

2020 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

Team No. 22



IN THE
INTERNATIONAL COURT OF JUSTICE
AT THE
PEACE PALACE, THE HAGUE

**CASE CONCERNING
JURISDICTION AND CONTROL IN OUTER SPACE, SPACE SITUATIONAL
AWARENESS, AND ORBITAL DEBRIS**

**THE CONFEDERATION OF VALENKOVA
v.
THE REPUBLIC OF SARIDIA**

**ON SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE
- MEMORIAL FOR THE RESPONDENT -
THE REPUBLIC OF SARIDIA**

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LIST OF ABBREVIATIONS

AFLR	Air Force Law Review
AJIL	American Journal of International Law
AO	Advisory Opinion
ARRA	Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (Rescue Agreement)
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
Art./Arts.	Article/Articles
BCICLR	Boston College International and Comparative Law Review
BUILJ	Boston University International Law Journal
BYIL	British Yearbook of International Law
CDM	Conjunction Data Messages
CIL	Customary International Law
CJTL	Columbia Journal of Transnational Law
CLJ	The Cambridge Law Journal
CoC	Code of Conduct
CoCoSL	Cologne Commentary on Space Law
COPUOS	Committee on Space Research

CRS	Congressional Research Service
CWILJ	California Western International Law Journal
<i>de facto</i>	In fact
Doc.	Document
<i>e contrario</i>	From the contrary
ed./eds.	Editor/Editors
e.g.	<i>exempli gratia</i> (for example)
EJLR	European Journal of Law Reform
<i>ergo</i>	Therefore
ESA	European Space Agency
EU	European Union
<i>et al</i>	<i>et alii</i> (and others)
FRD	Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations
GA	General Assembly
GACSSA	Global Astronautical Consortium for Space Situational Awareness
GAOR	General Assembly Official Records

GIELR	Georgetown International Environmental Law Review
GLJ	Georgetown Law Journal
HILJ	Harvard International Law Journal
ICJ/I.C.J.	International Court of Justice
ICLQ	International and Comparative Law Quarterly
IISL	International Institute of Space Law
IJLT	Indian Journal of Law and Technology
IJMCL	International Journal of Marine and Coastal Law
ILC	International Law Commission
ILR	International Law Reports
<i>in casu</i>	in this case
<i>inter alia</i>	among others
Int'l	International
ISS	International Space Station
J	Journal
JLT	Journal of Law and Technology
L	Law

LIAB	Liability Convention
<i>lit.</i>	<i>litera</i> (letter)
LTS Guidelines	Guidelines on the Long-term Sustainability of Outer Space Activities
MJIL	Melbourne Journal of International Law
MPEPIL	Max Planck Encyclopedia of Public International Law
NASA	The National Aeronautics and Space Administration
NILR	Netherlands International Law Review
No.	Number
OST	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)
para/paras	paragraph/paragraphs
PCIJ/P.C.I.J.	Permanent Court of International Justice
PSOs	Protected Space Operations
REG	Convention on Registration of Objects Launched into Outer Space (Registration Convention)
Rep	Report
SB Declaration	Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries (Space Benefits Declaration)

JALC	Journal of Air Law and Commerce
JSL	Journal of Space Law
SSA	Space Situational Awareness
SSH	Space Station Hypatia
SSH IGA	Space Station Hypathia Intergovernmental Agreement
TILJ	Texas International Law Journal
UN	United Nations
UN Charter	The Charter of the United Nations
UNGA	United Nations General Assembly
UK	United Kingdom of Great Britain and Northern Ireland
US	United States of America
v	versus
VCLT	Vienna Convention on the Law of Treaties
Vol.	Volume
WLP	Washington Law Paper
YJIL	Yale Journal of International Law
ZLW	Zeitschrift für Luft- und Weltraumrecht

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QUESTIONS PRESENTED

- I. Whether SaRidia acted in conformity with international law by sharing knowledge and experience related to interpreting conjunction assessment information and for providing expert information regarding the CDMs.
 - i. Whether SaRidia acted in conformity with international law by consulting with Valenkova.
 - (1) Whether SaRidia acted in conformity with international law by attempting to consult with Valenkova based on Art. 23 SSH-IGA.
 - (2) Whether SaRidia acted in conformity with international law by attempting to consult with Valenkova based on Art. IX OST.
 - ii. Whether SaRidia acted in conformity with international law by cooperating with Valenkova based on Art. IX 1S. OST.
 - iii. Whether wrongfulness was precluded due to distress.

- II. Whether SaRidia is liable under international law for unauthorized use of, and failure to return, the *Bondar* and for the loss of the Valenkovan life on the *Sharman*.
 - i. Whether SaRidia liable under international law for the loss of the Valenkovan life on the *Sharman*.
 - (3) Whether SaRidia is liable under Art. II LIAB.
 - (4) Whether SaRidia is liable under Art. VII OST.
 - (5) Whether SaRidia is liable under Art. 16 SSH-IGA.

- ii. Whether SaRidia is responsible under international law for the unauthorized use of the Bondar.
 - (1) Whether SaRidia has fulfilled the obligation under Art. 11(2) SSH-IGA.
 - (2) Whether the wrongfulness of the conduct attributable to SaRidia regarding the unauthorized use is precluded on the grounds of distress under Art. 24 ARSIWA as well as Section II.B. CoC.
 - iii. Whether SaRidia is responsible under international law for failure to return the Bondar.
 - (1) Whether SaRidia has fulfilled their obligation of return in Art. 5(3) ARRA by holding the Bondar at the disposal of Valenkova.
 - (2) Whether SaRidia has breached the obligation in Art. VIII OST as they have placed the Bondar in a hangar that is a designated space for Valenkovan vehicles.
- III. Whether Valenkova has a legal right to the extradition of the SaRidian crewmember.
- i. Whether Valenkova has jurisdiction over the SaRidian crewmember.
 - (1) Whether Valenkova has jurisdiction over the SaRidian crewmember based on Art. VIII OST and Art. 5(1) SSH-IGA.
 - (2) Whether Valenkova has jurisdiction over the SaRidian crewmember based on Art. 5(2) and Art. 22(1) SSH-IGA.
 - (3) Whether Valenkova has jurisdiction over the SaRidian crewmember based on the personality principle.
 - ii. Whether there is a legal basis for an obligation of SaRidia to extradite their crewmember to Valenkova.

- (1) Whether there is a legal basis for an obligation of SaRidia to extradite their crewmember to Valenkova based on Art. 22(3) SSH-IGA.
- (2) Whether there is a legal basis for an obligation of SaRidia to extradite their crewmember to Valenkova based on Art. 4 ARRA.

STATEMENT OF FACTS

1. It is the year 2040.
2. The success of the ISS and its legal framework is still the valid precedent for international cooperation, one of these being the SSH, which is a permanently crewed civil space station for peaceful purposes in accordance with international law. The partners are the Republic of SaRidia, the Confederation of Valenkova, the Chimuk Nation and the Haigneran Union. There are two governmental astronauts from each nation on board, as well as a private astronaut from Valenkova.
3. The GACSSA, the Global Astronautical Consortium for Space Situational Awareness, shares SSA information in a data repository.
4. The GACSSA provides products that assist in decision-making resulting from the collection of multi-source SSA data. It makes no judgements or recommendations as to actions to be taken.
5. Both Valenkova and SaRidia have been active in GACSSA for many years, as well as the Chimuk Nation and the Haigneran Union. Valenkova and SaRidia ingest data into the GACSSA, however, Valenkova does not rely on data sets flowing out from the GACSSA, rather it only recognizes CDMs from governmental providers. SaRidia has a demonstrated record of empowering industry partners in the fulfilment of a large portion of its consortium obligations and has been a frontrunner in the commercial development of sophisticated sensors and advanced analytics.
6. In July 2014, the SSH personnel received CDMs from two different SSA providers. One was from the GACSSA and one was from the Government of Valenkova. The two CDMs were in conflict as to the severity and imminence of the hazard posed to the station by a

piece of orbital debris. The GACSSA CDM described a low-valued probability of a collision and assessed that the probability of harm to the station did not warrant any action. The Valenkovan CDM made it clear, that a collision was almost certain in the absence of a change to SSH orbit.

7. The Valenkovan crewmembers on board the station challenged the GACSSA CDM. The SaRidians believed Valenkova's position was not based upon evidence of incompetence or error on the part of the CDM provider, but instead upon Valenkova's ideological disagreement with accepting CDMs from non-governmental providers.
8. Katie James, a SaRidian astronaut, had experience in evaluating SSA data and challenged the Valenkovan CDM as a Type 1 Error, which is false positive. She explained probabilities and thresholds to the crew. The Haigneran SSH Commander, found the Valenkovan CDM to be more credible, since she had observed the on board tension between the Valenkovan and SaRidian crewmembers and believed that the SaRidian challenge to the Valenkovan CDM was not based on empirical evidence, but was instead based upon personal prejudice. Throughout the mission, there were multiple occasions where SaRidian and Valenkovan crewmembers disagreed on many things. Commander Curieux believed the GACSSA CDM was a Type II Error, which is a false negative.
9. A heated debate ensued, where the SaRidians declared, that the Commander's refusal to heed the GACSSA CDM was in contravention of the LTS Guideline B.4. Due to the delay, the Commander chose evacuation as the next course of action, which effectively sacrificed the station in the process. She ordered to crew to evacuate to the Sharman, registered to the Haigneran Union, which is one of the two transfer vehicles, the other being the Bondar, registered to Valenkova.

