



THE IASLA SPACE LAW MOOT COURT COMPETITION

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

BETWEEN

PEOPLE'S REPUBLIC OF ENCELADUS
(APPLICANT)

AND

KINGDOM OF HYPERION
(RESPONDENT)

JOINTLY NOTIFIED TO THE COURT ON 7 JANUARY 2013

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

ENTRE

RÉPUBLIQUE POPULAIRE DE ENCELADUS
(DEMANDEUR)

ET

ROYAUME DE HYPERION
(DÉFENDEUR)

NOTIFIÉ CONJOINTEMENT À LA COUR LE 7 JANVIER 2013

Case concerning State Succession and International Responsibility for Satellite Operations

Enceladus v. Hyperion

STATEMENT OF AGREED FACTS

Background

1. The People's Republic of Enceladus is a large and prosperous country that has been governed by the Democratic Worker's Party of Enceladus since 1948, with its seat of government in the capital city of Farbauti. It is the fifth most populous country in the world and has developed a strong economy after embracing market reforms in the late 1990s, particularly in manufacturing, shipping, tourism, electronics and banking and finance. In 2008, Enceladus became party to the General Agreement on Tariffs and Trade ("**GATT**") and was admitted into the membership of the World Trade Organisation ("**WTO**").
2. The neighbouring Kingdom of Hyperion is a constitutional monarchy with an advanced market economy. It is a member of the Organisation of Economic Cooperation and Development ("**OECD**"), the GATT, and the WTO and is one of the world's largest economies. Aegir, the capital city of Hyperion, is the most populous city in the world.
3. Both Enceladus and Hyperion have advanced space industries, with a number of commercial launch operators, satellite manufacturers and satellite operators based within their territories.
4. Enceladus and Hyperion have a historical rivalry that goes back around three thousand years, though they have not fought a war between them for a few generations.
5. Under the provisions of the 1928 Treaty of Farbauti that ended their last war, the island city of Pandora was leased by Enceladus to Hyperion for 99 years, renewable at the option of Hyperion. As part of Hyperion, Pandora became an advanced commercial and financial centre, with a population of 4 million. Under the *Fundamental Law of Pandora* enacted in 1978, Pandora is an autonomous territory of Hyperion with its own government, legislature, laws, and courts and is self-governing except on issues of foreign affairs and defence.
6. From 1975 to 2004, Enceladus was part of the Federated States of Hephaestus, a federation of 7 formerly independent States with strong ethnic, linguistic, cultural, and historical ties that decided to join together as a confederation in the midst of the Cold War. Of the 9 constituent states of Hephaestus, Enceladus was the largest, wealthiest, and most populous, comprising about 45% of the population and 62% of the economy of Hephaestus.
7. During the decades in federation, Enceladus experienced much faster economic growth and infrastructure development *vis-à-vis* the other constituent states of Hyphaestus. On 26 March 2004, the people in the other constituent States of Hyphaestus voted overwhelmingly in a referendum to dissolve the federation and restore their independence. Article 24 of the 2004

Treaty of Dissolution of the Federation of Hyphaestus (the “**Dissolution Treaty**”), signed and ratified by all 7 “Constituent States” on 19 October 2004, provides in part that:

...

(3) *Except by consent of all of the Constituent States, none of the Constituent States would succeed automatically to any of the international treaties and conventions, intergovernmental organisations, rights, and benefits previously held by the Federation.*

...

(6) *Except by consent of all of the Constituent States, none of the Constituent States would inherit automatically to any property or asset of the Federation.*

8. Subsequently, on 26 March 2005, Enceladus applied for membership of the United Nations and was subsequently admitted as a new Member State on 19 October 2006.

