INTERNATIONAL COURT OF JUSTICE

COMPROMIS

BETWEEN THE STATE OF MAGRATHEA (APPLICANT) AND THE STATE OF DAMOGRAN (RESPONDENT) TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE THE DIFFERENCES BETWEEN THE PARTIES CONCERNING OVERFLIGHT CHARGES

jointly notified to the Court on xx xxx 2014

THE 2014 INTERNATIONAL AIR LAW MOOT COURT COMPETITION

THE STATE OF MAGRATHEA V. THE STATE OF DAMOGRAN THE

MATTER OF OVERFLIGHTS

I. Background

1. For the purposes of this Case, all of the States relevant to the problem—Magrathea, Damogran, and Traal—are parties to the following multilateral agreements:

    a. 1945 United Nations Charter (U.N. Charter)

    b. 1944 Convention on International Civil Aviation (Chicago Convention)

    c. 1969 Vienna Convention on the Law of Treaties

2. For the purposes of this Case, Magrathea is a party to the 1944 International Air Services Transit Agreement, Damogran and Traal are not.

3. Damogran is a very large State, occupying the eastern half of the Algolian continent. Despite its vast geographic size, Damogran is sparsely populated as a consequence of its highly mountainous terrain.

4. Magrathea is a small island State just off the eastern coast of Damogran. The citizens of Magrathea are relatively wealthy as a result of its thriving advanced technology industry led by multinational giant Sirius Cybernetics Corporation.

5. To Damogran's west is the State of Traal, a long-volatile territory consisting of hundreds of tribes with distinct cultures and languages. As a result of the continuous violence and political instability in Traal, few outsiders visited and Traal had little in the way of external diplomatic relations.

6. Magrathea's need to import natural resources and export its manufactured tech products caused it to develop a well-funded international aviation industry, and to seek air services agreements with as many different parties as possible.

7. Damogran is much less industrialized than Magrathea and does not have as large of an international presence. Its only international carrier, Heart of Gold Airways, is operated by the Damogran Aviation Corporation (DAC) which also owns and operates Damogran's air traffic management facilities and services. The State of Damogran owns a 75% stake in the DAC.

8. Magrathea and Damogran finally entered into an Air Services Agreement (ASA) in 1985. The ASA secured 1st-4th freedom rights for both States. The ASA also granted 5th freedom rights to Magrathea on routes beyond Damogran to Traal and 6th and 7th freedom rights to Damogran for routes between Magrathea and Traal. At the time, neither State had an ASA with Traal and both were therefore unable to evoke any 5th, 6th, and 7th freedom rights in that context.

9. Article 2(5) of the ASA between Magrathea and Damogran provides for commercial and technical matters, including frequencies, routes and fares, to be determined by a separate agreement between the States' respective designated international carriers.

10. New political leadership finally brought peace and stability to Traal in the late 1990s. Magrathea, recognizing a potential growth market for Sirius Cybernetics' newest product, the babelfish language translator, concluded both a trade and an air services agreement with Traal in 2003.

11. Given the geographic arrangement of the three States, flights between Magrathea and Traal must either pass through Damogran airspace, or navigate around Damogran by flying over the high seas at considerable increase in the cost and duration of flight.

12. In order to fully take advantage of the new agreements, and to serve both the Sirius Cybernetics trade representatives as well as the Magrathean citizens who enjoyed traveling to Traal to witness its extensive cultural diversity, Magrathea designated international carrier, Vogon Airlines approached Heart of Gold Airways about increasing the number of weekly frequencies their current agreement permitted Vogon Airlines to operate through Damogran airspace on routes to Traal from 1 to 42.

13. Heart of Gold Airways indicated that it was willing to permit Vogon Airlines to operate its desired number of frequencies between Magrathea and Traal, but that because Heart of Gold did not have the capability to operate its reciprocal share of frequencies under its 6^{th} or 7^{th} freedom rights connecting Magrathea to Traal, Vogon Airlines would have to pay Heart of Gold annual royalties to compensate Heart of Gold for its unused frequencies.

14. Following the amendment of the agreement to include the higher frequencies and royalty payments, Vogon Airlines began operating the 42 frequencies and paying Heart of Gold the desired royalties. The increased traffic through Damogran airspace also resulted in significantly increased user charges for Vogon Airlines to payable to Damogran Vogon Airlines was billed separately for the royalty payments and the user charges, though both were paid to the DAC.

15. Damogran and Traal reached an air services agreement of their own in 2005. Traal's first international airline, B-Ark airlines, began operating flights to both Damogran and Magrathea later that year.