10. The second SaRidian astronaut, Christine McKenzie, agreed with her colleague who disagreed with the Commander's decision, and also believed that the Valenkovan CDM was a Type I Error, a false positive. McKenzie shared with the crew that, if necessary, there was adequate time to maneuver the SSH and lower the probability of a collision, thereby lowering the probability of collision and saving the SSH and all personnel with a minimum of potential harm. She proposed an alternative course of action, specifically, to take additional time to evaluate the data and reach the best possible decision for crew and station, rather than taking immediate action. One of the Chimukian crewmembers, Astronaut Kanay, supported the SaRidian proposal to take more time to evaluate.
11. Commander Curieux refused to consider McKenzie's proposal. McKenzie challenged the chain of command and secured herself in the Bondar. The Bondar was priorly reported to have transmission problems with its communications system with the SSH. When she learned of the malfunctioning, the Commander ordered the Valenkovans to immediately form a task team to investigate, but the task team had not been convened before the CDM was received. The Commander used the SSH-to-transport-vehicle communications system, that she knew for a fact had exhibited a communication failure with the SSH, to give McKenzie a direct order to exit the Bondar and evacuate with the rest of the crew. McKenzie was silent.
12. Because they took time to attempt to change McKenzie's mind, the escape of the Commander and the rest of the crew was delayed. Sensing that McKenzie would not change her mind, the Commander again ordered her out of the Bondar and onto the Sharman, again using the communications system which she knew for a fact had been

reported to have malfunctioned, with the result of possible communication failure between the transfer vehicle and the SSH.

13. Commander Curieux and the other crewmembers, including the professor Mikaela, charted their course on the Sharman to avoid the area implicated by the Valenkovan message. The escape plan charted by the crew ended up maneuvering the Sharman transfer vehicle into an actual region of increased collision probability where the Sharman collided with the debris. The collision caused Commander Curieux to lose control, and the Sharman plummeted to Earth, landing in international waters. Mikaela lost her life as a result of the impact. In time, evidence and analytics show that the Valenkovan CDM did suffer from a Type I Error, a false positive, the position supported by the SaRidian crewmembers.
14. No harm was caused to the SSH, the Bondar. McKenzie piloted the Bondar back to SaRidia, where it was placed in a hangar leased to the Confederation of Valenkova.
15. Valenkova initiated diplomatic negotiations and consultations to resolve the issues surrounding the SaRidian challenge to the Valenkovan CDM, the delay and subsequent loss of life and misuse of property. When these negotiations failed to resolve the dispute, Valenkova commenced proceedings by Application to the ICJ. There are no issues of jurisdiction as SaRidia accepted the Court's jurisdiction, and the Parties submitted the foregoing Agreed Statement of Facts.
16. All of the SSH Partners and cooperating nations are Parties to the UN Charter, the Outer Space Treaty, the Rescue Agreement, the Liability Convention, and the Registration Convention. Only the Haigneran Union is Party to the Moon Agreement. All of the SSH Partners are Parties to the Space Station Hypatia Intergovernmental Agreement (SSH IGA) which is the SSH governing agreement and contains the same terms as the 1998 ISS-IGA;

the Code of Conduct for International Space Stations Crews (CoC); and MOUs and Letters of Agreement. The CoC was enacted within each Partner State and thereby made part of each Partner's national law. SaRidia and Valenkova do not have a bilateral extradition treaty. SaRidia and Valenkova have a bilateral agreement that allows use and leasing of SaRidian launch and landing facilities for Valenkovan vehicles.

17. The events that happened on July 2040, mentioned above in paragraphs 7-12, took place on board the module of the SSH registered to SaRidia.

SUMMARY OF ARGUMENT

I. SaRidia acted in conformity with international law, firstly based on Arts. 23 SSH-IGA and IX(3)&(4) OST, due to the fact, that SaRidias crewmembers tried consulting with Valenkova, which they had a right to do. Secondly, SaRidia tried cooperating with Valenkova, based on Art. IX(1) OST, which obliges States to do so. The obligation to cooperate is stipulated throughout space law and further specified in the SB-Declaration, as well as in the LTS-Guidelines. Moreover, even if it can be argued that SaRidia violated an international obligation by challenging the Valenkovan CDM, wrongfulness was precluded due to distress.

II. SaRidia is not liable under international law for the loss of the Valenkovan life on the Sharman as SaRidia is not a launching State of the Sharman, and thus launching State liability under LIAB or Art. VII OST cannot be imposed on SaRidia. Furthermore, Valenkova cannot claim an exemption from the cross-waiver of liability under Art. 16 SSH-IGA as the exemption only covers claims made by natural persons. Regarding the unauthorized use of the Bondar, SaRidia is not responsible as it has taken practicable steps to fulfil its obligation under Art. 11(2) SSH-IGA and even if SaRidia's conduct would not be enough to fulfil that obligation, the wrongfulness of the breach of the CoC that arises is precluded based on the grounds of distress under Art. 24 ARSIWA as well as Section II.B. CoC. While Valenkova engaged in diplomatic negotiations with SaRidia, the placement of the Bondar in a hangar leased to Valenkova and thus a designated space for Valenkovan vehicles, does not amount to a breach of an obligation, as SaRidia thereby fulfils its obligation under Art. 5(3) ARRA, by holding the Bondar at the disposal of Valenkova.

III. Valenkova has no legal right to the extradition of the SaRidian crewmember McKenzie, due to the fact that SaRidia has jurisdiction over said crewmember. This is firstly based on Art. VIII OST, as well as Art. 5(1) SSH-IGA, as the module, where the events took place, for which Valenkova wants to prosecute McKenzie, is registered to SaRidia. Furthermore, Art. 5(2) as well as Art. 22(1) SSH-IGA state that each Partner shall retain jurisdiction over the personnel, who are their nationals. As McKenzie is a SaRidian national, Valenkova does not have jurisdiction over her. Moreover, jurisdiction is based on the active personality principle, which also stipulates the aforementioned. Valenkova does not only not have jurisdiction, but also has no legal right to the extradition of said crewmember, based on the fact, that there exists no bi- nor multilateral extradition treaty between the two States. Furthermore, SaRidia has no legal obligation to extradite their crewmember based on Art. 22(3) SSH-IGA and Art. 4 ARRA.

ARGUMENT

I. SaRidia acted in conformity with international law by sharing knowledge and experience related to interpreting conjunction assessment information and providing expert information regarding the CDM

A. International law is applicable and the conduct of the governmental astronauts is attributable to their States

1. International law is applicable

International law is applicable to human activities in outer space¹ due to Art. III OST, which states that “States Parties to the Treaty shall carry on activities in the exploration and use of outer space [...] in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding.”²

2. The actions of their astronauts are attributable to SaRidia and Valenkova

State responsibility for the actions of its governmental or non-governmental entities³ is stipulated in Art. VI OST, which states that “States Parties to the Treaty shall bear international responsibility for national activities in outer space, [...] whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out

¹ Ribbelink, *CoCoSL* (2009) 64; Francke, *Zur Anwendbarkeit*, ZLW (1970) 34, 39; Blount, *Jurisdiction in Outer Space*, JSL (2007) 304; Williams, *Handbook of Space Law* (2015) 1000; Darwin, *The Outer Space Treaty*, BYIL (1967) 282; Hobe/De Man, *National Appropriation of Outer Space*, ZLW (2017) 470.

² Art. III OST.

³ Cheng, *International Responsibility*, *Air & Space L* (1995) 302-303; CRAWFORD (2013) 116; Art. VI OST.

in conformity with the provisions set forth in the present treaty.”⁴ There is no restriction of activities where the operation of space objects is concerned, as it can entail the operation, control and launch of a space station or satellite⁵ and therefore States shall bear responsibility for any activities in outer space.⁶ Art. VI OST further affirms the State’s responsibility for national activities, whereby this is irrespective of whether such activity is conducted by governmental or non-governmental entities⁷ and further enforces the obligation to uphold international law in outer space,⁸ as the consequence of not upholding said law would invoke a State’s responsibility of the activity.⁹

State responsibility has been codified by the ILC in the ARSIWA which,¹⁰ although they have not been adopted as a treaty, do possess weight, as they can express CIL¹¹ and the ICJ has acknowledged them in several cases.¹² Since a State cannot act by itself, it relies on authorized officials, representatives and organs.¹³

⁴ Art. VI OST.

⁵ Gerhard, *Transfer of Operation and Control*, ZLW (2002) 571-572; Gerhard, CoCoSL (2009) 109.

⁶ Gerhard, CoCoSL (2009) 109; LACHS (2010) 113.

⁷ Art. XI OST; Cheng, *International Responsibility*, Air & Space L (1995) 302-303; Jakhu, *Legal Issues Relating to the Global Public Interest in Outer Space*, JSL (2006) 52.

⁸ LACHS (2010) 113-114, Von der Dunk, *Liability Versus Responsibility in Space Law*, IISL Proceedings (1991) 366; Art. VI OST.

⁹ Mayence, in *National Space Legislation in Europe* (2011) 81; Jakhu, *Legal Issues Relating to the Global Public Interest in Outer Space*, JSL (2006) 52.

¹⁰ CRAWFORD (2019) 523; SHAW (2017) 591; ARSIWA.

¹¹ CRAWFORD (2019) 524; LOWE (2007) 120.

¹² Yamada, in *International Responsibility Today* (2005) 118; see also: *Arrest Warrant case* (2002) paras. 75–77; *LaGrand case* (2001) 466; *The Wall AO case* (2004) paras. 138–42, 154–60.

¹³ SHAW (2017) 594.

B. SaRidia acted in conformity with international law by consulting with Valenkova

1. SaRidia acted in conformity with international law by attempting to consult with Valenkova based on Art. 23 SSH-IGA

Art. 23(1) SSH-IGA states that “The Partners[...]may consult with each other on any matter arising out of Space Station cooperation.”¹⁴ Herewith, the SSH-IGA provides that the consultation mechanism should primarily be used when disputes arise during SSH activities.¹⁵ Dispute resolution should be carried out through friendly consultation.¹⁶ The first step of settling a difference consists of a discussion within the operational structure.¹⁷ Secondly, possible consultations of agency officials can be conducted, which then is followed by a decision of the highest authority of the agencies.¹⁸

The term consultation, when interpreting it by its ordinary meaning,¹⁹ as stated in the VCLT, signifies that an effort is made to discuss matters in order to adjust differences.²⁰ The ICJ has been adamant in its view that the rules of treaty interpretation contained in the VCLT reflect CIL,²¹ which the ICJ also confirmed in the *Kasikili/Sedudu Island*²² case and the *Territorial Dispute*²³ case. In the former, the ICJ stated, that the rules in Arts. 31 and 32 VCLT were applicable, despite

¹⁴ Art. 23(1) SSH-IGA.

