

INTERNATIONAL COURT OF JUSTICE

## COMPROMIS

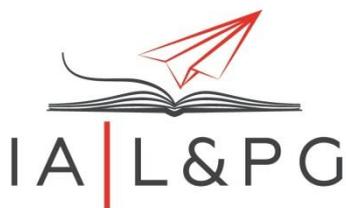
BETWEEN THE STATE OF **BONELON** (APPLICANT) AND THE STATE  
OF **NOSPACIA** (RESPONDENT)

TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE THE  
DIFFERENCES BETWEEN THE PARTIES

CONCERNING AN ACCIDENT ON ANTIPODAL AIRLINES

FLIGHT LE015

jointly notified to the Court on 7 August 2017



2017 Australia and New Zealand Air Law Moot Court (ANZALM) Problem

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## **I. Background**

1. For the purposes of this Case, both of the States relevant to the problem—Bonelon and Nospacia—are parties to the following multilateral agreements:

- a. 1945 United Nations Charter (UN Charter)
- b. 1944 Convention on International Civil Aviation (Chicago Convention), including the amendments thereto. Neither the State of Bonelon nor the State of Nospacia has notified differences to ICAO with respect to departures from Standards and Recommended Practices (SARPs)
- c. 1969 Vienna Convention on the Law of Treaties (Vienna Convention)
- d. 1967 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)
- e. 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (Rescue Agreement)
- f. 1972 Convention on International Liability for Damage Caused by Space Objects (Liability Convention)
- g. 1976 Convention on Registration of Objects Launched into Outer Space (Registration Agreement)
- h. 1984 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement)
- i. 1999 Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention)

## **II. Facts**

2. Bonelon (pronounced “Bon – Ee - Lon”) is and always has been a skyfaring nation, in one way or another. Some say the first flight ever happened in Bonelon, when a door to door salesman decided it would be faster for him to make his daily quotas along the long country roads if he could rise into the air pulled higher by a hot air balloon and a deft ability to tie up the balloon knot with one hand, while holding on for dear life with the other hand. Others, say that aviation really hit its stride in the nation when people discovered just how low the elevation of Bonelon was. They said the air was “thicker” and thus more “flyable”.

3. At any rate, Bonelon does not consider itself a particularly technologically savvy country. But its citizens are creative, aspirational, innovative and highly focused, while its land

expanses are vast, distances long and, because it is an island, girt by sea. This combination, together with a lack of many of the world's problems (such as urban crowding, over pollution, high unemployment and disease) meant it inspired a freedom of thought in its air and space industries that government institutions encouraged and commerce welcomed. Bonelon was blessed by nature and largely overlooked or ignored by those who might otherwise do it harm. The average Bonelon resident feels a keen affinity with nature and its eminently flyable sky, and aviation permits them to enjoy both.

4. Nospacia (pronounced "No – Space – Ee – Ah") is an antipodean nation in relation to Bonelon. These two great nations are separated not only by a distance of 19,000 km but also by the vast disparity in climatic, social and political norms. Notwithstanding or perhaps in spite of Nospacia's urban sprawl and dirty polluted cities, its people are tough, stubborn, and determined. Life there demands it. Industry weeds out those who are not.

5. Nospacians enjoy a wealthy lifestyle and have themselves taken up aviation in a significant way though not for similar reasons as Bonelon. Nospacia is a fast adopter of technology and usually leads the world in carefully and safely integrating technologies others may see as leading edge or fanciful. Thus, Nospacia has often been the world's test bed for things like remotely piloted aerial systems (RPAS or drones) in everyday commercial use. Nospacia has a dense cloud of small drones criss-crossing its streets at carefully calibrated altitudes throughout the day and night ensuring that everything from documents to packages and, sometimes, late night revellers, are transported where they need to be efficiently and inexpensively.

