

INTERNATIONAL INSTITUTE OF SPACE LAW
OF THE INTERNATIONAL ASTRONAUTICAL FEDERATION

INSTITUT INTERNATIONAL DE DROIT SPATIAL
DE LA FÉDÉRATION ASTRONAUTIQUE INTERNATIONALE

THE 2007 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

BETWEEN

THE REPUBLIC OF EMERALDA
(APPLICANT)

AND

THE STATE OF MAZONIA
(RESPONDENT)

JOINTLY NOTIFIED TO THE COURT ON 14 NOVEMBER 2006

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

ENTRE

LA REPUBLIQUE DE EMERALDA
(REQUÉRANT)

ET

L'ÉTAT DE MAZONIA
(RÉPONDANT)

NOTIFIÉ CONJOINTEMENT À LA COUR LE 14 NOVEMBRE 2006

CASE CONCERNING INTERNATIONAL LIABILITY

Emeralda v Mazonia

STATEMENT OF FACTS

1. A new multinational consortium called SkyQuest, established in the Kingdom of the Lowlands and incorporated under its national law, had developed a space vehicle: the *Skyhunter NSV* (New Space Vehicle), designed to be launched from a specially customized ship. The ship used for the launch was owned by a private maritime consortium and was registered in Philamina, a small equatorial republic. The *Skyhunter NSV* comprised the *Skyhunter* space plane and a launcher rocket. A company, Minergia, established in Rhumenistan, was responsible for the design and the manufacturing of the *Skyhunter* space plane. The rocket was manufactured by the multinational industrial group Space Systems (“SSC”), which was also responsible for the integration of the launcher rocket with the *Skyhunter* space plane.
2. The majority (65%) of SkyQuest’s capital was held by companies established in the State of Mazonia, one of the most important space faring nations in the world. The remaining 35% was held by various shareholders, some in the small Principality of Malao (15%), some in Europe (12%) and one in Africa (8%). The SSC company headquarters was located in Mazonia.
3. In April 2005, the *Skyhunter NSV* was certified, according to Mazonian national regulations, for human flight. In September 2005, SkyQuest proudly announced that the Mazonian authorities had licensed the first commercial flight of the *Skyhunter NSV* involving a “Space Flight Participant” and a professional astronaut of Mazonian citizenship. The flight plan (code NSV-01) consisted of the launch from a location situated on the high seas in the South Pacific Ocean, 32 nautical miles off shore of the Republic of Emeralda, followed by the separation of the space plane from its launch vehicle, after which the space plane was supposed to make a number of orbits of the Earth at an altitude of 360 km. The landing was planned to occur on the territory of the Commonwealth of Downunder, in the desert, 36 hours later. Once the space plane would have separated from the launcher, it would be powered by its own propulsion system.
4. The space plane and the launcher were registered in Isla Roca, a small island State, on the territory of which SkyQuest had established its technical subsidiary called TechnoQuest. This latter company was responsible for the preparation and design of SkyQuest’s future projects, including a space hotel as well as some of the launching facilities located on the maritime platform.
5. SkyQuest was keen to make this a major event in the history of the Company. It engaged in a worldwide advertising campaign in which Skyhunter was presented as “*the space Volkswagen*”: The Company spoke of a “*robust, reliable technology, able to provide an uncommon experience to the common people*”.
6. The highlight of the flight was to be a concert broadcast from the *Skyhunter* by Ian Brady, a Mazonian citizen and a 23 year-old celebrity pop singer, who will be on board. His participation in NSV-01 was sponsored by Tonik, a big brand of soda from Sylvana (a state neighbouring Mazonia) and MBC, a Mazonian TV-channel dedicated to music programmes. This sponsorship covered 80% of the total flight costs.

