

INTERNATIONAL INSTITUTE OF SPACE LAW
OF THE INTERNATIONAL ASTRONAUTICAL FEDERATION

INSTITUT INTERNATIONAL DE DROIT SPATIAL
DE LA FÉDÉRATION ASTRONAUTIQUE INTERNATIONALE

THE 2006 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

BETWEEN

THE REPUBLIC OF GALATEA
(APPLICANT)

AND

THE KINGDOM OF THALASSA
(RESPONDENT)

JOINTLY NOTIFIED TO THE COURT ON 22 NOVEMBER 2005

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

ENTRE

LA REPUBLIQUE DE GALATEA
(REQUÉRANT)

ET

LE ROYAUME DE THALASSA
(RÉPONDANT)

NOTIFIÉ CONJOINTEMENT À LA COUR LE 22 NOVEMBRE 2005

CASE CONCERNING THE SALE AND OPERATION OF CERTAIN COMMERCIAL REMOTE SENSING SATELLITES

Galatea v Thalassa: Proteus Intervening

STATEMENT OF FACTS

1. The Republic of Galatea and the neighbouring Kingdom of Thalassa are both industrialised States with a long history of competition, rivalry and even warfare. They are both coastal States on the western shores of the Nereid Ocean. However, relations between them have improved in recent years and many commercial ties exist between the governmental and private entities of the two States.
2. SpaceSense Corp. is a company incorporated in Galatea that is 51% owned by the Government of Galatea. The remaining 49% is owned by private investors in Galatea. SpaceSense operates a fleet of remote sensing satellites and provide images of the 19 States bordering the Nereid Ocean on a commercial basis to commercial interests in Galatea, Thalassa and most of the States covered by the SpaceSense satellite fleet. Two of the satellites, SRS-1 and SRS-3, were both launched by the government-owned Galatean Space Agency into low Earth orbit in 1993 from a facility located in Galatea that is owned and operated by the Galatean Space Agency.
3. NeoImage, Inc. is a company incorporated in Thalassa that is 100% owned by Thalassian private interests. NeoImage developed a new image processing technology, providing images of remarkable detail. Its original business plan was to purchase raw (or primary) imaging data from third-party satellite data providers. The data would then be processed using NeoImage's proprietary technology, and then resold to its commercial customers.
4. In 2000, SpaceSense had scheduled the launch of SRS-17 and SRS-18, which are intended to replace four satellites that are classified as obsolete, including SRS-1 and SRS-3. However, it was estimated that a further six years of operational lifespan existed in both of the retiring satellites. After four months of difficult negotiations, NeoImage agreed to buy both SRS-1 and SRS-3 from SpaceSense for an undisclosed amount. Both companies were at the time in the process of being listed on their respective domestic stock exchanges and, consequently, were keen to finalise the sale as quickly as possible. It was agreed verbally between the presidents of the two companies that the ownership and operation of both satellites were to be transferred at midnight on 1 April 2001. In their haste, no written arrangements were in place prior to 1 April 2001 and none have been concluded since then, between SpaceSense and NeoImage and between Galatea and Thalassa concerning the sale of the satellites. However, during a visit by the foreign minister of Thalassa to Galatea in March 2001, the two foreign ministers issued a joint communiqué that provided, among other statements:

The Governments of Galatea and Thalassa both welcome the sale and purchase of SRS-1 and SRS-3, acknowledge that the two Governments have international legal obligations concerning those satellites and agree to consult and indemnify each other to the extent that any loss arises from such international obligations.

