MANFRED LACHS SPACE LAW MOOT COURT COMPETITION 1995

Case Concerning the Use of the Geostationary Orbit for Satellite Broadcasting

AGRETHIA V. PATHRON

1. INTRODUCTION

The finals of the 4th Manfred Lachs Space Law Moot Court Competition were held in Oslo during the IISL Colloquium. Preliminary competitions had been organized in Europe by the European Centre of Space Law (ECSL) of ESA, and in the US by the Association of US Members of the IISL. The winners of these preliminaries were the University of Leiden, The Netherlands (Merel Nahuysen and Tom Kok) for Europe, and the University of North Carolina (John Clerici and Sara Hall) for the USA. They met in Oslo before a bench composed of Judge G. Guillaume, Judge V. Vereshchetin and Judge Chr. Weeramantry of the International Court of Justice. The University of North Carolina won the competition. Financial and organizational support for the competition were granted by the Norwegian Foreign Ministry, the University of Oslo, and KLM Royal Dutch Airlines. ECSL and AUSMIISL sponsored the teams' travel to Oslo. Hereunder follow the case, written by Sa'id Mosteshar, and the briefs of the winning teams.

2. THE PROBLEM

Background

In accordance with the the International Telecommunication Union Constitution, the Government of the Democratic Republic of Agrethia (hereafter "Agrethia") and the Peoples Republic of Pathron (hereafter "Pathron") have referred the dispute set out below by special agreement to the International Court of Justice. No question of the jurisdiction of the Court is at issue. The relevant applicable treaties and United Nations Resolutions are specified below. All the countries involved are Members of the ITU. Both Parties to the dispute have stipulated that the information set out below is true.

Statement of Facts

Agrethia has notified the ITU for coordination of frequencies and registration of geostationary orbital positions in respect of 5 communications satellites operating in the Fixed Satellite Service, denominated Agita 1 to Agita 5 respectively. Each satellite is to have 8 transponders, respectively Agita 1.1, Agita 1.2 ... to Agita 5.8. The domestic and international communications needs of Agrethia for the next ten years can be served by the capacity available on any one of the satellites.

The locations which Agrethia has notified fall within the most desirable part of the geosynchronous orbit for international communications, particularly between Europe and North America. Agrethia is a member of the International Satellite Organization ("GLOBESAT"). GLOBESAT has plans over the next eight years to occupy and use three of the orbital positions for which Agrethia has applied to the ITU. These three positions are critical to regional coverage and direct interconnectivity among member states. No notification to the ITU has yet been made by the United States, GLOBESAT's notifying administration and headquarters location.

It is the intention of Agrethia to make 4 of the orbital positions with associated frequencies available for use by the highest bidders for them. The remaining satellite is intended to be used by Agrethia in the following manner. Three transponders, Agita 1.1 to Agita 1.3 are to provide Direct to Home transmissions of television programming receivable in Agrethia and two of its neighbouring countries, Pathron and Coro, that share a common national language with Agrethia. The transponders Agita 1.4 to Agita 1.8 will be used for point to point business services.

Pending coordination of its notifications to the ITU, Agrethia has brought into service one satellite, Agita 1. It is operating on a non-interference basis in accordance with the Radio Regulations.

Services on Agita 1.1 to Agita 1.3

Agrethia has leased Agita 1.1 to a commercial company, TVA, for the provision of general entertainment and information television services. TVA derives its revenue from subscriptions and from advertising. Subscribers are sought and served in Agrethia, Pathron and Coro through direct mail and TVA has no representative or other presence in either Pathron or Coro. All broadcasting in Pathron and Coro is state controlled, but the relevant legislations do not address satellite broadcasting.

Pathron has a government to which the government of Agrethia is ideologically opposed and fears the spread of Pathron ideology among its own population. As part of its policy to unseat the government of Pathron, the government of Agrethia uses transponder Agita 1.3 to broadcast anti-government propaganda into Pathron where it is receivable by the general public.

Position in Relation to GLOBESAT

GLOBESAT is an international intergovernmental organization of which Agrethia and Pathron are members. Its Statutes provide for members to carry out a technical coordination process. In bringing Agita 1 into service, Agrethia did not undertake such coordination.

Pending negotiation of correspondent arrangements with other countries for its telecommunications traffic via Agita 1, the normal anticipated growth in international telecommunications traffic of Agrethia has necessitated a request to GLOBESAT for additional space segment capacity. Although such capacity is available to GLOBESAT, Pathron has also applied to reserve all capacity which can be made available to Agrethia. Pathron has no foreseeable need for such capacity. GLOBESAT has indicated to Agrethia that it is minded to allocate the relevant space segment capacity to Pathron in retribution for the failure of Agrethia to carry out the coordination process. The use of Agita 1 has not resulted in any interference or technical difficulties for

GLOBESAT.

Actions by Pathron

To prevent reception of transmissions from Agita 1.3 to Pathron, Pathron made jamming transmissions to Agita 1 from stations in its own territory. These transmissions interfered with the broadcasts of TVA and have destroyed its subscription and advertising revenue. Pathron owns and operates a satellite Spartan 1 in the geosynchronous orbit. Pathron has the appropriate assignments from ITU and has coordinated with GLOBESAT. Spartan 1 transponder Spartan 1.6 has been unused since its launch. Following requests to Agrethia to cease transmissions of its anti-government propaganda, Spartan 1.6 was re-oriented and transmissions made from Spartan 1.6 to Agita 1, with the aim of putting Agita 1.3 out of use.

The provisions of the Agita 1.1 transponder lease concerning the unavailability of services are those current in the industry, allowing TVA to claim a refund of the charges under the transponder lease for any period of outage. All necessary notices have been given immediately. At the time of jamming by Pathron the lease had a further 8 years to run.

Issues to be decided by the Court

The Court has agreed to decide the following issues:

I. Whether Agrethia's attempt to register all of the five geostationary orbital positions violates international law;

II. Whether Agrethia's transmissions on Agita 1.3 violate international law;

III. Whether Pathron's actions to jam the trans-missions on Agita 1.3 violate international law.

Instructions

You are asked to prepare Memoranda setting out international law arguments supporting the case of each of the protagonists and to argue the issues before the Court. Agrethia, Pathron and Coro are parties to the Outer Space Treaty of 1967, the Liability Convention of 1972 and the Registration Convention of 1975. Pathron carries the satellite Spartan 1 on its register and Agrethia carries Agita 1 on its register. Both Agrethia and Pathron voted in favour of United Nations General Assembly Resolution 37/92 of 10 December 1982 on Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting. The GLOBESAT Agreement is identical to that of INTELSAT; specific reference is made to Articles I, II, III, VII and XIV of the INTELSAT Agreement and Article 13 of the INTELSAT Operating Agreement. Relevant provisions of the ITU are attached in the Appendix. No other ITU Convention or Radio Regulation provisions are to be cited or relied upon as authority in the memorandum or argument of these issues. Students are not expected to have or to seek a detailed understanding of the Radio Regulations.

APPENDIX

RELEVANT PROVISIONS OF THE ITU

A. Convention

Article 33
Rational Use of the Radio Frequency Spectrum and of the Geostationary Satellite Orbit

2. In using frequency bands for space radio services Members shall bear in mind that radio frequencies and the geostationary satellite orbit are limited natural resources and that they must be used efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have equitable access to both, taking into account the special needs of developing countries and the geographical situation of particular countries.

Article 35
Harmful Interference

1. All stations, whatever their purpose, must be established and operated in such a manner as not to cause harmful intereference to the radio services or communications of other Members or of recognized private operating agencies, or of other duly authorized operating agencies which carry on radio service, and which operate in accordance with the provisions of the Radio Regulations.

B. Radio Regulations

Paragraph 163

Harmful interference: Interference which ... seriously degrades, obstructs, or repeatedly interrupts a radiocommunications service operating in accordance with the Radio Regulations.

Paragraph 2674

In devising the characteristics of a space station in the broadcasting-satellite-service, all technical means available shall be used to reduce, to the maximum extent practicable, the radiation over the territory of other countries unless an agreement has been previously reached with such countries.

3. WINNING BRIEFS

A. MEMORIAL FOR AGRETHIA

AGENTS

Merel Nahuysen, Tom Kok

REQUEST FOR PROVISIONAL MEASURES

Agrethia's rights to the transponder Agita 1 must be protected.

The government of Agrethia wishes to submit a claim requiring provisional measures of protection concerning the transmissions on satellite Agita 1, before the Court makes any other decisions on the merits in the Case Concerning the Use of the Geostationary Orbit for Satellite Broadcasting[1].

Pathron is still continuing its jamming transmissions to satellite Agita 1 from stations in its own territory. These transmissions are interfering with the broadcasts of TVA. TVA is a commercial company, which has leased transponder Agita 1.1 from Agrethia for the provision of general entertainment and information television services. TVA derives its revenue only from subscriptions and from advertising.

As a result of the jamming transmissions, TVA's subscriptions and advertising revenue have been destroyed. Indeed, TVA can claim a refund of the charges towards Agrethia under the transponder lease for any period of outage. But this claim can only cover the charges made concerning the lease of transponder Agita 1.1. TVA is of course not able to claim compensation for the huge amount of loss of revenue derived from the destroyed subscriptions and the advertising.

By the time that this Honourable Court makes any other decisions in this Case, TVA will be bankrupt. TVA will be the innocent victim by the internationally wrongful acts of Pathron. In other words: the legal position of Agrethia and TVA will suffer irreparable prejudice if the provisional measures will not be granted.

