GNLU INTERNATIONAL MOOT COURT COMPETITION

2010-11

BENCH-MEMORANDUM

The Case Concerning Eastern Jimm Economic Partnership Agreement

TABLE OF CONTENTS

1. INTRODUCTION

This year's problem was born out of the desire to encourage the GIMC student competitors to stretch their thoughts beyond the technical details of international trade law, while placing the problem in a context of domestic political issues to which each of us can relate.

The idea began with some of the discussions going on last year at my university's own city with regard to overzealous football fans. Following several destructive riots (and this is quiet Switzerland!) between rival clubs, the local police have been busy trying to pass legislation to increase their authority to prevent "hooliganism" even while they are increasing their cooperation with other national and international police forces that are also addressing the problem. The result has been a few oversteps – including a preemptive arrest of a whole train full of fans – along with a series of beneficial reforms in pro-active planning for "high-risk" games and dealing with fan-anger effectively. With football hooligans, as with other criminal law issues, the challenge for lawyers is to reach the point of balance between deterrence and safety on the one hand, and repression on the other. In making such line-drawing decisions, then, RA is not alone.

The joined issue, migration, is another difficult one for governments. How is society to respond to flows of persons who are looking for better economic opportunities? Both from the host and the home state, the questions surrounding migration bring up strong emotional responses, and often lead to equally strong political statements. Is migration a domestic problem? This question is key, given today's international legal rules on non-intervention. While the legal answer is open, certainly as a political matter, migration is an issue that quintessentially transnational. Pshad's unwillingness to allow potential dissidents to leave is perhaps rarer today than it once was, but the mishandling of returned émigrés is still all too common an occurrence.

Finally, I thought the space junk problem is one that can capture the interest of students today. With so much attention focussed on the health problems of our atmosphere, it is sometimes all to easy to forget the damage that is also being done beyond our atmosphere. The regulation of space may be the ultimate in extraterritoriality, but such fact alone cannot mask its current necessity. EO's frustration at its satellite's destruction due to such trash is therefore, from what I've read, something that national space programs know all too well.

Amidst these background themes, I wanted to create a broader scope of issues as well as a possibility for students to make some policy arguments in some of the areas of significant legal uncertainty.

On the scope, I therefore chose to insert some investment law issues. While the format of the moot would not have allowed for a direct investor-State arbitration claim to be brought by Rita Sen, an espoused claim permits some of the substantive issues of investment law to be debated. Bringing the students into contact with investment reflects current academic interests of international economic lawyers as well – the increasing attention given to investment issues in journals and at conferences makes a rudimentary knowledge of this area as important as the deeper knowledge of the more established area of trade law is.

On the trade law aspects of the problem, I wanted to move the students beyond the typical exceptions issues and on to some of the more intractable ones – particularly those of whether extraterritorial interests can be protected, how to deal with claims of security needs, and where human rights protections that are not necessarily health- or life-endangering should fit into the trade rules.

I hope you enjoy working with the various issues found in this year's problem. Certainly, I benefited greatly from trying to pull them together in a coherent whole. Thank you to the GIMC Team for all of their assistance and helpful comments during the creation process, and for their excellent efforts in putting together the Bench Memo.

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2. ENTITES INVOLVED

- **The Republic of Argunia ("RA")** is an industrialized country sharing its only border with the People's Democracy of Pshad (Pshad).
- **The People's Democracy of Pshad ("Pshad")** is a rapidly industrializing country on the eastern border of RA.
- **Eye Out ("EO")** is a private security firm located in RA, founded by Rita Sen.
- **Rita Sen,** a Pshadi citizen, immigrant to Laudi (a city in RA), is the founder of EO.
- **Oxia** is a country that had Satellite launching facilities since twenty years and which launched Pshadi Satellites till the last five years.

