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Manfred Lachs Space Law Moot Court Competition 1995

Case concerning the Use of the Geostationary Orbit for Satellite Broadcasting

AGRETHIA vs. PATHRON

Background

In accordance with the the International Telecommunication Union Constitution, the Government of the Democratic Republic of Agrethia (hereafter "Agrethia") and the Peoples Republic of Pathron (hereafter "Pathron") have referred the dispute set out below by special agreement to the International Court of Justice. No question of the jurisdiction of the Court is at issue. The relevant applicable treaties and United Nations Resolutions are specified below. All the countries involved are Members of the ITU. Both Parties to the dispute have stipulated that the information set out below is true.

Statement of Facts

Agrethia has notified the ITU for coordination of frequencies and registration of geostationary orbital positions in respect of 5 communications satellites operating in the Fixed Satellite Service, denominated Agita 1 to Agita 5 respectively. Each satellite is to have 8 transponders, respectively Agita 1.1, Agita 1.2 ... to Agita 5.8. The domestic and international communications needs of Agrethia for the next ten years can be served by the capacity available on any one of the satellites.

The locations which Agrethia has notified fall within the most desirable part of the geosynchronous orbit for international communications, particularly between Europe and North America. Agrethia is a member of the International Satellite Organization ("GLOBESAT"). GLOBESAT has plans over the next eight years to occupy and use three of the orbital positions for which Agrethia has applied to the ITU. These three positions are critical to regional coverage and direct interconnectivity among member states. No notification to the ITU has yet been made

by the United States, GLOBESAT's notifying administration and headquarters location.

It is the intention of Agrethia to make 4 of the orbital positions with associated frequencies available for use by the highest bidders for them. The remaining satellite is intended to be used by Agrethia in the following manner. Three transponders, Agita 1.1 to Agita 1.3 are to provide Direct to Home transmissions of television programming receivable in Agrethia and two of its neighbouring countries, Pathron and Coro, that share a common national language with Agrethia. The transponders Agita 1.4 to Agita 1.8 will be used for point to point business services.

Pending coordination of its notifications to the ITU, Agrethia has brought into service one satellite, Agita 1. It is operating on a non-interference basis in accordance with the Radio Regulations.

Services on Agita 1.1 to Agita 1.3

Agrethia has leased Agita 1.1 to a commercial company, TVA, for the provision of general entertainment and information television services. TVA derives its revenue from subscriptions and from advertising. Subscribers are sought and served in Agrethia, Pathron and Coro through direct mail and TVA has no representative or other presence in either Pathron or Coro. All broadcasting in Pathron and Coro is state controlled, but the relevant legislations do not address satellite broadcasting.

Pathron has a government to which the government of Agrethia is ideologically opposed and fears the spread of Pathron ideology among its own population. As part of its policy to unseat the government of Pathron, the government of Agrethia uses transponder Agita 1.3 to broadcast anti-government propaganda into Pathron where it is receivable by the general public.

Position in Relation to GLOBESAT

GLOBESAT is an international intergovernmental organization of which Agrethia and Pathron are members. Its Statutes provide for members to carry out a technical coordination process. In bringing Agita 1 into service, Agrethia did not undertake such coordination.

Pending negotiation of correspondent arrangements with other countries for its telecommunications traffic via Agita 1, the normal anticipated growth in international telecommunications traffic of Agrethia has necessitated a request to GLOBESAT for additional space segment capacity. Although such capacity is available to GLOBESAT, Pathron has also

applied to reserve all capacity which can be made available to Agrethia. Pathron has no foreseeable need for such capacity. GLOBESAT has indicated to Agrethia that it is minded to allocate the relevant space segment capacity to Pathron in retribution for the failure of Agrethia to carry out the coordination process. The use of Agita 1 has not resulted in any interference or technical difficulties for GLOBESAT.

Actions by Pathron

To prevent reception of transmissions from Agita 1.3 to Pathron, Pathron made jamming transmissions to Agita 1 from stations in its own territory. These transmissions interfered with the broadcasts of TVA and have destroyed its subscription and advertising revenue.

Pathron owns and operates a satellite Spartan 1 in the geosynchronous orbit. Pathron has the appropriate assignments from ITU and has coordinated with GLOBESAT. Spartan 1 transponder Spartan 1.6 has been unused since its launch. Following requests to Agrethia to cease transmissions of its anti-government propaganda, Spartan 1.6 was re-oriented and transmissions made from Spartan 1.6 to Agita 1, with the aim of putting Agita 1.3 out of use.

The provisions of the Agita 1.1 transponder lease concerning the unavailability of services are those current in the industry, allowing TVA to claim a refund of the charges under the transponder lease for any period of outage. All necessary notices have been given immediately. At the time of jamming by Pathron the lease had a further 8 years to run.

Issues to be decided by the Court

The Court has agreed to decide the following issues:

- I. Whether Agrethia's attempt to register all of the five geostationary orbital positions violates international law;
- II. Whether Agrethia's transmissions on Agita 1.3 violate international law;
- III. Whether Pathron's actions to jam the transmissions on Agita 1.3 violate international law.

Instructions

You are asked to prepare Memoranda setting out international law arguments supporting the case of each of the protagonists and to argue the issues before the Court.

Agrethia, Pathron and Coro are parties to the Outer Space Treaty of 1967, the Liability Convention of 1972 and the Registration Convention of 1975. Pathron carries the satellite Spartan 1 on its register and Agrethia carries Agita 1 on its register. Both Agrethia and Pathron

voted in favour of United Nations General Assembly Resolution 37/92 of 10 December 1982 on Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting. The GLOBESAT Agreement is identical to that of INTELSAT; specific reference is made to Articles I, II, III, VII and XIV of the INTELSAT Agreement and Article 13 of the INTELSAT Operating Agreement. Relevant provisions of the ITU are attached in the Appendix. No other ITU Convention or Radio Regulation provisions are to be cited or relied upon as authority in the memorandum or argument of these issues. Students are not expected to have or to seek a detailed understanding of the Radio Regulations.

APPENDIX
RELEVANT PROVISIONS OF THE ITU

A. Convention

Article 33

Rational Use of the Radio Frequency Spectrum and of the Geostationary Satellite Orbit

(...)

2. In using frequency bands for space radio services Members shall bear in mind that radio frequencies and the geostationary satellite orbit are limited natural resources and that they must be used efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have equitable access to both, taking into account the special needs of developing countries and the geographical situation of particular countries.

Article 35

Harmful Interference

1. All stations, whatever their purpose, must be established and operated in such a manner as not to cause harmful interference to the radio services or communications of other Members or of recognized private operating agencies, or of other duly authorized operating agencies which carry on radio service, and which operate in accordance with the provisions of the Radio Regulations.

(...)

B. Radio Regulations

Paragraph 163

Harmful interference: Interference which ... seriously degrades, obstructs, or repeatedly interrupts a radiocommunications service operating in accordance with the Radio Regulations.

Paragraph 2674

In devising the characteristics of a space station in the broadcasting-satellite-service, all technical means available shall be used to reduce, to the maximum extent practicable, the radiation over the territory of other countries unless an agreement has been previously reached with such countries.