¹⁵ Fukushima, *Legal analysis of the ISS*, Space Policy (2008) 39; Petras, *Space Force Alpha*, AFLR (2002) 179.

¹⁶ Zhao, *The Role of Bilateral and Multilateral Agreement in International Space Cooperation*, Space Policy (2016) 16; McCord, *Responding to the Space Station Agreement*, GLJ (1989) 1942.

¹⁷ Fukushima, *Legal analysis of the ISS*, Space Policy (2008) 40; GOH (2007) 62.

¹⁸ GOH (2007) 62.

¹⁹ Art. 31(1) VCLT; VILLIGER (2009) 426.

²⁰ Sztucki, *International Consultations*, IISL Proceedings (1974) 149-155.

²¹ CRAWFORD (2019) 354; VILLIGER (2009) 439-440; *LaGrand* case (2001) para. 99.

²² *Kasikili/Sedudu Island* case (1999) para. 18.

²³ *Territorial Dispute* case (1994) para. 41 (Feb. 3); DIXON/MCCORQUODALE (2003) 86.

the fact that neither of the States was Party to the VCLT, as they reflect CIL.²⁴ In the *Territorial Dispute* case, the ICJ recalled that Art. 31 VCLT expresses CIL and that treaties therefore are to be interpreted in good faith and in accordance with their ordinary meaning.²⁵

Two conflicting CDM's reached the SSH, one from the GACSSA and one from the Valenkovan government. James from SaRidia, who has experience in evaluating SSA data, challenged the Valenkovan CDM as a Type I Error. She explained probabilities and thresholds to the crew, whilst the Valenkovans challenged the GACSSA CDM. The SaRidians believed this was not based upon evidence, but on an ideological disagreement with accepting CDMs from non-governmental providers.²⁶ Both States are Party to the SSH-IGA.²⁷

Since both States are Parties to the SSH-IGA, it is applicable. The SSH-IGA declares that Parties have the right to consult with each other in connection with space station cooperation, which includes CDM's. SaRidia attempted to consult with Valenkova, yet this was not possible, due to their mistrust in non-governmental CDM providers. This mistrust was not based on any empirical evidence, but on ideological and therefore political disagreements. SaRidias challenge of the Valenkovan CDM was consequently not in breach of Art. 23 SSH-IGA.

²⁴ Aust, *VCLT*, MPEPIL (2006) para. 15; VILLIGER (2009) 439-440.

²⁵ *Territorial Dispute* case (1994) para. 41; VILLIGER (2009) 425.

²⁶ Compromis §6-8.

²⁷ Compromis §16.

2. SaRidia acted in conformity with international law by attempting to consult with Valenkova based on Art. IX OST

Similarly to Art. 23 SSH-IGA, Art. IX 4S. of the OST declares that “A State Party to the Treaty which has reason to believe that an activity[...]planned by another State Party in outer space[...]would cause potentially harmful interference with activities in the peaceful exploration and use of outer space[...]may request consultation concerning the activity or experiment.”²⁸

In order for a State to be under an obligation to undertake international consultation or as stated in Art. IX 3S. OST “[...]shall consult[...]”²⁹, two conditions must be met, firstly, there must be a planned activity in outer space and secondly, a reason to believe that said activity would cause potentially harmful interference to a State Party to the treaty.³⁰ The word shall, when interpreting it by its ordinary meaning per Art. 31(1) VCLT³¹, means “to owe”³², which in legal terms means a duty³³ or an obligation.³⁴ Moreover, when interpreting the word shall in its context³⁵ and therefore comparing the word shall with the word may in Art. IX 4S. OST, it is *e contrario* made even clearer, that shall constitutes an obligation, since may means being permitted to.³⁶

²⁸ Art. IX 4S. OST; Marchisio, CoCoSL (2009) 179-180.

²⁹ Art. IX 3S. OST; Viikari, Handbook of Space Law (2015) 730.

³⁰ Mineiro, *Article IX's Principle of Due Regard*, IISL Proceedings (2010) 678; Chatzipanagiotis, *Criminal Issues*, EJLR (2016) 109; Mineiro, *FY-1C USA-193 ASAT Intercepts*, JSL (2008) 334-335.

³¹ Dörr, in VCLT (2012) 541-542; Art. 31(1) VCLT.

³² Kimble, *The Many Misuses of Shall*, Scribes J of Legal Writing (1992) 62; BLACK'S LAW DICTIONARY (2009) 1068.

³³ Kimble, *The Many Misuses of Shall*, Scribes J of Legal Writing (1992) 62.

³⁴ MERRIAM-WEBSTER, *Owe*.

³⁵ Art. 31(1)&(2) VCLT; VILLIGER (2009) 427.

³⁶ MERRIAM-WEBSTER, *May*.

The procedure of consultation mainly consists of three phases: the first step is the prior notification of the plan of space activities. The planned activity does not need to be in violation of international law,³⁷ and can be interpreted as any action.³⁸ The second step is the right of the affected State to request consultation,³⁹ although the State affected by the harmful interference,⁴⁰ can ask for consultation not only before, but also during the performance of such activity.⁴¹ The last step is the duty of the affecting State to enter into consultations. The State planning an activity is thus required to enter into consultation prior to the authorization or undertaking of said activity.⁴²

The ICJ emphasized in the *North Sea Continental Shelf* case that although the obligation to consult did not imply an obligation to reach an agreement, it did force States to continue consulting each other in good faith.⁴³ In the *Pulp Mills* case, the ICJ identified a requirement of notification as part of consultation.⁴⁴ The obligation to notify is present both during the preliminary planning stages of the activity (prior notification) and when emergency notification is necessary.⁴⁵ Consultation in accordance with Art. IX OST will depend on the nature of the planned activity, but at a minimum it means to contact States Parties to the Treaty whose space activities would experience potentially harmful interference and that these States be provided with information sufficient to take

³⁷ Art. IX OST; Marchisio, CoCoSL (2009) 180.

³⁸ Mineiro, *FY-IC USA-193 ASAT Intercepts*, JSL (2008) 335; Leinberg, *Orbital Space Debris*, JLT (1989) 103.

³⁹ Nakamura, *Consultation Regime*, IISL Proceedings (1992) 441; Mineiro, *FY-IC USA-193 ASAT Intercepts*, JSL (2008) 333.

⁴⁰ Bourbonniere, *National Security Law in Outer Space*, JALC (2005) 13; Art. IX 4S. OST.

⁴¹ Marchisio, CoCoSL (2009) 180.

⁴² Marchisio, CoCoSL (2009) 180; Moenter, *The ISS*, JALC (1999) 1041; Sgobba, in *Space Safety Regulations and Standards* (2010) 277; Bourbonniere, *National Security Law in Outer Space*, JALC (2005) 13.

⁴³ *North Sea Continental Shelf* case (1969) para. 86; HACKET (1994) 127.

⁴⁴ *Pulp Mills* case (2010) para. 81.

⁴⁵ Plakokefalos, *ICJ*, IJMCL (2011) 172.

appropriate action.⁴⁶ Especially due to the ultra-hazardous nature of outer space activities,⁴⁷ consultation compromises the goal of reaching a solution and is not merely a procedural formality.⁴⁸

The personnel of the SSH received CDMs from two different SSA providers.⁴⁹ The Valenkovan crewmembers on board the station challenged the GACSSA CDM, which the SaRidians believed to be based on Valenkova's ideological disagreement⁵⁰ rather than on evidence of incompetence or error.⁵¹

Due to the fact, that the SaRidian crewmembers believed that the Valenkovan CDM was inaccurate, they tried to invoke consultation during an emergency situation. As the SSH is a multilaterally governed space station, actions taken by Valenkova will automatically affect other participating States. For this reason, SaRidia had a right to request consultation and thus acted in conformity with Art. IX 4S. OST. *A fortiori*, Valenkova even had an obligation to notify and partake in consultation, based on Art. IX 3S. OST, which it did not do, due to ideological reasons.

C. SaRidia acted in conformity with international law by cooperating with Valenkova based on Art. IX 1S. OST

Art. IX OST declares that “[...]States Parties to the Treaty shall be guided by the principle of cooperation and mutual assistance and shall conduct all their activities in outer space[...]with due

⁴⁶ Mineiro, *FY-1C USA-193 ASAT Intercepts*, JSL (2008) 338-339.

⁴⁷ Hobe, *Environmental Protection in Outer Space*, IJLT (2012) 9.

⁴⁸ Art. IX OST; Marchisio, *CoCoSL* (2009) 180; Hobe, *Environmental Protection in Outer Space*, IJLT (2012) 6.

⁴⁹ See I.B.1.

⁵⁰ Compromis §7.

⁵¹ Compromis §5.

regard to the corresponding interest of all other States Parties to the Treaty.”⁵² The term cooperation describes the coordinated action of two or more States, which takes place under a legal regime and serves a specific objective.⁵³ In the context of bilateral relations or the relations among a limited number of States it may mean the joint action of the Parties involved to serve their mutual interests.⁵⁴ The obligation of international cooperation has been particularly applied within legal regimes dealing with areas beyond national sovereignty.⁵⁵

Art. IX OST qualifies the term cooperation by the elements of mutual assistance and due regard.⁵⁶ The latter principle is aimed at States avoiding, as far as possible, any measures obstructing the space activities of other States. Thus a State may not undertake any activities that would threaten the activities of other States.⁵⁷ The due regard principle is seen as a counterbalance to the States’ freedom to explore and use outer space.⁵⁸ The State must prove beyond reasonable doubt that everything possible was undertaken to prevent a harmful act from occurring.⁵⁹ The concept of cooperation is seen throughout the body of international space law,⁶⁰ as it is *inter alia* addressed in Arts. III, IX, X, XI and XII OST. Moreover, there are several international institutions and

⁵² Art. IX OST.

