

1992 INTERNATIONAL INSTITUTE OF SPACE LAW  
of the  
INTERNATIONAL ASTRONAUTICAL FEDERATION  
MOOT COURT  
PEOPLE'S REPUBLIC OF BETA  
V.  
THE FEDERATED STATES OF ASTRA

**Concerning Recovery and Return of Non-Functional Satellites.**

The Government of the Republic of Beta (hereinafter "Beta") and the Federated States of Astra (hereinafter "Astra") have submitted the dispute set forth, below, by special agreement to the International Court of Justice pursuant to Article 36, paragraph 1, of the Statute of the Court. No question of the jurisdiction of the Court is at issue. Appendix A hereto contains a list of relevant treaties to which both Beta and Astra are Parties. The Applicant is Beta and the Respondent is Astra.

Both Parties hereto have stipulated that the information set forth in THE PROBLEM, below, is true.

On February 15, 1991, the International Court of Justice entered a preliminary order accepting jurisdiction.

THE PROBLEM set forth herein represents a hypothetical set of circumstances drafted for the exclusive use of the Association of the United States Members of the International Institute of Space Law, and is not intended to portray an actual situation. Further, the Association of the United States Members of the International Institute of Space Law retains all publication rights, in any form whatsoever, with respect to the Memorials of the finalists representing the Applicant and the Respondent, unless permission to publish is otherwise granted in writing by the Association.

**THE PROBLEM**

On February 3, 1987, two satellites named DELTA and THETA were launched from the territory of Astra by NEXUS, a reusable, manned launch vehicle. This launch vehicle was designed, manufactured, and launched by the Government of Astra. Satellite DELTA, owned by the socialist Government of Beta, is a multi-function satellite designed for commercial and military uses and is powered by a small nuclear power source. The military function is the provision of precise navigation for the ground-based, nuclear ballistic missile weapons system of Beta. The satellite is an innovative design that permits it to function in geostationary orbit for the purpose of remote sensing, as well as telecommunications. Satellite THETA is a commercial telecommunications platform powered by solar cell arrays and owned by a private corporation, ET&A, Inc., registered in the State of Cartel (hereinafter "Cartel"), Astra's immediate neighbor to the north. Both satellites were deployed in a parking orbit 160 miles above Earth on February 6, 1987. After deployment, the satellites were to use their perigee kick motors (PKMs) to reach the geostationary orbit. The PKMs were incorporated into payload assist modules (PAMs), all of which were manufactured by the same private corporation in Astra.

At this time, the satellites and launch vehicles were not registered in Astra, or any other state, nor was there notification of the Secretary General of the United Nations.

Neither satellite achieved proper geostationary orbit. Subsequent investigations revealed that the PAMs failed because of PKM problems and, as a result, both satellites were stranded in useless low-Earth orbits, unable to function for purposes of telecommunications, remote sensing, or ballistic missile navigation.

In May 1990, the insurers for the satellites, Floyd's of Sundown, Inc., (hereinafter "Floyd's") incorporated in Astra, paid on a total loss basis (that is, the satellites had to be completely destroyed or useless for their intended purposes before insurance proceeds would be paid out). Satellite DELTA of the Republic of Beta was insured for 100% of its actual value plus launch costs to geostationary orbit; satellite THETA was insured only for 49% of a 10-year projected consumer-use gross profit. Floyd's insured both satellites and because the likelihood of recovering the satellites was extremely remote should they become the subject of a claim payment, neither insurance policy addressed transfer of title in the event of payment of a claim. However, both satellite owners selected the NEXUS manned vehicle in part because of its potential recovery capability.

Premium costs for third party liability insurance coverage for the satellites were shared equally between the satellite owners and the PAM manufacturer. This coverage was required by the Government of Astra to be maintained indefinitely while the satellites were in outer space.