On the other hand, Pathron will not suffer from any damage whatsoever when it will stop the jamming transmissions from the stations in its territory and from Spartan 1.

Its legal interests are not prejudiced by any provisional measure because it can always resume the jamming if the Court unexpectedly will decide in favour of Pathron.

We respectfully ask the Court to issue a declaratory judgement to stop the jamming transmissions by Pathron immediately.

ARGUMENT

Chapter I: Agrethia's attempt to register all of the five geostationary orbital positions does not violate any obligation under international law.

I.1. Agrethia is only attempting to register five orbital slot positions.

Under the present regime concerning the access to the geostationary orbit, every country has a right to file an application for orbital slot positions and thereby *to attempt* to register a certain type of satellite in a certain location.

By filing a request for orbital slots, nations merely make known that they have the intention to locate a certain type of satellite in a certain orbital position. Filing a request does not at all mean that the orbital positions in question will be granted. The Radio Regulations Board of the ITU checks filings for conformity with the ITU Constitution, the ITU Convention and the Radio Regulations and accepts all filings as long as they abide by these rules.[2]

Thus, if the request of Agrethia will appear to be not in conformity with any of the abovementioned rules, then the claim will not be granted.

If Agrethia would, despite such a negative decision of the Radio Regulations Board, still go on to occupy the orbital slots it has been refused access to, *then and only then*, Agrethia's actions will constitute a violation of international law c.q. the ITU Constitution, Convention or Radio Regulations. Until then, however, it will be hard for Pathron to maintain that Agrethia has violated an obligation under international law. For, until then, Agrethia's attempt is nothing more than just a mere attempt. It must be seen as generally agreed upon amongst civilized nations that a certain action can only constitute a violation of a certain rule if this rule has been enacted before the action in question has been committed. Thus, an attempt cannot be a violation of a certain rule, if there is no rule that forbids this attempt.

No rule exists which forbids a country to *file a request* for an orbital slot position.

Every country, including Agrethia and Pathron, is thus free to file an application for orbital slot positions.

I.2. The fundamental rule of space law is the freedom to use outer space.

The United Nations adopted the principles of law presently applicable to space activities in the sixties and the seventies. It established freedom for all States as they all have an interest in outer space activities.

A number of General Assembly resolutions made clear that outer space is a res communis[3].

Such resolutions may be seen to constitute expressions of state practice and opinio juris and thus are part of customary law[4].

Moreover, Article 1 of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space[5] reconfirms the importance of the res communis principle. It mandated that the area and the resources were to be available freely and equally, and that there should be free access.

Thus, the fundamental rule in space law is a freedom of exploration and use of outer space[6]. The rule is based on the proposition that all nations should be allowed to benefit from the exploitation and use of the area and its resources for peaceful purposes. All rules concerning outer space shall be seen in the light of this basic rule.

It is furthermore agreed that the geostationary orbit is part of outer space[7].

The weight of authority considers the word "use" in Article 1 of the Outer Space Treaty to be a general term that encompasses all activities in outer space[8]. The del-

egates taking part in the debates on the Outer Space Treaty accepted this view, including telecommunications as one example.
Furthermore, the travaux preparatoires reflect no intention of the drafters of the Treaty to except commercial activities from its application[9].
Since this rule is of such a fundamental character, it follows that any restriction of this freedom, being such a great asset, shall be interpreted restrictively[10]. If this freedom is not interpreted in this way, it will become empty of meaning.
In the line of the abovementioned it should be agreed that the most fundamental rule in outer space law is the rule that formulates the freedom to use this area. According to this fundamental rule of freedom, Agrethia is free to use and explore outer space.
By registering the five geostationary orbital positions, Agrethia merely exercises its legal right to freely use and explore outer space.

I.3. Agrethia's acts do not violate any of the parameters provided with respect to the freedom to use outer space.

In substantiation of the above, it will be shown that the remaining important principles of the Outer Space Treaty, as parameters of the fundamental freedom, indeed have not been violated towards Pathron.

a) Peaceful purposes.
First of all, there is the demand that space activities must be carried out exclusively for peaceful purposes[11].
This command must be interpreted in a restricted way.
The satellites that will be launched and placed in the geostationary orbital slot positions will be used for telecommunication needs. Agrethia will not use these satellites for military purposes. Agrethia's request for five orbital slot positions and its use is therefore clearly in conformity with this provision.

b) Non-appropriation.
Secondly, there is the principle of non-appropriation of outer space. Appropriation of an area of outer space would normally benefit only the appropriating state. This would be detrimental to the common interest provision by which Agrethia, as set out in this paragraph under c of this Memorial, does abide.
Agrethia has obliged itself not to appropriate any part of outer space for it is a party to the Outer Space Treaty. This Treaty explicitly forbids appropriation of any part of outer space[12].
It will be difficult for anyone to maintain that Agrethia is planning to appropriate the parts of outer space that are the subject of this case.
An analogy with the law of the sea, since the sea is also a res communis[13], may elucidate the point at hand.
A ship on the High Seas has a right to fish on these Seas[14]. By doing this the ship will not at all appropriate the spot. It will fish for a certain amount of time after which it will leave the spot. Then another ship from another country can take its place. It cannot be said that the first ship, or its flag state, has appropriated the spot in question by fishing there.
The same can be said for a country that uses a 'spot' in the geostationary orbit. By using this 'spot', the country in question cannot be accused of appropriation. It merely occupies the spot at issue for a certain period, but this as such cannot constitute appropriation. Article 2 of the Outer Space Treaty provides namely that occupation can never result in appropriation.
It cannot, therefore be maintained that Agrethia, by partly now and partly in the future using the slots in question, has appropriated them. The principle of non-appropriation has thus not been violated by Agrethia.

c) The benefit and interest of all countries.
Next, there is the principle that the use of outer space has to be carried out for the benefit and in the interest of all countries[15].
Communication satellites provide affordable access to international telecommunication networks for most nations in the world. These satellites are the best example of using outer space for the common benefit of all countries[16]. It has been concluded that the activities of space communication are "generally beneficial to all countries (and) satisfy the requirement of the common interest clause"[17].
Agrethia's satellites can be used by anyone who is in need of them. The party in question will only need to pay an annual fee to be able to use one or more of the transponders on board our satellites. This annual fee, it must be understood, will lie far below the costs of operating a satellite system of its own[18]. For, in order to be able to offer its citizens the same telecommunication facilities as the Agita satellites do, one needs a system[19]. A sole satellite will, for this purpose, not suffice. Thus Agrethia reduces the costs for any country wishing to offer its citizens a global satellite sytem. The exploration is thus clearly carried out without in any way infringing upon the benefit and the interest of all countries.
Thus, Agrethia's intended use of the geostationary orbital slots is in full consistence with the principle that the use of outer space has to be carried out for the benefit and in the interest of all countries.

d) Promotion of international cooperation.
Lastly, there is the principle of promotion of international cooperation[20] by the carrying out of space activities. It should be reminded that GLOBESAT is not the only means of international cooperation. There are numerous forms of cooperation which can also exist next to eachother[21].
By making the satellite transponders available to the countries of the world, Agrethia promotes international cooperation. Agrethia's actions are thus in full consistence with the principle that space activities have to promote international co-operation.

I.4. Agrethia's behaviour does not in any way constitute a violation of Article 33 (2)[22] of the International Telecommunications Union Convention.

The fundamental principle of freedom of space activities can only be abrogated by a *lex specialis* of unequivocal character.

The only lex specialis applicable to this case is Article 33 (2) of the ITU Convention. This Article contains several criteria in order to assure rational use of the Radio Frequency Spectrum and of the Geostationary Satellite Orbit.
It should, however, be noticed that nothing in Article 33 (2) of the ITU Convention completely overrules the fundamental rule of freedom to use and explore outer space. It does not say that the freedom to use and explore outer space does not apply to the regime of the geostationary orbit.

I.4.1.The "efficient and economic use" criterium formulated by Article 33 (2) of the ITU Covention.

Article 33 (2) of the ITU Convention first of all states:
"In using frequency bands for space radio services Members shall bear in mind that radio frequencies and the geostationary orbit are limited natural resources and that *they must be used efficiently and economically* (...)"[23].

This formulation states that the geostationary orbit must be used and that this use must be efficient and economic.
This demand presupposes:

a) Ability to use.
The demand of efficient and economic *use* implies that there has to be an ability to use the resource.
The orbit/spectrum resource cannot be used if no satellite can be put up in the orbital slot in question. Thus, use cannot be made without ability[24].
By launching and operating succesfully the Agita 1 satellite, Agrethia has proven that it has the ability to use the resource. It has thereby forfilled the first prerequisite.

b) Genuine need.
According to a 1982 United Nations report the criteria for equitable and efficient use of the orbit in question should be
"based on the genuine needs (...) identified by each country[25]".
Thus, whether needs for the orbit/spectrum resource are current or future, they should be realistic and genuine.
"A strong argument can be made that it would be totally contrary to the elements of justice and fairness, inherent in the concept of equity, to penalize countries with a need for any resource simply in order to satisfy an illusory concept held by countries that have no need[26]".
For, if there is no need for the resource, then hardly any of the transponders on board the satellites will be leased. Without the need there cannot be *efficient and economic use*.
In the most minimalist approach one satellite, being Agita 1, seemed enough to serve its domestic and international communication needs. However, the normal anticipated growth in international telecommunications traffic has now necessitated a request to GLOBESAT for additional space segment capacity.
Need is
"a condition in which something desirable is missing or wanted[27]".
There is a rapidly growing demand for satellites that can transmit various forms of information. The Agita satellites fall within this category.
Hence, there is an economic need for Agrethia to get access to the slots in question. Agrethia has thereby forfilled the second prerequisite.