16. 2009, the DAC announced plans for a significant upgrade of Damogran's air traffic management infrastructure: a satellite-based system that would be less obstructed by Damogran's various mountain ranges. Shortly thereafter, Heart of Gold informed Vogon Airlines that royalty payments for overflights to Traal would be increased.

17. At an international conference in 2010, a Vogon Airlines executive vented to a B-Ark colleague about her company's annoyance at having to make another round of royalty payments to Heart of Gold. The B-Ark executive informed her that B-Ark had not been asked to make royalty payments for flights through Damogran airspace between Traal and Magrathea. The B-Ark executive communicated that their airline was charged at approximately the same level as Vogon Airlines under the Damogran use charges system.

18. In April 2012, Magrathean officials, following complaints from Vogon Airlines, requested access to the DAC's records to verify that Heart of Gold was also paying user charges and to determine the final destination of Vogon Airlines' royalty payments. The DAC denied the request

19. In June 2012, the Magrathean authorities accused Damogran of violating international law with regard to its practice of requiring royalty payments for flights by Magrathean carriers over Damogran airspace. Damogran rejected the charges and refused Magrathea's demands to amend its practices.

II. Action

1. After initiating consultations in conformity with their ASA, Damogran and Magrathea agreed that their differences were "irreconcilable." Both States agreed to invoke Article 14 of their ASA and bring the Case before the International Court of Justice.

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

    a. The first two freedoms of the air are transit rights, distinct from traffic rights, and are non-tradeable as a matter of international law.

    b. Damogran is in violation of Article 15 of the Chicago Convention by requiring payments solely for the operation of flights over Damogran airspace.

    c. The payments to the Damogran Aviation Corporation are user charges within the definition of Article 15 of the Chicago Convention. These payments violate the Article's requirements that such charges be transparent, proportional and non-discriminatory.

    d. The payments violate international aviation law's general principle against non-discrimination

3. In its response, the State of Damogran has asked the International Court of Justice to rule that:

a. Requiring payment for use of Heart of Gold's unused frequencies is permitted by Article 6 of the Chicago Convention.

b. Magrathean carriers are not being charged solely for right of transit over Damogran territory, instead they are being asked to pay rent for use of Heart of Gold's frequencies.

c. The royalty payments are not user charges and are not subject to the transparency or proportionality requirements of Article 15.

d. There is no binding general international aviation law principle of discrimination applicable to these circumstances.

Annex I

DAMOGRAN/MAGRATHEA BILATERAL AIR

SERVICES AGREEMENT (ASA)

The Governments of Damogran

and

the Government of Magrathea, hereinafter referred to as the Contracting Parties;

whereas the fact that the Contracting Parties are parties to the Convention on International Civil Aviation, December 7, 1944 in Chicago opened for signature;

Desiring to conclude with the purposes of establishing between and beyond their respective territories of two States air services agreement;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement, unless otherwise stated, the term:

1. “Aeronautical authorities” means any person or agency authorized to perform functions exercised by the Contracting Parties related to air transport;

2. “Designated airline” means an airline which has been designated and authorized in accordance with Article 3 of this Agreement;

3. “Chicago Convention” means the Convention on International Civil Aviation, done at Chicago December 7, 1944:

4. “Air service”, “international air service”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Article 96 of the Chicago Convention;

5. “Territory” means the land areas, internal waters, and territorial sea under the sovereignty of a Party; and

6. “User charge” means a charge imposed on airlines for the provision of airport, airport environmental, air navigation, or aviation security facilities or services including related services and facilities.

ARTICLE 2

GRANT OF RIGHTS

1. Contracting Parties grant each other the following rights for the conduct of international air transportation by the airlines of the other Contracting Parties:

a. the right to fly across the other Contracting Party's territory without landing;

b. the right to make stops in other Contracting Party's territory for traffic and non-traffic purposes;

2. Each airline of a Contracting Party may, on any or all flights and at its option:

a. operate flights in either or both directions;

b. combine different flight numbers within one aircraft operation;

c. serve behind, intermediate, and beyond points and points in the territories of the Contracting Parties in any combination and in any order;

d. omit stops at any point or points;

e. transfer traffic from any of its aircraft to any of its other aircraft at any point;

f. serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;

g. make stopovers at any points whether within or outside the territory of any Contracting Party;

h. carry transit traffic through the other Contracting Party's territory; and

i. combine traffic on the same aircraft regardless of where such traffic originates; without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement, provided that, with the exception of all-cargo services, the transportation is part of a service that serves a point in the homeland of the airline.

