a State of registry and a launching State under both the *Liability Convention* and *Registration Convention*. Usurpia should accordingly be bound by its actions.[83]

Thus, Usurpia should incur liability as a launching State either due to its involvement with Satelsat-18 prior to its launch, or its subsequent registration of the satellite.

(b) Concordia is a launching State of Satelsat-18 and SpaceStar

Concordia is a launching state of Satelsat-18, as the satellite was launched from a Concordian facility, in Concordian territory.[84] Additionally, Concordia is the launching State of SpaceStar, as it licensed or 'procured' the launch of this satellite.[85] The Applicants do not dispute Concordia's status as a launching State, but rather submit below in section 4 that any liability Concordia incurs in this capacity should be indemnified by Usurpia.

(c) Landia's loss is recoverable damage under the *Liability Convention*

Landia is claiming $2 billion for the economic loss it predicts it will suffer because of the loss of its lease of satellite services.[86] Damage is defined under Article I(a) of the *Liability Convention* as 'loss of life, personal injury or other impairment of health; or loss of or damage to property.'[87] However, compensation under the *Liability Convention* is to be determined 'in accordance with

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77 Ibid, 13.

78 Ibid, 14.

79 Ibid, 16.

80 Section 4, *Decree on Space Activities* (1982:1069) at <http://www.unoosa.org/oosaddb/showDocument.do?documentUid=319> at 1 June 2008.

81 Schrogl and Davies, above n 73, 295.

82 Wirin, above n 60, 313.

83 For the binding nature of a unilateral undertaking in international law, see eg, *Nuclear Tests (Australia v France)* [1974] ICJ Rep 253, 270.

84 *Compromis* ¶3.

85 *Compromis* ¶15.

86 *Compromis* ¶18.

87 *Liability Convention*, opened for signature 29 March 1972, 961 UNTS 197, art I(a) (entered into force 1 September 1972).

international law and the principles of justice and equity, in order to provide such reparation in respect of the damage as will restore the...State... to the condition which would have existed if the damage had not occurred.'[88]

Under international law, 'property' is not confined to tangible assets, but rather extends to any right which can be subject to a commercial transaction.[89] The satellite collision resulted in Landia's loss of its provisional lease of segment capacity on SpaceStar, which clearly constitutes a 'loss of property' within the threshold definition of damage.

Indirect economic damage arising from this loss of property is therefore recoverable under the *Liability Convention* insofar as it is required to effect reparation.[90] Article 36(2) of the *State Responsibility Articles* confirms the availability of compensation for prospective financial loss by expressly providing for compensation for future loss of profits. It is acknowledged that the *travaux preparatoires* of the *Liability Convention* reveal that negotiating States were divided as to whether indirect damage should be explicitly included in the Treaty. However, the majority of States held the opinion that the issue should be left open to be dealt with as individual cases arose.[91] To date, there has been only one international claim made pursuant to the *Liability Convention*, following the Cosmos 954 incident. This claim was presented by Canada in 1979, for damage caused when a Soviet satellite deposited nuclear debris on Canadian territory.[92] Although this dispute was eventually settled through negotiation, Canada's inclusion of 'clean-up costs' in its claimed amount suggests that compensation for indirect losses arising from the destruction or contamination of property does fall within the scope of recoverable damage under the *Liability Convention.*[93] Significantly, the most highly qualified publicists have since supported the view that the *Liability Convention* covers the 'additional consequences produced as a result of the initial hit [of a space object].'[94]

Such indirect damage will be compensable under the *Liability Convention*, as in general international law, so long as causation is established. In order for damage to be recoverable in Space law, it must be 'caused by' a space object.[95] The requisite causal link under both the *Liability Convention* and general international law is 'proximate causation,' a general principle of international law[96] which is supported in international case law[97] and by the most highly qualified publicists.[98] The rule of 'proximate causation' limits recoverable damage to that which arises as a normal consequence of an act and is reasonably foreseeable.[99] A normal

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88 *Liability Convention,* opened for signature 29 March 1972, 961 UNTS 197, art XII (entered into force 1 September 1972).

89 See eg, discussions of 'property' in *Amoco International Finance Corp v Iran (US v Iran)*(197) USCTR 189, ¶108; *Shufeldt Claim (US v Guatemala)* (1930) 2 RIAA 1083, 1097.

90 *Chorzow Factory Case (Merits)* [1928] PCIJ Series A., No 17, 47; *State Responsibility Articles* GA Res 56/83, UN GAOR, 56th sess, Supp No 10, art 31, UN Doc A/Res/56/83 (2001).

91 WF Foster, 'The Convention on International Liability for Damage caused by Space Objects' (1972) 10 *Canadian Yearbook of International Law* 137, 159.

92 Christol, C, 'International Liability for Damage Caused by Space Objects' (1980) 72 *American Journal of International Law* 346.

93 Ibid 362.

94 Foster, above n 91, 159. See also, Hurwitz, above n 65, 16.

95 *Liability Convention,* opened for signature 29 March 1972, 961 UNTS 197, arts II-III (entered into force 1 September 1972); Foster, above n 91, 157-158.

96 To which recourse may be had pursuant to Article XII of the *Liability Convention.*

97 *Administrative Decision No II (US v Germany)* (1923) 7 RIAA 23, 29-30; *Lake Lanoux Arbitration (France v Spain)*(1957)12 RIAA 281; *Trail Smelter Arbitration (United States v Canada)* (1949)33 AJIL 182, 183.

98 Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953) 241-56. ; Hurwitz, above n 65, 15–17; Christol, above n 71,109.

99 For example, in *Administrative Decision No II (US v Germany)* (1923) 7 RIAA 23 it was held at 29-30: 'the proximate cause of the loss must have been in legal contemplation the act of Germany... all indirect losses are covered...provided

and foreseeable consequence of a satellite collision is that entities reliant on the services of the satellites involved will incur grave losses. The collision of Satelsat-18 and SpaceStar caused Landia losses of such a nature. Landia was deprived of the opportunity to lease services from SpaceStar – an opportunity it most likely would have benefitted from had the satellite not been destroyed. It is highly likely that had the collision not occurred, Landia would have received funding to secure its provisional lease over SpaceStar, given the high value Landia places on internet connectivity as a constitutional right,[100] and its declaration under *GLITSO* of its total dependence and reliance on the commitments of other countries in enabling it to meet its basic telecommunications needs.[101] Following the collision, Landia lacked the capacity to operate its basic telecommunications infrastructure, and as a result will suffer enormous economic damage.[102] Accordingly, regardless of whether Landia's loss is categorised as direct or indirect, this damage is recoverable under the *Liability Convention* as it was legally caused by a space object.

(d) Therefore, Landia may claim full compensation from either Usurpia or Concordia under the *Liability Convention*

Article IV(1) of the *Liability Convention* provides that 'in the event of damage being caused elsewhere than on the surface of the Earth to a space object of one launching State...by a space object of another launching State,' these states shall be jointly and severally liable to a third state that suffers damage. The collision of Satelsat-18 (for which Usurpia and Concordia are joint launching States) with SpaceStar (for which Concordia is a launching State) caused Landia to suffer damage on the surface of the Earth, in the form of economic losses due to disruption to its telecommunications infrastructure. Pursuant to Article IV(2) of the *Liability Convention*, Landia is entitled to seek the entire compensation due to it 'from any or all of the launching States which are jointly and severally liable' – that is, from either Concordia or Usurpia.

1.8 In the alternative, Usurpia is liable to compensate Landia because it bears international responsibility for the collision under Article VI of the *OST*

Even if Usurpia is not held liable as a launching State under the *Liability Convention*, the Applicants may still claim compensation from Usurpia as the State internationally responsible for the collision.[103]

Article VI of the *OST* provides that State parties 'shall bear international responsibility for national activities in outer space...whether such activities are carried on by governmental agencies or non-governmental entities.'[104] According to the *lex specialis* rule, Article VI displaces general international law principles of State responsibility and attribution, automatically imposing international responsibility on States for their national activities in outer space.

The 'national activities' referred to in Article VI comprise of those space activities within a State's effective jurisdiction or control.[105] This encompasses both activities 'conducted by a company enjoying the nationality of [a] State'[106] and 'activities

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that Germany's act was the efficient and proximate cause from which they flowed.'

100 *Compromis* ¶2(b).

101 *Compromis*, Appendix A.

102 *Compromis* ¶18.

103 Frans von der Dunk, 'Liability versus Responsibility in Space Law: Misconception or Misconstruction' (1991) *Proceedings on the 34th Colloquium on the Law of Outer Space* 363, 368; Ricky J Lee, 'Liability Arising From Article VI of the Outer Space Treaty: States, Domestic Law and Private Operators'(2005) *Proceedings of the 48th Colloquium on the Law of Outer Space* 216.