The demand of "efficient and economic use" itself first of all requires that the claimed orbit/spectrum resource has to be used. Furthermore, this use has to be "efficient and economic".
The demand for transponders that transmit from the geostationary orbit is growing explosively[28]. It must be stressed again that the fee that has to be paid by a country to lease one or more of the transponders on board any of the Agita satellites will lie far below the costs of operating a satellite system of its own[29]. In view of this and in view of the ever increasing number of countries seeking access to the resource for telecommunication needs, it seems most probable that all the transponders will be leased in the very near future. The highest level of economic and efficient use will thus be attained.
By operating Agita 1, Agrethia has shown that it intends to use the claimed orbit/spectrum resource. This as opposed to some operators who filed so called 'paper' satellites[30]. This means that they have no immediate plans for launching let alone using them. These satellite networks are filed merely for speculative purposes. Moreover, according to some estimates, as many as 90(!) percent of ITU registrations for geostationary orbital slots are for speculative satellite projects[31]. No country, including Pathron, seems to have protested against the filings of these 'paper' satellites or the registrations of all the other satellites for speculative projects at all.
Not only, however, does Pathron *protest* against the present attempt made by Agrethia, it even considers it important enough to include it in this case before the International Court of Justice.
Attention must be drawn to the policy of the Radio Regulations Board[32], the organ of the ITU entrusted with the registration of frequency assignments, that has a policy that only claims on orbital slots a country intends to use, are valid[33]. By launching Agita 1 and by seeking lessors for the transponders on board Agita 2 to 5, Agrethia clearly shows that it has the intention to use the orbit/spectrum resource claimed.
The only conclusion left as regards the "efficient and economic use" criterium of Article 33 (2) is that Agrethia has not violated this obligation.

I.4.2. The "equitable access" criterium of Article 33 (2) of the ITU Convention.

Furthermore, Article 33 (2) of the ITU Convention states "(...) that they must be used efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have *equitable access* to both (...)"[34].
Equitable access implies the rule of equity and this legal concept requires taking all relevant factors into consideration[35]. Equitable does not however necessarily mean equal. Fair equity must imply that all countries should

have equal rights to meet their real requirements, as and when they exist[36]. However, "the use of the allocated frequency bands and fixed points in the geostationary satellite orbit by individual countries or groups of countries can start at various dates depending on requirements and readiness of technical facilities of countries"[37].
Only by taking all relevant factors into consideration, a proper judgement can be given about the equitability of a claim like the one here at hand.
In order to guarantee equitable access a number of so called Planning Principles are relevant[38].
These Planning Principles
"shall guarantee in practice for all countries equitable access to the orbit/spectrum resource taking into account the special needs of the developing countries and the geographical situation of particular countries[39]".
The following Planning Principles were selected:

a) The special needs of developing countries and the geographical situation of particular countries.
These are the first two Planning Principles. By leasing the transponders in question to anyone willing to pay the fee that lies far below the costs of operating a satellite system of its own[40], Agrethia takes the special needs of developing countries and of states with a particular geographical situation into consideration. For, without Agrethia's planned leasing it would most probably take these countries far more time to be able to get access to geostationary satellites providing the telecommunication services wished.
This can inter alia be deduced from the fact that several countries that fall within the category of developing states, work together because they cannot bring in enough money to get access to the geostationary orbit on their own[41].

b) The Planning Principle of flexibility.
The Principle of flexibility in this context means that a satellite has to have the ability to accomodate unforeseen or changed requirements and advances in technology.
Agrethia's system leaves all room necessary to be able to accomodate unforeseen or changed requirements and advances in technology.

c) The Principle of consideration of existing systems.
This Principle requires the newly filed satellite to take consideration of existing systems. The more senior satellites shall not be adversely affected by the newly filed spacecrafts[42].
Full consideration of existing systems is taken. All the Agita satellites will, like the Agita 1, operate on a non-interference basis in accordance with the Radio Regulations.

d) The Principle of duration.
The last Planning Principle involves the duration of the assigment. It provides that no planning method may lead to a permanent priority to an orbit/spectrum resource[43].
When the lifetime of the Agita satellites has expired, the orbital slot positions will in principle be available for new assignments. No permanent priority to the resource is claimed.

Agrethia has thus fully abided by the Planning Principles.

I.4.3. By not reacting to the Tongasat-affaire Pathron must be held to have aquiesced.

Even if the Court would decide, inspite of the foregoing arguments, that Agrethia's actions would not be in conformity with international law, Pathron should be estopped from claiming such violations.
It should be recalled that the Kingdom of Tonga, with an estimated population of 108.000 and a size smaller than New York City[44], got alloted 6 orbital positions.
The Tongasat affaire was the first real case that evolved around the principle of equitable access. The case itself and its implications are well known to all involved in geostationary orbital telecommunications.
The circumstances in the Tongan case, in comparison to the Agrethian situation, must, through the eyes of Pathron, have been a clearly more flagrant violation of the equitable access rule.
The Tongan circumstances thus called for some reaction, within a reasonable period, on the part of the Pathronese authorities. They do not seem to have done so either then or in the period thereafter, and thereby must be held to have aquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset.*[45]
Not only does Pathron protest against Agrethia's attempt to register five orbital positions, it also deems it important enough to include it in a case before the International Court of Justice.
The Government of Agrethia has relied in good faith upon the silence of Pathron. It has taken Pathron's silence as meaning that Pathron would have no objection to the actions against which it could very well have protested. Agrethia has acted upon its justified beliefs that Pathron would then also not protest against Agrethia's actions. These actions have brought along significant costs, namely those made by Agrethia to make its satellite telecommunications system operational. Having to turn back the proces that was started, would be highly detrimental to Agrethia.
Thus, Pathron should be precluded from now fighting Agrethia's actions before this Court[46].

The only possible conclusion left is, that Agrethia has done nothing more than lawfully exercising it's right to use and explore the geostationary orbit and the radio frequency spectrum, as part of outer space, as it exists under Article 33 (2) of the ITU Convention. No violation of Article 33 (2) of the ITU Convention has taken place.

I.5. The absence of any action from the sides of GLOBESAT and the ITU shows that Agrethia's actions do not constitute a violation of an obligation under international law.

If there would have been a violation of any rule of international law in this case, it would have been a rule of GLOBESAT or the ITU. The appropriate organisation to react to such a violation would then have been

either GLOBESAT or the ITU.

a) GLOBESAT.
Agrethia has obliged itself under the GLOBESAT Agreement[47] to incorporate in its national legislation provisions stating that GLOBESAT
"(...) shall posses juridical personality and that it shall enjoy the full capacity necessary for the exercise of its functions and the achievements of its purposes, including the capacity to (...) be a party to legal proceedings".
This provision is made in order to enable GLOBESAT to be a party to legal proceedings in case it feels its rights infringed upon.

Agrethia has enacted some such provision in its national legislation. It has hereby, conform the demand of Article 4 of the GLOBESAT Agreement, enabled GLOBESAT to be a party to legal proceedings. All member states are, by way of this Article, obliged to have done so.
Thus, *if* GLOBESAT felt that its rights or prerogatives would have been infringed upon, it *could* have and *would* have instituted proceedings itself. At least it may be expected that GLOBESAT, if not a Party in a legal proceeding, shall join the State Party instituting proceedings on its behalf. Lastly, GLOBESAT could have protested in many other, less formal, ways.
GLOBESAT, however, did neither of these. It seems thus that this organisation does not feel its prerogatives have been infringed upon.

b) The ITU
As for the ITU, Agrethia has obliged itself as a consequence of its ITU membership to incorporate provisions in its national legislation enabling the Union to "(...) enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes".[48]
Again, Agrethia has enacted some such provision in its national legislation. All member states are, by way of this Article, obliged to have done so, so as to enable the ITU to gard over its prerogatives.
Thus, *if* the ITU felt its rights or prerogatives infringed upon it *could* have and *would* have instituted proceedings itself or at least should have joined the State Party instituting proceedings on it behalf. Like with GLOBESAT, there were also numerous other, less formal, ways in which the ITU could have shown its disapproval.
The ITU did neither of these and thus this organisation does not feel its prerogatives have been infringed upon.

c) Conclusion.
Thus, apparently, GLOBESAT nor the ITU feels its rights or prerogatives infringed upon. As explained above, they could both very well have instituted proceedings against Agrethia. GLOBESAT and the ITU can defend their own prerogatives. There is no room for Pathron to act on behalf of both of these organisations.
Because of the absence of any action from any of these two organisations, it must be concluded that Agrethia has not infringed upon any of the obligations under international law it could have infringed upon.

Chapter II. Agrethia acted in complete conformity with international law by its transmissions on Agita 1.3.

II.1 Agrethia has a right to transmit information into Pathron since the freedom of information is protected by Human Rights documents.