3. On any segment or segments of the routes above, any airline of a Contracting Party may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated, provided that, with the exception of all-cargo services, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the homeland of the airline and, in the inbound direction, the transportation to the homeland of the airline is a continuation of the transportation from beyond such point.

4. Nothing in this Article shall be deemed to confer on the airline or airlines of one Contracting Party the rights to take on board, in the territory of another Contracting Party, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Contracting Party.

5. All the technical and commercial matters concerning the operation of aircraft and transportation of passengers, cargo and mail on the agreed services as well as the matters concerning commercial cooperation, particularly time-table, frequency of flights, types of aircraft, ground technical service of aircraft and procedures of financial accounts shall be settled by agreement between the designated airlines of the Contracting Parties and if necessary shall be submitted for the approval of the aeronautical authorities of the Contracting Parties.

ARTICLE 3

DESIGNATION AND AUTHORIZATION

1. Each Contracting Party shall have the right to designate an airline or airlines for the operation of agreed services on the specified routes and to substitute another airline for an airline previously designated in writing.

2. A Contracting Party, on receipt of applications from an airline of the other Contracting Party, in the form and manner prescribed for operating authorizations and technical permissions, shall grant appropriate authorizations and permissions with minimum procedural delay, provided:

a. substantial ownership and effective control of that airline are vested in the other Contracting Party, nationals of that Party, or both;

b. the airline is qualified to meet the conditions prescribed under the laws and regulations normally applied to the operation of international air transportation by the Contracting Party considering the application or applications; and

c. the other Contracting Party is maintaining and administering the provisions set forth in Article 6 (Safety) and Article 7 (Aviation Security).

ARTICLE 4

REVOCATION OF AUTHORIZATION

Any Contracting Party may revoke, suspend, limit, or impose conditions on the operating authorizations or technical permissions of an airline where that airline has failed to comply with the laws and regulations referred to in Article 5 (Application of Laws) of this Agreement.

ARTICLE 5

APPLICATION OF LAWS

The laws and regulations of a Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be complied with by such aircraft upon entering, when departing from, or while within the territory of that Contracting Party.

ARTICLE 6

SAFETY

1. All Contracting Parties shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by another Contracting Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. All Contracting Parties may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses granted to or validated for its own nationals by another Contracting Party.

2. Any of the Contracting Parties may request consultations concerning the safety standards maintained by another Contracting Party relating to aeronautical facilities, aircrews, aircraft, and operation of airlines of that other Contracting Party. If, following such consultations, one Contracting Party finds that another Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the offending Contracting Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Contracting Party shall take appropriate corrective action. All Contracting Parties reserve the right to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission of an airline or airlines of a Contracting Party in the event the Party does not take such appropriate corrective action within a reasonable time and to take immediate action, prior to consultations, as to such airline or airlines if the Party is not maintaining and administering the aforementioned standards and immediate action is essential to prevent further noncompliance.

ARTICLE 7

AVIATION SECURITY

1. The Contracting Parties affirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal September 23, 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal February 24, 1988.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities, and to address any other threat to the security of civil air navigation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry, operators of aircraft that have their principal place of business or permanent residence in their territory, and the operators of airports in their territory act in conformity with such aviation security provisions.

4. The Contracting Parties agree to observe the security provisions required by the other Contracting Party for entry into, for departure from, and while within the territory of that other Contracting Party and to take adequate measures to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading. The Contracting Parties shall also give positive consideration to any request from the other Contracting Party for special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

6. When a Contracting Party has reasonable grounds to believe that another Contracting Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Contracting Party may request immediate consultations with the aeronautical authorities of the offending Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, suspend, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party.

When required by an emergency, a Contacting Party may take interim action prior to the expiry of 15 days.

ARTICLE 8

COMMERCIAL OPPORTUNITIES

1. The airlines of the Contracting Parties shall have the right to establish offices in the territory of the other Contracting Party for the promotion and sale of air transportation.

2. The airlines of the Contracting Parties shall be entitled, in accordance with the laws and regulations of the other Contracting Party relating to entry, residence, and employment, to bring in and maintain in the territory of the other Contracting Party managerial, sales, technical, operational, and other specialist staff required for the provision of air transportation.

3. Each airline shall have the right to perform its own ground-handling in the territory of the other Contracting Party ("self-handling") or, at the airline's option, select among competing agents for such services in whole or in part. The rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible.