⁵³ Delbrück, in *Coexistence, Cooperation and Solidarity* (2012) 4-5; Wolfrum, *Cooperation*, MPEPIL (2010) para. 2; Noichim, *International Cooperation*, JSL (2005) 317.

⁵⁴ Wolfrum, *Cooperation*, MPEPIL (2010) para. 39.

⁵⁵ Williams, *Handbook of Space Law* (2015) 1001; Jakhu, *Legal Issues Relating to the Global Public Interest in Outer Space*, JSL (2006) 49.

⁵⁶ Art. IX OST; Marchisio, *CoCoSL* (2009) 174; Williams, *Handbook of Space Law* (2015) 1001.

⁵⁷ Marchisio, *CoCoSL* (2009) 175.

⁵⁸ Hobe, *Environmental Protection in Outer Space*, IJLT (2012) 6.

⁵⁹ Marchisio, *CoCoSL* (2009) 176.

⁶⁰ Hobe, *Environmental Protection in Outer Space*, IJLT (2012) 7; Hardenstein, *In Space, No One Can Hear You Contest Jurisdiction*, JALC (2016) 264.

programmes devoted to cooperation in the peaceful uses of outer space.⁶¹ Consultation, notification and the exchange of data for precise risk assessments are tools to minimize risks⁶² during ultra-hazardous outer space activities.⁶³ International cooperation in outer space is particularly prevalent on the SSH, due to the partnership among different States.⁶⁴ Furthermore, in Charlesworth's separate opinion in the *Whaling* case he stated that there exists a duty to cooperate by States when the treaty encompasses legal regimes dealing with shared resources.⁶⁵

Guideline B.4 of the LTS Guidelines further implements the term cooperation, when stating that "States[...]should, through[...]international cooperation, perform conjunction assessments during all orbital phases of controlled flight for their current and planned spacecraft trajectories."⁶⁶ Part of these conjunction assessments should consist of "determining the risk of collision and whether an adjustment of trajectory is required to reduce the risk of collision."⁶⁷ The LTS Guidelines furthermore state that States should share "information on the proper interpretation and usage of the conjunction assessment results[...]"⁶⁸ When interpreting Guideline B.4., especially international cooperation by its context,⁶⁹ it is made clear that international cooperation should also include non-governmental entities, as this is mentioned among others in Guideline C.4 (1)

⁶¹ Galloway, *Cooperation*, IISL Proceedings (2003) 3-4; e.g. non-institutionalized intergovernmental agreements (IGA) and UNCOPUOS and ESA as examples of international organisations.

⁶² Hobe, *Environmental Protection in Outer Space*, IJLT (2012) 7.

⁶³ Catalano Sgrosso, *Legal Status of the Crew*, IISL Proceedings (1999) 36; Hobe, *Environmental Protection in Outer Space*, IJLT (2012) 9.

⁶⁴ Fukushima, *Legal analysis of the ISS*, Space Policy (2008) 33.

⁶⁵ *Whaling in the Antarctic* (Sep.Op. Charlesworth) (2014) para. 13; Young/Sullivan, *Evolution through the Duty to Cooperate*, MJIL (2015) 332.

⁶⁶ B.4 LTS Guidelines.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Art. 31(1) VCLT; VILLIGER (2009) 427.

which *inter alia* states that “States should[...]p]romote activities of non-governmental entities that will enhance the long-term sustainability of outer space activities”.⁷⁰ Furthermore, it states in paragraph 4 that “[c]ooperation between Governments and non-governmental entities should be encouraged and fostered.”⁷¹

The Guidelines are voluntary,⁷² however, there is reason to believe that the implementation by States in the future will pave the way for the emergence of CIL in the foreseeable future.⁷³ Although the Guidelines are therefore not legally binding, they provide guidance on policies and among other things, international cooperation,⁷⁴ which the States agree on, due to the fact that decisions by COPUOS and its subcommittees always have to be reached by consensus.⁷⁵

The principle of cooperation has further been developed by the Friendly Relations Declaration⁷⁶ and the Space Benefits Declaration.⁷⁷ Whilst the FRD conveys the importance of cooperation in the face of political and ideological differences, the SB-Declaration also takes into account governmental and non-governmental cooperation, by stating in paragraph 4 that “[i]nternational cooperation should be conducted in the modes that are considered most effective and appropriate by the countries concerned, including, inter alia, governmental and non-governmental[...]multilateral[...]and international cooperation among countries[...]”⁷⁸. While

⁷⁰ C.4(1) LTS Guidelines.

⁷¹ C.4(4) LTS Guidelines.

⁷² Martinez, *Development of an International Compendium of Guidelines*, Space Policy (2018) 14.

⁷³ Yan, *Maintaining Long-Term Sustainability*, Space Policy (2019) 54.

⁷⁴ UN Press Release, *LTS-Guidelines*.

⁷⁵ Jakhu, *Legal Issues Relating to the Global Public Interest in Outer Space*, JSL (2006) 90; Martinez, *Development of an International Compendium of Guidelines*, Space Policy (2018) 14; Balogh/Hedman, *Review of the Work of COPUOS in 2009*, Space Policy (2009) 128.

⁷⁶ FRD.

⁷⁷ Marchisio, *CoCoSL* (2009) 174.

⁷⁸ Para. 4 SB-Declaration.

paragraph 1 of the SB-Declaration sets the basis for international cooperation,⁷⁹ by stating that it “shall be conducted in accordance with the provisions of international law[...]”⁸⁰, paragraph 4 not only states that effectiveness is a basic principle of international cooperation,⁸¹ but also explicitly names commercial cooperation,⁸² thereby placing commercial space activities on one level with State activities.⁸³ States are thus free to choose from different forms of cooperation, including non-governmental.⁸⁴

Valenkova's crewmembers challenged the GACSSA CDM, whilst James from SaRidia, who has experience in evaluating SSA data, challenged the Valenkovan CDM as a Type I Error. Additionally, the SaRidians believed that Valenkova's position was not based upon evidence of incompetence or error, but instead upon Valenkova's ideological disagreement with accepting CDMs from non-governmental providers.⁸⁵ The GACSSA is a multilateral consortium, which also relies upon non-governmental data⁸⁶ and SaRidia is a frontrunner in the commercial development of sophisticated sensors and advanced analytics.⁸⁷

⁷⁹ Carpanelli/Cohen, *A Legal Assessment of the 1996 Declaration on Space Benefits*, JSL (2012) 4; Benkö/Schrogl, *History and impact of the 1996 UN Declaration on “Space Benefits”*, Space Policy (1997) 142; TRONCHETTI (2009) 77.

⁸⁰ Para. 4 SB-Declaration.

⁸¹ Benkö/Schrogl, *History and impact of the 1996 UN Declaration on “Space Benefits”*, Space Policy (1997) 142; Mani, CoCoSL (2015) 340; Para. 4 SB-Declaration.

⁸² Mani, CoCoSL (2015) 340; Zhao, *The Role of Bilateral and Multilateral Agreement in International Space Cooperation*, Space Policy (2016) 13.

⁸³ Benkö/Schrogl, *History and impact of the 1996 UN Declaration on “Space Benefits”*, Space Policy (1997) 142.

⁸⁴ Benkö/Schrogl, *“Space Benefits”*, Space Policy (1995) 7; Zhao, *The Role of Bilateral and Multilateral Agreement in International Space Cooperation*, Space Policy (2016) 13; Mani, CoCoSL (2015) 341.

⁸⁵ Compromis §7-8.

⁸⁶ Compromis §3.

⁸⁷ Compromis §5.

Art. IX, as well as X and XII OST state the importance of cooperation and mutual assistance in outer space, whilst the LTS Guidelines and the SB-Declaration state the importance of cooperation and effectiveness in outer space, regardless if this is done by governmental or non-governmental cooperation, which in this case Valenkovan crewmembers, based on political and ideological differences, did not do. The LTS Guidelines, as well as the SB Declaration clearly state that States should promote cooperation, also with non-governmental entities, which in this case is the GACSSA. Valenkova did not undertake every possible measure beyond a reasonable doubt to prevent a harmful act of occurring, since cooperation and effectiveness are part of such measures, whilst SaRidia on the other hand challenged the Valenkovan CDM and thereby made vocal their concerns. Moreover, Valenkova's position was not based on any evidence, rather on its non-recognition of CDMs by non-governmental providers, in this case the GACSSA, a multilateral consortium, which they themselves are a part of. SaRidia acted in conformity with international law, based on Art. IX 1S. OST, by sharing their knowledge and thereby cooperating with other States on the SSH, whilst also cooperating with a non-governmental entity, the GACSSA.

D. Even if SaRidia violated an international obligation by challenging the Valenkovan CDM, wrongfulness was precluded due to distress

Art. 24(1) ARSIWA states that “[t]he wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author’s life[...].”⁸⁸ This article covers cases

⁸⁸ Art. 24(1) ARSIWA.

where an individual, whose acts are attributable to the State, is in a situation of extreme peril,⁸⁹ which was reiterated in the *Rainbow Warrior* case.⁹⁰ During a situation of distress, the author of the conduct has no real choice other than to breach an obligation and therefore, distress precludes the wrongfulness of voluntary acts.⁹¹ Concerning the requirement of “no other reasonable way”⁹² this means that there is no time to conduct proper examinations, although it still gives the author the flexibility of choosing how to save his or her life, or the lives of others.⁹³

Art. 24 (2) ARISWA sets forth on the one hand that distress can only preclude wrongfulness where the interests sought to be protected (e.g. the lives of the crew) clearly outweigh the other interests at stake in the circumstance⁹⁴ and on the other hand that distress cannot be invoked by the State who caused or induced said situation.⁹⁵

Space debris has been classified as being dangerous,⁹⁶ furthering the ultra-hazardous⁹⁷ characterization of outer space, especially concerning space vehicles and even more so concerning the ISS, space shuttles and other spacecraft with humans on board.⁹⁸

⁸⁹ ILC Report (2001) 79-4; Crawford/Olleson, in *International Law* (2014) 466; SHAW (2017) 604.