7. The launch was scheduled for 5 November 2005, at 14:30 GMT. On the day before the launch, the Emeraldian Maritime Authority, following a request from SkyQuest, circulated an announcement to all ships in its territorial waters informing them of the launch and recommending that all ships remained at least 15 nautical miles (nm) from the launch site. However, the announcement did not specify any particular risk or reason for the 15 nm exclusion.
8. A hundred people were invited by SkyQuest to attend the event onboard the *Condor*, a ship chartered by the commercial sponsors and flying the Emeraldian flag. The passengers on the *Condor* were observing the launch from about 8 nm from the launch platform.
9. The night before the launch, another ship, the *Barracuda*, left the little harbour of Armagosa on the Emeraldian coast for a fishing party. The area chosen by the captain of the *Barracuda* was approximately 10 nm from the location of the launch.
10. The Commander of NSV-01 was a former member of the Mazonian astronaut corps, Colonel Guy van den Bergh, who had been hired by SkyQuest. For the purposes of the command, as well as for flight protocols and procedures, SkyQuest has established a Crew Code of Conduct. This flight regulation is contractually accepted by all crew members and flight participants.
11. The launch proceeded perfectly until 8 seconds after lift-off when a large piece of insulating material detached from the upper part of the spaceplane, splitting into several fragments. Pieces from the rocket also detached. While these events seemed to have no direct consequences on the launch itself (the rocket remained on its nominal trajectory), the debris caused damage to the two ships cruising in the area of the launch. The *Condor* was hit by one of the falling pieces, causing a fire in the cabin. The fire was quickly brought under control. Nobody was hurt but the communication equipment was destroyed and the deck must be repaired.
12. Unfortunately on the *Barracuda*, an Emeraldian sailor was killed by the falling debris. Severe damage was caused to the communications equipment located in the superstructure of the ship. Although the ship was able to return to its port, the loss of the sailor as well as the delays in repairing the equipment caused the owners, Emeraldian Batoblue Ltd, to cancel a lucrative charter for a fishing expedition.
13. At 16:04 GMT, Van den Bergh contacted the Flight Director in the mission control room on the launch ship. According to calculations by the control computers, the loss of the material did not jeopardize the mission and so the flight could proceed according to the nominal conditions. The Flight Director decided to continue with the flight. This decision was questioned by Van den Bergh; his experience of space flights told him to abort the mission and to land as soon as possible, considering the possible loss of heat-protection elements. Consequently, Van den Bergh chose to ignore the Flight Director's instructions, took full command of the spaceplane and initiated a descent through the atmosphere. Before losing contact with ground control, he was able to communicate the latest position of the spacecraft and its expected area of landing.
14. On 6 November 2005, ten hours after that last contact, the Emeraldian Government issued an official communiqué stating that the Emeraldian Coast Guard had rescued the crew of an unidentified aircraft which had come down in their territorial sea. The two crew members had been transported to Emerald City – the capital city of Emerald – by helicopter after a short stay in a military base for medical treatment and care. They were safe and in good condition. It was quickly confirmed by a subsequent press release that

