



INTERNATIONAL COURT OF JUSTICE

**SPECIAL AGREEMENT**

BETWEEN

**REPUBLIC OF ELARA**  
(APPLICANT)

AND

**PRINCIPALITY OF ORTHOSIE COAST**  
(RESPONDENT)

JOINTLY NOTIFIED TO THE COURT ON 1 AUGUST 2016

COUR INTERNATIONALE DE JUSTICE

**COMPROMIS**

ENTRE

**RÉPUBLIQUE DE L'ELARA**  
(DEMANDEUR)

ET

**PRINCIPAUTÉ DE LA CÔTE D'ORTHOSIE**  
(DÉFENDEUR)

NOTIFIÉ CONJOINTEMENT À LA COUR LE 1 AOÛT 2016

# Case concerning the Operation and Destruction of Satellites in Times of Peace and Armed Conflict

*Elara v. Orthosie Coast*

## STATEMENT OF AGREED FACTS

### Background

1. The Republic of Elara and the Grand Duchy of Orthosie Coast are the two of the largest economies in the world, along with the world's tenth and nineteenth largest populations, respectively. They have a long history of rivalry and warfare between them, including some continuing disputes over their land border and territorial waters.
2. Both Elara and Orthosie Coast are members of the United Nations.
3. Both Elara and Orthosie Coast have highly successful government space programs that began in the 1970s, though neither country have sent manned missions into space. However, since the 1990s, the governments of both countries have become reliant increasingly on private launch providers for their government payloads.
4. Among the large number of private space industry participants that started up in both Elara and Orthosie Coast is United Space Launchers International, Inc. (*USLI*) is a provider of commercial space launch services that began in 1997 with nine unused *Hermippe* expendable launch vehicles that were developed and built by the Orthosie Coast Aerospace Agency (the *OCAA*) in the 1980s and 1990s, but has since designed and built its own *Euanthe* expendable launch vehicle for geostationary launches. Through a long term agreement between USLI and the OCAA that was signed in 1999, OCAA committed to utilise an orbital launch every quarter from 2002 to 2011 and would pay for them regardless of whether the launch option is actually taken up. Through the commercial security of this arrangement, USLI was able to secure financing for the development of its *Euporie* reusable launch vehicle, which has been used for orbital launches since 2001.
5. To provide some governmental regulation and oversight of the growing private space industry, the Legislative Assembly of Elara enacted the *Space Affairs Ordinance 2003*. In 2005, the Parliament of Orthosie Coast enacted the *Commercial Space Activities Act 2005*. Both domestic laws required the licensing of launch activities, for both launch providers and the satellite owners or operators that procure launch services that are either of their nationality or are operating in their territory. Although both domestic legislation provides for safety regulation and insurance obligations for licensees, a research report published by the International Air and Space Law Academy in 2015 suggested that the law of Elara imposed substantially heavier regulatory and financial burdens than that of Orthosie Coast, particularly with the benefit of a statutory cap on the liability of licensees under the *Commercial Space Activities Act* of Orthosie Coast.

## ETC and CS<sup>2</sup>

6. Elara Telecommunications Corporation (*ETC*) is a telecommunications operator that was a state-owned enterprise of Elara but was fully privatised in 1992 through a listing on the Elara Securities Exchange. In addition to provide a full range of telecommunications services in Elara and regional countries. In April 2005, the board of directors of ETC formulated a business plan to expand into international mobile telephony services by satellite, a plan that was approved later that year by a majority of its shareholders. Consequently, ETC established a wholly-owned subsidiary under the name of Commercial Satellite Communications Services, Inc. (trading as *CS<sup>2</sup>*). Because of the heavy regulatory and financial burden imposed by the *Space Affairs Ordinance* of Elara, *CS<sup>2</sup>* was incorporated and registered in Orthosie Coast, so that *CS<sup>2</sup>* was subject only to the licensing provisions of the *Commercial Space Activities Act* of Orthosie Coast.
7. From 2004 to 2006, USLI launched a constellation of 24 satellites for *CS<sup>2</sup>* that provide the satellite platform for global mobile telephony services that promoted itself heavily on its 100% coverage of the Earth's surface. The business operated under the name *Fermium*, the transuranic element with the atomic number of 100. Fermium quickly gained market share among business users and frequent travellers that placed much value on the use of a single telephone number worldwide without having to pay substantial data and voice roaming charges. Consequently, as from 2007, *CS<sup>2</sup>* became a significant source of revenue and profit for ETC.
8. In 2004, *CS<sup>2</sup>* bought a large piece of land in Orthosie Coast and constructed a purpose-built satellite control and operations complex there, from which the *Fermium* satellites were operated.
9. In 2009, by the suggestion and under the leadership of Orthosie Coast, an *ad hoc* committee of the International Telecommunication Union formulated the Mobile Telephony Roaming Agreement, which standardised roaming arrangements between telecommunications providers of different countries as well as setting maximum charges for data and voice roaming.
10. The rapid adoption of the Mobile Telephony Roaming Agreement among mobile phone networks worldwide in the following few years have caused a rapid erosion of the market share of *CS<sup>2</sup>*. Coinciding with the global financial crisis that was underway at that time, the domestic and foreign investment banks in Elara were not only no longer able to provide ETC with any further financing, they refused to restructure ETC's existing debt. The potential risk of bankruptcy of ETC as the sole telecommunications provider in Elara would have resulted in a catastrophic collapse of the Elaran economy and, to forestall this risk, the Federal Government of Elara began the compulsory acquisition of all of the issued shares of ETC with the effect of renationalising the company.
11. After renationalisation and under the leadership of the Elaran Minister for Communications as the *ex officio* chairperson of its new board of directors, ETC decided to refocus the *CS<sup>2</sup>* business and redesigned a new series of satellites. These new satellites, when launched, would give *CS<sup>2</sup>* the capability of providing a range of commercial satellite applications, including high resolution remote sensing and direct television broadcasting services, while the *Fermium* satellites would continue to provide satellite mobile telephony and telecommunications services to *CS<sup>2</sup>* customers. This constellation of 16 new satellites were launched from 2010 to 2013 by USLI and both the new business and satellites were given the name *Tennessine*, in keeping with the concept of naming them after transuranic elements, and the name was chosen because both the element and the new business were first announced in the year 2010.

