

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

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**In the arbitration proceeding between**

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Astracommex Regional Satellite Communication Inc.

*(Claimant)*

**and**

The Republic of Celestria

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*(Respondent)*

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**RESPONSE TO THE REQUEST FOR ARBITRATION**

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**11 November 2022**

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**For the Respondent:**

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Dr. Janis Pletnik  
**CosmoLex**  
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Celestria

## I. INTRODUCTION

- 750 1. The Republic of Celestria (“**Celestria**”), the Respondent in the present proceeding, hereby submits a short response to the Claimant’s Request for Arbitration (the “**Response**”).
2. In this Response, unless otherwise stated, the Respondent adopts the abbreviations used in the Claimant’s Request for Arbitration.
- 755 3. Unless otherwise stated, the Respondent disagrees with every statement made by the Claimant in the Request for Arbitration.

## II. THE TRIBUNAL LACKS JURISDICTION *RATIONE TEMPORIS* TO ENTERTAIN THE CLAIMANT’S CLAIM

4. The Respondent considers that the Tribunal lacks jurisdiction *ratione temporis* over the dispute.
- 760 5. Article 2 of the BIT defines its scope and provides that “[t]his Agreement shall apply to legal disputes in relation to investments that existed at the time of entry into force as well as to investments made or acquired thereafter.”
6. Article 2 of the BIT is silent on whether it applies to disputes that existed prior to its entry into force. Therefore, the Tribunal should apply general international law and notably Article 28 of the Vienna Convention on the Laws of Treaties which entered into force on 27 January 1980
- 765 (“**VCLT**”) and provides that:

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

- 770 7. In the case at hand, the intention of the BIT’s contracting parties was to exclude disputes that arose prior to its entry into force, as the contracting parties made clear in a binding interpretive statement that they issued on 10 October 2022.<sup>18</sup>
8. Furthermore, the dispute between the Parties arose and crystallized prior to the entry into force
- 775 of the BIT for several reasons.

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<sup>18</sup> Exhibit R-1, Declaration concerning the Agreement on reciprocal promotion and protection of investments between the Kingdom of Nebuland and Republic of Celestria, 10 October 2022.

9. First, the root of the dispute between the Parties is the denial by Astracommex Regional of Celestria’s right to adopt environmental regulations as shown by the comments of its CEO on the date of the adoption of the NEPA.<sup>19</sup>

10. Second, on 15 October 2020, faced with the request by the NFA to produce additional materials concerning the atmospheric impact of Astra satellite reentries, Astracommex Regional sent a letter to the NFA contesting such request and declining to “provide additional materials.”<sup>20</sup> Astracommex Regional thus disregarded a request made by an agency of Celestria.

11. Third, most of the factual matrix on which the Claimant is relying upon in the Request occurred prior to the entry into force of the BIT.

12. Accordingly, the Respondent respectfully requests the Tribunal to declare that it lacks jurisdiction over the Claimant’s claims against the Respondent.

### **III. THE RESPONDENT’S MEASURES DO NOT AMOUNT TO EXPROPRIATION**

13. If the Tribunal dismisses the Respondent’s jurisdictional objection, the Respondent affirms that it respected at all times its treaty obligations towards the Claimant. The Respondent undertook regulatory and administrative measures within its power for the safety and well-being of its citizens and the environment. None of the Respondent’s actions constitutes expropriation under Article VII of the BIT.

14. First, the Claimant retains the ownership, operation, and control over all its satellites and continues to provide services on territories other than that of the Respondent, for instance in the Kingdom of Nebuland. As such, the Respondent opposes the Claimant’s conclusion that it had suffered any deprivation of its property rights, not to mention a “significant deprivation.”

15. Moreover, the Claimant’s assertions as to the permanent nature of the suspension of the Claimant’s satellite communications within Celestria’s territory are also unfounded. The Claimant’s operations are suspended only until the Claimant successfully repositions the 400km satellites, of which, as the Claimant itself submitted, the satellites are more than

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<sup>19</sup> Exhibit R-2, “The Green Party enacts the National Environmental Protection Act”, the Cosmosis Post, 1 April 2020.