- “those two men were the crew of the Mazonian space plane involved in the death of a compatriot half a day earlier”. The wreck of the spaceplane was brought to the military base and placed in a secured warehouse by the Emeraldian Government.
15. After release of these statements, the Mazonian Government immediately requested information from the Emeraldian Government. Soon after the identities of the two men were confirmed by Emeraldian authorities, the Mazonian Government proceeded with an official request to the Emeraldian Government to:
 - 15.1. ensure the immediate safe delivery of Col. Van den Bergh and Mr. Brady to the Mazonian Embassy in Emerald City and their return thereafter to Mazonia; and
 - 15.2. return to the Mazonian authorities any part, debris or component of the *Skyhunter* spaceplane found within Emeraldian jurisdiction.
 16. The reply from the Emeraldian Government was that the Mazonian request will be duly considered after a careful review of the following issues, namely:
 - 16.1. indemnification by the Mazonian Government for the damage caused to the family and/or the company of the sailor killed during the launch; and
 - 16.2. assessment of a possible violation of Emeraldian sovereignty by the Mazonian Government and compensation thereof.
 17. Meanwhile, on 8 November, Soaring High Inc., the Emeraldian company which owns the *Condor*, requested the Emeraldian Minister of Foreign Affairs to present a claim for compensation under international law to the Mazonian Government, with the initial estimate of the damages by independent experts to amount to US\$150,000.00.
 18. Emeraldian Batoblue Ltd. also requested the Emeraldian Minister of Foreign Affairs to present a claim for compensation to the Mazonian Government for the cost of the repairs to the onboard communication equipment, for the financial loss resulting from the death of one of its sailors, as well as for the loss of revenue resulting from the cancelled charter.
 19. On 14 November, an Emeraldian prosecutor notified Col. Van den Bergh and Mr. Brady of her decision to prosecute them for manslaughter arising from the death of the sailor, as well as for violation of the Emeraldian Maritime Code, regulating access to Emeraldia’s territorial sea. This Code requires foreign ships and aircraft to obtain prior authorization before entering Emeraldian territorial waters or airspace. Considerations of possible actions before Emeraldian and Mazonian courts against the sponsoring companies by the sailor’s family were announced in the press. On 20 November, the Mazonian Ambassador in Emerald City forwarded to the Emeraldian authorities a new formal request for the immediate return of the two men.
 20. On 5 December, the Emeraldian Government replied to the second formal request from Mazonia that, after a careful legal review by their experts, there was no obligation for Emeraldia under any international law to return the two Mazonian citizens who are currently subject to criminal proceedings concerning the death of the sailor.
 21. Nevertheless, the Emeraldian Government agreed in principle to return the two men on the following conditions:

- 21.1. a written guarantee from the Mazonian Government that the two men would be prosecuted for the death of the sailor, and that actions would be initiated against the two sponsoring companies in due course;
 - 21.2. compensation to be paid to the family and the company of the sailor killed on the *Barracuda* in the total amount of US\$5 million and for financial losses arising from the death of the sailor and material damage to the ship of US\$200,000.00;
 - 21.3. compensation to be paid to Soaring High Inc. in the amount of US\$200,000.00 for material damage to the *Condor*; and
 - 21.4. a public apology for the damage caused and for the violation by Mazonian nationals of Emeraldal's sovereignty.
22. The reply from the Mazonian Government was the following:
- 22.1. Emeraldal was violating its obligation under several provisions of international law and this could lead to "appropriate legal actions", in the words of the spokesperson of the Mazonian Foreign Affairs Department;
 - 22.2. the legal basis for the indemnifications in the two claims made under the applicable provisions of international law had not been identified by the Emeraldian authorities;
 - 22.3. none of the ships or facilities used for the launch of NSV-01 was registered by Mazonia;
 - 22.4. according to general principles of international law and to the absence of delimitation of outer space not disputed by Emeraldal, the operation of a spacecraft, including its landing, must be considered as a space activity and is not subject to the application of any territorial jurisdiction; and
 - 22.5. despite having deep sympathy for the victim's family, there was no reason why the Mazonian Government should apologise.
23. On 7 June 2006, the Parties, failing to reach an agreed settlement as requested above, have mutually agreed to present their respective claims before a three-judge Chamber of the International Court of Justice for a binding resolution of their dispute, which took place on 14 November 2006.
24. Mazonia seeks declarations that :
- 24.1. the claim for return of the two crew members and of any part or element of the spaceplane is legally based on the international treaties and international rules to which Mazonia and Emeraldal are bound;
 - 24.2. there is no legal basis for the claim for the prosecution of the two astronauts before Mazonian courts;
 - 24.3. Mazonia is not liable for the damage caused to the two vessels; and
 - 24.4. no violation of Emeraldal's sovereignty have occurred.
25. Emeraldal seeks declaration that :

