

INTERNATIONAL COURT OF JUSTICE

# COMPROMIS

BETWEEN THE **REPUBLIC OF ATAPULO** (APPLICANT)  
AND THE **KINGDOM OF INGAPIRCA** (RESPONDENT)

TO SUBMIT TO THE INTERNATIONAL COURT OF  
JUSTICE THE DIFFERENCES BETWEEN THE PARTIES  
RELATING TO **THE DISAGREEMENT ARISING UNDER  
THE CONVENTION ON INTERNATIONAL CIVIL  
AVIATION DONE AT CHICAGO ON DECEMBER 7, 1944**

Jointly notified to the Court on ... April 2018

THE 2018 INTERNATIONAL AIR LAW MOOT COURT  
COMPETITION:

THE REPUBLIC OF ATAPULO (APPLICANT)

V.

THE KINGDOM OF INGAPIRCA (RESPONDENT)

IN THE MATTER OF THE DISAGREEMENT ARISING UNDER  
THE CONVENTION ON INTERNATIONAL CIVIL AVIATION  
DONE AT CHICAGO ON DECEMBER 7, 1944

For the purposes of this case, both of the States relevant to the dispute -the Republic of Atapulo (**Atapulo**) and the Kingdom of Ingapirca (**Ingapirca**, and together with Atapulo, the **States**) - are parties to the following treaties:

- 1944 Convention on International Civil Aviation (the **Chicago Convention 1944**), including the applicable amendments and annexes thereto, containing Standards and Recommended Practices (SARPs). For the purposes of this case, the States involved have not notified ICAO of any differences between their national regulations and practices and related SARPs, and the SARPs in force are deemed to be those effective on the day of the accident;
- 1945 United Nations Charter (the **U.N. Charter**);
- 1961 Vienna Convention on Diplomatic Relations; and
- 1969 Vienna Convention on the Law of Treaties.

No reservations have been made by the Republic of Atapulo and the Kingdom of Ingapirca concerning the application of any of the provisions of the above treaties.

## **I Background**

1. This case concerns a mid-air collision that occurred over Atapulo on July 25, 2014 between an Airtruck 419 passenger aircraft (the **Airtruck 419**) and a remotely piloted aircraft (the **RPA**). The Airtruck 419 was registered in Atapulo with registration mark AT-913 and was operating a scheduled flight by Atahualpa Airlines, an air carrier of Atapulo, on flight number AP147. The RPA was registered in Ingapirca with registration mark IN-321, and was transiting Atapulo's airspace on a non-scheduled cargo flight operated by Kanari Airlines, a commercial air transport operator, with principal place of business in the Principality of Sucumbios (**Sucumbios**). The RPA was remotely piloted from a remote pilot station (the **RPS**) located in the city of Quilotoa in the Republic of Latacunga (**Latacunga**).