⁹⁰ Hoss/Morgan-Foster, *The Rainbow Warrior*, MPEPIL (2010) paragraph 26; CRAWFORD (2013) 303-303; Davidson, *The Rainbow Warrior Arbitration*, ICLQ (1991) 450.

⁹¹ Fasoli, *Distress*, MPEPIL (2013) para. 7; CRAWFORD (2013) 301.

⁹² Art. 24(1) ARSIWA.

⁹³ CRAWFORD (2013) 303; SHAW (2017) 604.

⁹⁴ Crawford/Olleson, in *International Law* (2014) 466; ILC Report (2001) 80-10.

⁹⁵ ILC Report (2001) 80-9.

⁹⁶ Seymour, *Containing the Cosmic Crisis*, GIELR (1998) 891; ESA, *Space Debris Spotlight* (2005).

⁹⁷ Hobe, *Environmental Protection in Outer Space*, IJLT (2012) 9.

⁹⁸ NASA, *Space Debris and Human Spacecraft* (2013); Heimerdinger, *Orbital Debris and Associated Space Flight Risks*, Annual Reliability and Maintainability Symposium (2005) 508.

Two CDMs reached the SSH, which were in conflict as to the severity and imminence of the hazard posed by a piece of orbital debris. Commander Curieux found the Valenkovan CDM to be more credible and not the one from the GACSSA. The SaRidian crewmembers believed that Valenkova's position resulting in the Commander's decision, was based upon Valenkova's ideological disagreement.⁹⁹ The SaRidian crewmembers challenged the Valenkovan CDM, since James, a SaRidian astronaut, who has experience in evaluating probabilities and thresholds, challenged the CDM as a false positive.¹⁰⁰ The SaRidian, as well as the Chimukian crewmembers, proposed that the Commander take more time to evaluate the disparities in the data rather than taking immediate action.¹⁰¹ The Valenkovan CDM was in fact a false positive.¹⁰²

Even if SaRidias challenge of the Valenkovan CDM was a breach of an international obligation, the SaRidian crewmembers were justified to do so, as they were in a situation of distress. The SaRidian crewmembers challenged the Valenkovan CDM, due to a situation of extreme urgency, since they believed their lives were in danger, as the Commander trusted a CDM, which was a false positive. SaRidia did not cause the situation of distress, as this was caused by the choices made by the Commander. Furthermore, it can be argued that the danger of moving the SSH and thereby possibly colliding with space debris far out ways the danger of challenging a false CDM and thereby attempting to persuade the Commander of a safer course of action. Space debris is especially established as being ultra-hazardous concerning the ISS, which can also be applied to the SSH. Every manoeuvre should only be conducted based on substantial information, which in this case was lacking, according to the SaRidian crewmembers. Herewith Art. 24(2) is not

⁹⁹ See I.B.1.

¹⁰⁰ Compromis § 6-8.

¹⁰¹ Compromis §1.

¹⁰² Compromis §8.

applicable and in consequence it can be argued, that even if SaRidia violated an international obligation by challenging the Valenkovan CDM, wrongfulness was precluded due to distress.

II. SaRidia is not liable under international law for unauthorized use of, and failure to return, the Bondar and for the loss of the Valenkovan life on the Sharman

A. SaRidia is not liable under international law for the loss of the Valenkovan life on the Sharman

1. SaRidia is not liable under Art. II LIAB

Art. II LIAB imposes absolute liability to the launching State of a space object for damage, including loss of life, caused by said space object, and it is a launching State's duty as per Art. II REG to register the space object.¹⁰³

The Sharman is registered to the Haigneran Union.¹⁰⁴ The Sharman was neither launched from SaRidia's territory or its facility, nor is there evidence to suggest that SaRidian facilities were employed in the launch of the Sharman.¹⁰⁵

There is no indication that SaRidia can be qualified as a launching State for the Sharman. There is no damage caused to Mikaela by a space object whose launching State is SaRidia.

¹⁰³ Art. I LIAB; Smith/Kerrest, CoCoSL (2013) 111-112, 117; CRAWFORD (2019) 544; ILC Report (2006) 60; Schmidt-Tedd/Malysheva/Stelmakh/Tennen/Bohlmann, CoCoSL (2013) 250-251; HOBE (2019) 85-86; Malanczuk, in *Handbuch des Weltraumrechts* (1991) 782, 791; Watanabe, *State Liability*, IISL Proceedings (2016) 142-144.

¹⁰⁴ Compromis §9.

¹⁰⁵ Compromis §9, 16, 17.

2. SaRidia is not liable under Art. VII OST

Art. VII OST imposes international liability for damage to States and their nationals by a space object on its launching State, and it is in the benefit of space exploration that liability shall be imposed on launching States.¹⁰⁶

The Haigneran Union is Sharman's launching State and Mikaela lost her life as the result of the impact of the Sharman on Earth.¹⁰⁷

There is no evidence that SaRidia is the launching State of the Sharman. Therefore, there is no liability arising out of Art. VII OST.

3. SaRidia is not liable to Valenkova for the death of Mikaela under Art. 16 SSH-IGA

Art. 16 SSH-IGA asserts a broadly constructed cross-waiver of liability to activities undertaken within the context of the SSH project and damage incurred in that context, and only where claims are made by natural persons for damage or death is the cross-waiver inapplicable.¹⁰⁸ The aim of the cross-waiver of liability is to protect astronauts, who are potentially at risk of generating damage, and the limitation of liability for involvement in PSOs, defined as all Space Station related

¹⁰⁶ Art. VII OST; Kerrest/Smith, *CoCoSL* (2009) 128-129; HOBE (2019) 60, 79-80, 172; Dembling, *Establishing Liability*, IISL Proceedings (1971) 87.

¹⁰⁷ Compromis §9, 13.

¹⁰⁸ Art. 16(3)(d)(2) SSH-IGA; Von der Dunk, in *The ISS* (2006) 24; CATALANO SGROSSO (2011) 323-324; CRAWFORD (2013) 558-559; LYALL/LARSEN (2018) 113-114; Sharpe/Tronchetti, *Handbook of Space Law* (2015) 637-638; Smith, in *The ISS* (2006) 170; HOBE (2019) 172.

activities, including the use of launch or transfer vehicles.¹⁰⁹ Furthermore, claims for compensation outside the LIAB should be rejected if the exhaustion of local remedies has not been fulfilled.¹¹⁰

Mikaela lost her life during evacuation from the SSH after the transfer vehicle Sharman collided with debris.¹¹¹

Transfer vehicle activities are included in the scope of PSOs and the cross-waiver. While there is an exemption from the cross-waiver for injuries, Art. 16 SSH-IGA provides for a natural person as claimant. Therefore Valenkova, as applicant, cannot claim damages for the death of Mikaela. Furthermore, there is no evidence in the compromis that there has been an exhaustion of local remedies prior to Valenkova's application to the Court or that the local remedies are ineffective.

B. SaRidia is not responsible under international law for unauthorized use of the Bondar

Responsibility and liability in international law are closely interrelated, however space law contains separate provisions distinguishing the liability for damage caused by space objects in Art. VII OST and LIAB and responsibility for activities in outer space in Art. VI OST.¹¹² Despite the wording, the further parts of this claim deal with international responsibility.

¹⁰⁹ Farand, in *The ISS* (2006) 92; Iavicoli, in *The ISS* (2006) 194-195; Von der Dunk, in *The ISS* (2006) 24; Von der Dunk, *Handbook of Space Law* (2015) 701-702; Farand, in *ARRA. Lessons Learned* (2011) 64.

¹¹⁰ For elaboration on this strict requirement see e.g. Lauterpracht, *State Responsibility*, ILR (1956) 334; CRAWFORD (2019) 697-698.

¹¹¹ *Compromis* §13.

¹¹² CRAWFORD (2013) 51-52, 62-63; Uchitomi, *State Responsibility/Liability*, IISL Proceedings (2001) 51; LYALL/LARSEN (2018) 77-78, 95; CATALANO SGROSSO (2011) 106, 109-111; Gál, *Space Liability*, IISL Proceedings (2001) 157-158, 160; *Corfu Channel* case (1949) 23; *Nicaragua* case paras. 283, 292 (1986) 117-118; *Rainbow Warrior* para. 75 (1986); *Tehran Hostages* case para. 56 (1980); *Phosphates in Morocco* case (1938) 28; *Gabčikovo-Nagymaros* case (1997) 54.

1. SaRidia has fulfilled the obligation set out in Art. 11(2) SSH-IGA

Art. 11(2) SSH-IGA establishes an obligation that “States shall ensure that their crewmembers observe the CoC”, an instrument agreed upon by the IGA Parties in order to regulate the standards of astronauts’ conduct.¹¹³ As important as it may be, it remains in fact a soft law instrument, albeit a successful tool with high political force influencing States’ behaviour that has to be implemented in line with the obligation in Art. 11(2) SSH-IGA.¹¹⁴ In this case, Parties are called upon to exercise due diligence by adopting and enforcing appropriate measures which have to conform to applicable international agreements between the Parties.¹¹⁵

SaRidia has implemented the CoC as part of its national law.¹¹⁶

SaRidia has fulfilled its obligation in Art. 11(2) IGA by implementing the CoC into its national law. By incorporating the CoC into national law, SaRidia sets clear rules for its astronauts and has done as much as could possibly be expected from it to ensure observance of the CoC.

¹¹³ Art. 11(2) SSH-IGA; HOBE (2019) 170-171; De Roos, in *The ISS* (2006) 115-117; CATALANO SGROSSO (2011) 312; LYALL/LARSEN (2018) 129-130.

¹¹⁴ Iavicoli, in *The ISS* (2006) 197; Smith, in *The ISS* (2006) 176; Tronchetti, in *Soft Law in Outer Space* (2012) 373, 376, 381; Van Ansen, *Legal Pluralism*, IISL Proceedings (2009) 69, 72; Mayence, in *Soft Law in Outer Space* (2012) 343; HOBE (2019) 170-171; LYALL/LARSEN (2018) 129-130; De Faramiñán Gilbert, *L’expérience des astronautes*, *Space Sojourns* (2005) 50-51; CATALANO SGROSSO (2011) 312; BLACK’S LAW DICTIONARY (2009) 1499; De Roos, in *The ISS* (2006) 115-117; Brünner/Soucek, *Regulating ISS*, *ACTA ASTRONAUTICA* (2007) 597.