104 *OST*, opened for signature 27 January 1967, 610 UNTS 205, art VI (entered into force 10 October 1967).

105 Bin Cheng, 'Article VI of the Space Treaty Revisited: "International Responsibility," "National Activities," and the "Appropriate State"' (1998) 26 *Journal of Space Law* 7, 19.

106 Kerrest, A, 'Remarks on the Responsibility and Liability for Damages Other Than Those Caused by the Fall of a Space Object' (1997) *Proceedings of the 40th Colloquium on the Law of Outer Space* 134, 138.

undertaken from within the territory of the State in question.'[107] The relocation of Satelsat-18 was performed by New Satelsat, a company incorporated in Usurpia bearing Usurpian nationality.[108] In addition, the relocation was likely to have been performed using Satelsat's satellite control facilities located in Usurpian territory.[109] Thus, the relocation was within the national and territorial jurisdiction of Usurpia, and constituted a Usurpian 'national activity.'

The effect of Article VI is to impute to a State international responsibility for all private space activities under its control, including those that it has a duty to authorize and supervise as the appropriate State.[110] Professor Kerrest has stated that '[in] the case of violation by a private entity of any international regulation or principle, the State is responsible without having the possibility to avoid liability by proving ignorance of such a violation, nor even by showing it had [done] its best...to control the activity.' This represents a stringent application of the principle of international law established in the *Trail Smelter Arbitration* that a 'State owes at all times a duty to protect other States against injurious acts by individuals from within its jurisdiction.[111] In space law, States are not able 'to dodge a potential duty for damage by claiming they have taken due care.'[112] Usurpia breached its duty as a responsible State to supervise the activities of New Satelsat, resulting in the company rushing the satellite relocation and the subsequent collision.[113] Regardless of whether Usurpia had knowledge of the company's proposed speedy relocation, Usurpia's failure to adequately monitor New Satelsat's actions causes it to incur international responsibility.

As the State responsible for its national activities in outer space under Article VI, Usurpia is internationally liable to pay compensation for any damage caused by such activities.[114] Therefore, Usurpia is obliged to fully compensate Landia for its economic losses arising from the collision.[115]

2. Concordia is entitled to compensation from Usurpia for the loss of Satelsat-18

2.1 Concordia may claim for the destruction of Satelsat-18 on behalf of Satelsat

Concordia is entitled to claim compensation on behalf of its national, Satelsat[116] under both Article VIII(1) of the *Liability Convention* which provides that 'a State which suffers damage or whose natural or juridical persons suffer damage, may present...a claim for compensation for such damage'[117] and customary international law principles of diplomatic protection.[118] This is the case even though New Satelsat was the company which owned Satelsat-18 at the time it was destroyed, and Satelsat's loss occurred by virtue of its shareholding in New Satelsat.

In the *Barcelona Traction Case,* this Court stated that in some situations, 'considerations of equity might call for the possibility of protection of shareholders by their national state.'[119] The present case requires such considerations of equity. In particular, the *Barcelona Traction Case* recognised the

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107 von der Dunk, above n 103, 367.

108 *Barcelona Traction, Light and Power Company Limited (Belgium v Spain) (Judgment)* [1970] ICJ Rep 3, ¶42 ('*Barcelona Traction Case*').

109 *Compromis* ¶4.

110 Lee, above n 103, 218.

111 3 RIAA 1905, 1963; See also, *Corfu Channel Case (Merits)*(1949) ICJ Rep 4, 22.

112 von der Dunk, above n 103, 367.

113 *Compromis* ¶16.

114 *Chorzow Factory Case (Merits)* [1928] PCIJ Series A., No 17, 47; This rule applies under Article VI of the *OST*; von der Dunk, above n 103, 367; Kerrest above n 106, 139.

115 *State Responsibility Articles,* GA Res 56/83, UN GAOR, 56th sess, Supp No 10, art 36, UN Doc A/Res/56/83 (2001).

116 Due to its incorporation in Concordia: *Barcelona Traction Case* [1970] ICJ Rep 3, ¶42.

117 *Liability Convention,* opened for signature 29 March 1972, 961 UNTS 197, art VIII(1) (entered into force 1 September 1972).

118 *Draft Articles on Diplomatic Protection,* Report on the 55th Sess ILC (2003) UN GAOR, 58th Sess, Supp 10, arts 1-4.

119 *Barcelona Traction Case* [1970] ICJ Rep 3, 93.

applicability of the municipal company law doctrine of 'lifting the corporate veil' in international law.[120] This doctrine, recognised in both common law[121] and civil law[122] jurisdictions, allows the corporate veil to be pierced where the legal personality of a company is misused. For example, where the dominant intention of forming a company is to avoid an existing obligation, the corporate structure may be disregarded. It is submitted that the creation of New Satelsat was part of a sham transaction in order to evade the stringency of Concordia's *GLITSO* declaration and circumvent the interim order of the CCC. As such, the Court should look beyond New Satelsat's corporate veil, allowing Concordia to claim compensation on behalf of Satelsat, notwithstanding that New Satelsat incurred the loss.

2.2 Usurpia is liable compensate Concordia as the State at fault under the *Liability Convention*

Article III of the *Liability Convention* imposes fault-based liability on States in the event of damage being caused in outer space 'to a space object of one launching State...by a space object of another launching State.'

The damage suffered by Concordia does not precisely fall within this provision, as Concordia's claim is for the destruction of Satelsat-18, which was caused by Usurpia's relocation of that same satellite. However, an imposition of liability as provided for exactly by the article has become impractical and anachronistic with respect to today's commercial realities.[123] With the development of the commercial space industry resulting in an increasing number of launching States for any given satellite, a variety of losses in outer space are possible other than through a collision between different space objects belonging to different launching states. The purpose of the *Liability Convention* is 'to establish effective international rules and procedures concerning liability for damage caused by space objects...and a full and equitable measure of compensation.'[124] In particular, Professor Christol states that the imposition of fault-based liability in Article III constitutes 'an inducement to launching entities to exercise care.'[125] Article III should therefore be interpreted as providing a general regime of fault-based liability for damage caused in outer space. To allow Usurpia to escape liability simply because Concordia was involved in the launch of both satellites would contradict the victim-oriented nature of the *Liability Convention* and would also curtail any inducement of creditors which take possession of space objects from exercising due care. Thus, even though the present situation does not precisely meet the parameters of Article III, fault-based liability should be imposed upon Usurpia.

In this case, the destruction of Satelsat-18 was entirely due to the fault of Usurpia. Fault is not defined in the *Liability Convention.* However, in international law the principle of 'fault' refers not to culpability or malice, but rather a failure to comply with a legal duty or obligation.[126]

As discussed above, Usurpia breached international law in discriminatorily depriving Landia of the services of Satelsat-18 and failing to supervise New Satelsat's relocation of the satellite. These breaches of international law constitute fault on Usurpia's part. Baker has also proposed that in general, a State would be at fault if it failed to maintain the required spacing between satellites in the geostationary orbit.[127] Thus, fault for the collision and destruction of Satelsat-18 lies solely with Usurpia, as the collision was caused by its unlawful act of failing to prevent New Satelsat from speeding up the relocation.[128]

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120 *Barcelona Traction Case* [1970] ICJ Rep 3, 57.

121 *Gilford Motor Co v Horne* [1993 Ch 935].

122 *German Civil Code.*

123 Bruce Hurwitz, 'Liability for Private Commercial Activities in Outer Space' (1990) *Proceedings of the 33rd Colloquium on the Law of Outer Space, 37.*

124 See Preamble to *Liability Convention.*

125 Christol, above n 71, 107.

126 Cheng, above n 98, 218.

127 H Baker, 'Liability for Damage Caused in Outer Space by Space Refuse'(1988) 12 *Annals of Air and Space Law* 183, 192.

128 *Compromis* ¶16.

In addition, Concordia bore no fault in the satellite collision. Professor Cheng states that according to the international law principle of *nemo tenetur ad impossibile*, launching States cannot be held liable if a space object happens to be under the effective jurisdiction of another State, and it proves impossible to bring them within its effective jurisdiction.[129] In light of Usurpia's seizure of control and jurisdiction over Satelsat-18 in spite of Concordia's protests, Concordia had no control over the satellite at the time of the collision. Therefore, Usurpia's total fault requires it to pay complete compensation for the destruction of the satellite in accordance with a broad interpretation of Article III of the *Liability Convention.*

2.3 In the alternative, Usurpia is liable to compensate Concordia as the State responsible for the collision

As discussed above in sections 2.1 and 2.3, Usurpia bears international responsibility for the satellite relocation and subsequent collision under general principles of State responsibility and Article VI of the *OST.* It is thus liable to compensate Concordia for its losses arising from these acts.