2. On April 15, 2013, Ingapirca, the State of Registry of the RPA, and Sucumbios, the State of Operator of Kanari Airlines, entered into a bilateral agreement for the “Transfer of Certain Function and Duties” under Article 83bis of the Chicago Convention 1944 (the **Agreement**). The scope of this Agreement was limited to remotely piloted aircraft on the Register of Civil Aircraft of Ingapirca and operated under leasing agreements by Kanari Airlines. Under this Agreement, parties agreed that Ingapirca transfers, to Sucumbios, the following functions and duties, including oversight and control of relevant items contained in the respective Annexes to the Chicago Convention 1944:
  - Annex 1 - Personnel Licensing: issuance and validation of licensing;
  - Annex 2 - Rules of the Air: enforcement of compliance with the applicable regulations pertaining to the flight and manoeuvre of aircraft;
  - Annex 6 - Operations of Aircraft: (Part I International Commercial Air Transport - Aeroplanes) all responsibilities which are usually incumbent on the State of Registry; and
  - Annex 8 - Airworthiness of Aircraft: regulatory oversight, control and responsibility for the approval of line stations used by Kanari Airlines which are located away from its main base.
3. The Airtruck 419 was travelling southwest on the airway from the city of Condorcocha to Atuntaqui through Atapulco’s airspace at an altitude of 42,000 feet. The RPA was travelling at the same altitude, on the same airway, but in the opposite direction - northeast. Each aircraft was following clearances issued to them by Atapulco’s air traffic controllers (the **ATC**’s).
4. At 10:07 am, the Airtruck 419 and the RPA collided, each damaging their left wings.
5. As a result, the Airtruck 419 lost about one-third of its left wing, which rendered the aircraft uncontrollable. The aircraft started a steep spiral dive and sustained a structural separation, in flight, before hitting the ground in the middle of Atapulco’s desert region. Tragically, all 100 passengers and four crew members on the Airtruck 419 were killed.
6. The RPA lost part of its left winglet, and sustained damage the left stabilizer and elevator, but remained controllable, in flight, and was able to make an emergency landing.
7. A thorough investigation took place immediately after the accident, which, on the date of its occurrence, was considered the deadliest in Atapulco’s aviation history.
8. Following the crash, officials from the Accident Investigation Authorities (the **AIA**) of Ingapirca and Sucumbios were appointed to serve as the accredited representatives to the accident investigation conducted by Atapulco, under Article 26 and Annex 13 of the Chicago Convention 1944. While Latacunga did not appoint any representative, it provided all available information and data from the RPS to Atapulco’s AIA.

9. Ingapirca's Civil Aviation Authority (CAA) assisted its AIA in the investigation and appointed an adviser, under Annex 13, who travelled to Atapulo.
10. The same CAA official of Ingapirca was also responsible for determining, under national legislation, whether the Ingapircan remote pilot-in-command, Captain Lucas Hernandez, committed any violations of Ingapirca's regulations, which requires compliance with the Chicago Convention 1944 and its respective SARPs, and if so, whether any enforcement action should be taken.
11. Ingapirca's CAA operates a thorough and rigorous compliance and enforcement program which is designed to promote and ensure high safety standards and compliance with rules and regulations in civil aviation. Under this program, Ingapirca's CAA enforcement personnel must investigate and appropriately address every apparent or alleged violation.
12. This compliance and enforcement program is applied whether the alleged violation occurs within the territory of the Ingapirca or that of a foreign country.
13. During the accident investigation, Atapulo's AIA did not recommend to the correspondent authorities, of the State of Registry and the State of Operator of the aircraft, any immediate preventive action that it considered necessary to enhance aviation safety. Furthermore, Atapulo's AIA failed to notify Ingapirca's CAA that it believed that the Ingapircan remote pilot-in-command infringed any regulations and that Ingapirca's CAA should take action against Captain Hernandez for alleged violations of Atapulo's air regulations.
14. Under the national laws of Ingapirca and Sucumbios, when a foreign government notifies them of an alleged violation, committed by a certified aircraft operator or by one of their citizens, both countries must undertake an investigation into the actions in question. Ingapirca's CAA and Sucumbios' CAA conducted independent administrative proceedings, separate to the accident investigation under Annex 13, in the aftermath of the accident to determine, under their respective jurisdictions, whether the remote pilot-in-command or the operator, Kanari Airlines, had violated any applicable CAA regulations.
15. In conducting administrative proceedings to determine whether a violation has occurred following an accident, both Ingapirca and Sucumbios' CAA's gather all material and relevant evidence related to the potential causes of that accident. If the evidence is not sufficient to establish a violation, the CAA's investigative personnel recommend to the appropriate program office management that the investigation should be closed, with a "no action" status. Where the evidence is sufficient to support a violation, the CAA's investigative personnel recommend informal action, legal enforcement action or other actions, as appropriate.
16. Based on a review of all available information, including relevant carrier and airmen records, such as certificates, training records, medical records, and interviews about the accident with the remote pilot-in-command, the officials of Ingapirca's CAA and