### **Transfer of Satellite Operations to Elara**

12. The renationalisation of ETC by Elara coincided with the deterioration of relations between Elara and Orthosie Coast, as both governments accused the other of various economic activities including the enactment of laws and regulations discriminating against businesses of the other country, predatory currency devaluation against each other, dumping of manufactured goods in each other's markets, and even hacking to cause denial of web services and business espionage. Relations between the two countries worsened further when, on 15 October 2013, a shooting incident between military units of the two countries on the disputed border resulted in several deaths among soldiers on both sides, which blamed each other for the incident.
13. The business redirection of CS<sup>2</sup> was quite profitable, with demand for the CS<sup>2</sup>-Live satellite television broadcasting service popular in Elara, Orthosie Coast, and several neighbouring countries, and a high commercial demand for the CS<sup>2</sup>-Scope remote sensing services. However, there is some discomfort expressed in both the Parliament and the media in Orthosie Coast about the widespread reception of television services by a state-owned broadcaster of Elara. As tensions between the two countries escalated, CS<sup>2</sup>-Live was accused of propaganda by placing editorial emphasis on bad economic news for Orthosie Coast.
14. Throughout 2013, the Government of Orthosie Coast delivered official protests against the programs being broadcast on CS<sup>2</sup>-Live through bilateral diplomatic channels and the United Nations Secretary-General, which were all dismissed by the Government of Elara on the basis of both press freedom and journalistic independence.
15. In February 2014, after the election of a National Conservative government in Orthosie Coast, one of the CS<sup>2</sup>-Live channels broadcasted a series of commentary programs that criticised various economic and trade policies of the new governing party, even though some of these policies have not been announced to the public. On 27 February 2014, the Capital Police in Orthosie Coast arrested two satellite engineers of Elaran nationality at the CS<sup>2</sup> complex and charged them with both espionage and "criminal endangerment of the economic security of the state", and remain held without trial as "foreign enemy agents" in Orthosie Coast.
16. In response, CS<sup>2</sup> announced on 15 March 2014 that CS<sup>2</sup> would transfer control of both the *Fermium* and the *Tennessine* series of satellites to a temporary complex in Elara on 1 April 2014. In fact, control of the satellites was transferred on 14 March 2014, but CS<sup>2</sup> delayed both the announcement and the purported date of transfer, so as to avoid any potential interference from Orthosie Coast. On 17 March 2014, the Capital Police who attended with a search and seizure warrant at the CS<sup>2</sup> complex in Orthosie Coast found the place emptied of both papers and people.

### **War between Orthosie Coast and Psamathe**

17. On 6 August 2014, a group of anti-nuclear protestors from Orthosie Coast decided to sabotage a large nuclear power plant in neighbouring Psamathe by damaging the transmission lines from the power plant. The date of the operation was deliberately chosen to mark an important nuclear anniversary. They had planned to set off a small explosive charge by remote control in an open air area on the grounds of the nuclear plant without any intention of damaging anything. Unfortunately, they carried too much explosive with them and detonated them accidentally near one of the pipes supplying water to the plant. The engineering staff at the plant, believing the gauges showing a drop in coolant feed and rise in reactor core temperatures were part of their