3. SUMMARY OF FACTS

- The Republic of Argunia (RA) and the People's Democracy of Pshad (Pshad) are parties to the Eastern Jimm Economic Partnership Agreement (EJEPA).
- RA is an industrialized country which has lost a lot of ground in the past fifteen years to its economic rivals in technology and professional services. RA share's its only border with Pshad.
- Pshad has been a very economically liberal country in the past ten years. However, there exist huge differences in wealth division amongst its people. This has led to poverty-driven emigration to RA where they are often exploited as cheap unskilled labor. In fact, even the Pshadi government treats them unfavorably and they are subject to mistreatment by border officials.
- Laudi, a border city in RA, has recently witnessed an increase in football hooliganism to an alarming level of rioting and reports of the existence of a soccer-terrorism cell.
- EO, a private security firm, is contractually responsible for maintaining the security of Laudi's sports stadium. They launched a very powerful satellite in 2008 to maintain surveillance over the entire RA-Pshad border area. It can even track license plate numbers on cars pulling into the stadium's parking garage. As per newspaper reports this led to dramatic reductions in football violence in 2009.
- In May 2009, EO's satellite was put of function due a collision with space junk left in the orbit twenty years ago. The only countries that had satellites that long ago were Oxia and Pshad. Satellites produced and registered in Pshad were launched from Oxia until five years ago, when Pshad built its own launching facility.
- Outraged by the infrastructural and financial loss, RA on EO's pressure has called for an indefinite moratorium on space technology exports to Pshad. This had led to the present dispute between the two parties.

4. ISSUES

EXPORT PROHIBITION

- The first issue pertains to the export prohibition of space technology by RA. The question is whether such a prohibition is violation of the Quantitive Restriction clause of the EJEPA or can it be justified under the exemptions of the Agreement.
- The export prohibition can also be justified an actual and preemptive countermeasure to Pshad's human rights violations against returned Pshadi citizens.
- Even though both the parties are not a party to the WTO, it should be noted that the WTO jurisprudence is important for the interpretation of the RTA (Regional Trade Agreement).

INVESTMENT CLAIM

- As a counterclaim RA demands, on behalf of Sen, that Pshad pay her the value of the satellite and lost profits until a new satellite can be brought into operation.
- Pshad alleges that the Court has no jurisdiction to hear the investment claims and that even if the Court does find jurisdiction, RA's counterclaims cannot be upheld under international law.

5. LEGAL BACKGROUND

I. AGREEMENTS AND TREATIES

A. RELATED TO VIOLATIONS OF THE TRADE AGREEMENT

The Eastern Jimm Economic Partnership Agreement (**EJEPA**): Article 15 (General Elimination of Quantitative Restrictions), Article 30 (General Exceptions) and Chapter VII

- Teams have to rely on Article 15 to argue the validity of the measure on export prohibition of space technology by RA. Further, they also have to rely on Article 30 to prove that the quantitative restriction falls within the limits of the General Exceptions enshrined in the EJEPA.
- Chapter 7 deals with definition of "covered investment" and contains the general obligations of the parties related to these investments. This Chapter is important to determine the admissibility of the counterclaim put forth by Pshad.

General Agreement on Tariffs and Trade, 1994(**GATT Agreement**), Article XI, Article XX and the Chapeau to Article XX

- Teams may rely on Article XI of the GATT which is similar to Article 15 of the EJEPA to argue that the Quantitative Restriction was illegitimate.
- Article XX of the GATT is pari materia to Article 30 of the EJEPA. Thus, the GATT jurisprudence under Article XX may be used to interpret the exceptions under Article 30 of the EJEPA.

B. RELATED TO VIOLATION OF INTERNATIONAL LAWS

- ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, 53 UN GAOR Supp. (No. 10) at 43, U.N. Doc. A/56/10 (2001)
- Charter of the United Nations, 24 October 1945, 1 UNTS XVI
- Convention on International Liability for Damage Caused by Space Objects, GA Res 2777 (XXVI), 961 UNTS 187; 24 UST 2389; 10 ILM 965 (1971).

- International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).
- Statute of the International Court of Justice, 3 Bevans 1179; 59 Stat. 1031; T.S. 993; 39 AJIL Supp. 215 (1945).
- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, ("Outer Space Treaty"), GA Res. A/RES/2222/1967.
- Universal Declaration of Human Rights, GA res. 217A (III), UN Doc A/810 at 71 (1948).
- Convention on Registration of Objects Launched into Outer Space (adopted 12 November 1974, entry into force 15 September 1976) 1023 UNTS 15
- International Centre for Settlement of Investment Disputes (opened for signature 18 March 1965, entry into force 14 October 1966) 575 UNTS 159

6. ARGUMENTS

I. EXPORT PROHIBITION

A. PROHIBITION UNDER ARTICLE 15, EJEPA

- Quantitative Restrictions are prohibited under Article 15 of the EJEPA. The object behind such a provision is preference for tariffs over quotas as a form of border protection. This provision is similar to Article XI of the GATT, **with the addition of the all important clause 2(d).**
- RA has called for an indefinite moratorium on space technology exports to Pshad. Since this measure totally bans such exports, this amounts to a Quantitative Restriction (the maximum amount being zero).
- RA should concede that its measure amounts to a Quantitative Restriction **(QR)**. They should defend it as an exception under the agreement or justify it as a counter-measure to Pshad's wrongful acts.
- Participants arguing on behalf of the Pshad should not waste too much time on justifying the measure as a QR. Instead they should show that the measure does not fall within the purview of the exceptions.