- Sucumbios's CAA determined that there was no basis to recommend any action against the remote pilot-in-command of the RPA, or against the operating company Kanari Airlines.
17. Although Ingapirca's CAA determined the remote pilot-in-command was qualified and licensed by Sucumbios' CAA to operate the RPA, they did take the requisite steps to verify the remote pilot-in-command's continued qualifications.
  18. Following the accident, during the several months in which the remote pilot-in-command did not fly, Ingapirca's CAA officials paid close attention to the remote pilot-in-command' training and review.
  19. When the remote pilot-in-command attended recurrent training, Ingapirca's CAA sent two of its inspectors to Sucumbios to monitor the training and observe the check rides, of which the remote pilot-in-command successfully passed.
  20. During May to August 2015, the remote pilot-in-command also successfully passed the requisite annual line checks which were conducted jointly by field office inspectors from Ingapirca's and Sucumbios' CAA.
  21. On February 25, 2016, Ingapirca's AIA received the final draft report on the accident from Atapulo's accident investigation arm (the **Final Draft Report**). Atapulo's AIA Final Draft Report was finalized on January 20, 2016.
  22. The final report was released on April 11, 2016 (the **Final Report**).
  23. However, the Final Draft Report did state that there were a number of contributing factors, including acts and omissions by Atapulo's air traffic controllers. Some of these included:
    - a. failing to prohibit the RPA from flying over a controlled airspace open to civil manned aircraft without "due regard" to proper safety;
    - b. providing the RPA with authorization to maintain an altitude that conflicted with opposing air traffic;
    - c. failing to correct the RPA's altitude from that level;
    - d. failing to perform prescribed procedures when the ATC's stopped receiving transponder information, assuming that the RPA flight was at a different altitude;
    - e. allowing for an incorrect hand-over between control sectors;
    - f. maintaining reduced vertical separation minimum (**RVSM**) separation when its requirements were no longer met; and
    - g. primarily, failing to provide for proper traffic separation which led to the in-flight collision between the two aircraft.
  24. Additionally, the Final Draft Report concluded that:
    - a. the remote pilot-in-command, Captain Lucas Hernandez started the flight without the special authorization for the RPA to fly over Atapulian airspace under Article 8 of the Chicago Convention 1944;

- b. Captain Lucas Hernandez did not have a letter of authorization to operate the RPA in the RVSM;
  - c. the transponder of the RPA remained deactivated during most of the flight; and
  - d. the RPA was being operated with the airborne collision avoidance system (ACAS) and other, detect and avoid, systems switched off.
25. Ingapirca's AIA accredited representative provided comments on the Final Draft Report and, in accordance with Annex 13 protocols, requested that they be appended to the Final Report.
26. The comments received showed that Ingapirca's team were in agreement with the majority of the facts gathered and discussed in the Final Draft Report, however, differences were noted in some of the teams interpretations, conclusions, and understandings. In particular, that although many safety issues for Atapulo's air traffic control (ATC) operations were identified from both perspectives of the investigation, according to Ingapirca's team, these issues needed further study. The team of Ingapirca also noted that several safety deficiencies in Atapulo's ATC, while acknowledged in the report, were not sufficiently supported by analysis or reflected in the conclusions as the cause of the accident. Atapulo and Ingapirca did not agree on the findings of the probable cause of the accident.
27. Ingapirca's comments provided the following statement on the probable cause of the accident: "The evidence collected during this investigation strongly supports the conclusion that this accident resulted from the omissions of Atapulo's ATC. The two aircraft, following Atapulo's ATC clearances, directed them to operate towards each other, on the same airway, at the same altitude, resulting in a mid-air collision. The poorly executed ATC was not the result of a single error, but a combination of numerous individual and institutional ATC factors, which reflected the systemic shortcomings. Contributing to this accident, was the undetected loss of functionality of the ACAS technology as a result of the inadvertent inactivation of the transponder on board the RPA. Further contributing to the accident, was the inadequate communication between the ATC's and the pilots of the Airtruck 419 and the RPA."
28. Neither Atapulo nor Ingapirca issued further reports relating to this accident.
29. In January 2017, Atapulo sent the first Notices of Infraction (NOI's) in relation to the accident to Ingapirca and Sucumbios, more than two years after the accident on July 25, 2014.
30. These three notices, that is one addressed to Ingapirca's CAA, the second to Captain Lucas Hernandez and the third to Kanari Airlines, addressed three issues:
- 1) a violation of Article 8 of the Chicago Convention 1944, due to the lack of 'special authorization';
  - 2) the failure to ensure 'due regard' in regions open to civil aircraft; and,
  - 3) the administrative violation of Atapulo's Code of Aeronautics, due to the lack of the letter of authorization for RVSM airspace issued before the flight on July 25, 2014.