5. On 1 April 2001, NeoImage took over the control and operation of the satellites SRS-1 and SRS-3 from its new custom-built ground control facility in Thalassa. As the communication protocols and frequencies were unchanged, SpaceSense continued to retain the ability to control and operate the two satellites from its control facility in Galatea. Two months later, NeoImage began selling processed images of all 19 coastal States from both satellites on the commercial market.
6. The Democratic People's Republic of Proteus is a militaristic State on the northern coast of the Nereid Ocean. Proteus, along with the neighbouring Commonwealth of Larissa, gained independence in 1971 from Galatea after a violent armed struggle. Ever since then, a state of war had existed between Proteus and Larissa, resulting in three major wars and numerous skirmishes. The Governments of both States have long been customers of both SpaceSense and NeoImage for domestic civilian applications.
7. In May 2002, the Government of Larissa ordered high resolution processed images of various locations in Proteus from NeoImage. Using the SRS-1 and SRS-3 satellites, NeoImage obtained the image data of those locations, processed them and sold them to Larissa on its usual terms of trade. The locations in question included several army barracks, air bases, naval installations and nuclear facilities. In the subsequent months, Larissa ordered and obtained more high resolution images of the same and other locations, most of which were military installations of Proteus. These sales were kept confidential by both NeoImage and the Government of Larissa, although NeoImage suspected at the time that the images might be used for military purposes.
8. In September 2002, fierce fighting broke out again in what became known as the Fourth North Nereid War between Proteus and Larissa. The Larissan Air Force destroyed all the military installations and army concentrations of Proteus with a degree of accuracy that surprised the Government of Proteus. After intensive mediation by the Secretary-General of the United Nations and several resolutions of its Security Council, a ceasefire was declared and the guns fell silent. By then, around 40% of the army, 72% of the air force and all the nuclear facilities of Proteus had been destroyed.
9. During the Fourth North Nereid War, NeoImage quickly came to the conclusion that Larissa had used the images provided by NeoImage for targeting purposes. This conclusion was reached by studying television news and other media reports as to the locations of the air strikes by Larissa, which revealed that they were the same locations as the images provided by NeoImage. Through private channels, NeoImage protested to the Government of Larissa and obtained assurances that Larissa would no longer use images provided by NeoImage for military purposes.
10. The intelligence organisations of Proteus were instructed by the President of Proteus to investigate the causes of the accurate destruction of its forces by Larissa. In January 2003, a highly placed source in the Government of Larissa revealed to Proteus the transactions between NeoImage and Larissa. In the interest of protecting the source from exposure at the time, the Government of Proteus refrained from taking any action against NeoImage and kept this information secret

- within only the highest levels of its Government. However, it did embark on a secret program to conceal its military facilities and installations from remote sensing satellites.
11. In March 2003, civilian agencies within the Government of Proteus had sought from various commercial providers, including SpaceSense and NeoImage, high resolution images of coastal and rural areas for agricultural and water conservation purposes. NeoImage feared that Proteus would discover its contribution to the military activities of Larissa during the previous war and, consequently, refused the orders. Sadly, the images obtained from SpaceSense and other providers were of an insufficient resolution.
 12. After a successful covert operation by Proteus to extract its highly placed secret source in Larissa in October 2003, Proteus publicly revealed its evidence that images were supplied by NeoImage to the Government of Larissa for military purposes. Proteus brought proceedings in the domestic courts of Thalassa against NeoImage for its role in the damage sustained by Proteus during the last war.
 13. On 1 January 2004, during New Year celebrations, SpaceSense technical staff at its ground control facility had inadvertently resumed control of both SRS-1 and SRS-3 and, in the process, failed to notice or correct a malfunction in the altitude control of both SRS-1 and SRS-3 that independently and coincidentally occurred at the time. The malfunction caused the computers onboard both spacecraft to perceive erroneously that their altitudes were higher than they actually were, causing the onboard engines on both spacecraft to begin an automatic descent until both spacecraft had entered the atmosphere of the Earth. While SRS-1 was completely destroyed during its descent through the atmosphere, most parts of SRS-3 survived re-entry and landed in a munitions factory in the capital of Proteus. The explosions caused by the impact resulted in heavy casualties and serious property damage.
 14. Subsequent independent investigations reveal that the malfunction in the altitude control systems of both spacecraft would have occurred even if SpaceSense had not resumed control of the spacecraft. The cause of the malfunction is unknown. It is also unclear whether the NeoImage control staff would have been able to correct the malfunction if they had been in control of the spacecraft at the time.
 15. After the destruction of the two satellites, NeoImage lost most of its customers in the resulting wave of international indignation and was declared bankrupt in August 2004 before it could commence legal action against SpaceSense for the return of both satellites. The legal action brought by the Government of Proteus against it remained unresolved at the time.
 16. In September 2004, Proteus began negotiations with both Galatea and Thalassa, seeking compensation for the damage caused by the in-orbit operations and re-entry of the SRS-1 and SRS-3 satellites. After protracted negotiations, the three States agreed that Proteus was entitled to a specified amount of compensation, which was not hitherto disclosed. However, since there was no agreement as to who, Galatea or Thalassa, or both, was liable to pay such compensation, the three states agreed to jointly refer this issue to the International Court of Justice.