B. EXCEPTIONS UNDER THE AGREEMENT

1. Article 15(2) of the EJEPA states:

The provisions of paragraph 1 of this Article shall not extend to the following:

(d) Import or export restrictions necessary to ensure the protection or promotion of international law accepted by the international community, including the aims set forth in the United Nations Charter.

Arguments on behalf of RA

- Export restriction is necessary to ensure the compliance of human rights. Pshadi emigrants upon their return are subject to mistreatment by border officials.
- Article 13 of UDHR and Article 12 of ICCPR recognizes the right of people to leave any country, including his own, and to return to his country.
- Even though Article 12(3) allows for restriction of this right on grounds of national security, scholars are of the opinion that such a restriction by way of an administrative act is only permissible when it follows from the enforcement of a law that provides for such interference with adequate certainty. This has not been done by Pshad.
- Thus, since emigration has been recognized as a human right, physical absue by Pshad violates its citizens' human rights when they try to emigrate.
- One of the main aims of the UN Charter is protection of human dignity, and because technological products allow for border surveillance and Pshad is responsible for border guards' behaviour this restriction has been imposed.
- Further, they can rely on Articles 4-11 of the ILC draft Articles on Responsibility of States for internationally wrongful acts to prove that the acts of the border officials are the Act of State.

Arguments on behalf of Pshad

- Individual reports of absue by border officials cannot be equated to Human Right violations as HR violations require a continued systematic pattern of violation for a period of time.
- Article 12(3) of the ICCPR allows restriction of free movement on the grounds of national security. Pshad can rely on this Article to justify its unfavorable treatment to returing Pshadi's.
- All that is stated in the compromis is that returned Pshadi face a high probability of mistreatment by border officials. These facts do not necessarily establish human right violations.

2. General Exceptions under Article 30 of the EJEPA

- Article 30 of the EJEPA is pari-materia to Article XX, General Exeptions under the GATT. Hence, GATT jurispudence should used to interpret Article 30 of EJEPA.
- The burden of proving that the measure falls within one of the paragraphs of Article XX and is consistent with the chapeau of Article XX lies with RA.[1] They have to establish that it comes under one of the paras of Article XX and then justify that the conditions of the chapeau is satisfied.
- The relevant para under which the present measure can fall is : **(b): Necessary to protect human, animal or plant life or health.**
- It is important for the teams to argue whether sub-clause(b) would cover issues related to human right violations, which would depend on the definiation of the term "health".
- Article XX (b) of the GATT can be invoked under WTO law when the measure undertaken is to protect human life or health, and secondly, it must be **necessary**.[2]

[1] *United States - Standards for Reformulated and Conventional Gasoline,* WTO Doc WT/DS2/AB/R, (1996) Hereinafter: US-Gasoline.
[2] *US - Gasoline, Supra* note 1, p. 16; See generally *European Communities – Measures Affecting Asbestos and Products Containing Asbestos,* WT/DS135/AB/R, Report of the Appellate Body, 2001.

- The necessity test has been evolved which weighs and balances three factors (1) whether and the degree to which the common interests protected by the measure are vital and important; (2) whether alternative measures are "reasonably available" to accomplish the shared objective; (3) whether alternative measures are less consistent with the Member's obligations.[3]

- **Pshad should argue** that a blanket ban on exported of space technology is not "necessary" to ensure the protection of the emigrants. Emigration would continue anyway and individual abuses will always occur, given low resources to train officials and oversee their behaviour. Further, there is no threat as such to human life. Probabilty of absue is not equal to threat of life.

