

BRADLEY UNIVERISTY INTERNATIONAL LAW MOOT COURT 2007

COUNSEL FOR EMERALDA

IN THE INTERNATIONAL COURT OF JUSTICE

AT

BRADLEY UNIVERSITY, PEORIA, ILLINOIS

Case Concerning Atrocities

*Emeralda v. Mazonia*

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## **Abbreviations**

- MBC- a Mazonian TV station and sponsor
- NM- Nautical Mile
- NAT- Isla Roca's National Administration of Transportation
- NSV- New Space Vehicle
- NSV-01- the specific flight plan
- SSC- Space Systems, the rocket's manufacturer

## Table of Authorities

### LEGAL MATERIALS

- UN Charter
- International Court of Justice Statutes
- 1944 Chicago Convention on Civil Aviation
- 1967 Outer Space Treaty
- 1968 Rescue Agreement
- 1969 Vienna Convention on the Law of Treaties
- 1972 Liability Convention
- 1976 Registration Convention
- 1979 Moon Agreement

### CASES LAW

- *The S.S. Lotus (France v. Turkey)* Permanent Court of International Justice Reports, Series A, No. 10 (1927)

### WRITINGS

- Frank, Nancy K., and Michael J. Lynch. *Corporate Crime Corporate Violence: a Primer*. Harrow and Heston, 1992.
- Ramasastry 'Corporate Complicity: From Nuremberg to Rangoon, An examination of Forced Labour Cases and their Impact on the Liability of Multinational Corporations 20 *Berkeley Jnl of Int Law* (2002) 91, 96.

## **Statement of Relevant Facts**

1. SkyQuest was established in the Kingdom of the Lowlands and is incorporated under its national law.
2. SkyQuest developed the Skyhunter NSV, which is a vehicle designed to be launched from a specially customized ship.
3. A private maritime consortium registered in Philamina owns the launching ship.
4. The Skyhunter NSV consisted of the space plane and a launcher rocket.
5. Minergia was responsible for the design and manufacturing of the Skyhunter space plane.
6. Minergia is established in Rhumenistan.
7. Space Systems manufactured the rocket, which was also responsible for the integration of the launcher rocket with the Skyhunter space plane.
8. Companies established in the State of Mazonia hold 65% of SkyQuest's capital.
9. SSC is headquartered in Mazonia.
10. The Skyhunter NSV was certified for human flight, according to Mazonian regulations, in April 2005.
11. Mazonia licensed the first commercial flight of the Skyhunter NSV in September 2005.
12. The first licensed flight consisted of a "Space Flight Participant" and a professional astronaut of Mazonian citizenship.
13. The flight plan was known as code NSV-01.
14. NSV-01 consisted of the launch from a location 32 nautical miles off the shore of the Republic of Emeraldal, followed by the separation of the space plane from its

- launch vehicle. The plane was then to make a number of orbits of the earth at an altitude of 360 km.
15. The plane planned to land on the territory of the Commonwealth of Downunder 36 hours after take off.
  16. The space plane was powered by its own propulsion post launcher separation.
  17. Both the space plane and launcher were registered in the small island state of Isla Roca.
  18. SkyQuest established its subsidiary company, TechnoQuest, in Isla Roca.
  19. TechnoQuest was responsible for the preparation and design of SkyQuest's future projects.
  20. SkyQuest engaged in a worldwide advertising campaign pertaining to space travel, stating that the Skyhunter space plane was "the space Volkswagen"
  21. Pop singer, Ian Brady was to give a concert broadcast from the Skyhunter on the flight.
  22. MBC, a Mazonian TV-channel provided sponsorship covering 80% of total flight costs.
  23. The launch was scheduled for 5 November 2005, at 14:30 GMT.
  24. The Emeraldian Maritime Authority circulated an announcement to all ships in its territorial waters informing them of the SkyQuest launch and recommended that all ships remain 15 nautical miles away from the launch site.
  25. The announcement did not specify particular risks or reasons for the 15 nautical mile exclusion.