ET&A, Inc., which owned THETA, determined the satellite to be a total loss and undertook no efforts to control it or to recover it after payment of insurance proceeds. Although Beta had no ability to exercise useful control over DELTA, it determined that recovery and return of the satellite for refurbishing and relaunch was less costly than building a new satellite and, consequently, undertook negotiations with the State of Change (hereinafter "Change"), an immediate neighbor to the west, to recover DELTA with a reusable, manned vehicle intended to become operational in 1993. However, no guaranteed recovery date was given since funding for this manned vehicle was sporadic.

In June 1990, the main body of DELTA was struck and severely damaged by a small navigation satellite, OMICRON, not registered pursuant to the Registration Convention, and owned by the government of Astra. The navigation satellite had been non-functional for five years and had been undergoing orbital decay for three years without any ability of Astra to control it.

Floyd's approached Astra in July 1990 with a plan to retrieve DELTA and THETA for their salvage value. Astra had the capability of using the NEXUS manned spacecraft to attempt the recovery and, on the basis that Floyd's agreed to pay Astra for the costs of the recovery of the satellites, plus a profit equal to 20% of the insured value of each, Astra agreed to perform the mission. An additional motivation for Astra to enter into the "salvage" agreement was to clear the parking orbit of the disabled satellites, thereby reducing the risk of their collision with functioning satellites in the future. Astra also was concerned about the probability that the damaged DELTA satellite would disintegrate further and increase the collision potential in this important parking orbit used for similar orbit transfer maneuvers.

In February, 1991, Beta registered the DELTA satellite in its own registry and furnished to the Secretary General of the United Nations the information required by Article 4 of the Registration Convention. In March, 1991, Astra registered the DELTA satellite in its registry and furnished to the Secretary General of the United Nations the information required by Article 4 of the Registration Convention. The agreement between Beta and Astra for the launch of DELTA did not address the registration of DELTA.

The recovery mission undertaken by Astra in April 1991 was successful and DELTA and THETA were recovered. During the in-orbit recovery, however, the crew of NEXUS caused damage to DELTA. The damage occurred when the crew cut open the satellite to remove the nuclear power source, which it left in orbit. Floyd's had consented to this procedure in its salvage agreement with Astra.

Beta now claims DELTA and seeks its immediate return. The Government of Beta considers that it owns the satellite and, under its law, property of the state is never abandoned. Further, Beta has never made a declaration that it had abandoned its satellite and has offered to compensate the Government of Astra for one-half of the cost of the recovery mission, less the impact damage to DELTA caused by OMICRON, and less the damage caused to DELTA during its recovery.

Astra refuses to return DELTA and asserts its right to recover DELTA and THETA under the agreement with Floyd's. Astra also refused Beta's claim for damage to DELTA, which was made pursuant to the Liability Convention. Both Astra and Beta have agreed that the International Court of Justice may resolve issues relating to the Liability Convention in lieu of a Claims Commission.

#### REQUESTS FOR RELIEF

Both Parties have requested relief, and the Court has certified the relevant issues in the following manner:

- I. Whether Astra violated international law in recovering DELTA and whether Astra should be ordered to return DELTA to Beta.
- II. Whether Astra is liable to Beta for damage to DELTA caused by the collision with OMICRON and for damage caused to DELTA during the recovery operation.

#### **APPENDIX "A"**

The People's Republic of Beta and The Federated States of Astra, parties to the dispute over which the International Court of Justice has determined it may exercise jurisdiction, are also Parties to the Treaty on Principles Governing the Activities of States in the Exploration and Uses of Outer Space, Including the Moon and Other Celestial Bodies (1967 - also known as the Outer Space Treaty of 1967); the Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space (1968 - also known as the Rescue and Return Treaty); the Convention on International Liability for Damage Caused by Space Objects (1972 - also known as the Liability Convention); and the Convention on Registration of Objects Launched into Outer Space (1975- also known as the Registration Convention). The People's Republic of Beta is a Party to the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979 - also known as the Moon Treaty).