Conditions under the Chapeau of Article XX

- The chapeau of Article XX of GATT presents a concern that that trade restrictive measures undertaken in pursuance of legitimate policy objectives should not result in arbitrary or unjustifiable discrimination or a disguised restriction on international trade. The chapeau of Article 30 reads:

  Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- The WTO Appellate Body in Shrimp Turtle, while interpreting Article XX of the GATT, laid down three prerequisites which need to be examined to establish a violation of the chapeau. First, the application of the measure must result in discrimination. Second, the discrimination must be unjustifiable or arbitrary in character. Third, the discrimination must occur between countries where the same conditions prevail.[4]

[3] *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef,* Report of Appellate Body, WT/DS161/AB/R, 2001, ¶¶ 162-166.
[4] *United States—Import Prohibition of Certain Shrimp and Shrimp Products—Recourse to Article 21.5 of the DSU by Malaysia*, WT/DS58/AB/RW, Report of the Appellate Body, 2001, ¶¶ 150: Hereinafter: US-Shrimp.

- The participants should scrutinize the facts of the case and examine whether the measure is arbitrary or an unjustifiable discrimination or a disguised restriction on international trade as per the tests discussed above.

3. Essential Security clause under Chapter VII of the EJEPA

> *Nothing in this Treaty shall be construed to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.*

- **RA can argue** that football terrorism was on the rise before the launch of the satellite and since the satellite has now been destroyed they would need to keep enough space technology in the country to ensure that they come out with a new satellite to keep a watch on the security.
- **Pshad should argue** that there is no real proof of "terrorism" by soccer fans; even many RAs don't believe it. Soccer fans cannot threaten the "essential" security of the country even if there were concerns about security.

C. PROHIBITION AS A LEGITIMATE COUNTERMEASURE

- A fundamental prerequisite for any lawful countermeasure is the existence of an internationally wrongful act against which injured the State is taking the countermeasure. This point was clearly made by ICJ in the *Gabˇcíkovo Nagymaros Project* case.[5]
- In many cases the main focus of countermeasures is to ensure cessation of a continuing wrongful act, but they may also be taken to ensure reparation, provided the other conditions laid down are satisfied.
- The ILC Draft Articles on State Responsibility is an important treaty to determine the validity of a countermeasure. However, it should be noted that document has not been submitted by the ILC to the UN as a treaty. Thus, its force would not be the same as a treaty and it can be regarded as soft law.
- Article 22 of the same gives the power to a State to impose a non forcible countermeasure in response to an internationally wrongful Act by another State.
- Article 49 describes the permissible object of countermeasures taken by an injured State against the responsible State and places certain limits on their scope. Usually, countermeasures may only be taken by an injured State in order to induce the responsible State to comply with its obligations under Part Two, namely, to cease the internationally wrongful conduct, if it is continuing, and to provide reparation to the injured State.
- Article 51 establishes an essential limit on the taking of countermeasures by an injured State in any given case, based on considerations of proportionality. The *Air Service Agreement* arbitration,[6] discusses this aspect in detail.

Arguments on behalf of RA

- RA should argue that the Quantitative Restriction imposed in this case can be justified as a countermeasure to Pshad's human rights violations against returned Pshadi

[5] Case Concerning The Gabcikovo-Nagymaros Project (Hungaryislovakia) Judgment Of 25 September 1997
[6] France v. United States (1978). Arbitral Tribunal: Riphagen, President; Ehrlich, Reuter. 18 R.I.A.A. 416

citizens. Pshad has two wrongful acts: 1) Violating human rights commitments and 2) Non-payment of compensation for the damage to the satellite.

- Pshad has violated the Human Rights of emigrants. RA can argue that the measure is a countermeasure to ensure compliance of the same by Pshad.
- The Declaration of legal Principles Governing Activities of States in the Exploration and Use of Outer Space states that States shall be internationally responsible for national activities in space.
- Reasonable countermeasures can be imposed until there is reparation of the damage caused by Pshad to the Satellite. Support for this can be found in Article 49 of the ILC Draft Articles.
- The satellite investment is a covered investment as per Chapter 7 of the EJEPA. Even though the satellite is owned by a private corporation, the use as such is to enforce peace and security and curb terrorism in the country: which is the responsibility of the State.
- The destruction of the Satellite thus hinders the State in controlling terrorism and such a countermeasure of non export of space technology is a method to pressure Pshad into compensating for the Governments loss.