26. SkyQuest invited 100 people aboard the Condor, a ship chartered by commercial sponsorships and flying the Emeraldian flag.
27. The Condor was situated approximately 8 nautical miles from the launch ship.
28. Another ship, the Barracuda, based out of the Emeraldian harbor Armagosa, was situated 10 nautical miles from the launch location.
29. NSV-01's commander was former Mazonian astronaut corps member Colonel Guy van den Bergh, who was hired by SkyQuest.
30. SkyQuest established a Code of Conduct, contractually accepted by all crewmembers and flight participants.
31. 8 seconds after launch a large piece of insulating material detached from the space plane and split into several fragments.
32. A fragment from the Skyhunter space plane hit the Condor and caused a fire in the cabin.
33. The fragment destroyed the Condor's communication equipment and damaged the deck.
34. A fragment from the Skyhunter space plane hit the Barracuda, killing an Emeraldian sailor.
35. The fragment destroyed the Barracuda's communication equipment, and forced the ship to return to port.
36. The damage and delays cause the corporation, Emeraldian Batoblue Ltd., to cancel a lucrative charter for a fishing expedition.
37. At 16:04 GMT Colonel Van den Bergh contacted the flight director concerning the mission. The flight director pushed for the continuance of the flight, but

- Colonel Van den Bergh questioned this decision because of his space flying experience.
38. Colonel Van den Bergh chose to ignore the Flight Director's wishes, took full command of the space plane, and began to descend through the atmosphere.
  39. On November sixth the Emeraldian government issued an official communiqué stating that the Emeraldian Coast Guard had rescued the crew of an unidentified aircraft that landed in their territorial seas.
  40. The two rescued men were taken to Emerald city, medically treated, and kept in good condition.
  41. The two rescued men were the crew of the Mazonian space plane.
  42. The space plane wreck was brought to the military base and placed in a secured warehouse by the Emeraldian government.
  43. The Mazonian government requested: (1) the immediate safe delivery of Col. Van den Bergh and Ian Brady to the Mazonian embassy in Emerald city, and (2) the return of all parts, debris, and components of the Skyhunter space plane found within Emeraldian jurisdiction
  44. The Emeraldian government stated the Mazonian request would be considered upon the: (1) indemnification by the Mazonian Government for the damage caused to the family and/or company of the sailor killed during the launch, and (2) assessment of a possible violation of Emeraldian sovereignty by the Mazonian Government and compensation thereof.
  45. On November 8, Soaring High Inc. 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.
46. Emeraldian Batoblue Ltd requested the Emeraldian Minister of Foreign Affairs to present a claim for compensation under International Law to the Mazonian Government for the cost of repairs to communication equipment, the financial loss do to the death of one of its sailors, and for the loss of revenue for the canceling of its fishing charter.
  47. On November 14 Colonel Van den Bergh and Ian Brady were notified of a decision to prosecute them for manslaughter arising from the death of the Emeraldian sailor, as well as the violation of maritime code, regulating access to Emeraldia's territorial sea.
  48. Emeraldian Maritime code requires foreign ships and aircraft to obtain prior authorization before entering Emeraldian airspace or territorial waters.
  49. On November 20<sup>th</sup> the Mazonian Ambassador in Emerald city forwarded a new formal request for the immediate return of the two men.
  50. On December 5<sup>th</sup> the Emeraldian Government replied to the Mazonian request finding that, after legal review, there was no obligation to return the two Mazonian citizens who were subject to criminal proceedings concerning the death of an Emeraldian sailor.
  51. The Emeraldian Government agreed to the return of the two defendants upon the completion of the following conditions:
    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;

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;
3. Compensation to be paid to Soaring High Inc. in the amount of US\$200,000.00 for material damage to the Condor; and
4. A public apology for the damage caused and for the violation by Mazonian nationals of Emeralda's sovereignty.

52. The Mazonian Government replied to the Emeraldian requests with:

1. Emeralda 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;
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;
3. Mazonia registered none of the ships or facilities used for the launch of NSV-01.
4. According to general principles of international law and to the absence of delimitation of outer space not disputed by Emeralda, 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
5. Despite having deep sympathy for the victim's family, there was no reason why

the Mazonian Government should apologize.

53. On June 7, 2006 the parties mutually agreed to present their 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.
54. Mazonia is party to the 1967 Outer Space Treaty, the 1968 Rescue Agreement, the 1972 Liability Convention and the 1976 Registration Convention.
55. Emeraldal, 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.
56. 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.

## Questions Presented

1. Whether or not Emeraldalda has an obligation under International Law to return the crewmembers to the Mazonian Authorities.
2. Whether or not 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,
3. Whether or not Mazonia is liable for the material damage to the Condor and for the financial loss suffered by Soaring High, Inc.
4. Whether or not Mazonian national activities involving the Mazonian Government have caused a violation of Emeraldalda's sovereignty.