9. Article 37 of the Dissolution Treaty states:

(1) *On the dissolution of the Federation, any interest in any corporation carrying on a business or commercial object held by the Federation is to be apportioned between the Constituent States as follows:*

(a) *Artemis – 8%;*

(b) *Eileithyia – 12%;*

(c) *Enceladus – 49%;*

(d) *Hestia – 9%;*

(e) *Metis – 11%;*

(f) *Rhea – 4%; and*

(g) *Themis – 7%.*

(2) *Nothing in this article precludes the Constituent States from apportioning any interest in any corporation to which this article applies in any different manner by agreement.*

ESCC and HSA

10. Enceladus Satellite Communications Corporation (“**ESCC**”) is a company incorporated on 16 April 1996 in Enceladus and, at the time, 80% of its issued shares were held by the Federal Government of Hyphaestus. The remaining 20% was held by the Government of Enceladus. In accordance with article 37 of the Dissolution Treaty, Enceladus became the 59.2% shareholder of ESCC after the breakup of Hyphaestus and, with further agreements between Enceladus and Hestia, Rhea, and Themis through which Enceladus acquired their shares in ESCC, by 26 March 2005, Enceladus has attained 75.2% of the shares in ESCC.

11. The Hyperion Space Agency (“**HSA**”), formed by the enactment of the *Hyperion Space Agency Ordinance* of 1977, followed the decision of the newly-elected government of the time to promote scientific exploration and civilian uses of outer space, partly utilising the advanced missile technology that Hyperion had developed in the preceding decades. The principal launch facility used by the HSA is a former missile testing range that Hyperion had built on Pandora, principally due to political concerns within Hyperion at the time as to the risks posed to major population centres by missile testing.
12. In 2004, HSA formed a 50-50 joint venture with Pandora Space Launch Services, Inc. (“**PSLS**”), a company owned by private nationals and companies domiciled in Pandora, to provide commercial launch services using its suite of rockets, capable of launching payloads of up to 7 tonnes to low earth orbit or 5 tonnes to geostationary transfer orbit. Under the joint venture, PSLS would market and contract to provide commercial launch services and would coordinate all aspects of the launch, with HSA providing the launch vehicle for the launch.
13. While Hyperion does not have domestic legislation regulating launch activities, Pandora has enacted the *Space Activities Ordinance* of 1998 and PSLS is licensed under that legislation by the Space Licensing and Regulatory Office (“**SLARO**”) of Pandora. SLARO was established as an independent agency of the Government of Pandora and is not subject to oversight or control by the Government of Hyperion.

In-Orbit Failure of *EncelaCom-24*

14. Enceladus Satellite Communications Corporation (“**ESCC**”) is a company incorporated on 16 April 1996 in Enceladus.
15. At that time, 80% of its issued shares of ESCC were held by the Federal Government of Hyphaestus. The remaining 20% was held by the Government of Enceladus. In accordance with article 37 of the Dissolution Treaty, Enceladus became the 59.2% shareholder of ESCC after the breakup of Hyphaestus and, with further agreements between Enceladus and Hestia, Rhea, and Themis through which Enceladus acquired their shares in ESCC, by 26 March 2005, Enceladus has attained 75.2% of the shares in ESCC.
16. One of the satellites operated by ESCC is *EncelaCom-17*, which provided wholesale mobile telephony and direct television broadcasting services in Enceladus and nearby States. It was launched in 1998 and was nearing the end of its life cycle by 2008 and the ESCC resolved to replace it with *EncelaCom-24* sooner rather than later in order to ensure continuity of service.
17. After an open international tender process that involved launch operators, both governmental and commercial, all bidding to launch *EncelaCom-24*, it was PSLS that was ultimately successful in its tender as it was the cheapest contractor. On 1 December 2008, ESCC and PSLS signed a contract for the launch of the new *EncelaCom-24*.
18. On 14 September 2011, after several delays, *EncelaCom-24* was launched into orbit. However, its orbital insertion engine failed to ignite and it was not able to be inserted into geostationary orbit. In an effort to avoid a potential collision with the International Space Station (the “**ISS**”), on 19 September 2011, ground control engineers at PSLS manoeuvred the satellite, still attached to the orbital insertion stage, to a higher orbit. This manoeuvre was done by PSLS without prior

consent or consultation with ESCC because of the urgency and the need to have sufficient time for other measures to be taken to move the ISS if the manoeuvre was unsuccessful.