3. Usurpia is obligated to indemnify Concordia for any liability Concordia might owe Landia

3.1 Usurpia is a joint launching State of Satelsat-18

Article V of the *Liability Convention* allows a launching State which has paid compensation for damage to present a claim for indemnification to other participants in the joint launching, that is, the other launching States.[130]

Where the launching States have not concluded an agreement regarding the apportionment of their liability, this is to be determined in accordance with their relative fault.[131] As discussed above in section 3.2, the satellite collision was entirely due to Usurpia's fault. On the other hand, Concordia bore no fault. Therefore, as the State solely at fault, Usurpia must completely indemnify Concordia to the extent that the latter is liable to Landia.

3.2 In the alternative, Concordia is entitled to indemnification under general principles of international law

Usurpia's unilateral seizure of Satelsat-18 violated international law and deprived Concordia of any opportunity to conclude agreements with either New Satelsat or Usurpia, transferring to them the burden of its liability under the *Liability Convention.*

It is almost uniform State practice for States to require private satellite operators and their successors in title to indemnify them for any liability the private company's activities may cause the State to incur under the *Liability Convention.*[132] Such indemnification agreements protect States from the burden of liability arising from space activities which they are not in a position to control. For example; agreements between China and the United Kingdom concerning the AsiaSat-1, AsiaSat-2, Apstar-1 and Apstar-2 satellites contained an indemnification clause in favour of the United Kingdom assigning all liability to China in the launch phase when a Chinese corporation had complete control over the satellite.[133]

Had Usurpia not breached its international obligations, especially the duty to cooperate, Concordia would have concluded appropriate indemnification agreements. Therefore, Usurpia should be liable to indemnify Concordia to the extent that Concordia is required to pay compensation to Landia.

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129 Cheng, above n 98, 227.

130 Although the *Liability Convention* expressly specifies that 'a State from whose territory or facility a space object is launched shall be regarded as participant in a joint launching,' joint launching States can bear any of the definitional features of the launching State as defined in Article I; Cheng, above n 64, 329.

131 Kerrest, above n 106, 312.

132 *Report of the Secretariat, 'Review of the Concept of the 'launching State'* UN Doc A/AC.105/768 (2002) at 11.

133 See Exchange of Notes between the United Kingdom and China concerning Liability for Damage arising during the Launch Phase of the Asiasat Satellite, Peking, 26 March 1990 and 2 April 1990, UKTS No 7(1993) Cm. 2138.

SUBMISSIONS TO THE COURT

For the foregoing reasons, the Governments of Landia and Concordia, Applicants, respectfully request to the Court to adjudge and declare that:

1. Usurpia's decision to license Satelsat-18 satellite and permit it to be deployed at an Usurpian orbital location was inconsistent with applicable principles of international law;

2. Landia is entitled to compensation from Usurpia for the economic consequences of its loss of basic satellite telecommunications as a result of the collision that destroyed Satelsat-18 and SpaceStar;

3. Concordia is entitled to compensation from Usurpia for the loss of Satelsat-18; and

4. Usurpia is obligated to indemnify Concordia for any liability Concordia might owe to Landia as a result of the satellite collision.

MEMORIAL FOR THE RESPONDENT

THE KINGDOM OF USURPIA

University of New South Wales, Australia (Madeleine Ellicott, Tamara Phillips, Katrina Taylor; Coach: Mr Pouyan Afshar)

ARGUMENT

1. Usurpia's decision to re-license and authorise the relocation of Satelsat-18 was consistent with its international obligations

1.1 Usurpia acted in accordance with its *GLITSO* obligations

The *Global Legacy International Telecommunications Agreement* ('*GLITSO*') sets out an international regime for the provision of satellite services.[134] Usurpia, Concordia and Landia are all States parties to this Agreement. Under Article II of *GLITSO*, parties commit to maintaining global connectivity and coverage to all countries on a non-discriminatory basis and to supporting the provision of affordable satellite services to Lifeline Dependent Countries ('LDCs'). *GLITSO* does not specify any particular means by which States must honour their obligations. Rather, each State party has the discretion 'to take such action as it determines to be appropriate' to achieve the objectives set out in *GLITSO*.[135] Each party to *GLITSO* is required to issue a Declaration indicating how it intends to adhere to these objectives.[136]

Accordingly, the Declaration issued by Usurpia in connection with its ratification of *GLITSO* requires satellite operators to accommodate the objectives of *GLITSO* on a 'best efforts' basis, consistent with prudent business practice and in light of the commercial realities of the satellite industry.[137]

134 *Compromis* ¶5.
135 *Compromis* Appendix A.
136 Ibid.
137 Ibid.

(a) Usurpia's Declaration is consistent with the object and purpose of *GLITSO*

Usurpia's Declaration is a statement of how it intends to adhere to the principles of *GLITSO*. The rules regarding reservations in the *Vienna Convention on the Law of Treaties*,[138] which codify customary international law,[139] apply to Usurpia's *GLITSO* Declaration, which, like a reservation, purports to modify the effect of a treaty provision.[140] Under Article 19 of the *Vienna Convention*, States are entitled to formulate a reservation provided this does not defeat the object and purpose of the treaty. Article 20 provides that a State is considered to have accepted another State's reservation if it does not raise any objection to the reservation within a stated time.

Usurpia's 'best efforts' declaration is entirely consistent with the object and purpose of *GLITSO*, when viewed in the context of space industry practice. Due to the high-risk, capital-intensive and volatile nature of the satellite services industry, it is common for operators to include a 'best efforts' clause in their service agreements due to the substantial risk of satellite service failure in the event of insolvency.[141] Satellites are subject to significant operational risks whilst in orbit, including control system failures, in-orbit malfunctions, transponder failures and power system failures.[142] Given the demonstrated volatility of the satellite industry, and the directive in *GLITSO* that a State may 'take such action as it deems appropriate,' Usurpia's declaration is clearly valid. Further, Landia and Concordia did not raise any objection to this Declaration, thus they may be deemed to have accepted its validity.

(b) Usurpia complied with its 'best efforts' Declaration

While there is an absence of international law jurisprudence interpreting the term 'best efforts', this Court is entitled to apply general principles of law, judicial decisions and writings of publicists in deciding disputes submitted to it.[143]

An examination of the case law of national courts reveals that a 'best efforts' standard only obliges the declarant to do what is reasonable in the circumstances. This principle has been upheld by the Australian High Court.[144] Similarly, the Canadian Supreme Court has held 'best efforts' means taking, in good faith, all reasonable steps to achieve an objective.[145] United States case law also requires a party to do what is reasonable, and notes that a party with a best efforts obligation is not required to disregard its own interests or spend itself into financial ruin.[146]

Further, publicists have noted that States frequently employ a 'best efforts' clause in relation to their high-risk activities in outer space in order to 'refrain from promising the accomplishment of their respective obligations, committing themselves only to using their best efforts to achieve success... [t]his is associated with both a reduction and a waiver of liability'.[147] Usurpia's commitment to

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138 *Vienna Convention on the Law of Treaties,* opened for signature 23 May 1969, 1155 UNTS 331 art 31(3)(b) (entered into force 27 January 1980) ('*Vienna Convention*').

139 *Reservations to the Genocide Convention* [1951] ICJ Rep 15, 24.

140 *Vienna Convention,* opened for signature 23 May 1969, 1155 UNTS 331, art 2 (entered into force 27 January 1980).

141 Julian Hermida, *Legal Basis for a National Space Legislation* (2004) xxiv.

142 *Telesat Form F-1* (2006) US Securities and Exchange Commission <http://www.sec.gov/Archives/edgar/data/1375450/000090956706001910/o33788fv1za.htm> at 11 July 2008.

143 *Statute of the International Court of Justice*, arts 38(1)(c)-(d).

144 *Transfield Pty Ltd v Arlo International Ltd* (1980) 54 ALJR 323, 329.

145 *Atmospheric Diving Systems Inc v International Hard Suits Inc* [1994] 89 BCLR (2d) 356.

146 *Bloor v Falstaff Brewing Corp*, 601 F.2d 609 (2d Cir 1979); *Hughes Communications Galaxy, Inc v United States* (2000) 47 Fed Cl 236, which interpreted the term in the context of a satellite contract.

147 Bernhard Schmidt-Tedd, 'Best Efforts Principle and Terms of Contract in Outer Space

performing its obligation on a best efforts basis is therefore not an absolute guarantee of performance, but only required it to do what was reasonable in the circumstances, in accordance with 'prudent business practice'.

In assessing the nature of 'prudent business practice' as referred to in Usurpia's Declaration, it is necessary to examine the practice of commercial satellite operators. This reveals that satellite companies often resort to selling or redistributing their assets as a means to avoid insolvency. For example, in 2000, Iridium LLC was forced to sell its satellite assets (previously valued at US$5 billion) for US$25 million after falling into significant debt.[148] Also, in 2003, Loral Space and Communications was forced to sell five in-orbit satellites to Intelsat to repay its US$959 million debt.[149] In light of Satelsat's $25 billion debt, the UBC made a prudent and necessary decision to approve the restructuring plan in order to save the company.

