

INTERNATIONAL INSTITUTE OF SPACE LAW
OF THE INTERNATIONAL ASTRONAUTICAL FEDERATION

INSTITUT INTERNATIONAL DE DROIT SPATIAL
DE LA FEDERATION ASTRONAUTIQUE INTERNATIONALE

THE 2004 MANFRED LACHS SPACE LAW MOOT COURT COMPETITION

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

BETWEEN

THE REPUBLIC OF PALLADIA
(APPLICANT)

AND

THE KINGDOM OF ZIRCONIA
(RESPONDENT)

JOINTLY NOTIFIED TO THE COURT ON 22 NOVEMBER 2003

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

ENTRE

LA REPUBLIQUE DE PALLADIA
(REQUÉRANT)

ET

LE ROYAUME DE ZIRCONIA
(RÉPONDANT)

NOTIFIÉ CONJOINTEMENT À LA COUR LE 22 NOVEMBRE 2003

CASE CONCERNING THE COMMERCIALISATION OF A SPACE STATION

Palladia v Zirconia

STATEMENT OF FACTS

1. The Republic of Palladia is an industrialised State with a population of 87 million. The neighbouring Kingdom of Zirconia is a developing State with a population of 64 million. The two States had a long history of competition, rivalry and warfare but relations between them have improved considerably over the past 50 years. Since 1988, the two States entered into a customs and monetary union to promote closer economic ties between them.
2. Orbital Outpost, Inc. is a Palladian company which is 70% owned by the Palladian Space Agency, a governmental authority. The remaining 30% are held by private investors from both Palladia, Zirconia and other States. In 1998, Orbital Outpost began construction of a large space station in Earth orbit called “Outpost One” that was to provide space-based scientific research, communications services and the occasional space tourist. Outpost One was completed in orbit in December 2001 and has been staffed by a crew ranging from four to six trained scientific researchers and communications engineers, all of whom, including the commander of the orbital station, are of Palladian nationality.
3. Orbital Outpost engaged SpaceCommuter Corporation for the ferrying of crew members to and from Outpost One. SpaceCommuter is a launch operator based in Palladia that is entirely owned by Palladian private interests and conducts all its launches from a private facility located in Palladia. Its launch vehicle is a reusable launch vehicle that could carry up to three passengers to and from Outpost One. It has obtained all valid licences and permits from the Palladian Space Agency to operate the launch vehicles.
4. Ms. Lorena Basinska is a 22-year-old (in July 2002) model and comedienne of Zirconian nationality, who became popular in Zirconia as a result of her earlier participation in a reality television program. Ms. Basinska was selected in July 2002 to become one of its first tourists to engage in a 10-day stay onboard Outpost One from 2 to 11 May 2003. The flight to Outpost One was to be launched and operated by SpaceCommuter with two Orbital Outpost employees of Palladian nationality as crew members travelling with Ms. Basinska.
5. The contract for Ms. Basinska’s flight was concluded on 15 July 2002 between Orbital Outpost and the Zirconian Television Corporation (“ZTC”). ZTC was to pay Orbital Outpost the fee of US\$25,000,000.00 for Ms. Basinska’s trip. The contract refers to the Space Stations Code of Conduct, as enacted by the Palladian Space Agency, which among other things include a provision that the commander is responsible for ensuring the safety and welfare of all persons onboard. It is understood that part of the contract involved the conduct of several scientific experiments by Ms. Basinska onboard Outpost One.
6. ZTC had concurrently concluded arrangements with other Zirconian commercial entities, including the television rights for the broadcast of seven hours of television programming of Ms. Basinska’s preparations and operations on board Outpost One as

well as dedicated sponsorship, publicity and merchandising contracts. On the basis of these arrangements, ZTC was able to secure lines of credit from Palladian banks to finance the costs of the trip.