31. The accompanying transmittal letter from Atapulo's CAA stated the following: "we require appropriate action to be taken in response to the facts under discussion herein this Notice of Infraction."
32. On February 10, 2017, Atapulo also sent a diplomatic note to Ingapirca outlining its understanding that "Captain Lucas Hernandez initiated a flight without the special authorization for the RPA; he failed to ensure 'due regard' in regions open to civil aircraft; and he did not hold the requisite letter of authorization for RVSM". This note also requested that Ingapirca "take the appropriate action in response to the facts under discussion herein."
33. On March 17, 2017, Atapulo's CAA sent a follow-up letter to the CAA in Ingapirca, referring back to the note dated February 10, 2017, asking the CAA of Ingapirca to take into consideration the terms of Article 12 of the Chicago Convention 1944 in respect of the Rules of the Air, which provides that: "Each contracting State undertakes to adopt measures to insure that every aircraft flying over or maneuvering within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and maneuver of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to insure the prosecution of all persons violating the regulations applicable."
34. On April 26, 2017, Ingapirca responded by diplomatic note to Atapulo, and on May 9, 2017, Ingapirca's CAA replied by letter to the letter sent by Atapulo's CAA's. Both the note and the letter sent to Atapulo and their CAA, respectively, explained that the CAA of Ingapirca had previously reviewed the case and concluded that there was no basis for initiating CAA actions. The letter and note further described the actions that Ingapirca's CAA undertook to ensure that any safety issues were appropriately addressed, including the issuance of safety alerts for operators (**SAFO**).
35. It was not until June 2, 2017 — almost three years after the accident — that Atapulo's CAA sent two additional NOI's, issued to Captain Lucas Hernandez. These NOI's concerned the operation of the RPA while the transponder and ACAS technology on-board were switched off and were described as administrative violations of the Atapulian Code of Aeronautics. The June 2, 2017 letter from Atapulo's CAA, attaching these NOI's, requested that "Ingapirca's CAA open an internal administrative investigation into their findings pursuant to Article 12 of the Chicago Convention 1944."
36. Ingapirca responded by diplomatic note to Atapulo on June 9, 2017, stating that Ingapirca's position concerning the accident was previously detailed in the April 26, 2017 diplomatic note, and noting that the CAA would respond directly to Atapulo's CAA. That same day, Ingapirca's CAA sent a letter to Atapulo's CAA, stating that it had

previously concluded that no enforcement action was warranted in this case, and that this was still their position on this matter.