Industry practice reveals that satellite companies are highly dependent on the lease rates of their transponders to remain profitable,[150] and often rely on the patronage of a few major clients to maintain acceptable revenue levels.[151] Satelsat's potential customer was able to lease *all* of the Satelsat-18 transponders at premium rates (as opposed to only 10 of the 11 transponders which were being utilised at its existing location), and this would significantly aided the prevention of Satelsat's insolvency.[152] Prudent business practice necessitated action by Usurpia to secure the customer quickly in order to save Satelsat and ensure that the company could continue to provide satellite services, including lifeline services, into the future.

Furthermore, the *Convention on International Interests in Mobile Equipment* which was concluded eight years before *GLITSO* provides useful guidance as to what is 'prudent business practice' for creditors in the space industry.[153] Whilst the *Mobile Equipment Convention* is not yet in force,[154] the remedies available to creditors under it have been accepted by over 40 contracting States which have signed or ratified the treaty. This includes countries heavily involved in the financing of space assets such as the United States and United Kingdom. The *Space Protocol* aims to promote the financing of space activities though the creation of a clear legal framework for the securitisation of space assets, in order to instil greater confidence in financiers who wish to loan money for space ventures.[155] Both Usurpia and Concordia are parties to the *Mobile Equipment* Convention and have acceded to the procedures within it, and they have an obligation

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Business' (1988) *Proceedings of the 31st Colloquium on the Law of Outer Space* 330, 330.

148 *Iridium Satellite LLC* (2001) <http://www.spaceandtech.com/spacedata/constellations/iridium_sum.shtml> at 21 July 2008.

149 *Space News Business Report* (2003) <http://www.space.com/spacenews/archive03/loral_102003.html> at 21 July 2008.

150 *RSCC Feels Effects of Transponder Rates, Insurance Costs* (2005) Russian Satellite Communications Company <http://rscc.ru/en/company/publ/2005.04.25.html> at 19 July 2008.

151 *Telenor ASA Form 20-F* (2004) US Securities and Exchange Commission <http://www.sec.gov/Archives/edgar/data/1126113/000115697305000475/u48549e20vf.htm#107> at 19 July 2008.

152 *Compromis*, Statement of Additional Facts, 4.

153 *Convention on International Interests in Mobile Equipment*, opened for signature 16 November 2001, UN Doc A/AC.105/C.2/2002/CRP.3 (entered into force 1 March 2006 excl art 49)('*Mobile Equipment Convention*').

154 It will only enter into force with respect to space assets when the *Draft Protocol on Matters Specific to Space Assets ('Space Protocol')* is acceded to: *Preliminary Draft Protocol on Matters Specific to Space Assets*, UNIDROIT Doc Study LXXIIJ (2004).

155 Rolf Olofsson and Mark Bisset, 'The UNIDROIT Convention on International Interests in Mobile Equipment, the Aircraft Protocol and the Draft Space Protocol' (2002)3 *Business Law International* 307, 307; Paul Larsen, 'Critical Issues in the UNIDROIT Draft Space Protocol' (2002) *Proceedings of the 45th Colloquium on the Law of Outer Space* 2, 2.

not to act contrary to the object and purpose of the Agreement before it enters into force.[156]

Under the *Mobile Equipment Convention* and the *Space Protocol*, a creditor may apply for a court order authorising various remedies upon a satellite operator's default, including orders allowing the creditor to repossess, sell, lease or manage the use of the space object, as long as this is done in a 'commercially reasonable' manner, in line with industry practice.[157] Here, Satelsat defaulted on its interest payments on its debt to the Banks over a six month period.[158] Accordingly, in applying for the necessary authority to restructure Satelsat and relocate Satelsat-18, the Banks acted consistently with the rights of creditors which have been internationally recognised in the *Mobile Equipment Convention*.

Usurpia's acts in re-licensing and authorising the relocation of Satelsat-18 were entirely consistent with its best efforts declaration with regard to the standard of prudent business practice set out above. Given Satelsat's huge debt obligations, the Banks were forced to urgently adopt a commercially viable solution to prevent Satelsat's insolvency. Had the Banks not seized the opportunity to take on a customer who was able to lease all of the transponders on Satelsat-18 at premium rates, Satelsat would have been in grave and imminent danger of insolvency, which would have led to many countries dependent on Satelsat's 25 satellites (including Landia) becoming entirely deprived of Satelsat's satellite services. The only option available in these circumstances was to offer Landia an alternative service on three other Satelsat satellites. While this may not have been an ideal alternative for Landia, it was the only commercially reasonable option available in the circumstances. In light of Satelsat's impending insolvency, acceding to Landia's demands to maintain their satellite services on Satelsat-18 would have been financially unsound and may have resulted in Landia being deprived of Satelsat satellite services altogether. Usurpia's decision represented the exercise of its best efforts to support the provision of affordable satellite services to Landia given the exigencies of the situation.

(c) New Satelsat was not bound by Concordia's *GLITSO* obligation

Concordia's Declaration in connection with its ratification of *GLITSO* requires that licensees of the CCC adhere to the principles of *GLITSO*, and that as a condition of sale of any satellite assets, a 'successor in title holding that satellite license shall be similarly obligated to adhere to such obligations.'

Immediately upon receiving approval for the revised restructuring plan, Usurpia notified the CCC of its intent to relinquish its license to operate Satelsat-18 and any rights it had to locate the satellite at its Concordian orbital location.[159] As the Concordian license was relinquished before the transfer of Satelsat-18, New Satelsat was not a 'successor in title holding' a Concordian license to operate Satelsat 18. Thus, New Satelsat was at no time bound by the Concordian *GLITSO* Declaration.

1.2 Usurpia's actions were consistent with the *Outer Space Treaty*

(a) Usurpia did not breach Article I

Article I 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*[160] stipulates that the exploration of space should be carried out for the benefit and interests of all countries 'irrespective of their degree of scientific and economic development'.

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156 *Vienna Convention,* opened for signature 23 May 1969, 1155 UNTS 331, art 18 entered into force 27 January 1980).

157 *Mobile Equipment Convention*, opened for signature 16 November 2001, UN Doc A/AC.105/C.2/2002/CRP.3, art 8 (entered into force 1 March 2006 excl art 49).

158 *Compromis* ¶4.

159 *Compromis* ¶13.

160 *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*, opened for signature 27 January 1967, 610 UNTS 205 (entered into force 10 October 1967) ('*OST*').

However, this provision remains non-binding for two reasons.

First, the principle is simply too vague to create a binding legal obligation as the language used is too general and lacks the minimum precision required in legal documents.[161] The most highly qualified publicists have stated that Article I(1) is merely an expression of intention conferring no real rights and imposing no real obligations on states.[162] Gorove has stated that the 'common interests' clause in Article I(1) 'is not self-executing, but rather a kind of imperfect legislation in that it expresses an aspiration couched in very general terms which could not be specifically implemented without further elaboration.'[163] Furthermore, Jenks has seen it as merely a 'point of departure' requiring further definition and conceptualisation before making the transition from executory to executed international law.[164] Therefore, Usurpia had no legal obligation towards Landia to ensure commercial activities in outer space were conducted for its benefit.

Second, subsequent state practice in the application of the *OST* (which the Court is entitled to take into account in its interpretation of the Treaty under Article 31(3)(b) of the *Vienna Convention*)[165] reveals that States do not view Article I as a binding legal obligation. Since the *OST* entered into force no over 40 years ago, no State has sought to rely on Article I to assert a claim to benefits obtained by another country through its space programs.[166] Further, most States have not implemented domestic laws which accommodate the principles embodied in Article I, reflecting that States merely perceive Article I as a statement of aspirational principle rather than a legal obligation.[167]

In any event, even if Article I is binding, Usurpia acted consistently with the principle by seeking to ensure Satelsat remained solvent. An obligation to carry out space activities for the benefit and interests of all countries does not require States to accord preferential treatment to any one country. With 25 satellites in its fleet, Satelsat serviced many members of the international community. Usurpia acted in the common interest of this international community by restructuring Satelsat and relocating Satelsat-18.

(b) Usurpia's acts were consistent with Article IX

Article IX of the *OST* imposes an obligation on States to conduct their activities in outer space with due regard to the interests of other States.[168] Usurpia did consider the interests of Landia when it decided to authorise the relocation of Satelsat-18. Usurpia complied with Article IX as Landia's position was duly considered, and it was offered the best possible alternative service available.

