



THE IASLA SPACE LAW MOOT COURT COMPETITION

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

BETWEEN

KINGDOM OF CALIBAN
(APPLICANT)

AND

REPUBLIC OF PROSPERO
(RESPONDENT)

JOINTLY NOTIFIED TO THE COURT ON 7 JANUARY 2045

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

ENTRE

ROYAUME DE CALIBAN
(DEMANDEUR)

ET

RÉPUBLIQUE DE PROSPERO
(DÉFENDEUR)

NOTIFIÉ CONJOINTEMENT À LA COUR LE 7 JANVIER 2045

Case concerning the Aerial and Space Incidents of 6 October 2044

Caliban v. Prospero

STATEMENT OF AGREED FACTS

1. The Kingdom of Caliban is a constitutional monarchy for which the major economic sectors include banking, finance, shipping and tourism. It is a member of the Organisation of Economic Cooperation and Development (“**OECD**”). Due to historical conflicts with many of its neighbours and other advanced countries, Caliban’s military forces are among the world’s most powerful and it maintains a network of bilateral and multilateral alliances worldwide.
2. The largest and most populated city in Caliban is Trinculo, which is a major transportation hub in the Northern Hemisphere.
3. The Republic of Prospero is a prosperous country on the opposite side of the world, with advanced technology in space exploration. It is also a member of the OECD and is one of the world’s largest economies. Sycorax, its capital, is one of the most populated cities in the world and is a major financial centre of the Southern Hemisphere.
4. One of the largest satellite television operators in Prospero is SpaceTV. SpaceTV is a wholly owned subsidiary of a media holding company based in Caliban and is the only subscription television provider in Prospero that is foreign owned. SpaceTV leases transponders on-board satellites that are owned by the Government of Caliban and broadcasts directly into Prospero and nearby countries in the region.
5. A great circle distance of 18,047 km separate Sycorax and Trinculo. Commercial air flights can take over 21 hours to travel one-way between the two cities, with a mandatory fuel stop en route as no airplane can economically carry enough fuel to fly the entire trip non-stop.
6. On 15 March 2034, the Ariel Space Express Corporation (“**Ariel**”) was established in Prospero under the *Private Companies Ordinance 1973*.
7. On 28 September 2039, as a result of more favourable income tax treatment, Ariel moved its corporate headquarters to Trinculo and was listed on the Caliban Stock & Futures Exchange, but it remained registered as a Prosperoan corporation. At that time, the largest shareholders in Ariel are the Prospero Economic Development Fund (the “**Fund**”), a sovereign wealth fund established by the Federal Government of Prospero in 2011 to invest its oil wealth for the future, and the Prospero Space Development Agency (“**PSDA**”), the governmental space agency. The Fund and PSDA held 42.5% of the issued shares in Ariel and private investors in Prospero held a further 15.5% of issued shares. The balance of the shares is held by private investors, including a significant number that are resident in Caliban.

8. Ariel was established with the idea of using a suborbital spacecraft to provide scheduled passenger flights between Sycorax and Trinculo that would shorten the flight time between the two cities to 48 minutes. Ariel constructed purpose-built spaceports in the outskirts of Sycorax and Trinculo with helicopter services to the nearby international airports and the city centres. The business model envisaged that there would be significant demand for its services from busy business people needing to travel between the two cities or connect from them to nearby cities and countries.
9. The construction of the spaceports and the first spacecraft, *Miranda I*, was financed by a long-term loan from the Fund, repayable over 50 years. The terms of the loan specified that Fund may demand repayment of the entire balance of the loan at any time by giving 90-days' notice to enable Ariel to refinance. In consideration of the generous loan terms, including the low interest rate, the Fund obtained a substantial equity stake in Ariel.
10. After repeated flight tests and certification by the PSDA, *Miranda I* entered service on 19 May 2039 with daily flights between the two cities and quickly became a commercial success. This enabled Ariel to construct *Miranda II*, a spacecraft identical in design and construction to *Miranda I*, which entered service on 25 August 2043 and Ariel's schedule increased to twice-daily flights between the two cities.
11. Both *Miranda I* and *Miranda II* carried 14 passengers, 2 flight crew and a flight attendant. They were designed so that it could be properly maintained for daily return services between Trinculo and Sycorax. In Prospero, the maintenance work was subcontracted to the PSDA. In Caliban, the maintenance work was carried out by a local contractor engaged by Ariel.
12. In late 2043, war broke out between 6 countries, in what is now referred to as the Uranium War, over sovereignty of an area north of Prospero but on the same continent that contained rich uranium and thorium deposits. Tensions rose between Caliban (and its allies) and Prospero (and its allies), which were on opposing sides of the conflict. The legislatures of the two countries each enacted escalating economic and trade sanctions on the other. Due to the diplomatic efforts of the Secretary-General of the United Nations, a cease-fire was negotiated and signed by the parties to the conflict on 16 January 2044.
13. On 11 February 2044, a newspaper in Caliban claimed that Prospero has placed instruments on-board *Miranda I* and *Miranda II* to collect data with ground radar imagery as well as monitoring their telemetry to assist in calibration of Prosperoan missile guidance systems. This was allegedly done by intelligence officers posing as PSDA staff at Ariel's maintenance facility in Sycorax. Later that day, the High Court of Caliban issued a warrant to the Federal Security Agency ("FSA") of Caliban to enter and search the Ariel maintenance facility in Trinculo for evidence. At the time that FSA agents entered Ariel's premises, the agents seized control of *Miranda II*, which was being serviced at the time. With a filming crew from a satellite news channel accompanying them, FSA agents searched and found the instruments on-board the spacecraft.
14. It is common ground between the parties that any collection of radar imagery on-board *Miranda II* took place only in outer space.
15. On 18 February 2044, after strong lobbying efforts by the business community that the passenger transport service provided by Ariel was essential for the domestic economy, the

Minister of Justice of Caliban announced that control over the spaceport in Trinculo was to be returned to Ariel, but *Miranda II* was seized as “material evidence” and kept at the facilities of the Caliban Aerospace Corporation (“CAC”), the space agency of Caliban.