6. One of the more successful recent deployments by the Nospacian Government has been its "UAA" (Unmanned Aerial Ambulance). Heartened by its trials with RPAS taxis (tested primarily on drunk nightclub revellers at 5:00am – they didn't lose one) Nospacia's Department of Health heavily invested in and developed the world's first UAA system. The UAA is a heavily adapted aircraft that works like conventional ambulance services. They are sent (pilotless) from base to extract and return casualties from all kinds of accident sites, to major hospitals around Nospacia. Trials have demonstrated that UAA's vehicles can manoeuvre with great agility like helicopters but with the stability of multirotor drones. In addition specially fitted robotic equipment does the work of crewpersons who would otherwise need to be carried in the aircraft to extract casualties from hard to access spaces or depths.

7. Bonelon and Nospacia share a passion for aviation and its applications. The world's first commercially viable intercontinental space transport plane (nicknamed SWIFTY1) emerged after joint investment by both governments into the prototype designed by an array of experts from private aerospace firms. In the end, following a fierce bidding war over 5 years, the first SWIFTY1 was sold to the government of Bonelon to be leased and operated by Antipodal Airlines which is a Nospacian based private airline with majority shareholding in Bonelon. SWIFTY1 was registered as an aircraft in Nospacia, and as a space object in Bonelon.

8. Nospacia demanded that all trial and initial commercial flights would have to be between Bonelon and Nospacia. Bonelon quickly assented, and the trials commenced in February 2016.

9. SWIFTY1 works in a curious hybrid way. It is much like a jet aircraft, close to the ground, and takes off horizontally from a runway. It travels to a significant height using a combination of jet and other propulsion systems to reach high above sea level (around 80 km) before reconfiguring its engines to produce the thrust to push it beyond 100 km above sea level, where it is temporarily controlled by rocket propulsion, before descending and penetrating the atmosphere back into airspace. There its engines are able to work again, and are able to fly it the remainder of the way to a normal jet like landing. It does not reach orbit but occupants onboard do feel weightless and get to feel and experience “space travel”. In order to reenter the atmosphere the SWIFTY1 has a particularly efficacious reusable thermal protection system (TPS) – necessary to insulate the vehicle from the high temperatures generated by the speed at which the craft travels as it reenters (up to 1,648°C).

10. Neither Bonelon nor Nospacia have domestic laws which delimit the boundary between airspace and outer space.

11. The first Antipodal Airlines test flight, run at great expense and with much care and preparation without passengers or cargo, performed brilliantly in February 2017. The SWIFTY1 was first flown by test pilots from the capital city airport of Bonelon (Grunburra) through suborbital space for several minutes. Its entire flight to the capital of Nospacia (Drondon) took only three hours. In a regular passenger airliner, the entire flight duration would have been more than approximately five times longer. After several weeks of checking, inspection and deliberation, the SWIFTY1 was brought back to Grunburra to the adulation of all Bonelonians.

12. To prepare for its first commercial flight, Antipodal Airlines ran a global lottery to allot the 10 available passenger seats to people on the first flight. Tickets to the lottery only cost \$500 each, making them accessible for many, but as it turned out the 10 passengers selected in the lottery were very high net worth individuals who each could afford to (and in fact bought) millions of dollars worth of tickets, to maximise their chances to fly on the inaugural journey. There were no indicators on the tickets about liability limits, merely a holographic message enjoining readers to “Get ready for the wildest charter ride of your life?”

13. The day of the first commercial flight (12 May 2017) approached and the world was watching. On 12 May Antipodal Flight LE 015 took off from Grunburra bound for Drondon, carrying 10 very enthusiastic and excited passengers. The take off and initial flight went off perfectly, as did the transition to the second stage to propel it higher, but as the SWIFTY1 left the atmosphere a few tiles of its TPS broke loose and vanished. This caused no noticeable disturbances onboard but the pilots were given an indication of damage through instruments monitoring the craft’s systems. The pilots were concerned, but felt helpless. They figured it

must have been an improper bond between the tile and the under surface of the craft, as it did not seem as if they had been struck by anything. And, if that were the case, the flight was so short that even if there was capability to repair the tile inflight, there would not be enough time before descent and re-entry.