19. While the manoeuvre successfully avoided contact between *EncelaCom-24* and the ISS, the orbital insertion engine became detached from the payload, so that when the manoeuvre ended, the engine continued in its trajectory and eventually collided with *StratSat-IV*, a remote sensing satellite operated by the Department of War of Enceladus. The collision destroyed the satellite and created a small but dangerous debris field.
20. *StratSat-IV* was registered with the United Nations by Hyphaestus soon after its launch on 22 August 2002, listing Hyphaestus as the launching State and the State of registry. No change was made to its registration after the dissolution of Hyphaestus, though control of the satellite, along with the remainder of the government satellite fleet, was under *de facto* Enceladus control. The terms of the arrangement between Enceladus and the other constituent States of Hyphaestus in relation to ownership and control of these satellite assets had not been finalised as on the date of this Special Agreement.

Loss of *EncelaCom-17*

21. After the launch failure of *EncelaCom-24*, ESCC continued to rely heavily on *EncelaCom-17* until a replacement satellite can be launched to take the place of *EncelaCom-24*. However, the replacement satellite was not expected to be launched until October 2014, causing significant loss to ESCC as a result of contractual commitments it has entered into with third parties in anticipation of *EncelaCom-24* coming into service.
22. On 19 March 2012, the ground control centre at ESCC lost the ability to command and control *EncelaCom-17*. As the satellite had just passed through an orbital space near where *StratSat-IV* was destroyed, it was believed that collision from debris has damaged the communications devices or solar panels onboard *EncelaCom-17*. Although no other cause has been identified, the collision theory cannot be definitively proven. What was certain was that ESCC had lost all ability to control or manoeuvre the spacecraft.
23. On 27 March 2012, *EncelaCom-17* collided with *HyperSat-B*, a communications satellite launched and operated by the Government of Hyperion. Although *HyperSat-B* was not destroyed in the collision, it was propelled towards the surface of the Earth before command and control over the satellite was recovered in Hyperion. *HyperSat-B* re-entered the atmosphere and parts of it survived re-entry as some of its components were made of steel, titanium, and beryllium. Though most of it did not cause any loss or damage, a piece estimated to be 170kg in weight crashed into the roof of a travelling vehicle carrying a family of three children and their parents in Enceladus.
24. Hyperion was concerned that the returned component may allow Enceladus to derive sensitive technology and, further, its memory chips onboard may contain encrypted military communications and demanded the return of the component. However, the local provincial governor refused to deliver the component and, instead, used the component as the centrepiece of a memorial built to commemorate the death of the family and built a hall around the memorial. It was reported in the press that all the doors and windows of the hall were too small for the memorial or the spacecraft component to be removed from the building.

25. It was widely reported in the international media that, before the *HyperSat-B* component was installed as part of the memorial, engineers were seen removing circuit boards from the component. The identity of engineers and the whereabouts of those circuit boards are unknown.

The Dispute

26. After months of diplomatic efforts having failed to resolve the disputes between the States, Enceladus and Hyperion agreed to refer the dispute to the International Court of Justice.
27. Enceladus claims that:
- (i) Hyperion is liable to Enceladus for the loss of *StratSat-IV*;
 - (ii) Hyperion is liable to Enceladus for the loss of *EncelaCom-24*, including but not limited to the economic loss suffered by ESCC; and
 - (iii) the claims made by Hyperion are untenable.
28. Hyperion claims that:
- (i) Enceladus is liable for the loss of *HyperSat-B*;
 - (ii) Enceladus is required to return to Hyperion all components and parts of *HyperSat-B* returned to Enceladus; and
 - (iii) The claims made by Enceladus are untenable.
29. Both Enceladus and Hyperion are Member States of the United Nations.
30. Hyperion is party to all five United Nations space treaties as well as the Vienna Convention on the Law of Treaties. Hyphaestus was party to all five United Nations space treaties but neither signed nor ratified the Vienna Convention on the Law of Treaties. Either before or after it was part of Hyphaestus, Enceladus has not acceded to any of these treaties.