Moreover, Usurpia did not breach any duty to consult with Landia or Concordia under Article IX. The duty of consultation in this provision only applies to a State's 'potentially harmful interference' in other States' use of outer space, which refers to environmental harm such as contamination and pollution.[169] This

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161 Carl Q Christol, *The Modern International Law of Outer Space* (1982) 42.

162 Bin Cheng, *Studies in International Space Law* (1997) 404-405.

163 Stephen Gorove, 'Implications of International Space Law in Private Enterprise' (1982) VII *Annals of Air and Space Law* 319, 322.

164 C. Wilfred Jenks, *Space Law* (1965) 310. See also Cheng, above n 162, 235.

165 *Vienna Convention,* opened for signature 23 May 1969, 1155 UNTS 331, art 31(3)(b) entered into force 27 January 1980).Even though the States in this case are not party to the *Vienna Convention,* it has been established that *Vienna Convention* arts 31-32 reflect customary international law; *Case Concerning Sovereignty over the Islands of Litigan and Sipadan (Indonesia v Malaysia)* (2002) ICJ Rep 23-24.

166 Christol, above n 161.

167 Nandasiri Jasentuliyana, 'Ensuring Equal Access to the Benefits of Space Technologies for All Countries' (1994) 10(1) *Space Policy* 7,10.

168 *OST* opened for signature 27 January 1967, 610 UNTS 205, art IX (entered into force 10 October 1967).

169 Jerry Sztucki, 'International Consultations and Space Activities' (1975) *Proceedings of the 17th Colloquium on the Law of Outer*

clearly does not extend to the present situation involving the proposed relocation of a satellite.

Further, even if the duty to consult in this Article did apply to the proposed relocation of a satellite, the exchanges between Usurpia and Landia constituted the requisite consultation. The consultation requirement is fulfilled if a 'reasonable time was left for an exchange of communications and if this exchange took place in whatever form, even if it only showed that the positions of the parties involved were irreconcilable.'[170] Usurpia took Landia's interests into account by offering it an alternative service which it rejected. To fulfil the consultation requirement, Usurpia was not obliged to act in accordance with Landia's wishes, but was merely required to take Landia's interests into account, which it did by offering an alternative service and responding to Landia and Concordia's protests.[171] Hence, Usurpia did not breach any duty under Article IX of the *OST*.

1.3 Usurpia's actions were consistent with the *Registration Convention*

The *Convention on Registration of Objects Launched into Outer Space* [172] does not require States to notify the UN of changed orbital parameters for spacecraft.[173] Although the UN General Assembly has suggested that following the change in supervision of a space object in orbit, information regarding any change in its orbital position *could* be furnished to the Secretary General,[174] this is merely a *de lege ferenda* recommendation which has not crystallised into a binding obligation.[175] Indeed, State practice reveals that notification of changed orbital parameters to the UN is not common.[176] Thus, Usurpia was not bound to notify of the changed orbital parameters of Satelsat-18.

In any event, Usurpia's acts in placing Satelsat-18 on its national registry and commencing notification to the UN occurred 'as soon as practicable', in conformity with its obligations under the *Registration Convention*.[177] State practice under the *Registration Convention* reveals that delays of nine months or longer are common in States' implementation of their notification obligations. For example, in September 2007 the United States completed the process of notifying the UN of its registration information for a satellite launched in December 2006.[178] Further, in June 2007 the United Kingdom notified the UN of registration information for satellites launched between March and November 2005.[179] Thus, Usurpia's commencement of applicable notification procedures at some point between the approval of the restructure on 15 July 2010 and the collision on 25 August 2010 fell far short of the delays noted above, and was thus in conformity with the requirement to notify as soon as practicable. Landia is not entitled to compensation from Usurpia for loss suffered due to the collision of Satelsat-18 and SpaceStar

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Space 159, 159. See also Cheng, above n 162, 256.

170 Sztucki, above n 169, 165.

171 Ibid.

172 *Convention on Registration of Objects Launched into Outer Space*, opened for signature 14 January 1975. 1023 UNTS 187 (entered into force 15 September 1976)('*Registration Convention*').

173 David Enrico Reibel, 'Registration of Space Objects: Beyond Conventional Compliance'(1989) *Proceedings of the 32nd Colloquium on the Law of Outer Space* 391.

174 *Recommendations on enhancing the practice of state and international intergovernmental organizations in registering space objects*, GA Res 62/101, UN GAOR 62nd sess, adopted 17 December 2007, UN Doc A/RES/62/101 (2008).

175 This is emphasised by the preamble to the resolution noting that 'nothing in the conclusions of the working group or in the present resolution constitutes an authoritative interpretation of or a proposed amendment to the *Registration Convention.*'

176 *United Nations Registry of Space Objects* <http://www.unoosa.org/oosa/en/SORegister/index.html> at 23 July 2008.

177 *Registration Convention*, opened for signature 14 January 1975, 1023 UNTS 187 art IV(1) (entered into force 15 September 1976).

178 UN DOC ST/SG/SER.E/514, accessed at <http://www.unoosa.org/oosa/en/Reports/Regdocs/ser514.html> at 23 July 2008.

179 UN DOC ST/SG/SER.E/518, accessed at <http://www.unoosa.org/oosa/Reports/Regdocs/ser518.html> at 23 July 2008.

1.4 Usurpia is not liable to pay compensation to Landia under the *Liability Convention.*

Landia, Concordia and Usurpia are all States parties to the *Convention on International Liability for Damage Caused by Space Objects.*[180] This treaty acts as the *lex specialis* for determining issues of liability for damage caused by space objects.[181] The *Liability Convention* provides that only 'launching States' can incur liability in space law.[182] Article I(c) defines a launching State as a 'State which launches or procures the launching of a space object' or a 'State from whose territory or facility a space object is launched'.

Usurpia is not liable to Landia because: the launching State regime remains applicable, Usurpia is not a launching State and Concordia is a launching State for Satelsat-18 and is therefore liable for any damage caused to Landia.

1.5 The *Liability Convention* only provides for the liability of launching States

Even though the regime of holding launching States liable was formulated before the proliferation of commercial space activities, it remains applicable today. State practice in the application of the *Liability Convention* (which may be referred to as an interpretive aid pursuant to Article 31(3)(b) of the *Vienna Convention*)[183] reflects continued international acceptance of the current space liability regime exclusively based upon the launching State. This is evident in the domestic legislation which has been enacted by the majority of spacefaring nations, requiring private operators to indemnify the launching State for any liability it incurs under the *Liability Convention.* For example, Japan, Russia, the United States and the United Kingdom all require private operators to indemnify the State for damage caused by their space activities.[184] Moreover, these States legally require that commercial satellite operators obtain compulsory third party liability insurance, to ensure that the private entities can actually cover the payment of any potential liability they incur.[185]

Furthermore, the increasing sale and purchase of satellites in orbit has not affected launching State liability, which subsists after a transfer of satellite ownership.[186] The *Liability Convention* was designed to simply put up a 'safety net' to ensure that victims may always identify a state from which to claim compensation.[187] Upon the sale of satellites in orbit, launching States can disburse the burden of their liability through their domestic laws or private agreements.[188] For example, in the 1990 launch of the ASIA-I satellite for Hong Kong from China, a liability agreement was concluded between the governments of China and the United Kingdom.[189] This agreement privately distributed the liability of the parties for damage caused in the various stages of the operation of the satellite for which the countries were responsible. China has subsequently invoked this agreement many times in its space activities. Similar agreements have also been concluded between the French government and the European Space Agency in relation to use of the Guiana Space Centre.[190]

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180 *Convention on International Liability for Damage Caused by Space Objects*, opened for signature 29 March 1972, 961 UNTS 197 (entered into force 1 September 1972) ('*Liability Convention*').

181 *Rights of Passage over Indian Territory (Portugal v India)(Merits)*[1960] ICJ Rep 6, 44.

182 *Liability Convention,* opened for signature 29 March 1972, 961 UNTS 187, arts II-V (entered into force 1 September 1972).

183 *Vienna Convention,* opened for signature 23 May 1969, 1155 UNTS 331, art 31(3)(b) entered into force 27 January 1980); see above n 165.

184 For summary of national laws see, *Review of the concept of the 'launching State,'* UN DOC A/AC.105/768 (2002), 11-12.

185 Ibid, 10-11.

186 Ricky Lee, 'Effects of Satellite Ownership Transfers on the Liability of the Launching States' (2000) *Proceedings of the 43rd Colloquium on the Law of Outer Space* 148.

187 Armel Kerrest, 'Remarks on the Notion of the Launching State' (1999) *Proceedings of the 42nd Colloquium on the Law of Outer Space* 308, 308.