- 25.1. there is no obligation of Emeraldalda under international law to return the crew members to the Mazonian authorities;
 - 25.2. Mazonia is liable for the loss and suffering caused by the death of the Emeraldian sailor, and the material damage to the *Barracuda* and for financial loss suffered by Emeraldian Batoblue Ltd,
 - 25.3. Mazonia is liable for the material damage to the *Condor* and for the financial loss suffered by Soaring High, Inc.; and
 - 25.4. Mazonian national activities involving the Mazonian Government have caused a violation of Emeraldalda's sovereignty.
26. Mazonia is party to the 1967 Outer Space Treaty, the 1968 Rescue Agreement, the 1972 Liability Convention and the 1976 Registration Convention.
 27. Emeraldalda, Lowlands, Malao, Sylvana and Downunder are party to the 1967 Outer Space Treaty, the 1968 Rescue Agreement, the 1972 Liability Convention, the 1976 Registration Convention and the 1979 Moon Agreement.
 28. Isla Roca has not signed the 1967 Outer Space Treaty and has signed but not yet ratified the 1968 Rescue Agreement, the 1972 Liability Convention and the 1975 Registration Convention. No licence from Isla Roca's Government is required to operate space objects registered under Isla Roca national law.
 29. Philamina is party to the 1967 Outer Space Treaty.
 30. All the above States are party to the 1944 Chicago Convention on Civil Aviation, to the 1969 Vienna Convention on the Law of Treaties and to the Charter of the United Nations.



EXPERIENCING THE UNIVERSE

CODE OF CONDUCT FOR THE SKYHUNTER NSV CREW

I. INTRODUCTION

A. Authority

1. This Code of Conduct, hereinafter referred to as “Code”, is applicable to all Skyhunter NSV Crew Member, as defined here under.

B. Scope and Content

2. The purposes of this Code are to:
 - (a) establish a clear chain of command in orbit;
 - (b) establish a clear relationship between ground and orbital management; and establish a management hierarchy;
 - (c) set forth standards for work and activities in space, and, as appropriate, on the ground;
 - (d) establish responsibilities with respect to elements and equipment; set forth disciplinary regulations;
 - (e) establish physical and information security guidelines; and
 - (f) define the Skyhunter NSV Commander’s authority and responsibility, on behalf of all the partners, to enforce safety procedures, physical and information security procedures and crew rescue procedures for the Skyhunter NSV.
3. This Code sets forth the standards of conduct applicable to all Skyhunter NSV Crew Members during pre-flight, in orbit and post-flight activities (including launch and return phases).

C. Definitions

4. For the purposes of the Code:
 - (a) “**Crew Surgeon**” means a flight surgeon assigned by SkyQuest to any given expedition. He or she is the lead medical officer and carries primary responsibility for the health and well-being of the entire crew, including the Space Flight Participant(s).

- (b) “**Disciplinary Policy**” means the policy developed by SkyQuest to address violations of the Code and impose disciplinary measures.
- (c) “**Flight Rules**” means the set of rules used by SkyQuest to govern flight operations of the Skyhunter NSV.
- (d) “**Skyhunter NSV Crew Member**” means any SkyQuest personnel assigned to a dedicated flight onboard the Skyhunter NSV, including the Commander and any flight assistant and any person assigned to a specific mission during the flight and onboard the spacecraft. This definition excludes a Space Flight Participant.
- (e) “**Space Flight Participant**” means any passenger taking part in the flight pursuant to a contract concluded with SkyQuest, excluding any participation in the flight operations or in a mission.

II. GENERAL STANDARDS

A. Responsibilities of Skyhunter NSV Crew Members

- 5. Skyhunter NSV Crew Members shall comply with the Code. Accordingly, during pre-flight, in orbit and post-flight activities, they shall comply with the Skyhunter NSV Commander’s orders, all flight and rules, operational directives and management policies, as applicable. These include those related to safety, health, well-being, security and other operational or management matters governing all aspects of spacecraft equipment and payloads and any other equipments or facilities, to which they have access.
- 6. All applicable rules, regulations, directives and policies shall be made accessible to Skyhunter NSV Crew Members through appropriate means, coordinated by SkyQuest.