16. There were media reports in both Prospero and Caliban that the CAC has seized and dismantled *Miranda II* for the purpose of reverse engineering much of the technology on-board, particularly in relation to avionics, propulsion and heat and debris shielding. The Government of Prospero have repeatedly demanded the return of *Miranda II* without success.
17. From the beginning of March 2044, the Defence Communications Directorate of Caliban also began jamming the radio frequencies used by Ariel to transmit telemetry and communications. The transmitters are powerful enough that the receivers on-board *Miranda I* for most of the journey between the two capital cities, mostly while transiting through outer space, can only hear a selection of musical pieces from a renowned classical composer of Caliban. With each change of frequency or modulation by Ariel, Caliban’s advanced equipment was able to detect the change and adjust their jamming equipment automatically.
18. In response, the Chancellor of Prospero ordered the retaliatory jamming of transmission signals of SpaceTV. To compensate SpaceTV subscribers in Prospero, the Government offered subsidies on any one-off setup fees payable for them to switch to another subscription television provider in the first three months of the jamming being undertaken. Within those three months, SpaceTV lost 87.2% of their customers, with the remainder holding out only because the subsidy offered by the Government was less than the contract break fee that they had to pay to SpaceTV. This decision by the Chancellor proved to be immensely popular, with her approval rating unaffected even after it was revealed in the press that all of SpaceTV’s competitors had made substantial contributions to her party’s last election campaign.
19. On 6 October 2044 at 0923 GMT, the PSDA was making an emergency manoeuvre of its orbiting space station *Iris*, which was built and launched from Prospero in September 2039, to avoid a previously-unseen large piece of debris when it was not able to shut down some of the rockets on-board, causing the station to lose altitude. At 0940 GMT, when the crew on-board the *Iris* recovered control over the space station by separating from and discarding two of the malfunctioning engines, the crew sought to make contact with the PSDA but they were not able to do so as there has been a substantial loss of power to communications systems.
20. At around the same time, ground-based monitors and satellites in low earth orbit of Caliban, Prospero and other countries detected the fall in altitude of the *Iris*. However, no one at the time except those on-board the *Iris* were aware of the separation and discarding of the engines.
21. At 1040 GMT that operational control staff at PSDA realised that the *Iris* posed a risk to *Miranda I*, which departed Trinculo at 1030 GMT. Frantic telephone calls between PSDA staff and their counterparts at the CAC followed but attempts to contact *Miranda I* failed as a result of the radio jamming that was taking place.
22. At 1058 GMT, *Miranda I* collided with one of the discarded engines from the *Iris*. The resulting explosion killed all 13 passengers and crew on-board.

23. The other discarded engine returned through the atmosphere and, while parts of the engine burnt up in the atmosphere during re-entry, a large metal component of the engine survived and collided with the right wing of Caliban Airlines flight 281, a civilian passenger aircraft on a domestic flight within Caliban in a holding pattern to the south of Trinculo Airport. The aeroplane spiralled out of control and crashed into a hillside, killing all 119 passengers and crew on-board.
24. Both Caliban and Prospero immediately blamed each other and trade sanctions were announced by both countries on each other. When public opinion in both countries strongly in favour of further punitive action, Caliban enacted measures nationalising various mining interests that were owned by public and private entities in Prospero. In response, Prospero implemented foreign ownership limits in various banking and financial sectors that forced any shareholdings owned by individuals and entities in Caliban to be sold to local interests within 2 months or have them forfeited to the Government of Prospero. Consequently, most Calibanian investments in Prospero were wiped out.
25. Concerned that the economic skirmish between the two countries would escalate into a military conflict, the Secretary-General of the United States began some shuttle diplomacy with a view to bringing the two sides to the negotiating table. Eventually, on 7 January 2045, the foreign ministers of both countries agreed to refer their dispute to the Court.
26. The Foreign Minister of Caliban stated her government's position as follows:
 - (i) the collection of radar imagery of the territory of Caliban by Prospero was unlawful;
 - (ii) the seizure of *Miranda II* in the circumstances is permitted by international law;
 - (iii) Prospero is liable for the loss and damage caused to Caliban Airlines flight 281;
 - (iv) Prospero is not entitled to any relief that it may seek from the Court.
27. The Grand Chancellor of Prospero stated his government's position as follows:
 - (i) the seizure and dismantling of *Miranda II* by Caliban was unlawful;
 - (ii) the deliberate jamming of radio transmissions of *Miranda I* by Caliban was unlawful;
 - (iii) Caliban is liable for the loss and damage caused to *Miranda I*; and
 - (iv) Caliban is not entitled to any relief that it may seek from the Court.
28. Both Caliban and Prospero are parties to all five United Nations space treaties and are members of the United Nations, the International Telecommunication Union and the International Civil Aviation Organisation.