¹¹⁵ *Pulp Mills* case (2010) paras. 186, 197, 204; Fadahunsi-Banjo, *Good Neighbourliness*, IISL Proceedings (2015) 219.

¹¹⁶ *Compromis* §16.

2. Even if SaRidia had not fulfilled the obligation in Art. 11(2), wrongfulness is precluded on the grounds of distress codified in Art. 24 ARSIWA and Section II.B. CoC

ARSIWA codifies customary international law in regard to the breach of an international obligation and attribution to a State and provides for circumstances precluding the wrongfulness under specific conditions.¹¹⁷ Furthermore, a course of conduct for situations of distress can be found in II.B. CoC, which sets forth that astronauts may remove property to which they have access to without the authorization of the Flight Director when necessary to ensure the immediate safety of SSH-crewmembers.¹¹⁸ Art. 24 ARSIWA precludes the wrongfulness of voluntary acts on the grounds of distress in cases where human life is at stake, if the author of the act has no other reasonable way in a situation of distress of saving her life, as well as giving the author of the act some flexibility regarding the urgency of the situation of distress.¹¹⁹

Art. 24 acknowledges that there may be neither the time nor the possibility to conduct proper assessment in urgent situations.¹²⁰ As aforementioned,¹²¹ Art. 24(2) states that the justification of distress can't be used in two situations: a contribution to the situation of distress and the creation of comparable or greater peril.¹²² Distress for example allows endangered aircraft or naval vessels to seek another State's territory for safety, without prior permission in cases of severely dangerous

¹¹⁷ CRAWFORD (2019) 523-525, 546; *Chorzów Factory* (1928) 73; ILC Report (2001) 34-1, 35-4, 71-2,3; *Tehran Hostages* case (1980) 29-56,63,67; *Phosphates in Morocco* (1938) 28-22; Gerhard, CoCoSL (2009) 109, DUPUY/KERBAT (2016) 507-508; CRAWFORD (2013) 275.

¹¹⁸ II.B.CoC.

¹¹⁹ See I.D.; CRAWFORD (2013) 301, 303-304; CRAWFORD (2019) 549; Abeyratne, *Space Tourism*, ZLW (2004) 186.

¹²⁰ CRAWFORD (2013) 301-302.

¹²¹ See I.D.

¹²² CRAWFORD (2019) 549.

conditions.¹²³ Commanding officers of spacecraft are primarily required to use their best judgement for the preservation of the commanded object and lives of people on board, which is also an integral part of the CoC and of astronauts' contractual provisions, as they always include the CoC.¹²⁴

The SSH-Commander is the leader of the team who assumes her position aware that hazardous circumstances in space may force her to make extreme decisions using reasonable and necessary means.¹²⁵ As the CoC applies on board the SSH, it is important to highlight III.A. CoC that makes the Commander responsible for forming the crewmembers into a single integrated team, ensuring the crewmembers' safety, mission success and the protection of SSH-elements, and II.B.CoC which establishes the obligation that "SSH-Crewmembers shall maintain a harmonious and cohesive relationship [...] through an interactive, participative and relationship-oriented approach [...] and no crewmember shall act in a manner which creates the appearance of giving undue preferential treatment to any person."¹²⁶

¹²³ CRAWFORD (2013) 301-303.

¹²⁴ CRAWFORD (2013) 304; *Int'l Arbitral Awards* (1928) 447; CATALANO SGROSSO (2011) 314-315; Catalano Sgrosso, *Legal aspects of the astronaut*, *Space Sojourns* (2005) 63-64; Catalano Sgrosso, *Legal Status, Rights and Obligations*, *JSL* (1998) 171.

¹²⁵ Achilleas, *L'astronaute en droit international*, *Space Sojourns* (2005) 23; Brünner/Soucek, *Regulating ISS*, *ACTA ASTRONAUTICA* (2007) 597; Catalano Sgrosso, *Application of the Rules of the CoC*, *IISL Proceedings* (2002) 78.

¹²⁶ I.A.(2)(B) CoC, II.A. CoC, II.B. CoC, III.A. CoC; LYALL/LARSEN (2018) 133; De Roos, in *The ISS* (2006) 119; Brünner/Soucek, *Regulating ISS*, *ACTA ASTRONAUTICA* (2007) 597; CATALANO SGROSSO (2011) 314; Achilleas, *L'astronaute en droit international*, *Space Sojourns* (2005) 23; BLACK'S LAW DICTIONARY (2009) 1499; Van Ansen, *Legal Pluralism*, *IISL Proceedings* (2009) 72; Catalano Sgrosso, *Application of the Rules of the CoC*, *IISL Proceedings* (2002) 78.

All SSH-Partners are Parties to the SSH-IGA and the CoC.¹²⁷ While discussing the course of action for the SSH, the SaRidians presented the Commander with experience evaluating relevant data.¹²⁸ Nevertheless, the sole reason for the Commander's decision was that she falsely believed the SaRidian challenge is based on personal prejudice and not empirical evidence.¹²⁹ Furthermore, the Commander tried to communicate with McKenzie through a malfunctioning communications system she knew for a fact had reported transmission problems.¹³⁰ McKenzie entered the Bondar after the dispute about the emergency conduct in order to evacuate and transport herself to safety.¹³¹ The Commander charts a course for the rest of the crew following the Valenkovan CDM.¹³²

An anticipated collision can only be described as severely dangerous for the space station crew. From McKenzie's point of view, the situation is urgent. After failing to convince the Commander with evidence provided by her colleague, she sees no other way to save her own life than to use the Bondar to pilot to safety. Instead of trying to resolve the tension on board, the Commander fails to even support her flawed argumentation and does not give proper weight to the specific knowledge of the SaRidians, acting against II.B. CoC and III.A. CoC.

McKenzie does not contribute to the situation of distress while evacuating, as this situation is already established by the actions of the Commander regarding the conflicting CDMs. The Commander's actions severely contribute to the situation of distress. McKenzie's evacuation also

¹²⁷ Compromis §16.

¹²⁸ Compromis §8.

¹²⁹ Compromis §6-8.

¹³⁰ Compromis §11.

¹³¹ Compromis §11.

¹³² Compromis §13.

does not create a comparable or greater peril. During the evacuation of the rest of the crew, the Commander follows a course of action based on the wrong CDM. This, and not McKenzie's actions, affects the evacuation plan of the crew.

The wrongfulness of the use of the Bondar is precluded due to the urgent situation of distress, as McKenzie has no other reasonable way to save her life and there is neither the time nor the possibility to conduct a more detailed examination of the situation. II.B. CoC provides crewmembers with the possibility of removing SSH-property to which they have access without authorization in severe cases to ensure immediate safety for SSH-crew. Thus, McKenzie was also authorized by the CoC to use the access she had to the Bondar to save her own life.

C. SaRidia is not responsible under international law for failure to return the Bondar

1. SaRidia is not under the obligation to return the Bondar under Art. 5(3) ARRA as it holds the Bondar at the disposal of Valenkova

Art. 5(3) ARRA obliges each State Party that has jurisdiction over territory on which a space object has been discovered to take action and practicable measures within the limits of the facilities at its disposal to recover the space object and upon request, return it to the launching authority.¹³³

The aforementioned obligation of return in Art. 5(3) ARRA is triggered by a request of the launching authority.¹³⁴ The obligation can be discharged by holding the object at the disposal of persons authorized to collect it.¹³⁵

¹³³ Art. 5(2)&(3) ARRA; LYALL/LARSEN (2018) 90-94; De Faramiñán Gilbert/Muñoz Rodríguez, in ARRA. Lessons Learned (2011) 44; CHENG (1997) 278; CATALANO SGROSSO (2011) 298.

¹³⁴ LACHS (1972) 83-84; Marboe/Neumann/Schrogl, CoCoSL (2013) 68; CHENG (1997) 418; LYALL/LARSEN (2018) 93; Hintz, in Handbuch des Weltraumrechts (1991) 183; Marchisio, in ARRA. Lessons Learned (2011) 144.

¹³⁵ LACHS (1972) 84; LYALL/LARSEN (2018) 93; Schmidt-Tedd/Mick, CoCoSL (2009) 165.

Lease agreements are intended to provide and confer rights towards amenities such as military or air bases and can be concluded between States as they find useful. The typical exchange includes financial contribution in the form of lease payments and fees, allowing leased bases to serve as storage, mobility hubs or airfields for the lessee.¹³⁶

The Bondar is placed in a hangar on SaRidian territory, but the hangar has been leased to Valenkova.¹³⁷

While the lease agreement allows for several kinds of uses of the hangar by Valenkova, one may be the storage of spacecraft. By placing the Bondar at the disposal of Valenkova in a hangar leased to it, SaRidia not only fulfils its contractual obligations of providing Valenkova with the amenity, which is in this case the hangar, but it also shows that SaRidia does not wish to retain possession of the Bondar.

2. SaRidia is not obliged to return the Bondar under Art. VIII OST because the lease agreement implies the hangar as a designated space for Valenkovan vehicles

Art. VIII OST states that “objects found beyond the limits of the State of Registry are to be returned to that State”, with the underlying purpose of the system of State of Registry being organized return during the de-orbiting phase of space objects.¹³⁸

¹³⁶ CRAWFORD (2019) 197; Nicol, *Kyrgyzstan and the Status of the U.S. Airbase*, CRS (2009) 4; LYALL/LARSEN (2018) 390-392; Bjornerud, *Baikonur Continues*, J. SPACE L (2004) 16; LAUTERPRACHT (1927) 187-188; Sundahl, *Handbook of Space Law* (2015) 890-891; Cooley, *Imperial Wreckage*, Int'l Security (2000/2001) 101-104, 116.

¹³⁷ Compromis §14.