188 Ibid, 309.

189 Review of the concept of the 'launching State,' UN DOC A/AC.105/768 (2002) 13.

190 Ibid, 14.

The conclusion of the *Mobile Equipment Convention* and the negotiation of the *Space Protocol* reinforce the continued relevance of launching State liability in situations where a satellite changes ownership. The *Space Protocol* specifically considers the scenario of a creditor taking control of a secured space asset following a debtor's default, which is exactly the situation which occurred in the instant case. Article XXI *bis* of the *Space Protocol* provides that the rights and obligations of States under the existing international space treaties should not be affected by the *Protocol* or *Mobile Equipment Convention.*[191] Thus, even where a satellite is repossessed whilst in orbit, the rules in the *Liability Convention* attributing liability to the launching State still apply.

In 2002, the Legal Subcommittee of the United Nations Committee on the Peaceful Use of Outer Space ('UNCOPUOS') reviewed in detail the concept of the launching State, and explicitly declined to change either the use or interpretation of the term.[192] The Review noted that States have expressed the opinion that it would be inappropriate to extend the definition or interpretation of the term launching State.[193] This would hinder the development of the space industry, and result in space activities becoming excessively expensive for both governments and the private sector, as States would be 'hesitant to approve participation by their private entities if they would be subject to liability even for tangential connections to the launch.'[194] A broad interpretation of the 'launching State' would also increase the 'red tape costs' of the space sector.[195] Instead of recommending changes to the existing liability regime, the Working Group recommended that States continue to implement national laws to apportion the burden of their obligations under the *Liability Convention.* This view was also adopted by the UN General Assembly in Resolution 59/155, which encouraged States to enact national laws and conclude private agreements to fulfil their international obligations under the *Liability Convention.*[196]

Thus, the political consensus of a majority of States has been to maintain the current regime of launching State liability, and to adapt to lacunae in the treaty with the enactment of national legislation, rather than wholesale amendment or novel interpretation of the *Liability Convention.* Therefore, liability in this case must only be borne by the launching State of the satellites involved in the collision.

1.6 Usurpia is not a launching State of Satelsat-18

Usurpia did not participate in the launch of Satelsat-18. The satellite was not launched from its territory or its facility. While there are Satelsat satellite control facilities located in Usurpia, there is no evidence to suggest that these facilities were employed in the launch of Satelsat-18. Moreover, even if these were utilised, it is submitted that the provision of satellite control facilities without more does not qualify a State as a launching State.[197]

In addition, Usurpia did not 'procure the launch' of Satelsat-18. Whilst the term 'procurement' is not defined in the *Liability Convention,* the *travaux préparatoires* of the treaty explain that a State procures a launch if it 'actively and substantially participate[s]' in the launch.[198] Professor Hurwitz has confirmed that a State which procures a launch is 'the State which specifically requests the launch' or the 'State whose nationals have financed or ordered

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191 *Space Protocol*, UNIDROIT Doc Study LXXIIJ (2004).

192 *Review of the concept of the 'launching State,'* UN DOC A/AC.105/768 (2002).

193 Ibid, 17.

194 William Wirin, 'Practical Implications of Launching State – Appropriate State Definitions' (1992) *Proceedings of the 36th Colloquium on the Law of Outer Space* 109, 113.

195 Kai-Uwe Schrogl and Charles Davies, 'A new look at the launching State:' the results of the UNCOUOS Legal Subcommittee Working Group' (2002) *Proceedings of the 45th Colloquium of the Law of Outer Space* 286, 293.

196 *Application of the Concept of the 'Launching State,'* GA Res 59/155, UN GAOR, 59th sess, 71st plenary mtg UN Doc A/Res/59/115 (2005).

197 *Review of the concept of the 'launching State,'* UN DOC A/AC.105/768 (2002), 18.

198 *Report of the Legal Subcommittee on its Sixth Session* UNCOPUOS, Legal Subcommittee, UN Doc A/AC.105/C.2/SR.77 (1967).

the launch.'[199] Procurement has also been limited to States which have 'direct control over the launch'[200] or those that 'organise' the launch.[201]

Usurpia did not request, finance or actively participate in the launch of Satelsat-18. Indeed, there is no indication that Usurpia was at all involved in the launch of Satelsat-18. Thus, Usurpia is not a launching State, and cannot be liable under the *Liability Convention* for the losses arising from the satellite collision.

Furthermore, Usurpia did not become a launching State as a result of its placement of Satelsat-18 on its national registry. The drafters of the *Registration Convention* 'generally believed registration of a space object by itself, to be an insufficient basis for linking a State to damage caused by that Space object.'[202] The launching State concepts within the two Conventions have a different purpose, scope and effect. Whilst the *Liability Convention* aims at the recovery of compensation by injured parties, the *Registration Convention* is directed to the identification and management of space objects. A State's liability arises from its status as a launching State, not as a State of registry, such that 'ascribing liability to a state solely because it has registered a space object is not only legally questionable, but also unnecessary and counter-productive.'[203] Therefore, even though Usurpia placed Satelsat-18 on its register, this does not make it the launching State of Satelsat-18.

It has been stated that if the 'satellite of the national A is assigned to the national B of a different nationality, the State of the national B will *not* become the launching State retroactively.'[204]The *Liability Convention* does not impose liability on States in the position of Usurpia, which are not involved in the launch of a satellite, but whose national later purchases the satellite whilst in orbit.[205] As Usurpia is not a launching State, it is therefore not liable for any damage caused by Satelsat-18 under the *Liability Convention.*

1.7 Concordia is liable for damage caused by Satelsat-18 as it is the launching State

Satelsat-18 was launched from the Concordia Space Center by commercial launch services providers based in Concordia and licensed by the government of Concordia.[206] As Satelsat-18 was clearly launched from both Concordian 'territory' and a Concordian 'facility', Concordia is the launching State and is liable for any damage caused by the satellite.[207] Usurpia is not internationally responsible for the satellite collision

Article VI of the *OST* provides that 'State parties to the Treaty shall bear international responsibility for national activities in outer space...and for assuring that national activities are carried out in conformity with the provisions set out in the present Treaty.'[208] The term 'responsibility' in this provision is used in the same sense as responsibility in general international law. That is, responsibility under the *OST* also arises as a result of an internationally wrongful act by a State.[209] Professor von der Dunk has stated that 'international State responsibility, in space law as much as elsewhere, therefore arises in [the] case of activities being in violation of relevant

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199 Bruce Hurwitz, *State Liability or Outer Space Activity* (1992) 22.

200 Wirin, above n 194, 113.

201 Schrogl and Davies, above n 195, 293.

202 Edward A Frankel 'Once a Launching State, always *The* Launching State?' (2001) *Proceedings of the 44th Colloquium on the Law of Outer Space* 32, 36.

203 Ibid, 37.

204 Bernhard Schmidt-Tedd and Michael Gerhard, 'Registration of Space Objects: What are the Advantages for States Resulting from Registration,' in Marietta Benko and Kai-Uwe Schrogl (eds) *Space Law: Current Problems and Perspectives for Future Regulation* (2005) 121, 131 (emphasis added).

205 Kerrest, above n 187, 308.

206 *Compromis* ¶3.

207 *Liability Convention*, opened for signature 29 March 1972, 961 UNTS 197, art I(c)(ii) (entered into force 1 September 1972).

208 *OST,* opened for signature 27 January 1967, 610 UNTS 205, art VI (entered into force 10 October 1967).

209 *Articles on Responsibility of States for Internationally Wrongful Acts*, GA Res 56/83, UN GAOR, 56th sess, Supp No 10, UN Doc A/Res/56/83 (2001), art 1 ('*State Responsibility Articles*').

legal obligations, those being primary obligations of space law.'[210] Article VI therefore requires States to ensure that the acts of their nationals are conducted in accordance with international law, and imposes international responsibility on States for any violation of international law by their private entities.[211]

Although the satellite collision was highly unfortunate, it did not involve any breach of international law and therefore did not entail Usurpia's international responsibility. As discussed above in section 1, Usurpia and New Satelsat acted at all times in conformity with Usurpia's international obligations under the *OST, Registration Convention* and *GLITSO.*

Although Article VI of the *OST* does not specify the precise manner in which States are to supervise the activities of their non-governmental activities in outer space, Usurpia took appropriate steps to supervise the activities of New Satelsat in accordance with established State practice under Article VI. The UTA issued a license for the operation of Satelsat-18, in line with the practice of other spacefaring States which require the space activities of their private entities to be licensed.[212] Moreover, Usurpia rightly commenced notification to the UN Secretary General of the satellite's changed status.[213]

Even if New Satelsat's speedy relocation of the satellite was not in conformity with the Usurpian license, this would not constitute a breach of international law, as no legal regime for the regulation of satellite manoeuvring or space traffic has yet been formulated.[214] In 2004, DIRECTV, a private company, relocated one of its satellites from a US orbital slot to an orbital position which had been assigned to Canada, without authorisation from the appropriate US authority. Although the company was fined under US domestic law for breaching internal regulations, it was never alleged that either the US or Canada had breached international law.[215] Similarly, the entire process of New Satelsat's relocation of Satelsat-18 did not breach any of Usurpia's international obligations. Thus, Usurpia is not internationally responsible or liable for the satellite collision.