7. Since July 2002, Ms. Basinska had been training in Palladia and she was launched to Outpost One by SpaceCommuter in accordance with the contract schedule. During the flight onboard Outpost One, Ms. Basinska complained to the commander of Outpost One that Mr. Jacques Toussaint, a 46-year-old crew member had subjected her to sexual harassment onboard Outpost One by excessive unwanted demonstrations of friendliness, such as unjustified kissing and touching. The complaint did not appear to have any effect on modifying Mr. Toussaint's behaviour.
8. Outraged by this lack of understanding on the part of the commander, Ms. Basinska anchored herself next to Mr. Toussaint during the next meal break and repeatedly punched him in the chest and face, causing substantial injuries. The injuries caused Mr. Toussaint to return to Earth with Ms. Basinska on 11 May 2003 instead of his original scheduled return in August 2003. Without a scheduled launch that would have allowed for a replacement crew member, a significant number of scientific experiments, most of which arose as a result of Orbital Outpost's commercial arrangements, had to be postponed, modified or even cancelled, causing a heavy financial loss.
9. During the conduct of one of the experiments, Ms. Basinska did not take sufficient care to reset the climatic controls at the conclusion of an experiment, resulting in significant and irreparable damage being caused to an experiment conducted in the Glovebox Facility onboard Outpost One. The experiment was conducted on behalf of the Gloveco Company, which had a lucrative contract with Orbital Outpost for the completion of this experiment. The Glovebox Facility, a microfibre experiment module, had to be rebuilt and subsequently reinstalled at substantial cost.
10. On the return flight on 11 May 2003, a cutting tool that was overlooked by the crew when preparing the vehicle for its flight fell from the vehicle's ceiling to its floor when the vehicle left microgravity conditions and entered the Earth's atmosphere. Ms. Basinska's face was slashed by the tool and, despite the best efforts of surgeons, remained disfigured. Her existing contracts for modelling and television appearances were subsequently cancelled and she has not been able to secure any new contracts.
11. Orbital Outpost subsequently prohibited all Zirconians from participating in tourist flights to Outpost One, but it continued to allow nationals of other States to participate in its space tourism program.
12. Independent investigations into the incident onboard the return flight had demonstrated that, although Mr. Toussaint was onboard that flight and was responsible for most of the pre-flight inspections, there could be no suggestion that the cutting tool was deliberately left by him in the cabin, as doing so would have posed a grave danger to himself.
13. Negotiations between Orbital Outpost and ZTC of their opposing claims were prematurely ended when ZTC filed for voluntary bankruptcy on 13 September 2003. Subsequent discussions between the Governments of Palladia and Zirconia also failed to produce any resolution. Consequently, both Governments agreed to submit their dispute to the International Court of Justice by way of this Special Agreement.

14. Palladia seeks declarations that:
 - (i) Zirconia is responsible for the actions of Ms. Basinska on board Orbital Outpost in causing physical injury to Mr. Toussaint and subsequent financial loss suffered by Orbital Outpost as a result of Mr. Toussaint not being able to conduct the scientific experiments as required;
 - (ii) Zirconia is responsible and liable for the damage to the Glovebox Facility and the resulting financial loss to Orbital Outpost;
 - (iii) The prohibition placed by Palladia on further tourist flights to Outpost One by Zirconian nationals was not contrary to international law; and
 - (iv) Palladia is neither responsible for nor liable to Zirconia for the injuries caused to Ms. Basinska and her subsequent financial loss; and
 - (v) All other relief sought by Palladia in its memorials and oral submissions should be granted and all relief sought by Zirconia should be denied.
15. Zirconia seeks declarations that:
 - (i) Palladia failed in its international legal obligations when the commander of Outpost One did not take effective action concerning Ms. Basinska's allegation of sexual harassment, and therefore is responsible for any loss or damage suffered to its nationals or property on Outpost One;
 - (ii) Palladia is responsible and liable for the injuries caused to Ms. Basinska and her subsequent financial loss;
 - (iii) The prohibition placed by Palladia on further tourist flights to Outpost One by Zirconian nationals was contrary to international law;
 - (iv) Zirconia is not liable to Palladia for any loss or damage resulting from Ms. Basinska's acts while on Outpost One; and
 - (v) All other relief sought by Zirconia in its memorials and oral submissions should be granted and all relief sought by Palladia should be denied.
16. Outpost One was registered by Palladia in accordance with the 1975 Registration Convention and lists Palladia as the State of registry, except that the instrument of registration lodged pursuant to the Convention did not indicate its launching States.
17. Palladia and Zirconia are both parties to the 1967 Outer Space Treaty, the 1972 Liability Convention, the 1968 Rescue Agreement and the 1975 Registration Convention. Both States were founding members of the United Nations in 1945. Zirconia has signed and ratified the 1979 Moon Agreement but Palladia has never signed it or recognised it as being part of international law.
18. Palladia and Zirconia are both International Telecommunication Union members.
19. Neither Palladian nor Zirconian tort or criminal law allow for any form of provocation to be a full or partial defence to a claim of assault.