<sup>20</sup> Exhibit R-3, Letter from Astracommex Regional to the NFA, 15 October 2020.

capable.<sup>21</sup> It is thus by the Claimant's own choice that its operations remain suspended. The suspension cannot be deemed permanent in nature.

16. Lastly, out of abundance of caution, the Respondent notes that Celestria has made the following notification under Article 25(4) of the ICSID Convention:

805 Pursuant to Article 25(4) of the ICSID Convention, the Republic of Celestria will only consider submitting disputes over expropriation and nationalization to the jurisdiction of the International Centre for Settlement of Investment Disputes.

**IV. IN ANY EVENT, THE MEASURES ARE JUSTIFIED UNDER THE APPLICABLE INTERNATIONAL LAW**

810 17. The regulatory actions from respectively the Celestrian Space Agency, the National Frequency Agency ("NFA"), and the Department of Defense ("DoD") are justifiable and thus do not entail the international responsibility of the Respondent.

18. The Celestrian Space Agency's action is a legitimate exercise of police power for public welfare. Optical and radio astronomy are important for the public not only for purposes of science, but also for preventing or mitigating catastrophic events like asteroid impact. As part of the UN-endorsed International Asteroid Warning Network ("IAWN"), the Celestrian Space Agency utilizes its ten major telescopes for discovering, monitoring, and physically characterizing the potentially hazardous near-Earth objects.<sup>22</sup>

815 19. The NFA's decision was informed by evidence of atmospheric impacts gathered by the Celestria Institute of Technology, a laboratory sponsored by the Environmental Protection Agency ("EPA").<sup>23</sup> The NFA's approach aligns with the precautionary principle enshrined in Article V of the BIT. The principle's objective is to anticipate and avoid environmental damage before it occurs, in recognition of the need to protect human health and the environment by taking precautionary measures while scientific studies are undertaken to qualify the risk or risks associated with a course of action.<sup>24</sup> The absence of evidence that mass scale satellite reentries would not negatively impact the stratosphere was sufficient to activate the principle.

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<sup>21</sup> Request for Arbitration, para. 18.

<sup>22</sup> Exhibit R-4, Celestrian Space Agency's Study on Astra Satellites' Impact on Astronomy, 20 May 2020.

<sup>23</sup> Exhibit R-6, Study on Atmospheric Effects of Spacecraft Reentries, 1 October 2020.

<sup>24</sup> Exhibit R-5, Scientists' Call to Halt Satellite Light Pollution, 30 May 2020.

20. The DoD's measures address concerns about environmental impacts from space debris and national security, including potential collision with DoD's military assets in adjacent orbits. The DoD investigation revealed both software and hardware flaws in the Claimant's system, threatening Celestria's essential security. The Claimant asserted that the DoD decision was "outside of Celestria's jurisdiction." However, the Respondent was not claiming jurisdiction over the Claimant's satellites *per se*. Instead, it was regulating the use of outer space orbits, which are designated as global commons under Article I of the Outer Space Treaty:

Outer space, including the Moon and other celestial bodies shall be free for exploration and use by all States without discrimination of any kind [...] and there shall be free access to all areas of celestial bodies.

## V. CONSTITUTION OF THE TRIBUNAL

21. In accordance with Rule 16 of the ICSID Arbitration Rules, the Respondent appoints Prof. Brynn Sterling, a national of Lyonnaisia, as its arbitrator.

22. Prof. Sterling's contact information is the following:

Prof. Brynn Sterling  
25 rue du ciel bleu  
00056 Lumière-sur-Isle  
Lyonnaisia  
Email: [bsterling@sterling.org](mailto:bsterling@sterling.org)

## VI. RELIEF SOUGHT

23. In light of the above, the Respondent respectfully requests the Tribunal to:

- i. **DECLARE** that it has no jurisdiction to hear the Claimant's claim; and
- ii. If the Tribunal finds that it has jurisdiction over the dispute, **DECLARE** that the Respondent's actions do not amount to expropriation under Article VII of the BIT and reject the Claimant's claims; and
- iii. **ORDER** the Claimant to bear the entire cost of the proceedings.

24. The Respondent reserves the right to further develop its arguments.

For the Respondent,



CosmoLex Associates