Arguments on behalf of Pshad

- Article 49 requires that countermeasures may only last as long as the violation, and in the instant case RA has imposed an "indefinite" moratorium on the export of space technology. Hence the countermeasure is not legitimate. Pshad should rely strongly on this point.
- Further, they should argue none of the acts in question have been proven as wrongful act. Human Rights violations are merely claimed, there are no details with regard to the mistreatment by the border officials.
- Whether or not the State is liable for the satellite damage has not been established by any tribunal or court. Thus, a countermeasure aimed at pressurizing them to

compensate is not legitimate. Unilateral punishment, not countermeasure is underlying RA's claim.

- Additionally, the Quantitative Restriction has no reasonable nexus with such alleged acts of human rights violations inasmuch as such prohibition cannot ensure compliance with human rights obligations.
- They can also argue that these guards are "bad eggs" acting on a personal level and their acts should not be attributed as Act of State. Even though this view is not supported under ILC Draft Articles, it can be argued that this document has the force of only a soft law.

II. INVESTMENT CLAIM

A. ADMISSIBILITY

- RA has made counterclaims on the basis of the investment provisions contained in Chapter 7 of the EJEPA.It demands on behalf of Sen that Pshad pay her the value of the satellite and lost profits until a new satellite can be brought into operation. Pshad has challenged the admissibility of this claim stating that the court has no jurisdiction to hear investment claims.
- Chapter 7 of the EJEPA defines a "covered investment" and "investment" as:

  "covered investment" *means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Treaty or established, acquired, or expanded thereafter;*

  "investment" *means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk*

- Chapter 7 then goes on lay down the obligation regarding non-discrimination, minimum standard treatment, expropriation and compensation and the conditions when these benefits can be denied in relation to the covered investments.
- The Dispute settlement clause in the EJEPA states:

  2. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

  a. either Party, on behalf of a national, may submit to arbitration under this Section a claim that the respondent has breached an obligation under this Chapter and that its national has incurred loss or damage by reason of that breach.

- Further, clause relating to *Consent of Each Party to Arbitration* requires that the consent of submission of a claim to arbitration to the ICJ shall satisfy the requirements of Chapter II of the ICSID Convention (Jurisdiction of the Centre).

- In order to decide the admissibility of the investment claim, the parties have to establish:
    - Whether the satellite launched by RA is a covered investment?
    - Whether the conditions of Article 25 of ICSID are satisfied?
    - Whether RA can bring a claim on behalf of Rita Sen, who is a Pshadi citizen ?

Arguments on behalf of RA

- In order to establish that the dispute comes within the ambit of the *Minimum Standard Treatment Clause* teams have to establish whether Eyes Out invested in the territory of Pshad.
- Some scholars have are of the opinion that space is considered as *gobal commons*, i.e. territory common to all. It can be argued that Pshad has breached its obligation of mitigating space debris in the outer space.
- Thus, RA can argue that the satellite launched by RA into space constitutes an investment in global territory, which includes Pshad's territory a well.
- Article 25 of ICSID states that jurisdiction shall extend to any legal dispute arising directly out of an investment between a contracting state and a national of another contracting state.
- Clause 2 of Article 25 states that: *A '**National of another contracting State'*** may be
    a. *any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute. It does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and to conciliation or arbitration.*
    b. ***any juridical person which had the nationality of a Contracting State other than the State party to the dispute*** *on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be*

treated as a national of another Contracting State for the purposes of this Convention.

- RA has to rely on Article 25(2)(b) in order to justify that the claim is brought on behalf of Eyes Out, which is a incorporated in RA, and has all of its activities is RA.
- They can argue that the investor is Eyes Out, which is incorporated in RA. They need to argue that incorporation is the only measure of legal person nationality (cases for this point are numerous, although not uniform) and that the treaty's plain text should rule.
- They need to justify that even though Eyes Out is controlled by Rita Sen, a Pshadi citizen, she has spent all of her life in RA, and in effect it is the interests of RA that "actually" control company.
- Further, the function that Eyes Out performs through the use of the satellite is to enforce peace and security and curb terrorism in the country: which is the responsibility of the State.
- With regard to the corruption charges, RA can argue that rumors cannot be relied upon, but even if they were prove, allowing Pshad to escape liability would be unjustly enriching them, something courts are loath to do.