14. About two minutes later the passengers were exploring their weightless-selves. For some of them this was a greater joy than for others with several involuntarily regurgitating their complimentary peanuts. Rather than looking out at the splendour from their windows the passengers saw the mess floating by their faces.

15. A few minutes later the brief sojourn into zero gravity became anything but entertaining. The craft split with a fiery boom at the spot where the tiles had peeled off. A safety feature of the SWIFTY1 deployed instantly closing off sections of the fuselage to try and protect those onboard from being sucked out and managed to trap everyone inside a capsule. The aircraft was heavily damaged and all in it were seriously injured. Remarkably it survived re-entry but only barely managed a parachute descent at a field in a rural area far from Drondon centre.

16. Meanwhile the pilots had alerted UAA Control in Drondon of its MAYDAY but received no reply. They all hoped that was only because of instrument damage to the SWIFTY1. As it turned out on that day all the drones operated by UAA had effectively stopped working and were unresponsive even to specific manual commands. At any rate, because Nospacia had no traditional ambulance service anymore it was not possible to send any assistance to the site of the crash landing, and even though everyone made it back to Earth – all died at the site.

17. The accident caused international outrage with calls from many nations for the end of both the SWIFTY1 flight offering and UAA services. The anger was palpable in both Bonelon and Nospacia for both had lost citizens onboard, and several other states also mourned for their lost countrymen and women. The passengers not only left families behind but, as wealthy individuals, had made some of the most philanthropic contributions known in history. Their loss shook the world.

18. Blame was soon cast through vehement media rhetoric and political bickering. Bonelon argued that Nospacia was responsible for compensating families for the deaths because it did not fulfil its international obligations to assist astronauts, to which Nospacia retorted they were passengers, not astronauts. Nospacia said that Bonelon was the launch state and carried ultimate responsibility for compensating for the deaths, to which Bonelon said Nospacia had in fact procured the launch by demanding that the flight only go to Nospacia.

19. Both states engaged in further arguments among themselves. Bonelon tried to wash its hands entirely of the crash by saying that SWIFTY1 was an aircraft in commercial flight and thus the aviation liability conventions should apply no matter what altitude the craft suffered its accident. Nospacia denies that those laws should apply as the purpose of the flight was to enter space and the location of the TPS damage and failures was in space.

20. While liability as a matter of principle is part of the questions which are submitted to the court, the determination and quantification of damages is not.

21. Ensuing consultations and negotiations between the authorised representatives of the State of Bonelon and the State of Nospacia failed to resolve the disagreements. Both States agreed to bring their dispute before the International Court of Justice by way of this *Compromis*.

### **III. Action**

1. The State of Bonelon has asked the International Court of Justice to rule that:

a. The State of Nospacia is responsible for the loss of all onboard Flight LE 015 and is liable for the damages arising from its breach of an international obligation to assist astronauts; or in the alternative,

b. The accident was one which occurred in airspace and thus international civil aviation laws should apply instead of space law.

2. The State of Nospacia has asked the International Court of Justice to rule that:

a. The State of Bonelon is responsible for the loss of all onboard Flight LE 015 and is liable for the damages arising from its responsibilities as the launch state; or in the alternative,

b. The accident was one which occurred in outer space and thus space law should apply instead of aviation law.

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**See notes overleaf**

### **Notes for student competitors**

1. The problem is not designed to trip you up. Part of the goal of the case is to have you consider policy and strategic, or practical, solutions to air law and related problems which can cause legal disputes in the absence of a coherent, complete and relevant legal matrix to regulate it. Thus, if there seems to be some void in the law it may well be that there is one in respect of one or more concepts raised on the present facts.
2. Where there appears to be a legal void, this presents your opportunity to argue in written memorials and in verbal moot rounds for the evolution or development of the relevant area of law in a way which serves the State on whose behalf you represent. The arguments teams make may be, and are expected to be creative, but must also be tempered by restrictions imposed by the Statute of the Court, and reason - in terms of policies and practices the international community would have regard to (or would be bound by in a practical or diplomatic sense) in deciding on whether the law should resolve in any particular way.