B. General Rules of Conduct

- 7. No activities performed by SkyQuest, its personnel or its contractors shall violate the principles of international law, in particular the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, open for signature on 27 January 1967.
- 8. Skyhunter NSV Crew Members’ conduct shall be such as to maintain a harmonious and cohesive relationship among the crew and an appropriate level of mutual confidence and respect through an interactive, participative and relationship-oriented approach which duly takes into account the international and multicultural nature of the crew and flight.
- 9. No Skyhunter NSV Crew Member shall, by his or her conduct, act in a manner which results in or creates the appearance of:
 - (a) giving undue preferential treatment to any person or entity in the performance any SkyQuest activity; and/or

(b) adversely affecting the confidence of the public in the integrity of, or reflecting unfavorably in a public forum on, SkyQuest inc. and its commercial partners or contractors;

10. Skyhunter NSV Crew Members shall protect and conserve all property to which they have access for SkyQuest activities. No such property shall be altered or removed for any purpose other than those necessary for the performance of flight duties. Before altering or removing any such property, Skyhunter NSV Crew Members shall first obtain authorization from the Flight Director, except as necessary to ensure the immediate safety of Skyhunter NSV Crew Members or Skyhunter NSV elements, equipment or payloads.

C. Use of Position - Exclusivity

11. The use of a Skyhunter Crew Member's position by the Skyhunter Crew Members is exclusively restricted to the purposes and the benefit of SkyQuest activities.
12. Furthermore, no Skyhunter NSV Crew Member shall use the position of Skyhunter NSV Crew Member in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to himself or herself or other persons or entities, without the prior written authorization from SkyQuest.

D. Mementos and Personal Effects

13. Each Skyhunter NSV Crew Member may carry and store mementos, including flags, patches, insignia and similar small items of minor value, onboard the Skyhunter NSV for his or her private use, subject to the following conditions:
- (a) mementos are permitted as a courtesy, not an entitlement, and as such they shall be considered as ballast as opposed to a payload or mission requirement and are subject to manifest limitations, in-orbit stowage allocations and safety considerations;
- (b) mementos may not be sold, transferred for sale, used or transferred for personal gain, or used or transferred for any commercial or fundraising purpose other than SkyQuest's, without the prior written consent of SkyQuest. Mementos which, by their nature, lend themselves to exploitation by the recipients, or which, in the opinion of SkyQuest providing the Skyhunter NSV Crew Member, engender questions as to good taste, will not be permitted.
14. An Skyhunter NSV Crew Member's personal effects, such as a wristwatch, will not be considered mementos. Personal effects of any nature may be permitted, subject to constraints of mass/volume allowances for crew personal effects, approval SkyQuest, and considerations of safety and good taste.

III. AUTHORITY AND RESPONSIBILITIES OF THE SKYHUNTER NSV COMMANDER, CHAIN OF COMMAND AND SUCCESSION IN ORBIT - RELATIONSHIP BETWEEN GROUND AND IN ORBIT MANAGEMENT

A. Authority and Responsibilities of the Skyhunter NSV Commander

15. The Skyhunter NSV Commander, as a Skyhunter NSV Crew Member, is subject to the standards detailed elsewhere in this Code, in addition to the command-specific provisions set forth below.
16. The Skyhunter NSV Commander will seek to maintain a harmonious and cohesive relationship among the Skyhunter NSV Crew Members and an appropriate level of mutual confidence and respect through an interactive, participative and relationship-oriented approach, which duly takes into account the international and multicultural nature of the crew and flight.
17. The Skyhunter NSV Commander is the leader of the crew and is responsible for forming the individual Skyhunter NSV Crew Members into a single integrated team. During pre-flight activities, the Skyhunter NSV Commander, to the extent of his or her authority, leads the Skyhunter NSV Crew Members through the training curriculum and mission preparation activities and seeks to ensure that the Skyhunter NSV Crew Members are adequately prepared for the mission, acting as the crew's representative to the SkyQuest's flight training and preparation operations.
18. During post-flight activities, the Skyhunter NSV Commander coordinates with the SkyQuest supervisor to ensure that the Skyhunter NSV Crew Members complete the required postflight activities.
19. The Skyhunter NSV Commander is responsible for and will, to the extent of his or her authority and the Skyhunter NSV in orbit capabilities, accomplish the mission program implementation and assure the safety of the Skyhunter NSV Crew Members and the protection of the Skyhunter NSV elements, equipment or payloads.
20. The Skyhunter NSV Commander's main responsibilities are to:
 - (a) conduct operations in or on the Skyhunter NSV as directed by the Flight Director and in accordance with the Flight Rules, plans and procedures;
 - (b) direct the activities of the Skyhunter NSV Crew Members as a single integrated team to ensure the successful completion of the mission;
 - (c) fully and accurately inform the Flight Director, in a timely manner, of the Skyhunter NSV vehicle configuration, status, commanding and other operational activities on-board (including off-nominal or emergency situations);
 - (d) enforce procedures for the physical and information security of operations and utilization data;
 - (e) maintain order;