Arguments On Behalf Of Pshad

- Pshad can argue that there is no covered investment of an enterprise of RA ***in its territory since the satellite is in space*** and hence the provisions of Chapter 7 would not apply. Consequently, this dispute does not come within the ambit of the Dispute Settlement Clause and it cannot be admitted.
- They should highlight the point that the claim in brought on behalf of Rita Sen, a Pshadi national. A covered investment requires that there be an investment by national of another country in Pshad for Pshad to be liable for the security and protection of the assets of the investor. Since, Eyes Out is controlled by Pshadi nationals (as they own more than 70% of the Company) the provisions of the EJEPA would not be attracted.
- Further, there is no investment or asset in the territory of Pshad. The satellite has been launched in the outer space and Pshad has no control over there.

- They can also argue that the hiring of Eyes Out by RA might have been through corruption therefore no "investment". The relevant fact to support this would be:

> *Nevertheless, for several months after the contract was awarded, rumors circulated that Sen's close friendship with the mayor of Laudi was more important to the award of the contract than was EO's qualification.*

- Moreover, they can argue that control rests with its own nationals, so nationality should be determined through a piercing of the corporate veil, although, this is usually done when there is suspicion of bad faith.

B. MERITS OF THE INVESTMENT CLAIM

- Assuming that the satellite is considered as an investment under the EJEPA and the issue is admitted, RA has to argue that Pshad is responsible for the damage caused to Eye Out's satellite as per customary international space law.
- Clarification 2 specifically states that the piece that damaged EO's satellite has been determined to be a piece of a Pshadi-built and owned satellite from 1990.
- International law is not settled on the liability principle in Space Law and even the Liability Convention has been ratified by very few nations. Even RA and Pshad have not ratified it. Further, whether or not these Conventions apply to "Space Junk" or not has also not been settled.
- The Declaration of legal Principles Governing Activities of States in the Exploration and Use of Outer Space states that States shall be internationally responsible for national activities in space.
- The provisions of the Liability Convention and the Outer Space Treaty is important to determine whether Pshad is the liable as the owner of the space junk or is it Oxia's sole responsibility as the launching State.
- Article I(c)of the Liability Convention defines launching State as:

  The term "launching State" means:

  (i) A State which launches or procures the launching of a space object

  (ii) A State from whose territory or facility a space object is launched;

- Article III of the Liability Convention states:

  In the event of damage being caused elsewhere than on the surface of the Earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible.

- Article VII, Outer Space Treaty

> *Each State Party to the Treaty that launches or procures the launching of an object into outer space, including the Moon and other celestial bodies, and each State Party from whose territory or facility an object is launched,* ***is internationally liable for damage to another State Party to the Treaty or to its natural or juridical persons by such object or its component parts on the Earth****, in air space or in outer space, including the Moon and other celestial bodies.*

- Article V of the Liability Convention states that

> *Whenever two or more States jointly launch a space object, they shall be jointly and severally liable for any damage caused*

- It should be noted that since RA and Pshad have not ratified these Conventions, teams have to justify that these principles are a part of the customary international law.

Arguments on behalf of RA

- RA should first argue that the Liability Convention and the Outer Space treaty should apply to space junk as well.
- Pshad is the launching State as it procured the launching of the satellite. Pshad is also the Registering state in accordance with Article 2 of the Registration Convention. Hence, they are liable to compensate for the damage caused due to the collision with the space junk as per Article III of the Liability Convention and Article VII of the Outer Space Treaty.
- Even if these Conventions do not apply to Space Junk, it can be argued that the liability principle laid down in these Conventions is to be considered as a part of customary international law. Hence it should apply to Space Junk.

Arguments on behalf of Pshad

- Liability Convention and the Outer Space treaty should not apply to space junk as these Conventions applies only to active space objects.
- Even if these Conventions apply to space junk, the liability principle laid down therein does not from a part of customary international law. International law is not settled on the liability principle present in the Convention. There are views which say that it is only the State whose facility has been used to launch the satellite, is liable to pay for any damage caused due to it.

- Since Oxia is the State from where the satellite was launched, they should be made liable.
- As an alternative argument, they can say that the liability under the Convention is on a fault basis. Support can be found in the text of Article III of the Liability Convention which states:*"....shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible."* Since there is no fault of Pshad they are not liable.
- Further, Pshad can also argue that Article VII of the Convention restricts the applicability of the Convention and states that it shall not apply to the damage caused to the nationals of the same launching State. Since Rita Sen is a Pshadi national this Convention would not apply.