In space law, first of all Article I of the Outer Space Treaty expresses the freedom of exploration and use of outer space. Thus, Agrethia is free to use outer space for her transmissions. This is the freedom of information. If there are any exceptions at all to the freedom of exploration and use of outer space, they must be interpreted in a restricted way. The freedom of information will become empty of meaning if this will not be done.
Up till now, no general international convention concerning the freedom of information has been adopted. Because of this inability of nations to arrive at other convention texts, the human rights principles outlined below are the only authoritative declaration of the freedom of information and its limitations.
A 1948 report of the Subcommission on Freedom of Information and of the Press entitled "Statement of Rights, Obligations and Practices to be Included in the Concept of Freedom of Information"[49] (hereafter referred to as the "Paper") provides substantial guidance. The Paper's interpretation of the freedom of information as such can be summarized as follows:
"...the freedom of information 1) is a *fundamental right*, 2) encompasses the right to think and hold opinions without interference, to seek, receive and *impart* information and ideas by any means without fetters and regardless of frontiers[50]."
The Paper expresses the view that the right to freedom of communication should be considered legally absolute[51].

On 10 December 1948 the UN General Assembly adopted the Universal Declaration of Human Rights without a dissenting vote[52]. The Declaration has had a marked influence upon the constitutions of many states and upon the formulation of subsequent human rights treaties and resolutions. In 1968 a UN International Conference on Human Rights met at Teheran, Iran, "to review the progress made in the twenty years since the adoption of the Universal Declaration of Human Rights and to formulate a programme for the future". Among other things, the representatives of the 84 States there represented adopted a solemn Proclamation containing the following clause:

"...2. The UDHR states a common understanding of all members of the human family and constitutes an obligation for members of the international community[53]."

The Conference of Teheran and the opinions expressed there, make clear that the states concerned consider the principles contained in the UDHR as binding upon them.
Accordingly, if the Universal Declaration did not itself already constitute an obligation for the Member States of the United Nations, the Proclamation of Teheran did so by expressing the wish to consider the UDHR as an legal instrument of international law.

Furthermore, the international community attaches

much importance to this Declaration. The principles of the Declaration clearly have become binding either by way of custom or by general principles of international law[54]. Therefore, Pathron is bound by the principles that can be found in this Declaration.

Article 19 of the Universal Declaration of Human Rights provides that:
"Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and *impart* information and ideas through any media and regardless of frontiers[55]".

The human rights declared in the Universal Declaration also have an international dimension and should be seen in a wide, international context.

On 19 December 1966, the International Covenant on Civil and Political Rights was adopted in New York. By this instrument, all parties undertake to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant. Article 19 of the Covenant also proclaims the freedom of expression:
"Everyone shall have the right to hold opinions without interference".
Rights like the one expressed in Article 19 are clearly resulting in binding obligations and the Covenant can be seen as an elaboration of the human rights principles of the Human Rights Declaration of 1948[56] mentioned earlier.

Agrethia claims the internationally accepted right to impart her opinions. By broadcasting her opinions into Pathron, Agrethia is not violating any right at all and thereby merely making use of this right; no rule is operative or applicable which would detract from this right. The only possible conclusion is that Agrethia may continue the use of transponder Agita 1.3 to broadcast her messages into Pathron.

II.2. Agrethia has a right to transmit information into Pathron on the basis of Principle 1 of the DBS Resolution.

One of the purposes and objectives of the United Nations General Assembly Resolution 37/92 (1982), "Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting" as expressed in Principle 1, is the right of *everyone* to seek, receive and *impart* information and ideas. The vote on the Resolution was 107 in favour, 13 against and 13 abstaining, which is a very robust majority. Although a recommendation only, Resolution 37/92 can be said to be international customary law because of the votes which represent a opinio iuris concerning the major rule in the Resolution. The burden of prove is for Pathron to state that the DBS Resolution does not reflect customary law.
Agrethia is imparting her ideas by transmitting signals from transponder Agita 1.3. Agrethia's actions are therefore not violating the purpose as outlined above. On the contrary, Agrethia is implementing this purpose by broadcasting information. Therefore, Agrethia is acting in complete conformity with this right of expression and has a right to transmit information into Pathron.

II.3. Agrethia has a right to transmit information into Pathron on the basis of general customary law.

A rather pragmatic approach on the issue of broadcasting of radio waves which led to a functional 'freedom of broadcasting'[57], is based on numerous examples in international law documents[58]. A uniform state practice of acquiescence to transborder radio broadcasts developed, which also led to a customary rule of international law of freedom to broadcast[59]. Adherent to the freedom of broadcasting is the right to *receive* the broadcast information. Without the last-mentioned right, the right to broadcast and impart information would be idle and a mere formality. By giving the people of Pathron information, whatever its content may be, Agrethia is supporting the realisation of the right to receive information!
Agrethia is transmitting signals into Pathron on the basis of its sovereign powers. Agrethia is entitled to regulate free broadcasting of information from its own territory and thus has a right to transmit from Agita 1.3 into Pathron.

Chapter III. Pathron's actions to jam the transmissions on Agita 1.3 violate international law.

III.1. The jamming from the territory of Pathron is not in conformity with Article 35 of the ITU Convention, because of the resulting harmful interference.

Article 35 of the ITU Convention prohibites stations, whatsoever their purpose, to cause harmful interference to the radio services or communications of other Members by the ITU Convention.
Paragraph 163 of the ITU Radio Regulations gives the following definition of harmful interference.
"Interference which seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with the ITU Radio Regulations".
Thus, the above cited rules have limited states' freedom in conducting radio transmissions to the extent that they cause harmful interference to certain other services or repeatedly interrupt the services of another member nations[60]. The principal purposes of the ITU Convention are to promote international cooperation in the development and use of radio, and to avoid harmful interference between radio stations of different countries[61].
The purpose of international co-operation in solving international problems of an economic, social, cultural or humanitarian character is given in Article 1.3 of the UN Charter, which as such sustains the legal obligation contained in Article 35 of the ITU Convention.
Nevertheless, Pathron is jamming the transmissions on transponder Agita 1 on purpose from its own territory in order to put the transponder out of use. Therefore, Pathron violates Article 35 of the ITU Convention and does not act in conformity with paragraph 163 of the Radio Regulations, as well as Article 1.3 of the UN Charter. Pathron has to stop the jamming from its territory immediately.

III.2. The jamming by the stations in the territory and by Spartan 1 is not in conformity with rules concerning

international peaceful purposes.

Article 1.2 of this Charter states that one of the UN purposes is to develop friendly relations among nations based on respect for the principle of equal rights.

This principle is provided by also in the Preamble of the Outer Space Treaty, Principle 3 of the DBS Resolution and Principle d of General Assembly Resolution 2625[62].

Pathron has jurisdiction and control over the stations in its own territory and also over satellite Spartan 1. For the wrongful acts deriving from the use of the groundstation and the satellite Pathron should be held responsible. This state violated the peaceful purposes of the Charter of the United Nations.

Agrethia has leased Agita 1.1 to a commercial company, TVA. Agrethia carries Agita 1 on its register and has notified the ITU for coordination of frequencies and registration of geostationary orbital positions, including Agita 1. Agrethia has jurisdiction and control over this space object[63], because of its registration in Agrethia. Therefore Agrethia can give diplomatic protection to TVA, and can claim compensation for this company in case damage occurs.

Spartan 1 transponder Spartan 1.6 was re-oriented and jamming transmissions are made from this transponder to Agita 1, with the aim of putting Agita 1.3 out of use.

If the jamming continues in future, it can also result in impairment of the satellite itself. Disturbances of waves can bring satellites out of their course or interruptions of their radiospectrum or disturbances of frequencies can make them useless. Considering the huge amount of money needed to develop and launch a satellite, damaging such a space object causes serious consequences[64].

Pathron's jamming on Agita 1 constitutes a serious breach to the rules concerning international peaceful purposes, considering abovementioned facts.

Therefore, Pathron should refrain from jamming the transmissions on Agita 1 immediately.

III.3. The jamming from both the territory of Pathron and Spartan 1 is disproportional.

Even if the Court would have decided that Agrethia was not allowed to transmit information into the territory of Pathron, Pathron can not justify the jamming actions as a reprisal. Such actions must be proportional[65]. All broadcasting in Pathron is state controlled. All the relevant legislations however do not address satellite broadcasting. Pathron is a sovereign state and therefore can for example make legislations which forbid the use of equipment which can receive radio waves from foreign countries like Agrethia[66]. Pathron has not used this option. On the contrary, Pathron is making jamming transmissions to satellite Agita 1. This action is not proportional at all, considering the fact that by jamming the satellite Agrethia and TVA are suffering.

III.4. Pathron must make reparation for international wrongfullness towards Agrethia because of the damage caused by the jamming from the territory of Pathron.

Pathron has jurisdiction and control over the stations in its own territory which make jamming transmissions to Agita 1. Pathron should therefore be held accountable for damage caused by those jammings. And indeed, Article VI of the Outer Space Treaty provides for responsibility for national activities in outer space. Pathron is responsible for her international wrongful acts which violated the obligation not to make jamming transmissions. Pathron has violated her obligations by jamming Agita 1 by Spartan 1 and therefore is international responsible for the damage, because of its fault. The responsibility of Pathron also includes the duty to provide recovery for this indirect damage[67], which does in case consist of the loss of revenue for TVA. In the Chorzów Factory Case, the Permanent Court of International Justice said that: "It is a principle of international law, and even a greater conception of law, that any breach of an engagement involves an obligation to make reparation".