1.8 Even if Usurpia is liable for the collision, the losses claimed by Landia are not compensable under either the *Liability Convention* or general international law

The *Liability Convention* expressly limits compensable damage in Article I(a) to 'loss of life, personal injury or other impairment of health or loss of or damage to property.'[216] The use of the term 'means' rather than 'includes' in Article I(a) suggests that the definition of damage was intended to be exhaustive, and confined to direct damage.[217]

Indirect damage which does not 'flow directly and immediately from the act, but only from some of the consequences or results of such act' is therefore not recoverable under the

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210 Frans von der Dunk, 'Liability versus Responsibility in Space Law: Misconception or Misconstruction' (1991) *Proceedings of the 34th Colloquium on the Law of Outer Space* 363, 366.

211 Armel Kerrest, 'Remarks on the Responsibility and Liability for Damages Other Than Those Caused by the Fall of a Space Object' (1997) *Proceedings of the 40th Colloquium on the Law of Outer Space* 134, 139; Ricky J Lee, 'Liability Arising From Article VI of the Outer Space Treaty: States, Domestic Law and Private Operators' (2005) *Proceedings of the 48th Colloquium on the Law of Outer Space* 216, 217.

212 *Compromis* ¶13; See examples of Australian, Russian, South African, Swedish, Ukrainian, British and US licensing laws pursuant to Article VI of the *OST* described in *Review of the concept of the 'launching State,'* UN DOC A/AC.105/768 (2002), 5-6.

213 *Compromis* ¶24.

214 Pamela L Meredith, 'Spacecraft Motion Management (SMM): Institutional and Legal Frameworks' (1992) *Proceeding of the 35th Colloquium on the Law of Outer Space* 102.

215 *In the Matter of DIRECTV, Inc, Before the Federal Communications Commission* (2004) <http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-138A1.pdf> at 21 July 2008.

216 *Liability Convention,* opened for signature 29 March 1972, 961 UNTS 187, art I(a) (entered into force 1 September 1972).

217 Hurwitz, above n 199, 19.

Liability Convention.[218] This is supported by the *travaux préparatoires* of the *Liability Convention* which indicate that negotiating States specifically considered the issue of indirect damages, and most countries, including the United States and the USSR, opposed the inclusion of reference to indirect damages in the Convention.[219]

Also, in the negotiation of Article VII of the *OST*, which preceded the full elaboration of the *Liability Convention*, the US delegate stated that 'any reasonable interpretation of that clause would mean physical damage' and that the article 'pertains only to physical, non-electronic damages that space activities may cause to the citizens or property of a signatory State.'[220] Moreover, subsequent space law instruments address liability issues by explicitly providing for the recovery of indirect damage.[221] This supports the proposition that when States intend to include compensation for indirect damage, they do so explicitly.

It is acknowledged that some commentators have attempted to use the 1978 Cosmos 954 incident, in which a Soviet Union satellite deposited nuclear debris on Canadian territory, to demonstrate that indirect damage is recoverable under the *Liability Convention*.[222] However, this example does not support any particular interpretation of the *Liability Convention*, let alone one which includes the recovery of indirect damage. Although Canada's claim against the Soviet Union for cleanup costs was based on the *Liability Convention,* the final payment by the USSR did not represent its acceptance of liability under the *Liability Convention*.[223] Rather, under the settlement reached, the USSR paid half the original amount claimed by Canada which it categorised as an 'ex gratia' sum.[224]

The expansion of the definition of 'damage' is, moreover, not supported by the writings of highly qualified publicists. Even given the considerations of today's commercialised space industry, Professor Bin Cheng has stated that the definition of damage in Article I does not need to be widened.[225] Thus, any claim for indirect damage arising from the satellite collision falls outside the scope of the *Liability Convention.*

In any event, the satellite collision was not the legal cause of Landia's economic loss. Space law, like general international law,

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218 Stephen Gorove, 'Some Comments on the Convention on International Liability for Damage Caused by Space Objects' (1973) *Proceedings of the 16th Colloquium on the Law of Outer Space* 253, 255.

219 Hurwitz above n 199, 16; Carl Q Christol, 'International Liability for Damage Caused by Space Objects' (1980) 74 *American Journal of International Law* 346, 361; W F Foster, 'The Convention on International Liability for Damage caused by Space Objects' (1972) 10 *Canadian Yearbook of International Law* 137, 157-158.

220 Christol, above n 219, 354.

221 For example, the multilateral Space Station Agreement includes indirect damage in the meaning of 'damage' in art 16(c)(4); *Agreement among the Government of Canada, the Governments of the Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation and the Government of the United States concerning cooperation on a civil international space station* (1998) ; <ftp://ftp.hw.nasa.gov/pub/pao/reports/1998/IGA.html>at 23 March 2008; while the *Principles Relevant to the Use of Nuclear Power Sources in Outer Space* states that compensation for nuclear damage shall include certain expressly stated indirect expenses; *Principles Relevant to the Use of Nuclear Power Sources in Outer Space*, GA Res 47/68, UN GAOR 47th sess, Supp 20, UN Doc A/47/20 (1992), Principle 9(3).

222 See eg, discussion in Christol, above n 219 , 362.

223 Steven Freeland, 'There's A Satellite In My Backyard! – Mir And The Convention On International Liability For Damage Caused By Space Objects' (2001) 24(2) *University of NSW Law Journal.*

224 Ibid, ¶40.

225 Cited in Maureen Williams, 'Review of Space Law Treaties in View of Commercial Activities' (Paper presented at the International Law Association London Conference: Space Law Committee, London, 25-29 July 2000) 13-16.

requires the claimant to establish causation.[226]

Articles II and III of the *Liability Convention* limit the scope of compensation to damage which is 'caused by' a space object. The connection which must be established is that of 'proximate causation,' a general principle of international law,[227] which is supported in international case law[228] and by the most highly qualified publicists.[229] The rule of 'proximate causation' limits recoverable damage to that which arises as a normal consequence of an act and is reasonably foreseeable.

In particular, it has been held that a State does not proximately cause foreseeable damage to entities which have contracted with the party which is actually injured.[230] For example, in the *Life Insurance Claims* case, insurance companies were unsuccessful in their claims against Germany for the premature maturation of life insurance contracts, as it was held that the acts of Germany in taking the lives of the insured did not 'proximately cause' the economic loss to the insurance companies.[231] So too, Usurpia cannot be held liable to compensate Landia simply because the destruction of SpaceStar caused it to lose any entitlement it had under a contract with Orbitsat. A fortiori this rule applies in the present case where Landia's contract with Orbitsat was provisional, and even if SpaceStar had not been destroyed, Landia might have lost the benefits under that contract due to its inability to procure the necessary finances.[232] For this Court to decide otherwise would constitute an unreasonable extension of space liability to every party which is contractually connected to the entity which is actually injured, even in situations when this connection is tenuous.

Finally, Landia's $2 billion worth of predicted economic loss due to disruption to its telecommunications infrastructure is not a recoverable head of damage under general principles of international law.[233] Landia has not yet suffered $2 billion worth of indirect economic loss, but only predicts that this will occur. International law refuses the recovery of future loss where this is based upon speculation or contingency.[234] In the *Trail Smelter Arbitration*, residents whose businesses were affected by the metal smelter's fumes were refused compensation for their 'reduced economic status' as this was held to be 'too indirect, remote and uncertain to be appraised.'[235] More recently, damages for prospective loss were denied in the *Gabčíkovo-Nagymaros Case* as they were not sufficiently certain.[236] Landia should not be able to claim for disruption to its economic welfare due to its loss of telecommunications services from SpaceStar as this loss is heavily contingent on Landia having obtained the financial assistance to actually pay for the lease, at five times the cost of its previous satellite services.[237]

1.9 Even if Usurpia is liable, Landia's compensation should be limited due to its failure to mitigate its loss.

The rule that an injured party is required to mitigate its damage is well-accepted in

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226 Foster, above n 219, 155; Christol, above n 219, 361.

227 To which recourse may be had pursuant to Article XII of the *Liability Convention.*

228 *Administrative Decision No II, (US v Germany)* (1923) 7 RIAA 23, 29-30; *Trail Smelter Arbitration* (1938) 3 RIAA 1905, 1963; see also discussion of relevant cases in Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953) 241-56.

229 Cheng, above n 97; Hurwitz, above n 199, 28; Christol, above n 161, 109.

230 *Dickson Car Wheel Co (Mexico v United States)* (1931) 4 RIAA 681.