## Summary of Arguments

### I. Existence of Jurisdictional Principle in International Law

#### A. The S.S. Lotus (France v. Turkey) Case

##### 1. Significance of the case

#### B. Customary Rules derived from the S.S. Lotus Case

##### 1. Notion of customary law

###### a. Territorial Principle

###### b. Passive Personality Principle

#### C. Customary law applied to the Emeraldalda v. Mazonia case

### II. Liability of Mazonia for the damages caused by the SkyHunter NSV

#### A. 1967 Outer Space Treaty

##### i. Articles VI and VII establish responsibility and liability

#### B. 1972 Liability Convention

##### i. Articles I and II establish responsibility and liability

#### C. 1976 Registration Convention

##### i. Article I and IV establish responsibility

### III. Sovereignty of Emeraldalda was violated

#### A. Chicago Convention on Civil Aviation

##### i. Articles I, II, III define sovereignty and the rights a state has

## **Jurisdiction of the Court**

The ICJ has jurisdiction in this case due in part that both states have signed the UN Charter and agree to utilize the ICJ in this dispute.

## Arguments

- I. Existence of Jurisdictional Principle in International Law
  - i. The Lotus case and the current case have clear correlations to one another. Also, the lotus case was the landmark case in defining a states right to prosecute through the use of jurisdictional principle.<sup>1</sup>
  - ii. The customary rule that stems from the codified judicial decision found in the Lotus Case sets forth Emeraldalda’s jurisdiction on two fronts:
    1. Objective Territorial Principle- states that a state can prosecute if a defendant’s actions violate state law, and the actions started outside of the state, but had an affect on the state.
    2. Passive Personality Principle- States that a state can prosecute if a defendant’s actions violated state law, affected a national of the state, and can occur anywhere
  - iii. The Mazonian crew falls under both jurisdictional principles, as violations of Emeraldian law took place, affecting Emeraldian nationals. The actions took place upon Emeraldian land, as both ships are considered territory under the Law of the Seas.  
  
Additionally, the victims of the Mazonian actions were nationals of the state with crimes affecting them within the world.

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<sup>1</sup> *The S.S. Lotus (France v. Turkey)* Permanent Court of International Justice Reports, Series A, No. 10 (1927)

## II. Liability of Mazonia for the damages caused by the SkyHunter NSV

- i. According to the 1967 Outer space treaty, specifically Articles VI and VII Mazonia is responsible and liable. Article VI lays out the responsibility, as states are responsible for the actions taking place by space craft regardless of who, government or non-government entity, is conducting the space travel Article VII then goes on to state that each state is liable for the damages caused by their spacecraft. Mazonia was responsible for their aircraft as the launch was being conducted under their government. Mazonia is then also held liable for the occurrences stemming from the aircraft's actions no matter where the occurrences take place.<sup>2</sup>
- ii. According to the 1972 Liability Convention, specifically Articles I and II, Mazonia is responsible and liable for the spacecraft's actions. Article I defines the launching state to be any state that launches or procures the launching of an object. Additionally, the article states that damage is defined as "loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international intergovernmental organizations. Article II then goes on to state that the launching state is liable for the actions of the

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<sup>2</sup> 1967 Outer Space Treaty

craft, and is liable to pay compensation for the craft's actions.<sup>3</sup>

- iii. According to the 1976 Registration Convention, specifically Articles I and IV, Mazonia is responsible for all actions. Article I defines the launching state as a state that launches or procures the launching of a space object. Article IV also goes on to state that the state launching the object must submit a registry to the United Nations concerning the nature of the flight. No evidence even suggests that Mazonia did this, as required. Therefore, there was not proper communication of the spacecraft's actions by Mazonia, making them responsible for the actions that took place in and out of the safety zone.<sup>4</sup>

### III. Sovereignty of Emeraldal was violated

- i. According to Articles I and II of the 1944 Chicago convention on civil Aviation sovereignty of a state is complete and absolute in the airspace, land, and territorial waters surrounding a state. Additionally, Article III states that a civil aircraft has a right to land at any airport or landing facility of a state. Mazonia did not land in these designated areas, instead the ship landed in territorial waters, violating the sovereignty of the state of Emeraldal.<sup>5</sup>

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<sup>3</sup> 1972 Liability Convention

<sup>4</sup> 1976 Registration Convention

<sup>5</sup> 1944 Chicago Convention on Civil Aviation

## **Submissions to the Court**

For the foregoing reasons, the government of Emeraldalda, Applicant, respectfully request to the Court to adjudge and declare that:

1. Emeraldalda is in no way obligated under International Law to return the crewmembers to the Mazonian authorities prior to prosecution.

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

3. Mazonia is liable for the material damage to the Condor and for the financial loss suffered by Soaring High Inc.

4. Mazonia violated Emeraldian sovereignty