Agrethia can file a claim on behalf of TVA, as a result of the fact that TVA has leased transponder Agita 1.1 from Agrethia. The Court also emphasized that "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed[68]".

Agrethia suffers damage because of the jamming from the stations in the territory of Pathron. This damage has to be compensated for. If the Court agrees on the duty of Pathron to compensate for the damage, then Agrethia offers its assistance to the Court for determining the extent of the damage occurred.

SUBMISSIONS TO THE COURT.

On the basis of the evidence and legal arguments presented in this Memorial, the Government of the Democratic Republic of Agrethia respectfully requests the Court to adjudge and declare that:

- firstly, Agrethia's attempt to register the five geostationary orbital slot positions in question is in complete conformity with international law.
- secondly, By its transmissions from Agita 1, Agrethia is acting in complete conformity with international law. She has a right to transmit information into Pathron.
- thirdly, By means of the jamming from the groundstation and Spartan 1 Pathron violates rules of international law.
- fourthly, Pathron is responsible for the indirect damage caused by jamming of satellite Agita 1 and has to compensate this damage.

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1 Article 41.1 of the Statute of the International Court of Justice state that the Court can indicate any provisional measures to be taken to preserve the respective rigths of either party. Article 74.1 of the Rules of the Court adds that a request shall have priority over all other cases and matters.

2 *Cf.* Article 14 of the ITU Constitution of 1992, Article 10 of the ITU Convention of 1992; S.D. White, International Regulation of the Radio Frequency Spectrum and Orbital Slot Positions, 2 Telecommunications & Space Journal (1995). *See* J. Christensen, *Orbital Slot Contention and the Radio Regulations*, 9 Via Satellite 24-28 (1994).

[3] *See e.g* UN General Assembly resolution 1962 (XVII) adopted in 1973, that lays down a series of applicable legal principles which include the provision that outer space and celestial bodies are free for exploration and use by all states on a basis of equality and in accordance with international law. See further General Assembly resolutions 1721 (XVI) and 1884 (XVIII).

[4] *See* M.N. Shaw, International Law 329 (1991); Cheng, *United Nations Resolutions on Outer Space: 'Instant' International Customary Law ?*, 5 Indian Journal of International Law 23 (1965); *see also* Case concerning military and paramilitary activities in and against Nicaragua (Merits) (Nicaragua v. the United States of America), 1986 I.C.J. Rep. 14 (judgement of June 27 1986); Cf. P. Abdurrasyid, *The Outer Space Treaty and the Geostationary Orbit*, XII Annals of Air and Space Law 135 (1987)

[5] Hereafter Outer Space Treaty.

[6] *See* Article 1 of the Outer Space Treaty. *See also*: H.A.Wassenbergh, Space Law in Hindsight 9 (1991); M.N Shaw, International Law (1991); Cf. S. Gorove, *Sources and Principles of Space Law, in* N. Jasentuliyana (ed.), Space Law Development and Scope 46 (1992); Cf. H. DeSaussure, *The Freedoms of Outer Space and their Maritime Antecedents,* in N.Jasentuliyana (ed.), Space Law Development and Scope 6 (1992); Cf.M. Lachs, *Outer Space, the Moon and other Celestial Bodies, in* M. Bedjaoui (ed.), International Law, Achievements and Prospects 961 (1991); C.Christol, The Modern International Law of Outer Space 444 (1982);Cf. C. Jenks, *Space Law, in* I. Brownlie, Principles of Public International Law 195 (1965); K.Böckstiegel, Handbuch des Weltraumrechts 22 (1991); Cf. C. Jenks, Space Law 170 (1965); Cf. R.Jakhu, The Legal Status of the Geostationary Orbit, 7 Annals of Air and Space Law (1982).

[7] *See* D. Greig, International Law 360 (1976); R. Jakhu, The Legal Status of the Geostationary Orbit, 7 Annals of Air and Space Law 334-351 (1982); Cf. B, Cheng, *The Legal Regime of Air Space and Outer Space: The Boundary Problem. Functionalism versus Spatialism: The Major Premises*, V Annals of Air and Space Law, 323 et seq.; O. Ogunbanwo, International Law and Outer Space Activities 58 (1975); International Law Association, Report of the Fifty-Eight Conference 2 (1978); M. McDougal, The Emerging Customary Law of Space 58 (1986); S. Gorove, *The Geostationary Orbit: Issues of Law and Policy*, 73 American Journal of International Law 444,447 (1979); J. Busak, *The Geostationary Satellite Orbit- International Cooperation or National Sovereignty ?*, 45 Telecommunication Journal 67, 169 (1979).

[8] *See* M. Smith, The Role of the ITU in Space Law, XVII-I Annals of Air and Space Law 163 (1992).

[9] UN Doc. A/4141, part 3, paragraph 2-5, 9 and 30 (1959).

[10] As is the case with various other fundamental rules of international law, *e.g.* Article 2 (4) of the Charter of the UN, the rule that prohibits the use of force. *See e.g.* D.Bowett, Self-defence in International Law (1958).

[11] *See* Article 3 of the Outer Space Treaty; *see also* H. Wassenbergh, Principles of Outer Space Law in Hindsight 8 (1991); C. Christol, The Modern International Law of outer Space (1982); M. Shaw, International Law (1991); J. Fawcett, International Law and the Uses of Outer Space 29 (1968); I. Diederiks-Verschoor, An Introduction to Space Law 125-135 (1993); K. Böckstiegel, Handbuch des Weltraumrechts (1991); N. Jasentuliyana, Space Law, Development and Policies (1992).

[12] *See* Article 2 of the Outer Space Treaty.

[13] *See e.g.* V.F Wodie, *The High Seas*, in M. Bedjaoui, International Law; Achievements and Prospects (1991)

[14] *See* Article 116 of the United Nation Convention on the Law of the Sea drafted in Montego Bay, 10 December 1982.

[15] *See* Article 1 of the Outer Space Treaty.

[16] *See* M. Smith, The Role of the ITU in Space Law, XVII-I Annals of Air and Space Law 164 (1992).

[17] *See* S. Gorove, *Freedom of Exploration and Use in The Outer Space Treaty: A Textual Analysis and Interpretation*, 93 Den. J. International Law and Policy 101 (1971).

[18] To operate a satellite system of its own will cost at least $300 million and the ground equipment needed to operate such a system costs three to five times that much. *See* M.Rycroft (ed.), Cambridge Encyclopedia of Space (1990).

[19] The most elementary communication system has two satellites in orbit and a spare on the earth. M. Rycroft (ed.), Cambridge Encyclopdia of Space (1990).

[20] *See* Article 3 of the Outer Space Treaty. This article also refers to international law, including the Charter of the United Nations. Article 1 paragraph 3 of the Charter contains the goals of the United Nations amongst which the furthering of international cooperation can be found.

[21] *E.g.* European countries cooperate within the framework of GLOBESAT, EUTELSAT and on a bilateral basis.

[22] This has become Article 44 (2) of the Constitution of the ITU since the Additional Plenipotentiary Conference of Geneva (1992). In this Article the demand of rationality is added to the demands "efficiently and economically" that can be found in Article 33 (2) of the former Convention. Even if Agrethia's acts were to be tested against this parameter, no infringement of that Constitution would have been made since Agrethia's actions abide by the demands of efficiency, economy and equitability. Having fulfilled these demands, Agrethia's attempt can only be judged rational.

[23] Emphasis added.

[24] *See* S.Gorove, *Principles of equity in international space law*, 26 Proceedings Colloquium IISL 17 (1983).

[25] *See* U.N. Doc. No. A/CONF.101/10, at 71 (1982).

[26] M.L.Smith, *Equitable access to the orbit/spectrum resource*, Colorado Springs (1987): "Technological developments should not be hampered by the pace of development of the slowest Member of the ITU", S.D. White, *International Regulations of the Radio Fre-*

quency Spectrum and Orbital Positions, 2 Telecommunications & Space Journal (1995).

27 *See* Longman Dictionary of Contemporary English 695 (1987); H. Black, Black's Law Dictionary 1031 (1990).

28 The demand is that huge that there are already a number of conflicts between countries rushing to get access to the geostationary orbit. E.g. in 1993 a dispute was settled between a company from Hongkong, Asia Satellite Telecommunications Co.Ltd., and Shinawatra Satellite Public Co. Ltd.; in 1993 Rimsat/Tongasat and Indonesia worked out an agreement that ended a conflict between them. *See also* Werner Wolter, *International regulation of the frequency spectrum and of the geostationary satellite orbit*, International Business Lawyer, (1986).

29 *See supra* note 12.

30 Examples are the networks filed on behalf of Direct Broadcast Satellite Corp. and Directsat both American companies. *See* J. Christensen, *Orbital Slot Contention and the Radio Regulations*, 9 Via Satellite 24-28 (1994).

31 *See* P. Seitz, *Crowding of Communications Satellites Causing Problems*, 38 Space News 18 (1994).

32 Being the successor of the International Frequency Registration Board.

33 *See* R. Saunders, *Tonga Faces Deadline for Orbital Slots*, Space News 1 and 20 (1990).

34 Emphasis added.

35 Equitable means "just, fair, and right, in consideration of the facts and circumstances of the individual case". H. Black, Black's Law Dictionary 632 (1968); See also M. Radin, Law Dictionary (1995) and D. Walker, The Oxford Companion to Law (1980). Cf. M. Chemillier-Gendreau, *Equity*, in M. Bedjaoui (ed.) International Law, Achievements and Prospects 279 (1991). Cf. I. Brownlie, Principles of Public International Law 26 (1990).