37. Furthermore, Ingapirca's CAA stated that Captain Lucas Hernandez did not require "special authorization" referred in Article 8 of the Chicago Convention 1944 as it refers to aircraft without a pilot. The RPA in this case was an aircraft which was indeed controlled by a qualified and licensed pilot from a RPS. In other words, the aircraft had a pilot who was responsible, for the flight, at all times. Ingapirca's CAA's letter also highlighted that the RPA was engaged in a non-scheduled cargo flight, transiting Atapulo's airspace. Accordingly, and pursuant to Article 5 of the Chicago Convention 1944, this aircraft did not require prior permission to fly over Atapulo's airspace.
38. Ingapirca's CAA letter also stated that "under applicable regulations, Captain Lucas Hernandez' remote pilot license cannot be suspended, nor can a civil penalty be imposed." The letter explained that under Ingapirca's "stale complaint rule"<sup>1</sup>, the CAA would have had to initiate enforcement action within six months of the date of any alleged violations to avoid dismissal of the charges.
39. In addition to the technical investigation, and three months after the date of the accident, Atapulo's Police Department and Prosecution Service Department conducted investigations into determining the responsibility of those involved in the accident. Atapulo's ATC's were prosecuted and found guilty by Atapulian courts. Ingapirca's remote pilot-in-command, Captain Lucas Hernandez, was prosecuted and sentenced to five years in absentia. Moreover, in its administrative capacity, Atapulo's CAA fined Kanari Airlines and Captain Lucas Hernandez for violations of Atapulian Air Regulations.
40. On June 26, 2017, the Ambassador of Ingapirca to Atapulo sent a letter to the Chief Minister of the Civil Aviation Secretariat of the Presidency of Atapulo, attaching a summary of the Ingapirca's CAA's response to the accident of flight AP147, which listed many of the actions the Ingapirca CAA undertook. This also included a description of its assessment into the conduct of the remote pilot-in-command, of which it determined that no enforcement action was necessary.
41. The Government of the Atapulo did not respond to this letter.
42. On July 3, 2017 Atapulo sent a Note Verbale to Ingapirca requesting bilateral consultations regarding the accident.
43. After communicating to arrange a meeting, Ingapirca and Atapulo met to discuss the accident on July 11, 2017.

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<sup>1</sup> As with other States, Ingapirca's legislation imposes certain time limitations for bringing enforcement actions against airmen. The "stale complaint rule" provides that any complaint against an airman, brought by the Ingapirca CAA, seeking legal enforcement action, will generally be dismissed if the offenses alleged occurred more than six months prior to the CAA's advising of the reasons for the proposed action.

44. After one month of unsuccessful negotiations, both States agreed to bring their dispute before the International Court of Justice by way of this Compromis.

## II Actions

### A. The Republic of Atapulo has asked the International Court of Justice to rule that:

1. As the RPA is a 'pilotless aircraft', Article 5 of the Chicago Convention 1944 is not applicable, and therefore, 'special authorization' was necessary to transit the Republic of Atapulo's airspace, irrespective of the fact that the RPA was engaged in a non-scheduled flight;
2. The Kingdom of Ingapirca failed to comply with its obligation under Article 8 of the Chicago Convention 1944, to ensure 'due regard' with respect to the flight of the RPA in the Republic of Atapulo's airspace;
3. The Kingdom of Ingapirca violated Article 12 of the Chicago Convention 1944 for failing to ensure the prosecution of Captain Lucas Hernandez, and for violating Standard 3.1.1 of Annex 2 to the Chicago Convention 1944;

and to order:

4. The Kingdom of Ingapirca to take immediate steps to bring administrative and judicial proceedings in order to prosecute its national who has violated rules and regulations of the Republic of Atapulo's airspace, contributing to this accident.

### B. The Kingdom of Ingapirca has asked the International Court of Justice to rule that:

1. As the RPA is an 'aircraft' engaged in a non-scheduled flight, no 'special authorization' was necessary to transit the Republic of Atapulo's airspace, pursuant to Article 5 of the Chicago Convention 1944;
2. As the RPA required the intervention of a remote pilot-in-command, Article 8 of the Chicago Convention 1944 has not been violated as it refers to 'pilotless aircraft' only. Accordingly, there was no obligation to ensure 'due regard' for the flight of the RPA in the Republic of Atapulo's airspace;
3. The Kingdom of Ingapirca's aviation practices and actions, both in general and in this case, are in full compliance with Article 12 of the Chicago Convention 1944 and Standard 3.1.1 of Annex 2 to the Chicago Convention 1944;
4. Due to the trias politica principle – that is the separation and independence of powers – and the Rule of Law principle with regards to the stale compliance rule, neither administrative nor judicial procedures can be taken to prosecute a national of the Kingdom of Ingapirca's.