231 *Life Insurance Claims (US v Germany)* (1924) 7 RIAA 91, 116.

232 *Compromis* ¶15.

233 Which also condition the recovery of compensation under Article XII the *Liability Convention.*

234 *Alabama Claims (United States-Great Britain) Claims Arbitration* cited in Bruce Hurwitz, 'Reflections on the Cosmos 954 Incident' (1989) *Proceedings of the 32nd Colloquium on the Law of Outer Space* 348, 356.

235 *Trail Smelter Arbitration* (1938) 3 RIAA 1905, 1931.

236 *Gabčíkovo-Nagymaros Project (Hungary v Slovakia)(Judgment)* [1997] ICJ Rep 7.

237 *Compromis* ¶15.

international law.[238] The principle is also relevant to compensatory awards under the *Liability Convention*, as Article XII requires that compensation be determined 'in accordance with international law and the principles of justice and equity'. The ILC's commentaries to the *State Responsibility Articles* states that 'even the wholly innocent victim... is expected to act reasonably when confronted by the injury.'[239] When confronted with the fact that it would no longer receive the services of Satelsat-18, and the prospect that it would not be able to afford the expensive replacement services of SpaceStar, Landia should have accepted the alternative, albeit inferior service from Satelsat to limit the damage it would sustain. Although this option admittedly would have required modification of Landia's ground infrastructure at some expense, this is likely to have been far less costly than entering into the SpaceStar lease at five times the previous cost of its satellite services. Further, as there is evidence that Landia may have obtained monetary assistance to satisfy the cost of the Orbitsat lease, it is entirely reasonable to assume that it could have obtained similar assistance to modify its infrastructure. Accordingly, any damage for which Usurpia is liable should be reduced to the extent that Landia failed to mitigate its loss by accepting the proposed alternative Satelsat service.

2. Concordia is not entitled to compensation from Usurpia for the loss of Satelsat-18 as a result of the collision

2.1 Concordia is precluded from claiming compensation under the *Liability Convention*

Concordia may not claim compensation from Usurpia under the *Liability Convention* for two reasons. First, as discussed above in section 2.1, Usurpia is not a launching State of either satellite involved in the collision. Second, Concordia's claim does not fall within the parameters of Article III of the *Liability Convention* which relates to compensation for damage caused in outer space. Article III of the *Liability Convention* provides that a launching State will be liable only if its space object causes damage to a space object of '*another* launching State.'[240] That is, where damage occurs in outer space, a claim can be made only if the collision is between space objects of different launching States. Professor Hurwitz affirms that where a collision occurs between space objects owned by different private entities but launched by the same State, Article III is not applicable.[241] In this case, as Concordia was the launching State of both Satelsat-18 and SpaceStar, its claim falls outside the scope of the *Liability Convention*.

2.2 In any event, Concordia may not present a claim for compensation as its nationals have not suffered damage

Article VIII of the *Liability Convention* provides that only 'a State which suffers damage, or whose natural or juridical persons suffer damage, may present...a claim for compensation for damage.'[242] It is submitted that neither Concordia nor its national, Satelsat, suffered damage.

In determining a State's eligibility to present a claim under Article VIII of the *Liability Convention*, it is necessary to consider the general principles of international law relating to the nationality of claims.[243] The *Barcelona Traction Case* established the principle that 'a State of nationality of shareholders in a corporation shall not be entitled to exercise diplomatic protection in respect of such shareholders in the case of injury

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238 *Gabčikovo-Nagymaros Project (Hungary v Slovakia)*[1997] ICJ Rep 7, 80; James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (2002) 228.

239 Crawford, above n 238.

240 *Liability Convention*, opened for signature 29 March 1972, 961 UNTS 187, art III (entered into force 1 September 1972).

241 See Hurwitz, above n 199, 33.

242 *Liability Convention*, opened for signature 29 March 1972, 961 UNTS 187, art VIII (entered into force 1 September 1972).

243 Article XII of *Liability Convention* provides for reference to general principles of international law in the determination of compensation claims under the Convention.

to the corporation.'[244] This Court recently confirmed that this rule extends to circumstances where the injured corporation is incorporated in the defendant State.[245]

In the present case, Concordia seeks compensation for the loss of Satelsat-18. However, at the time of the collision, the satellite was owned by New Satelsat, a company incorporated in Usurpia. As such, the destruction of Satelsat-18 did not directly damage any Concordian interest. The only possible basis for Concordia's claim is that Satelsat incurred loss by virtue of its shareholding in New Satelsat. However, based on the authorities analysed above, Concordia's claim on behalf of Satelsat as New Satelsat's shareholder cannot succeed.

3. Concordia is not entitled to indemnification from Usurpia for any compensation it owes to Landia as a result of the collision

3.1 The *Liability Convention* does not apply

Article V of the *Liability Convention* provides that 'a launching State which has paid compensation for damage shall have the right to present a claim for indemnification to other participants in the joint launching.'[246] As discussed above in section 2.1, Usurpia is not the launching state of either satellite. Therefore, Article V does not apply, and Usurpia is not obliged to indemnify Concordia for any compensation it might owe Landia.

3.2 In any event, Usurpia is not liable to indemnify Concordia under the *Liability Convention* as it was not at fault

Even if this Court decides that Usurpia is a launching State of Satelsat-18, Usurpia is not liable to indemnify Concordia under Article V as it was not at fault in the collision. Joint launching States are liable to one another for compensation paid to a third State to the extent to which they were at fault.[247]

Fault is not defined in the *Liability Convention.* However, in international law the principle of 'fault' refers not to culpability or malice, but rather a failure to comply with a legal duty or obligation.[248] There is no duty at international law to conduct satellite relocations at a particular speed or for the relocation to follow a particular course or trajectory.[249] As the most highly qualified publicists have noted, even if States were to follow directives as to the spacing of their satellite objects meticulously, they would still lack the ability to predict the occurrence of a collision.[250] There is no evidence that Usurpia was negligent or reckless in its relocation of the satellite. Thus, Usurpia was not at fault in the collision and does not attract liability to indemnify Concordia under the *Liability Convention.*

3.3 This result is not unfair to Concordia

There is no injustice in Concordia bearing absolute liability under the Liability Convention for any damage caused to Landia. As discussed above in section 2.1, through domestic legislation, spacefaring countries[251] routinely require private satellite operators to indemnify them against any international liability they might incur under the Liability Convention in order to 'bridge the gap between

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244 *Barcelona Traction, Light and Power Company Limited* (Belgium v Spain) (Second Phase) [1970] ICJ Rep 3, 34; This has been codified in Article 11 of the *Draft Articles of Diplomatic Protection, International Law Commission, Report of the 55th session,* UN GAOR 58th sess, Supp 10, UN Doc A/58/10 (2003).

245 *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)(Preliminary Objections)* (2007) ICJ ¶76-¶95.

246 *Liability Convention,* opened for signature 29 March 1972, 961 UNTS 187, art V (entered into force 1 September 1972).

247 Kerrest, above n 187, 312.

248 Cheng, above n 97, 218.

249 Meredith, above n 214.

250 Howard A Baker, 'Liability for Damage Caused in Outer Space by Space Refuse' (1988) 12 *Annals of Air & Space Law* 183 at 192.

251 See examples of Australian, Japanese, Russian, South African, Swedish, British and US indemnification laws described in *Review of the concept of the 'launching State,'* UN DOC A/AC.105/768 (2002), 10-12.

the entity legally liable and the entity actually guilty'.[252] Professor Kerrest has remarked that 'as far as private entities' activities are concerned, the launching State's obligation under the Liability Convention is, in fact, more an obligation to control and to guarantee [the disbursement of liability] than an obligation to pay for the damage.'[253] In line with this practice, Concordia would have (or indeed should have) entered into appropriate agreements or enacted relevant legislation to ensure that Satelsat and any of its successors in title would assume the burden of Concordia's liability as a launching State of Satelsat-18.

SUBMISSIONS TO THE COURT

For the foregoing reasons, the Kingdom of Usurpia, Respondent, respectfully requests the Court to adjudge and declare that:

5. Usurpia's decision to license Satelsat-18 and permit it to be deployed at an Usurpian orbital location was consistent with applicable principles of international law;

6. Landia is not entitled to compensation from Usurpia as a result of the collision between Satelsat-18 and SpaceStar satellites;

7. Concordia is not entitled to compensation for the loss of Satelsat-18;

8. Concordia is not entitled to indemnification from Usurpia for any financial obligation owed to Landia, as a result of the collision between Satelsat-18 and SpaceStar.

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252 Frans von der Dunk 'Commercial Space Activities, an Inventory of Liability, an Inventory of Problems' (1994) *Proceedings of the 37th Colloquium of the Law of Outer Space* 161,164.

253 Kerrest, above n 187, 311.