36 *See* J.C. Raison, *Television via satellite: Convergence of the Broadcasting - Satellite and Fixed - Satellite Service - the European experience*, 9 Space Communications (1992).

37 Final Acts of the 1971 World Administrative Radio Conference for Space Communications, Resolution Spa 2-1.

38 These Principles were selected at the 1985 World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space services using it of the International Telcommunication Union. They are discussed in a clear fashion by M.L.Smith, *see supra* note 11.

39 *See* ITU Report to the Second Session of the Conference (1985).

40 *See supra* 20.

41 Examples are ARABSAT and Palapa.

42 *See also* Radio Regulations 1051 and 1052. This proces of coordination is discussed in a clear fashion by S.D. White, *International Regulation of the Radio Frequency Spectrum and Orbital Positions*, 2 Telecommunications & Space Journal (1995).

43 These Principles are discussed clearly by M.L.Smith in his article *Equitable access to the orbit/spectrum resource*, (1987).

44 *See supra* note 17.

45 Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. Rep. 6 (judgement of June 15 1962).

46 *See* D.W. Bowett, *Estoppel before International Tribunals and Its Relation to Acquiescence*, 33 British Yearbook of International Law (1957).

47 *See* Article 4 of the GLOBESAT Agreement.

48 *See* Article 17 of the ITU Convention of 1982 drafted in Nairobi and Article 31 of the ITU Constitution of 1992 (Geneva).

49 Second session, 19 January to 3 February 1948.

50 Paragraph 1 a-c of the Paper. Emphasis added.

51 Paragraph 1f of the Paper.

52 UN General Assembly Resolution 217A (III), 10 December 1948.

53 M. Shaw, note 7, at 197.

54 See e.g. M. Shaw, note 7 at 196; P. Sieghart, *The International Law of Human Rights* 54; R. Wallace, *International Law* 197.

55 Emphasis added. Cf. also Article 29.3 of the Declaration.

56 M. Shaw, note 5, at 199.

57 N. Matte, *Aerospace Law, Telecommunications Satellites* 166 Hague Recueil 140 (1980).

58 *E.g.* Principle 1 of the DBS Resolution; Preamble and Articles 4 and 7.3 of the European Convention on Transfrontier Television of 5 May, 1989; Article 5 of the UNESCO Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange as adopted on 15 November 1972.

59 D. Fisher, Prior Consent to International Direct Broadcasting (1990) 141.

60 D. Fisher, *supra* note 62, at 66.

61 D. Rice, Regulation of Direct Broadcast Satellites: *International Constraints and Domestic Options*, 25 New York School Law Review 813 (1980).

62 "Recognizing the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes"; "...the strengthening of friendly relations and cooperation among all States..."; "The duty of States to cooperate with one another in accordance with the Charter".

63 Article VIII of the Outer Space Treaty.

64 D.Fisher, *supra* note 47, at 4.

65 International wrongfullness of an act is precluded where it is committed as a measure legitimate under international law. An example is a reprisal. *See* Article 30 Draft Articles on State Responsibility.

66 A lot of countries have already issued these kind of regulations. Among them are Singapore, Indonesia,Malaysia, Iraq, Brunei, etc.

67 *E.g.* C.Christol, *supra* note 9, at 157; P.Meredith and G. Robinson, Space Law: a Case Study for the Practioner 63 (1992).

68 Case concerning the factory at Chorzów (Germany v. Poland), 1928 P.C.I.J. Rep. (Ser. A No.17,29).

B. MEMORIAL FOR PATHRON

AGENTS

John Clerici, Sara Hall

ARGUMENT

I. Agrethia's Request To Register Five Geostationary Orbital Positions Violated International Law.

A. Agrethia's attempt to register five geostationary orbits violated its obligations under the International Telecommunication Union Convention.

Article 33 of the Convention of the International Telecommunications Union (hereinafter ITU) dictates[1]:...that radio frequencies and the geostationary satellite orbit are limited natural resources and that they must be used efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have equitable access to both, taking into account the special needs of developing countries and the geographical situation of particular countries.

1. Agrethia's use of the geostationary orbit is not an efficient and economic use of a limited natural resource.

The domestic and international communications needs of Agrethia for the next ten years can be served by the capacity available on any one of the five satellites Agrethia seeks to register. Agrethia intends to make four of the orbital positions with the associated frequencies available for use to the highest bidder. Agrethia seeks a license to "squat" on four positions which fall within the most desirable part of the geosynchronous orbit for international communications until a suitable profit can be made. Agrethia admits it has no immediate use for these positions other than to place them up for auction. By doing so, Agrethia is denying other nations who may be able to avail themselves of the benefits of this limited resource at below market costs access to these positions.

According to the principle of maximum channel dispersion, the objective of international orbit resource development law is to maximize the availability of satellite communications pathways.[2] Maximum development reflects the notion that the geostationary orbit be used "efficiently and economically" as required by the ITU Convention. While maximum development of the geostationary orbit is a matter of basic principle, the international community must guard against any overreaching in applying this principle.[3]

In 1990, the International Frequency Registration Board (hereinafter IFRB), the United Nations agency responsible for overseeing the geostationary orbit industry, denied the nation of Tonga's request for the registration of sixteen geostationary positions, and instead, awarded Tonga only six positions in compliance with the goal of maximizing international communications.[4] Although Tonga's acquisition of the orbital positions was motivated by profit rather than need, the IFRB granted Tonga control of the positions based on the notion articulated in Article 33 of the ITU Convention that the special needs of developing nations, such as Tonga, be taken into account.[5]

In the case before the Court, nothing indicates that Agrethia deserves special treatment as a developing nation. The Tonga matter is the only derogation from the principle that acquisition of geostationary positions must be motivated maximum development rather than profit and announces only a narrow exception to that rule for developing nations. Since Agrethia does not fall under the narrow exception announced in that IFRB holding, Agrethia's attempt to register five geostationary positions without a true need for these positions is in violation of the principle of maximum development.

2. Agrethia's use of the five geostationary orbital positions deny equitable access to other countries.

In 1993, this Court recognized that equity standards are to be used for the allocation and sharing of resources and benefits and that in the context of sharing natural resources, equity is playing an important international role. The Court specifically noted that the allocation of "slots" for the geostationary communications satellites in outer space, "like the sharing of the high seas, is properly addressed by the tenants of equity."[6] The application of equity in such circumstances, according to the Court, demands reasonableness and good faith in the interpretations and applications of treaties which may be relevant to the facts before the Court.[7]

Here, the ITU convention specifically states that any division of the limited natural resource of the geostationary orbit must allow equitable access to other countries. The term "equitable access" first surfaced at the 1971 World Administration Radio Conference in Geneva.[8] Two years later, the "equitable access" language was added to Article 33 of the ITU Convention and thus became legally operative.[9] This was viewed as a successful effort on the part of developing nations to replace the "first–come–first–served" principle in use since the beginning of the space age with *a priori* planning, thus guaranteeing equitable access by all countries to the geostationary orbit and space services utilizing it.[10]

Although no plan for implementing *a priori* planning was established at the time this language was inserted into the ITU Convention, future World Administrative Radio Conferences would devise various voluntary plans which attempted to guarantee equitable access. Many States oppose *a priori* planning of geostationary orbital resource due to the concern that technology can render such plans obsolete and could consequently result in a less efficient utilization of the resource.[11] The World Administrative Radio Conferences of 1985 and 1988 reached a compromise where geostationary positions are to be reserved for every state (described as *a priori* or planned development) but those positions would continue to be allocated today based upon the current first–come–first–served basis.[12] When the country who "owns" the allocated position has a need for the position, it has a right to claim to that position from the current occupant.

Normally, it is the job of the World Adminis-

trative Radio Conferences to reconcile the principle of free use by all states with the requirement for exclusive positions and frequency assignments.[13] However, given this Court's holding in the Maritime Delimitation case, it is now the job of the International Court of Justice, applying equity, to balance these principles.

Agrethia did not engage in any *a priori* planning before bringing Agita 1 into service nor has it indicated any intention to do so before notifying the ITU for coordination of frequencies and registration of the five geostationary orbits. GLOBESAT, an international satellite organization, has indicated that it has plans over the next eight years to occupy and use three of the orbital positions. Agrethia has given no consideration to the concern of less developed nations nor has it published its intentions to occupy the positions in order to give notice any nation which may have an intention to occupy that position. While Agrethia's application may succeed under a first–in–time–first–in–right scheme, Article 33 clearly gives a super–priority to developing countries. Since Agrethia has not followed the proper procedures in bringing Agita 1 into service, equity demands that this Court deny its claim to the five geostationary positions.

B. Agrethia's request to register five geostationary orbits violates its obligations under the Outer Space Treaty of 1967.

The Outer Space Treaty of 1967 was drafted in anticipation of the first men on the moon and rejects many theories of national appropriations. Instead, it accepts an analogy to Antarctica that no nation can claim sovereignty over the celestial spheres by any means.[14] An underlying principle of the Outer Space Treaty is that every nation, no matter its technical capacity, have common access to outer space.[15] This concept is embodied in Article I of the Treaty which requires that the use of outer space shall be carried out for the benefit and in the interests of all countries.[16]

By requesting registration of five geostationary positions, Agrethia seeks only to benefit itself. Of the forty transponders it asks for permission to operate, eight will be used for activities which directly benefit Agrethia. The remaining thirty–two transponders will be used to fill the coffers of Agrethia's treasury. Agrethia, in developing this plan, has not considered the interests of any country other than Agrethia. Agrethia's use of the geostationary orbit amounts to an appropriation of the orbits for its own enjoyment and profit and is in clear violation of both the letter and the spirit of the Outer Space Treaty to which it is a party.