- scheduled training exercise that day, performed a simulated shutdown of the plant rather than an actual shutdown. The resulting meltdown caused thousands of deaths and irradiated a large area.
18. Tensions between Orthosie Coast and Psamathe reached boiling point when Orthosie Coast refused to arrest the activists responsible and extradite them to Psamathe. Elara made public statements condemning the activists and also Orthosie Coast for failing to deliver them to justice. The Permanent Representative of Elara to the United Nations met with the Foreign Secretary of Psamathe and pledged support in any action against the activists and Orthosie Coast.
  19. On 22 September 2015, CS<sup>2</sup> offered continuing remote sensing data and processed imagery over the territory of Orthosie Coast to the Government of Psamathe, as well as satellite connectivity for mobile communications to the Psamathe military, both at cost only. On learning of this, the Government of Orthosie Coast ordered remote sensing imagery over the territory of Psamathe from CS<sup>2</sup>, which refused to supply them to Orthosie Coast at any cost. When the Chief Minister of Orthosie Coast telephoned the President of Elara to complain about this, the President of Elara denied all involvement or interference in the independent commercial operations of ETC and CS<sup>2</sup>.
  20. On 1 October 2015, Psamathe declared war on Orthosie Coast.
  21. On 2 October 2015, CS<sup>2</sup> found that its CS<sup>2</sup>-Live signal has been jammed in Orthosie Coast, so that no customer can receive their satellite television services within Orthosie Coast.
  22. On 5 October 2015, *Meteo-VI*, a weather forecasting satellite launched by USLI, owned and operated by the Government of Orthosie Coast, collided with *Fermium-14*, one of the satellites owned and operated by CS<sup>2</sup>. *Fermium-14* was destroyed completely. Later that day, a collision between *Meteo-IX* and *Tennessee-9* was avoided only because CS<sup>2</sup> was alert to the potential collision and moved its satellite out of the collision course in time.
  23. On 6 October 2015, the Aerospace Theatre Command of Elara fired missiles that shot down six *SatcomOC* satellites that have orbital parameters that overlapped or sufficiently close to those of CS<sup>2</sup>. Later that day, the President of Elara made a public statement while attending the General Assembly of the United Nations that condemned the destruction of the CS<sup>2</sup> satellites and declared the actions in shooting down the *SatcomOC* satellites to be “self-defence”. The *SatcomOC* satellites were launched by USLI and were owned and operated by OC Telecom, Inc., a company registered in Orthosie Coast and listed on its stock exchange.
  24. On 7 October 2015, the Chief Minister of Orthosie Coast, who was also attending the General Assembly at the time, announced that two new *Tennessee* satellites that were at USLI awaiting launch would be expropriated as compensation for the destruction of the *SatcomOC* satellites. She claimed that the satellite collisions that took place on 5 October 2015 were “unfortunate accidents”, that there was “no basis whatsoever” to suggest that any collisions would occur between the destroyed *SatcomOC* satellites and any CS<sup>2</sup> satellite, and that the destruction of the *SatcomOC* satellites amounted to an “act of war” by Elara in support of Psamathe.
  25. By resolution of the United Nations Security Council, a ceasefire was declared on 15 October 2015 between Orthosie Coast and Psamathe and, under the terms of the resolution that were agreed to by both governments, the activists would be arrested and tried at a special tribunal under Psamathe law to be convened in The Hague before a panel of three judges from Psamathe.

26. In April 2016, Leonard Hoffmann, an engineer who was employed by OC Telecom, resigned, moved to Elara, and became an employee of CS<sup>2</sup>. Hoffmann told his managers at CS<sup>2</sup> that, when he was working for OC Telecom, he and his colleagues were given access to the confiscated *Tenessine* satellites, the components of which were dismantled and reverse engineered. This confirmed suspicions held by CS<sup>2</sup> executives as to the remarkable technical similarities in design and construction between the new series of *SatcomOC* satellites and the lost *Tenessine* satellites.

### **The Dispute**

27. After months of diplomatic efforts having failed to resolve the disputes between the States, including the use of the good offices of the Secretary-General of the United Nations, Elara and Orthosie Coast agreed to refer the dispute to the International Court of Justice.
28. Elara claims that:
- (i) Orthosie Coast is liable to Elara for jamming the CS<sup>2</sup>-Live broadcast signals in its territory;
  - (ii) Orthosie Coast is liable to Elara for the destruction of *Fermium-14* and *Tenessine-9*;
  - (iii) Orthosie Coast is liable to Elara for the confiscation of the *Tenessine* satellites; and
  - (iv) Orthosie Coast acted unlawfully in allowing access by a commercial competitor of CS<sup>2</sup> to the *Tenessine* satellites.
29. Orthosie Coast claims that:
- (i) Elara is liable to Orthosie Coast for the direct television broadcast activities of CS<sup>2</sup>-Live to customers in Orthosie Coast;
  - (ii) Elara is liable to Orthosie Coast for the supply of remote sensing imagery by CS<sup>2</sup> to Psamathe and the refusal of CS<sup>2</sup> to supply remote sensing imagery to Orthosie Coast; and
  - (iii) Elara is liable to Orthosie Coast for the destruction of the *SatcomOC* satellites.
30. Both Elara and Orthosie Coast are parties to the Outer Space Treaty, the Rescue Agreement, the Liability Convention, and the Vienna Convention on the Law of Treaties. Orthosie Coast is party to the Registration Convention, which has not been signed by Elara. Neither Elara nor Orthosie Coast are party to the Moon Agreement. Both Elara and Orthosie Coast are founding members of the International Telecommunication Union.