4. An airline of a Contracting Party may engage in the sale of air transportation in the territory of the other Contracting Party directly and, at the airline's discretion, through its agents, except as may be specifically provided by the charter regulations of the country in which the charter originates that relate to the protection of passenger funds, and passenger cancellation and refund rights. Each airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies.

5. Each airline shall have the right to convert and remit to its country and, except where inconsistent with generally applicable law or regulation, any other country or countries of its choice, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance.

6. The airlines of the Contracting Parties shall be permitted to pay for local expenses, including purchases of fuel, in the territory of the other Contracting Parties in local currency. At their discretion, the airlines of the Contracting Parties may pay for such expenses in the territory of the other Contracting Parties in freely convertible currencies according to local currency regulation.

7. In operating or holding out the authorized services under this Agreement, any airline of one Party may enter into cooperative marketing arrangements such as blocked-space, code-sharing, or leasing arrangements, with

a. an airline or airlines of the other Contracting Party;

b. an airline or airlines of a third country; and

c. a surface transportation provider of any country;
provided that all participants in such arrangements

(i) hold the appropriate authority and
(ii) meet the requirements normally applied to such arrangements.

8. Airlines and indirect providers of cargo transportation of the Contracting Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Contracting Parties or in third countries, including to and from all airports with customs facilities and to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

ARTICLE 9

CUSTOMS DUTIES AND CHARGES

1. On arriving in the territory of one Contracting Party, aircraft operated in international air transportation by the airlines of one of the other Contracting Parties, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco, and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges that are (a) imposed by the national authorities, and (b) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees, and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

a. aircraft stores introduced into or supplied in the territory of a Contracting Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the

other Contracting Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;

b. ground equipment and spare parts (including engines) introduced into the territory of a Contracting Party for the servicing, maintenance, or repair of aircraft of an airline of one of the other Contracting Parties used in international air transportation;

c. fuel, lubricants, and consumable technical supplies introduced into or supplied in the territory of a Contracting Party for use in an aircraft of an airline of one of the other Contracting Parties engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Contracting Party in which they are taken on board; and

d. promotional and advertising materials introduced into or supplied in the territory of one Contracting Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Contracting Party engaged in international air transportation, even when these materials are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.

3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The exemptions provided by this Article shall also be available where the airlines of one Contracting Party have contracted with another airline, which similarly enjoys such exemptions from the other Contracting Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article.

ARTICLE 10

USER CHARGES

1. User charges that may be imposed by the competent charging authorities or bodies of the Contracting Party on the airlines of the other Contracting Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Contracting Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Contracting Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

ARTICLE 11

FAIR COMPETITION

1. All Contracting Parties shall allow a fair and equal opportunity for the airlines of the other Contracting Party to compete in providing the international air transportation governed by this Agreement.

2. All Contracting Parties shall allow each airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, none of the Contracting Parties shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the airlines of the other Contracting Party, except as may be required for customs, technical, operational, or environmental reasons.

3. No Contracting Party shall impose on the other Contracting Party's airlines a first-refusal requirement, uplift ratio, no objection fee, or any other requirement with respect to capacity, frequency, or traffic that would be inconsistent with the purposes of this Agreement.

ARTICLE 12

PRICING

1. All Contracting Parties shall allow prices for air transportation to be established by airlines of the Contracting Parties based upon commercial considerations in the marketplace.

2. Prices for international air transportation between the territories of the Contracting Parties shall not be required to be filed. Notwithstanding the foregoing, the airlines of the Contracting Parties shall provide immediate access, on request, to information on historical, existing, and proposed prices to the aeronautical authorities of the Contracting Parties in a manner and format acceptable to those aeronautical authorities.

ARTICLE 13

CONSULTATIONS

Any Contracting Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Contracting Party receives the request unless otherwise agreed.

ARTICLE 14

SETTLEMENT OF DISPUTES

Any dispute arising under this Agreement that is not resolved within 30 days of the date established for consultations pursuant to a request for consultations under Article 13 may be referred, by agreement of the Contracting Parties, for decision to the International Court of Justice. Such decision shall be binding on both Contracting Parties.

ARTICLE 15

TERMINATION

Any Contracting Party may, at any time, give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) at the end of the International Air Transport Association (IATA) traffic season in effect one year following the date of written notification of termination, unless the notice is withdrawn by agreement of the Contracting Parties before the end of this period.

ARTICLE 16

REGISTRATION WITH ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 17

ENTRY INTO FORCE

This Agreement will enter into force on July 1, 1985.