C. Agrethia's request to register five geostationary orbits violates its customary international law obligation to act in Good Faith.

Professors Gennady Zhukov and Yuri Kolosov describe space law doctrine as proceeding from the premise that, in the absence of relevant rules of international space law, the relations between states arising in connection with space activities should be regulated by general principles of international law.[17] While both the ITU Convention and the Outer Space Treaty are certainly relevant in this dispute, general principles of customary international law work to supplement these documents.

There exists in international law a general principle which requires nations to comply with treaty obligations in good faith.[18] As stated above, Agrethia has breached not only its obligations under the ITU Convention and the Outer Space Treaty but has made a bad faith attempt to subvert the spirit of mutual cooperation and benefit embodied in those agreements.

Agrethia did not fulfill its obligations to GLOBESAT in good faith. Agrethia did not carry out the technical coordination process required by GLOBESAT. As a matter of practice, nations which are members of international intergovernmental organizations concerning satellites such as INTELSAT often bring satellites on–line prior to undergoing any technical coordination process.[19] However, Agrethia is bound to act "in a manner fully consistent with an in furtherance of the principles stated in the Preamble and other provisions of [the GLOBESAT] Agreement."[20] These principles include those embodied in Article I of the Outer Space Treaty and Article 33 of the ITU Convention. By failing to follow the technical coordination process required by GLOBESAT and by acting in contravention of the principles embodied in the Outer Space Treaty and Article 33 of the ITU Convention, Agrethia has breached its obligation to act in good faith as required by international law.

II. Agrethia's Unauthorized Broadcasts Of Anti–Government Propaganda Into Pathron Can Not Be Protected By The Limited Principle Of Freedom Of Information As They Violate Pathron's Sovereignty.

A. Agrethia's unauthorized broadcasts of anti–government propaganda into Patron's territory are not protected by the limited principle of freedom of information.

1. Freedom of information is not an absolute principle and must be applied in relation to other doctrines of international law.

There is no support in international law for Agrethia's assertion that freedom of information is a right that trumps all other rights. Scholars caution that " We have all departed a long way from the free flow of information concept as an absolute principle and we are talking practicalities."[21] As a principle of international law, freedom of information has real and practical limitations:

In terms of the 1967 Space Treaty there is freedom of exploration and use of outer space by states, depending on certain conditions– including the application of the principle of equality and sovereignty. Broadcasting is an instrument for the exchange of information and there are documents–for example the Universal Declaration of Human Rights, approved by the plenary Assembly of the U.N. in 1948– which proclaims the right to information with the freedom of information as a corollary. But in no case it is a question of total and absolute freedom: the freedom principles are limited expressly for well founded reasons and the limitations are indicated by the relevant documents.[22]

2. The principle of freedom of information as it has been defined by international documents and customary international law does not encompass Agrethia's broadcasts of anti–government propaganda.

The definition of the right to freedom of information exempt the very behavior that Agrethia's attempts to justify. For example, the International Covenant on Civil and Political Rights places definite limits on the right to freedom of expression: "everyone shall have the right to freedom of expression", the exercise of the right carries with it "special duties and responsibilities." The Covenant further cautions that the right is subject to restrictions which are "provided by law and are necessary: . . . For the protection of national security or of public order ..."[23]

B. State practice demonstrates that states reject freedom of information as an absolute right and exercise their sovereign right to regulate the information entering their country.

The expressed policy of the former Soviet Union in the context of satellite broadcasting is:

International law does not know any principle of 'free flow of information beyond national

frontiers'...The illegality of broadcasting detrimental to the maintenance of international peace and security, involving an encroachment on fundamental human rights undermining the foundations of local civilization, culture, way of life, traditions or language, rests upon generally recognized international principles... International law recognizes the legality of counter–action against illegal action.[24]

Even the United States, the most ardent supporter of free information in word, regulates domestic direct broadcast satellite services and requires prior consent from its friendly neighbor Canada before it can operate transborder radio paging operations.[25] Not only has the United States restricted information flow in practice but its stated policies have long conflicted with the free information rhetoric it espouses. In his 1967 Communication Policy, President Johnson stressed that regardless of its commitment to a single global system, the United States will not "give up its vital sovereignty over domestic communications."[26]

Likewise, Radio Free Europe and Radio Liberty adhered to strict policies concerning program content and edited many of their broadcasts.[27] Almost half of the developing countries continue to censor all programming that is transmitted into their boarders. Nearly all governments control the content of foreign broadcasting in some fashion and almost no government allows an unimpeded flow of information into its state: the former Soviet Union often jammed foreign signals, the former Soviet bloc countries do not permit the distribution of unlicensed Western publications within their borders[28], almost half of the LDC's maintain government control over all broadcast and print media and censor foreign information and news, the United States requires licensing of foreign broadcasts, and developing nations often maintain control over media broadcasts.[29] This extensive censorship dispels the notion that there is any internationally recognized right to broadcast across national boundaries.[30]

C. Although Agrethia's attempts to cloak its blatant efforts to unseat the lawful government of Pathron under the rubric of freedom of information, the principle of state sovereignty entitles Pathron to protect itself.

1. The doctrine of state sovereignty has long been recognized as a rule of international law.

Sovereignty is considered by many experts to be the most fundamental principle of international law because international relations are so dependent upon it.[31] The sovereign rights of states are recognized in the most fundamental international conventions including the United Nations Charter and the Charter of Economic Rights and Duties of States. The later charter, adopted on Dec 12, 1974 by 120 countries, defines the "Fundamentals of International Economic Relations" as follows: Economic as well as political and other relations among States shall be governed, inter alia, by the following principles (a)Sovereignty, territorial integrity and political independence of States (b) Sovereign equality of all States; (c) Non–aggression; (d) Non–intervention...."[32]

2. The principle of state sovereignty is the main limitation on freedom of information.[33]

As it relates to direct broadcast satellite, the form and content of broadcasts within a nation's borders is one aspect of state sovereignty: "Every government thus attaches great importance to its right to define, at least generally, the nature and impact of television services made available to its population; this right is viewed as a corollary to national sovereignty."[34]

D. By broadcasting unauthorized anti–government propaganda without Agrethia's prior consent or consultation, Pathron intervened in Agrethia's affairs.

1. The principle of non–intervention is a recognized rule of customary international law.

A corollary to the principle of state sovereignty is the principle of non–intervention. Intervention is an international term for "various forms of interference by one or several states into affairs which are within the jurisdiction of another state in pursuance of their own interests."[35] The prohibition against intervention is "a generally accepted rule of international law"[36]. Numerous international conventions and charters have espoused the principle of non– intervention. The UN Charter declares: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."[37] The Principle of non–intervention is asserted in the charters of many states including the Organization of American States, the League of Arab States and the Organization of African Unity and the Conferences of Montevideo, Buenos Aires, Chapultepec and Bogota.[38]

1981 called for the total ban on interference into internal

affairs of other states.[39] The 1965 Declaration on the Inadmissibility of Interference into Internal Affairs of States and the Protection of Their Independence and Sovereignty asserts "No state has the right to intervene, directly, or indirectly, for any reason whatever, in the internal or external affairs of any other state"[40]. The 1975 Declaration on the Use of Scientific and Technological Progress in the Interest of Peace declares that: All States shall refrain from any acts involving the use of scientific and technological achievements for the purpose of violating the sovereignty and territorial integrity of other States interfering in their internal affairs....Such acts are not only a flagrant violation of the Charter of the United Nations and principles of international law but constitute an inadmissible distortion of the purposes that should guide scientific and technological developments...[41]

Judicial decisions, including those rendered by this Court, have firmly established that intervention violates state sovereignty and is unlawful. In the Corfu Channel case of 1949, the International Court of Justice declared: "Between independent States, respect for territorial sovereignty is an essential foundation of international relations."[42] The Court further held that states have no right to intervention in the affairs of other states:

The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention...would be reserved for the most powerful States and might easily lead to perverting the administration of international justice itself.[43]

Again, in the 1986 Nicaragua case, the International Court of Justice emphasized that "Intervention is wrongful when it uses methods of coercion".[44] More importantly, the Court noted that unlawful intervention need not involve the use of force. Specifically, the Court found that the United States supply of funds to the contras was a prohibited intervention in the internal affairs of Nicaragua even though it did not amount to force. The "wrongfulness" of the intervention was not simply the United States' supply of funds, but the goal of the United States to overthrow the Nicaraguan government through coercion.[45]

2. Agrethia's unauthorized broadcasts of anti–government propaganda into Pathron violates the customary international law principle of non–intervention.

Not only is Agrethia's broadcast of "anti–government propaganda into Pathron where it is receivable by the general public" coercion as defined by this Court in the Nicaragua case but Agrethia's "policy to unseat the government of Pathron" is also a form of unlawful intervention.[46] The Nicaragua case and the case at bar parallel one another in that while the United States used the supply of funds to overthrow the government, Agrethia is attempting to overthrow Pathron's government through the use of anti–government propaganda.