¹³⁸ Art. VIII OST; Schmidt-Tedd/Mick, *CoCoSL* (2009) 149, 165; LYALL/LARSEN (2018) 58-59; Hintz, in *Handbuch des Weltraumrechts* (1991) 182; CHENG (1997) 259.

As previously mentioned, Valenkova and SaRidia have a lease agreement concerning the use and lease of SaRidian launch and landing facilities and the lease of a hangar.¹³⁹ The Bondar was piloted back to the hangar under Valenkovan lease.¹⁴⁰

The Bondar is a space object but it has not been found on SaRidian territory as a result of unexpected de-orbiting circumstances. It was piloted back and placed in a hangar leased to the State of Registry. Even if the intention behind Art. VIII OST was an obligation to return any and all space vehicles, even intentionally placed outside of the State of Registry, SaRidia would have fulfilled its obligation by placing the Bondar at Valenkova's disposal in the hangar leased to it.

¹³⁹ Compromis §16.

¹⁴⁰ Compromis §14.

III. Valenkova has no legal right to extradition of the SaRidian crewmember

A. Valenkova has no legal right to the extradition of the SaRidian crewmember, as SaRidia has exclusive jurisdiction over said crewmember

1. Valenkova does not have jurisdiction over the SaRidian crewmember based on Art. VIII OST and Art. 5(1) SSH-IGA

In space, jurisdiction designates the right of a State to exercise its judicial, legislative and executive power over a person on board a spacecraft and the spacecraft itself.¹⁴¹ Art. VIII OST states that “[a] State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space[...].”¹⁴² Due to Art. VIII OST, only the launching State, which is also the State of Registry, has jurisdiction over a space object,¹⁴³ and this State can therefore apply its national law over the personnel on board.¹⁴⁴ Personnel includes the crew on board a space object,¹⁴⁵ whilst control refers to the actual supervision of the activities of the personnel.¹⁴⁶ Jurisdiction within Art. VIII OST refers to civil, as well as criminal jurisdiction.¹⁴⁷

Art. 5(1) SSH-IGA contains the obligation of registration within the SSH by stating that “[i]n accordance with Art. II REG, each Partner shall register as space object the flight elements listed

¹⁴¹ Achilleas, *L’astronaute en droit international*, *Space Sojourns* (2005) 20; Hobe/Reuter, in *ISS* (2006) 126; Sinha, *Criminal Jurisdiction on the ISS*, *JSL* (2004) 89.

¹⁴² Art. VIII OST.

¹⁴³ Schmidt-Tedd/Mick, *CoCoSL* (2009) 147; Grove, *Criminal Jurisdiction in Outer Space*, *The International Lawyer* (1972) 316; Von der Dunk, in *The ISS* (2006) 17.

¹⁴⁴ Sun, *Legal Issues of Space Colonization*, *ZLW* (2017) 480; Gorove, *Criminal Jurisdiction in Outer Space*, *The International Lawyer* (1972) 315-316; Schmidt-Tedd/Mick, *CoCoSL* (2009) 159.

¹⁴⁵ Grove, *Criminal Jurisdiction in Outer Space*, *The International Lawyer* (1972) 316.

¹⁴⁶ Schmidt-Tedd/Mick, *CoCoSL* (2009) 157.

¹⁴⁷ Gorove, *Criminal Jurisdiction in Outer Space*, *The International Lawyer* (1972) 316.

in the Annex which it provides[...].¹⁴⁸ Art. 5 SSH-IGA thereby echoes the jurisdiction clause found in the OST¹⁴⁹ and therefore, States retain jurisdiction over their registered flight elements aboard the SSH.¹⁵⁰

McKenzie is a SaRidian crewmember,¹⁵¹ whom Valenkova wants to prosecute for the death of the Valenkovan astronaut and for endangering the safety of the SSH crew and the Valenkovan transport vehicle.¹⁵² The events, which Valenkova wants to prosecute McKenzie for, took place on board the module of the SSH, registered to SaRidia.¹⁵³

Due to the fact that the module, where the events took place, for which Valenkova wants to prosecute McKenzie, is registered to SaRidia, Valenkova does not have jurisdiction over her under Art. VIII OST and Art. 5(1) SSH-IGA.

2. Valenkova does not have criminal jurisdiction over the SaRidian crewmember based on Art. 5(2) and Art. 22(1) SSH-IGA

Art. 5(2) SSH-IGA states that "[...]each Partner shall retain jurisdiction and control[...]over personnel in or on the Space Station who are its nationals."¹⁵⁴ Art. 22(1) SSH-IGA, which provides the jurisdictional basis for prosecution in case of criminal conduct taking place on board the

¹⁴⁸ Art. 5(1) SSH-IGA.

¹⁴⁹ Hardenstein, *In Space, No One Can Hear You Contest Jurisdiction*, JALC (2016) 275; Von der Dunk, in *The ISS* (2006) 22; Sun, *Legal Issues of Space Colonization*, ZLW (2017) 481.

¹⁵⁰ Sinha, *Criminal Jurisdiction on the ISS*, JSL (2004) 109.

¹⁵¹ Compromis §10.

¹⁵² Compromis §16.

¹⁵³ Compromis §17.

¹⁵⁴ Art. 5(2) SSH-IGA; Von der Dunk, in *The ISS* (2006) 22.

SSH,¹⁵⁵ sets forth that “[...]States may exercise criminal jurisdiction over personnel in or on any flight element who are their respective nationals.”¹⁵⁶ The basis for prosecution and the exercise of criminal jurisdiction, is the nationality of the alleged perpetrator.¹⁵⁷ Partner States to the treaty retain the right to criminal jurisdiction over their nationals regardless of on or in which flight element that national has committed an offence.¹⁵⁸ Therefore, the SSH-IGA does not grant Partner States criminal jurisdiction over the elements they provide to the SSH.¹⁵⁹

There exists a possibility of a victim State to prosecute the national of another State, although strict requirements must be met.¹⁶⁰ Firstly, as stated in Art. 22(2) SSH-IGA, the misconduct must have affected the “life or safety of a national of another Partner State”¹⁶¹ or occurred “in or on or cause[d] damage to the flight element of another Partner State.”¹⁶² Additionally, the affected Parties must have undergone consultations concerning the matter¹⁶³ and after a three month period of said consultations, the perpetrator’s State must have failed to provide assurances, that it will submit the case to its authorities for prosecution.¹⁶⁴ The Partner State responsible for the alleged perpetrator automatically retains jurisdiction over said crime, whilst the other State may request

¹⁵⁵ Farand, in *The ISS* (2006) 89; Hardenstein, *In Space, No One Can Hear You Contest Jurisdiction*, JALC (2016) 280.

¹⁵⁶ Art. 22(1) SSH-IGA.

¹⁵⁷ Blount, *Jurisdiction in Outer Space*, JSL (2007) 313; Farand, in *The ISS* (2006) 91.

¹⁵⁸ Sinha, *Criminal Jurisdiction on the ISS*, JSL (2004) 117; Hardenstein, *In Space, No One Can Hear You Contest Jurisdiction*, JALC (2016) 277.

¹⁵⁹ Ratner, *Establishing the Extraterrestrial*, BCICLR (1999) 335; Hardenstein, *In Space, No One Can Hear You Contest Jurisdiction*, JALC (2016) 277.

¹⁶⁰ Farand, in *The ISS* (2006) 91.

¹⁶¹ Art. 22(2) SSH-IGA.

¹⁶² *Id.*

¹⁶³ Moenter, *The ISS*, JALC (1999) 1050; Chatzipanagiotis, *Criminal Issues*, EJLR (2016) 112.

¹⁶⁴ Art. 22(2) SSH-IGA; Farand, in *The ISS* (2006) 90; Moenter, *The ISS*, JALC (1999) 1050; Blount, *Jurisdiction in Outer Space*, JSL (2007) 313; Chatzipanagiotis, *Criminal Issues*, EJLR (2016) 112.

consultations. This effectively means that the requested State may block another State from exercising criminal jurisdiction.¹⁶⁵

McKenzie is a SaRidian crewmember,¹⁶⁶ whom Valenkova wants to prosecute. SaRidia and Valenkova have already undergone diplomatic consultations.¹⁶⁷

Due to the fact that McKenzie is a SaRidian national, SaRidia has jurisdiction based on Art. 5(2) and Art. 22(1) SSH-IGA. Furthermore, SaRidia has already initiated diplomatic consultations and there is no indication that SaRidia failed to investigate McKenzie's conduct. Therefore, the exception of Art. 22(2) SSH-IGA is not applicable.

3. Valenkova does not have jurisdiction over the SaRidian crewmember based on the personality principle

The jurisdiction of a State is either based on its defined territory or on its permanent population,¹⁶⁸ their nationals, wherever they may be located.¹⁶⁹ The active personality principle, which is universally accepted¹⁷⁰ and also known as the nationality principle,¹⁷¹ awards States the power to exercise judicial and legislative criminal jurisdiction over their own nationals for crimes they have

¹⁶⁵ Devlin/Schmidt, *Legal Issues Continue to Surround the ISS*, US Air Force Academy J of Legal Studies (1997-1998) 243.

¹⁶⁶ Compromis §10.

¹⁶⁷ Compromis §15-16.

¹⁶⁸ Hobe/Reuter, in ISS (2006) 126.

¹⁶⁹ Oxman, *Jurisdiction of States*, MPEPIL (2007) para. 11; Robbins, *The Extension of US Criminal Jurisdiction in Outer Space*, Santa Clara L Review (1983) 630.

¹⁷⁰ Bassiouni, *Theories of Jurisdiction*, CWILJ (1974) 41.

