

INTERNATIONAL INSTITUTE OF SPACE LAW
OF THE INTERNATIONAL ASTRONAUTICAL FEDERATION

INSTITUT INTERNATIONAL DE DROIT SPATIAL
DE LA FÉDÉRATION ASTRONAUTIQUE INTERNATIONALE

THE 2008 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

BETWEEN

CONCORDIA AND LANDIA
(JOINT APPLICANTS)

AND

KINGDOM OF USURPIA
(RESPONDENT)

JOINTLY NOTIFIED TO THE COURT ON 14 NOVEMBER 2010

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

ENTRE

CONCORDIA ET LANDIA
(REQUÉRANT)

ET

LE ROYAUME DE USURPIA
(RÉPONDANT)

NOTIFIÉ CONJOINTEMENT À LA COUR LE 14 NOVEMBRE 2010

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

Concordia and Landia v Usurpia

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 lease agreement with Orbitsat, to take effect on September 1, 2010, subject to Landia’s ability to obtain emergency funding from the World Bank or a similar international organization.
16. In light of Landia’s and Concordia’s protests and concerned about what impact they might have on Usurpia, New Satelsat decided to speed up the relocation of the Satelsat-18 to the new orbital location licensed by Usurpia. Unfortunately, as a direct result of this effort, the Satelsat-18 satellite collided in geosynchronous orbit on August 25, 2010, with the Orbitsat Space Star satellite, completely destroying both satellites.
17. Following the collision, Landia found itself not only lacking the ability to continue to receive services from the Satelsat-18 satellite, but also deprived of the ability to secure appropriate replacement capacity on the Orbitsat SpaceStar satellite. In Landia’s view, it was now totally deprived of any suitable means for meeting its internal and external telecommunications requirements, especially given the inferiority of the alternate arrangements that had previously been proposed by the banks.

18. Estimating that it would take at least three years to get adequate replacement capacity from another satellite operator and that, during the interim, Landia would suffer more than \$2 billion in losses to its economic welfare as a result of the disruption of its telecommunications infrastructure, Landia submitted demands for compensation to both Concordia and Usurpia for this amount, contending that both countries were ultimately liable for the loss. Usurpia rejected this demand, disavowing any breach of international law or obligations owed to Landia. Moreover, Usurpia denied that there was any basis under international law for recovery of the type of damages allegedly incurred by Landia. Concordia, which has its own claim for compensation from Usurpia for loss of both the Satelsat-18 and Orbitsat SpaceStar satellites, did not directly deny Landia's claim for compensation, but rather took the position that, to the extent it would be held liable for compensation, it was entitled to indemnification from Usurpia.
19. In an effort to resolve this impasse, Landia, Concordia and Usurpia have agreed to submit this dispute for resolution to the International Court of Justice, which has accepted jurisdiction over the matter. Concordia's damages claim against Usurpia relating to the loss of the Orbitsat SpaceStar satellite has been resolved by negotiation and is not presented for further consideration. However, Concordia's damages claim against Usurpia relating to the loss of the Satelsat-18 satellite has not been resolved. Because of the overall commonality of many of their respective positions, Landia and Concordia have joined forces in opposition to Usurpia in the submission of the dispute to the International Court of Justice.
20. Landia seeks declarations from the International Court of Justice to the effect that:
- (i) Usurpia's decision to license and then authorize the relocation of the Satelsat-18 satellite over the objections of Landia is contrary to applicable principles of international law, including, *inter alia*, the 1967 Outer Space Treaty, the 1975 Registration Convention and the GLITSO Agreement; and
 - (ii) Landia is entitled to compensation for economic consequences of its loss of basic satellite telecommunications services from Usurpia for the relocation of the Satelsat-18 satellite and from both Concordia and Usurpia as a result of the collision destroying the Satelsat-18 and Orbitsat Space Star satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.
21. Concordia seeks declarations from the International Court of Justice to the effect that:
- (i) Usurpia's decision to authorize relocation of the Satelsat-18 satellite over its objections is inconsistent with applicable principles of international law, including, *inter alia*, the 1975 Registration Convention and the GLITSO Agreement;
 - (ii) Usurpia is liable to Concordia for the loss of the Satelsat-18 satellite under, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement; and
 - (iii) Usurpia is obligated to indemnify Concordia for any liability Concordia might owe to Landia for the economic consequences of Landia's loss of basic satellite telecommunications services arising from the collision of the Satelsat-18 and Orbitsat

SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.

22. Usurpia seeks declarations from the International Court of Justice to the effect that:
- (i) Usurpia's decision to license the Satelsat-18 satellite and to permit it to be deployed at an Usurpian orbital location over the objections of both Landia and Concordia is consistent with applicable principles of international law, including, *inter alia*, the 1967 Outer Space Treaty, the 1975 Registration Convention and the GLITSO Agreement;
 - (ii) Landia is not entitled to compensation from Usurpia as a result of the collision that destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement;
 - (iii) Concordia is not entitled to compensation for the loss of the Satelsat-18 satellite, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement; and
 - (iv) Concordia is not entitled to indemnification from Usurpia for any financial obligation owed to Landia, as a result of the collision destroyed the Satelsat-18 and Orbitsat SpaceStar satellites, pursuant to, *inter alia*, the 1972 Liability Convention and the GLITSO Agreement.
23. All three countries are members of the United Nations and the ITU and are parties to the 1967 Outer Space Treaty, the 1972 Liability Convention and the 1975 Registration Convention. Concordia and Usurpia are members of the World Trade Organization but Landia is not.
24. Both the Satelsat-18 and 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.**

Appendix A

Relevant Provisions of the GLITSO Agreement and Party Declarations Made Pursuant There to

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.