E. Regardless of the content of the broadcast, almost universal state practice requires that the broadcasting state enter into prior consultations with the receiving state before broadcasting.

1. Many states advocate prior consent requirements.

Recent Committee on Peaceful Use of Outer Space documents, hereafter COPUOS, indicate that the majority of states support prior consent and assert that the concept of freedom of information must yield to the right to state sovereignty.[47] Within the U.N. COPUOS Working Group on DBS, the Soviet Union and Japan made several proposals which received support requiring strict program content regulation or some form of prior consent.[48] In 1978, UNESCO formulated the Declaration of Guiding Principles on the Use of Satellite Broadcasting which recognized the right of the receiving state to grant prior consent: "it is necessary that States, taking into account the principle of freedom of information, reach or promote prior agreements concerning direct satellite broadcasting to the population of countries other than the country of origin of the transmission."[49]

2. Even if prior consent is not a universally accepted principle of international law, the requirement of prior consultations has risen to the level of customary international law.

In addition to the documents listed above which support the requirement of prior consultations, Article 3 of the Charter of Economic Rights and Duties of States requires states to cooperate and enter into prior consultations in the exploration of natural resources, such as space: "In the exploitation of natural resources, each State must co–operate on the basis of a system of information and prior consultations. . .without causing damage to the legitimate interest of others."[50] Even the United States, the strongest advocate of freedom of information and the strongest objector to the strict prior consent proposals, proposed COPUOS provisions advocate that "a state which proposes to establish or authorize[s] the establishment" of DBS service "specifically aimed at a foreign state" should "without delay" notify the state and "promptly enter into consultations."[51] The overwhelming body of authority on prior consent confirms that prior consultation is considered a minimum floor by states.

F. While there maybe disagreement among states as to whether prior consent or prior consultation is required, no nation supports the unqualified right of one state to broadcast propaganda into another borders.

The U.N. Committee on the Peaceful Uses of Outer Space, COPUOS, defines propaganda as a hostile act, broadcasts of which may provoke war, incite subversive activities, slander receiver countries, interfere with receiver's internal affairs, and violate human rights.[52]

1. The international obligation not to disseminate hostile propaganda has been historically accepted as customary international law.[53]

The prohibition against propaganda dates back

to the 1936 League of Nation's Convention Concerning the Use of Broadcasting in the Cause of Peace. This was the first multilateral effort to regulate peacetime propaganda and was signed by 27 countries. [54] In 1947, the United Nations General Assembly created Resolution 110(11), "Measure to be Taken Against Propaganda and the Inciters of a New War," which condemned any propaganda designed to provoke acts of aggression, threats of peace or breaches of peace.

The use of DBS to disseminate hostile propaganda breaches the international duty to use space for peaceful purposes. The 1975 Declaration on the Use of Scientific and Technological Progress in the Interest of Peace emphasizes that technology should be used for peaceful purposes:

"(1) All States shall promote international cooperation to ensure that the results of scientific and technological developments are used in the interests of strengthening international peace and security..."[55]

2. Agrethia's broadcasts of anti–government propaganda violate the Outer Space Treaty which Agrethia has bound itself to follow.

The Outer Space Treaty establishes that activities in space should be carried on only for peaceful purposes.[56] Further, the preamble of the Treaty affirms the 1947 U.N. General Assembly Resolution 110(11) which "condemns propaganda designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression..."[57] Although the preamble to a treaty is not binding per se, Agrethia has an obligation to perform its treaty obligations in good faith in light of the treaty's intent under the doctrine of pacta sunt servanda[58], a fundamental principle of the law of treaties.[59]

2. Agrethia is bound by UN General Assembly Resolution 37/92 which, at the minimum, requires prior consultations before broadcasting into another country.

Agrethia voted in favor of the 1982 U.N. General Assembly Resolution 37/92 which requires a country to give notice before broadcasting into a foreign country: "A State which intends to establish or authorize the establishment of an international direct television broadcasting satellite service shall without delay notify the proposed receiving State or States of such intention and shall promptly enter into consultation with any of those States which so requests." [60] Paragraph 8 of the resolution further mandates that: "States should bear responsibility for activities carried out by them or under their jurisdiction and for the conformity of any such activities with the principles set forth in this document." [61]

Not only has the international community recognized that states should refrain from the use of propaganda and, at a minimum, enter into consultations prior to broadcast of any material into a foreign territory but Agrethia has expressly bound itself to honor these principles. As such, Agrethia can not assert in good faith that the right to freedom of information gives them the unqualified right to deliberately disseminate propaganda into Patron.

III. Pathron's Request That Agrethia Cease The Anti–Government Propaganda And Patron's Later Response To Their Unauthorized Broadcasts Conformed To Applicable Principles Of International Law.

A. Pathron's response to Agrethia's unauthorized broadcasts of anti–government propaganda is supported by the principles of state sovereignty and self–help.

1. The broadcast of propaganda into another state authorizes the invaded state to jam in self–defense.

as it allows for states to claim full control over their territory.[62] Scholar Bowett asserts: where the delict involves the broadcasting of propaganda the state may have recourse to 'jamming', which may be illegal prima facie but justifiable as self–defence. Thus, the decision of the British government to 'jam' the broadcasts from Athens Radio in January, 1956, was justifiable as a measure of self–defense against the delictual conduct of Greece....[63]

Scholar Glahn declares that "[a]ny target state for subversive propaganda possesses a perfect legal right to adopt jamming procedures against foreign subversive transmissions...."[64]

Likewise, D.P. O'Connell, in International Law: Vol. 1 (1971), states: There is no duty on a State not to resort to jamming of radio broadcasts from other States. Sometimes the right to jam is

free transmission.... Various United Nations organs have condemned the practice but this is not law–creative.[65]

2. State practice confirms that states often jam unwanted and unauthorized information broadcast into their territories by a foreign state.

Jamming of radio broadcasts began in the 1930s in many European countries.[66] During World War II jamming increased.[67] The former Soviet Union began jamming Western radio broadcast such as the BBC's External Broadcasting Services, the Voice of America, and Radio Free Europe/Radio Liberty in 1948 and has continued these practices throughout the twentieth century.[68] Cuba has a history of jamming United States stations. In the 1980's, Cuba repeatedly jammed several commercial stations in the 1980s and minutes after TV Marti went on the air in March 1990, Cuba began broadcasting on the same channel as TV Marti.[69]

Eastern European nations, such as Cuba and the former Soviet Union, assert that when states broadcast propaganda which threaten their national security they are justified in signal jamming. The 1972 Soviet Draft Convention states:

1. Any state Party to this Convention may employ the means at its disposal to counteract illegal television broadcasting of which it is the object, not only in its own territory but also in outer space and other areas beyond the limits of the national jurisdiction of any State.
2. State Parties to this Convention agree to give every

assistance in stopping illegal television broadcasting....[70]

3. Pathron's responded lawfully by jamming the unauthorized propaganda transmitted into its state.

In the case before the court, the relevant facts are these: Agrethia began broadcasting into Pathron's territory without receiving prior consent or entering into consultations with Pathron. Agrethia then broadcast unauthorized anti–government propaganda receivable by the general public. Pathron responded with repeated requests that Agrethia cease their transmissions. When this proved futile, Pathron began jamming the broadcasts and eventually re–oriented its own satellite in an attempt to put Agita 1.3 out of use. As such, Pathron dealt with the threat to its national security not with bombs, troops or an attempt to overthrow Agrethia's government but simply by preventing the unlawful broadcasts from entering its territory. This action represents a peaceful and lawful response to Agrethia's violations of Pathron's sovereignty.

B. Agethia's actions conform to the applicable provisions of the ITU Convention and the Radio Regulations.

Article 33 of the ITU Convention declares that the geostationary satellite orbit is a limited natural resource that must be used "efficiently and economically" and "in conformity with the provisions of the Radio Regulations ...taking into account the geographical situation of the particular countries".[71] By transmitting anti–government propaganda, Agrethia is not acting in conformity with the ITU Convention as Agrethia is not using the limited natural resource efficiently. Instead, it is using this valuable spectrum space for propaganda in flagrant disregard for Pathron's close geographical proximity to Agrethia.

Agrethia is violating the Radio Regulations by disregarding in bad faith the intent of Paragraph 2673 which states: "all technical means available shall be used to reduce, the maximum extent practicable, the radiation over the territory of other countries unless an agreement has been previously reached with such countries."[72] Agrethia did not reach or attempt to reach an agreement with Pathron, they did not inform Pathron of the broadcasts and they repeatedly ignored Pathron's requests that the broadcast of the propaganda be stopped. Pathron's transmissions did not cause harmful interference as Pathron was not creating inference with a service "operating in accordance with the Radio Regulations."[73] Instead, Pathron lawfully prevented Agrethia from broadcasting unauthorized anti–government propaganda into its country.

SUBMISSIONS TO THE COURT

The government of Pathron respectfully requests that this Honorable Court:

1. Declare that Agrethia has violated international law by requesting to register five geostationary orbital positions.
2. Declare that Agrethia's unauthorized broadcasts of anti-government propaganda into Pathron's territory violate Pathron's state sovereignty and as such, the broadcasts cannot be protected by the principle of freedom of information.
3. Declare that Pathron's response conformed with applicable principles of international law.
4. Declare that Agrethia cease broadcasting unauthorized anti-government propaganda into Pathron's territory.
5. Grant such further relief as this Court may deem just.

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