¹⁷¹ CRAWFORD (2019) 443; Gorove, *Criminal Jurisdiction in Outer Space*, The International Lawyer (1972) 314.

committed,¹⁷² regardless of their location.¹⁷³ Criminal jurisdiction in outer space is the competence of a State to define and apply policy with respect to particular events defined as criminal, occurring in outer space.¹⁷⁴

The passive personality principle on the other hand declares that a State may claim jurisdiction to try an individual for offences committed abroad, which have affected nationals of said State.¹⁷⁵ This principle is a lot more controversial than the above mentioned active personality principle,¹⁷⁶ as judge Moore declared in his separate opinion in the *Lotus* case,¹⁷⁷ as well as judges Higgins, Kooijmans and Buergentahl noted in their joint separate opinion in the *Arrest Warrant* case¹⁷⁸ Judges Higgins, Kooijmans and Buergenthal stated that the passive personality principle is regarded as controversial, except when dealing with a particular category of offences, mentioning terrorism as one of the lone examples.¹⁷⁹ In practice, the passive personality principle has rarely been utilized, except in cases of contemporary terrorism.¹⁸⁰

¹⁷² Bantekas, *Criminal Jurisdiction of States*, MPEPIL (2011) para. 13; Wolswijk, *Locus Delicti and Criminal Jurisdiction*, NILR (1999) 362; Krizek, *The Protective Principle of Extraterritorial Jurisdiction*, BUILJ (1988) 340; Blount, *Jurisdiction in Outer Space*, JSL (2007) 307.

¹⁷³ Ratner, *Establishing the Extraterrestrial*, BCICLR (1999) 329.

¹⁷⁴ Sinha, *Criminal Jurisdiction on the ISS*, JSL (2004) 88.

¹⁷⁵ Wolswijk, *Locus Delicti and Criminal Jurisdiction*, NILR (1999) 362; Krizek, *The Protective Principle of Extraterritorial Jurisdiction*, BUILJ (1988) 340; Watson, *Offenders Abroad*, YJIL (1992) 44; Blount, *Jurisdiction in Outer Space*, JSL (2007) 309; REYNOLDS/MERGES (2019) 277; Robbins, *The Extension of US Criminal Jurisdiction in Outer Space*, Santa Clara L Review (1983) 630.

¹⁷⁶ CRAWFORD (2019) 444.

¹⁷⁷ *Lotus* case (Diss.Op. Moore) (1927) 94; CRAWFORD (2019) 444.

¹⁷⁸ *Arrest Warrant* case (Joint Sep.Op. Higgins, Kooijmans, Buergenthal) (2002) para. 47.

¹⁷⁹ *Id.*

¹⁸⁰ Bantekas, *Criminal Jurisdiction of States*, MPEPIL (2011) para. 17; Watson, *The Passive Personality Principle*, TILJ (1993) 13.

McKenzie is a SaRidian crewmember,¹⁸¹ whom Valenkova wants to prosecute for the death of the Valenkovan astronaut and for endangering the safety of the SSH crew and the Valenkovan transport vehicle.¹⁸² She challenged the chain of command, whereupon she secured herself on the Bondar¹⁸³ and piloted it safely back to SaRidia.¹⁸⁴

Due to the fact that McKenzie is a SaRidian astronaut, the jurisdiction to criminally prosecute her lies within SaRidia and not Valenkova, due to the active personality principle. Moreover, the passive personality principle is not applicable in this case, since the actions by McKenzie, which were challenging the chain of command and securing herself on the Bondar, do not constitute acts of terrorism. Valenkova has no legal right to the extradition of McKenzie.

B. There is no legal basis for an obligation of SaRidia to extradite their crewmember to Valenkova

1. There is no legal basis for an obligation of SaRidia to extradite their crewmember to Valenkova based on Art. 22(3) SSH-IGA

The practice of extradition is based upon bilateral¹⁸⁵ or multilateral¹⁸⁶ treaty law and does not exist as an obligation upon States under CIL.¹⁸⁷ Furthermore, general international law does not impose a duty on States to punish an alleged offender when extradition fails.¹⁸⁸ Art. 22(3) SSH-IGA states that “[i]f a Partner State which makes extradition conditional on the existence of a treaty receives

¹⁸¹ Compromis §10.

¹⁸² Compromis §16.

¹⁸³ Compromis §11.

¹⁸⁴ Compromis §14.

¹⁸⁵ Cullen/Burgess, *Extradition from A to Z*, UWALR (2015) 210; BASSIOUNI (2013) 500-501; SHEARER (1971) 22; SHAW (2017) 514.

¹⁸⁶ Stein, *Extradition*, MPEPIL (2011) para. 2; SHEARER (1971) 22.

¹⁸⁷ SHAW (2017) 514.

¹⁸⁸ Stein, *Extradition*, MPEPIL (2011) para. 10

a request for extradition from another Partner State with which it has no extradition treaty, it may at its option consider this Agreement as the legal basis for extradition in respect of the alleged misconduct on orbit.”¹⁸⁹ As mentioned above,¹⁹⁰ may means being permitted to¹⁹¹ or to be authorized to,¹⁹² not however in contrast to the word shall, which means to have a duty to.¹⁹³ Art. 22(3) SSH-IGA therefore allows a State to consider the IGA as the legal basis for extradition only upon a request,¹⁹⁴ but does not oblige it to do so.

SaRidia and Valenkova do not have a bilateral extradition treaty.¹⁹⁵

Due to the fact that SaRidia and Valenkova do not have a bilateral extradition treaty and the practice of extradition is based on such treaties, Valenkova has no legal right to demand the extradition of the SaRidian crewmember. SaRidia, however, has the right but not the obligation to extradite said crewmember based on Art. 22(3) SSH-IGA.

2. There is no legal basis for an obligation of SaRidia to extradite their crewmember to Valenkova based on Art. 4 ARRA

Art. 4 ARRA obliges any State that recovers personnel of a spacecraft to return them safely and promptly to the launching authority,¹⁹⁶ but only in cases of an “[...]accident, distress, emergency

¹⁸⁹ Art. 22(3) SSH-IGA.

¹⁹⁰ See I.B.2.

¹⁹¹ BLACK’S LAW DICTIONARY (2009) 1068; MERRIAM-WEBSTER, *May*.

¹⁹² Kimble, *The Many Misuses of Shall*, *Scribes J of Legal Writing* (1992) 76.

¹⁹³ BLACK’S LAW DICTIONARY (2009) 1499; Kimble, *The Many Misuses of Shall*, *Scribes J of Legal Writing* (1992) 76.

¹⁹⁴ Sinha, *Criminal Jurisdiction on the ISS*, *JSL* (2004) 121.

¹⁹⁵ *Compromis* §16.

¹⁹⁶ Von der Dunk, *A Sleeping Beauty Awakens*, *JSL* (2008) 423.

or unintended landing[...].¹⁹⁷ Concerning the above-mentioned terms, this would encompass for example, the malfunction of the spacecraft, a collision between the spacecraft and another object, or a physical disability suffered by the astronaut.¹⁹⁸ The terms therefore include any situations where outside help is needed or requested.¹⁹⁹ When interpreting the word return by its ordinary meaning in accordance with Art. 31(1) VCLT²⁰⁰ it is the act of coming back to a place²⁰¹ or going back.²⁰² Furthermore, when interpreting the context of the purpose of ARRA, by also taking into account the preamble, in accordance with Art. 31(2) VCLT,²⁰³ ARRA's purpose is for States to "render all possible assistance to astronauts"²⁰⁴ and encompasses first and foremost the duty to rescue astronauts.²⁰⁵ The historical background for the conclusion of ARRA was based on humanitarian sentiments,²⁰⁶ which *inter alia* were based on a fear of mistreatment or hostage keeping.²⁰⁷

McKenzie is a SaRidian crewmember²⁰⁸ who safely piloted the Bondar back to SaRidia, where it was placed on a hanger leased to Valenkova.²⁰⁹

¹⁹⁷ Art. 4 ARRA.

¹⁹⁸ Dembling/Arons, *The Treaty on Rescue and Return of Astronauts and Space Objects*, William and Mary L Review (1968) 646.

¹⁹⁹ Gorove, *Legal Problems of the Rescue and Return of Astronauts*, The International Lawyer (1969) 899.

²⁰⁰ Art. 31(1) VCLT; *Oil Platforms* case (1996) para. 23.

²⁰¹ CAMBRIDGE DICTIONARY, *Return*.

²⁰² MERRIAM-WEBSTER, *Return*.

²⁰³ Art. 31(2) VCLT; Dörr, in VCLT (2012) 549.

²⁰⁴ Preamble, ARRA.

²⁰⁵ Sundahl, *The Duty to Rescue Space Tourists*, JSP (2009) 169; Kopal, in ARRA. Lessons Learned (2011) 121; Marboe/Neumann/Schrogl, CoCoSL (2013) 10-11.

²⁰⁶ Marchisio, in ARRA. Lessons Learned (2011) 143; Marboe/Neumann/Schrogl, CoCoSL (2013) 10.

²⁰⁷ Marboe/Neumann/Schrogl, CoCoSL (2013) 10; ARRA, Preamble.

²⁰⁸ Compromis §10.

²⁰⁹ Compromis §14.

Art. 4 ARRA is applicable in cases where personnel of a spacecraft should be returned, if they land in territory other than the launching State, due to a situation of distress, an accident, an emergency or an unintended landing. McKenzie did not unintentionally land in SaRidia, nor was the landing due to any other involuntary circumstance, rather she purposefully manoeuvred the Bondar to SaRidia, where it was subsequently placed on a hanger leased to Valenkova. Furthermore, when interpreting the wording of Art. 4 ARRA, especially the word return, as well as the contextual purpose, it is made clear that this does not include extraditing one's own nationals to another State for prosecution. ARRA is based on humanitarian sentiments concerning the rescue of astronauts and surely not their extradition.

SUBMISSIONS TO THE COURT

For the foregoing reasons, the Government of the Republic of SaRidia, Respondent, respectfully requests the Court to adjudge and declare that:

- I. SaRidia acted in conformity with international law by sharing knowledge and experience related to interpreting conjunction assessment information and for providing expert information regarding the CDMs.
- II. SaRidia is not liable under international law for unauthorized use of, and failure to return, the Bondar and for the loss of the Valenkovan life on the Sharman.
- III. Valenkova has no legal right to extradition of the SaRidian crewmember.

Respectfully submitted on behalf of the Respondent,

Agents for the Respondent.