- (f) ensure crew safety, health and well-being including crew rescue and return; and
 - (g) take all reasonable action necessary for the protection of Skyhunter NSV elements, equipment or payloads.
21. During all phases of in orbit activities, the Skyhunter NSV Commander, consistent with the authority of the Flight Director, shall have the authority to use any reasonable and necessary means to fulfil his or her responsibilities. This authority, which shall be exercised consistent with the provisions of Sections II and IV, extends to:
- (a) the Skyhunter NSV elements, equipment and payloads;
 - (b) the Skyhunter NSV Crew Members as well as any Space Flight Participant or any other passenger onboard the Skyhunter NSV;
 - (c) activities of any kind occurring in or on the Skyhunter NSV; and
 - (d) data and personal effects in or on the Skyhunter NSV where necessary to protect the safety and well-being of the Skyhunter NSV Crew Members and the Skyhunter NSV.
22. Any matter outside the Skyhunter NSV Commander's authority shall be within the purview of the Flight Director. Issues regarding the Commander's use of such authority shall be referred to the Flight Director as soon as practicable, who will refer the matter to appropriate authorities for further handling. Although other Skyhunter NSV Crew Members may have authority over and responsibility for certain Skyhunter NSV elements, equipment, payloads or tasks, the Skyhunter NSV Commander remains ultimately responsible, and solely accountable, to the Flight Director for the successful completion of the activity and the mission.

B. Chain of Command and Succession in Orbit

23. The Skyhunter NSV Commander is the highest authority among the Skyhunter NSV Crew Members in orbit. SkyQuest will determine the order of succession among the Skyhunter NSV Crew Members in advance of flight and the Flight Rules set forth the implementation of a change of command.
24. The Flight Rules define the authority of the Rescue Vehicle Commander and any other commanders, and set forth the relationship between their respective authorities and the authority of the ISS Commander.

C. Relationship between the Skyhunter NSV Commander and the Flight Director

25. The Flight Director is responsible for directing the mission. A Flight Director will be in charge of directing real-time Skyhunter NSV operations at all times. The Skyhunter NSV Commander, working under the direction of the Flight Director and in accordance with the Flight Rules, is responsible for conducting in orbit operations in the manner best suited to the effective implementation of the mission. The Skyhunter NSV Commander, acting on his or her own authority, is entitled to change the daily routine of the

Skyhunter NSV Crew Members where necessary to address contingencies, perform urgent work associated with crew safety and protection of Skyhunter NSV elements, equipment or payloads, or conduct critical flight operations. Otherwise, the Skyhunter NSV Commander should implement the mission as directed by the Flight Director.

26. Specific roles and responsibilities of the Skyhunter NSV Commander and the Flight Director are described in the Flight Rules. The Flight Rules outline decisions planned in advance of the mission and are designed to minimize the amount of real-time discussion required during mission operations.

IV. DISCIPLINARY REGULATIONS

27. Skyhunter NSV Crew Members will be subject to the disciplinary policy developed and revised as necessary by SkyQuest and approved by Isla Roca's National Administration for Transportation ("NAT").
28. SkyQuest has developed an initial disciplinary policy, which has been approved by the NAT. The disciplinary policy is designed to maintain order among the Skyhunter NSV Crew Members during preflight, in orbit and post-flight activities. The disciplinary policy is administrative in nature and is intended to address violations of the Code.
29. Such violations may, inter alia, affect flight assignments as an Skyhunter NSV Crew Member and give rise to criminal prosecution under applicable law.