17. On 1 November 2005, Galatea and Thalassa jointly referred the issues of their respective liability for decision by the Court. Proteus was joined as an intervener with the consent of both Galatea and Thalassa, but it was agreed by all three States that Proteus was not to assume an active role in the proceedings.
18. Galatea seeks declarations that:
 - (i) Galatea has been fully compliant with its obligations under international law as far as the supply of high resolution remote sensing data over the military installations and facilities of Proteus for military purposes is concerned, and under the March 2001 joint communiqué Thalassa bears any international responsibility for those activities;
 - (ii) In the absence of any specified arrangement on dealing with third-party claims for unlawfulness of activities involving SRS-1 and SRS-3, Thalassa is fully and exclusively responsible in any case where activities involving SRS-1 and SRS-3 would be considered to violate rights of Proteus under international law for the refusal by NeoImage to supply to Proteus remote sensing data over Protean territory;
 - (iii) In the absence of any specified arrangement on dealing with third-party claims for liability involving SRS-1 and SRS-3, Thalassa is fully and exclusively liable for any claim addressed to Galatea and Thalassa jointly or severally under international law for damage caused to Proteus by the re-entry of SRS-3 into the atmosphere of the Earth;
 - (iv) Galatea is not liable under international law for the economic loss suffered by Thalassa by the loss of both SRS-1 and SRS-3; and
 - (v) all other relief sought by Galatea in its memorials and oral submissions should be granted and all relief sought by Thalassa should be denied.
19. Thalassa seeks declarations that:
 - (i) Thalassa has been fully compliant with its obligations under international law as far as the supply of high resolution remote sensing data over the military installations and facilities of Proteus for military purposes is concerned, and under the March 2001 joint communiqué Galatea bears any international responsibility for those activities;
 - (ii) In the absence of any specified arrangement on dealing with third-party claims for unlawfulness of activities involving SRS-1 and SRS-3, Galatea is fully and exclusively responsible in any case where activities involving SRS-1 and SRS-3 would be considered to violate rights of Proteus under international law for the refusal by NeoImage to supply to Proteus remote sensing data over Protean territory;
 - (iii) In the absence of any specified arrangement on dealing with third-party claims for liability involving SRS-1 and SRS-3, Galatea is fully and exclusively liable for any claim addressed to Galatea and Thalassa jointly or

- severally under international law for damage caused to Proteus by the re-entry of SRS-3 into the atmosphere of the Earth;
- (iv) Galatea is liable under international law for the economic loss suffered by Thalassa by the loss of both SRS-1 and SRS-3; and
 - (v) all other relief sought by Thalassa in its memorials and oral submissions should be granted and all relief sought by Galatea should be denied.
20. Both SRS-1 and SRS-3 were registered with the Secretary-General of the United Nations in accordance with the 1975 Registration Convention, with Galatea listed as the “launching State” and the “State of registry”. No notification of any change of status of SRS-1 and SRS-3 was lodged subsequent to the sale of the spacecraft.
21. Galatea, Proteus and Thalassa are parties to the 1967 Outer Space Treaty, the 1972 Liability Convention, the 1968 Rescue Agreement and the 1975 Registration Convention. All three States were founding members of the United Nations in 1945. Galatea has signed and ratified the 1979 Moon Agreement but Proteus and Thalassa have never signed it nor recognised it as being part of international law.
22. Galatea and Thalassa are both members of the International Telecommunication Union and the World Trade Organisation, while Proteus is a member of the International Telecommunication Union but not the World Trade Organisation.
23. Larissa is a member of the United Nations but is not party to the Outer Space Treaty, the Liability Convention, the Rescue Agreement, the Registration Convention or the Moon Agreement. It is a member of the World Trade Organisation but is not a member of the International Telecommunication Union.