

INTERNATIONAL COURT OF JUSTICE

COMPROMIS

BETWEEN THE

THE PRINCIPALITY OF MAYUR (*APPLICANT*)

AND

THE REPUBLIC OF AKIRA (*RESPONDENT*)

TO SUBMIT TO

THE INTERNATIONAL COURT OF JUSTICE

THE DIFFERENCES BETWEEN THE PARTIES

RELATING TO VARIOUS CONVENTIONS ON AIR LAW AND

INTERNATIONAL LAW

AND RELATED SOURCES

Jointly notified to the Court on 7 April 2019

INTERNATIONAL AIR LAW MOOT COURT CASE 2018/2019

A. Applicability of Sources of International Law

For the purposes of this case, the States which are involved in this procedure, namely, the Principality of Mayur and the Republic of Akira, are parties to the following treaties and related sources of international law:

- The *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, henceforth also referred to as the *Chicago Convention (1944)*, including the amendments and Annexes thereto, containing International Standards and Recommended Practices (SARPs);
- The *International Air Services Transit Agreement*, signed at Chicago on 7 December 1944, henceforth also referred to as the *Transit Agreement (1944)*;
- The *United Nations Charter* signed at San Francisco on 26 June 1945;
- The *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation* done at Beijing on 10 September 2010, henceforth also referred to as the *Beijing Convention (2010)*;
- The *Convention on Diplomatic Relations*, signed at Vienna on 18 April 1961, henceforth also referred to as the *Vienna Convention on Diplomatic Relations (1961)* or *VCDR (1961)*;
- The *Convention on the Law of Treaties* signed at Vienna on 23 May 1969 henceforth also referred to as the *Vienna Convention on the Law of Treaties (1969)* or *VCLT (1969)*;
- The *United Nations Convention on the Law of the Seas*, signed at Montego Bay, Jamaica, on 10 December 1982 henceforth also referred to as *UNCLOS (1982)*.

In addition, the two above-mentioned States have:

- made no reservations concerning the application of any of the provisions of the above treaties;
- not notified the International Civil Aviation Organization (ICAO) of any differences between their national regulations and practices and related International Standards.

B. Background

1. This case concerns certain measures adopted by the State of Akira (Akira) in relation to actions allegedly carried out by citizens of the Principality of Mayur (Mayur). According to Akira, the said measures are designed to uphold and preserve the safety of international civil aviation.
2. Mayur is bounded to the north, east and west by the territory of the Akira and to the south by the Atlantic Ocean. As such, Mayur's territorial airspace is largely surrounded by that of neighboring Akira although Mayur has direct access to international waters to the south.
3. Mayur has one principal airline, The Flying Prince, which operates numerous daily flights to many international destinations across the globe. The Flying Prince is a remarkably successful international air carrier which operates a 6th Freedom or Hub and Spoke business model.
4. Until recently, both Akira and Mayur have enjoyed friendly political and economic relations with each other for many decades. Both States are members of the Atlantic Regional Economic Bloc (AREB) and parties to a series of Free Trade and Free Movement Agreements concluded under the auspices of the AREB. In 2014, the two States signed an open skies bilateral air services agreement known as the Dayton Agreement (see section C below).
5. Mr. Terry Wrist and Ms. Kim Young are citizens of Mayur and they operate a troll factory located in the north eastern region of Mayur, about 75 nautical miles (NM) away from the border with Akira. Mayur's public authorities are aware of the activities of Mr. Wrist and Ms. Young. In fact, the license issued by the Mayurian Ministry of Industry and Commerce to Mr. Wrist and Ms. Young permits their troll factory to engage in several industrial activities including the manufacturing, testing and export of electronic devices.
6. On 2 April 2018, the pilot-in-command of a wide-bodied passenger aircraft registered in Akira as A1-BCD and operating an international charter flight received a 'climb' command from the Airborne Collision Avoidance System (ACAS) on board the aircraft. After climbing for a few seconds in response to the command, Air Traffic Controllers on the ground in Akira noticed the aircraft's deviation from its assigned altitude and urgently radioed the pilot-in-command to immediately return to the previously assigned altitude, heading and course, and also to reset the on-board ACAS. The aircraft proceeded to complete the flight without further incident. This incident happened while the aircraft was cruising in the southern part of Akira's territorial airspace at an altitude of 35,000 feet about 50 NM north of the land border with Mayur.
7. An incident investigation subsequently launched by the authorities of Akira established that the aircraft's computer system had been hacked remotely. Although the Incident Report itself did not conclusively identify the source of the hacking, it was widely reported in the Akiran press that the hacking had been carried out by Mr. Wrist and Ms. Young from their troll factory located in the territory of Mayur. The incident investigation report concluded that the hacking

incident constituted a grave danger to the safe operation of aircraft. Mr. Wrist and Ms. Young had previously granted television interviews in which they were heavily critical of the Government of Akira.

8. A few days later, on 8 April 2018, a second Akiran-registered aircraft A2-BCF suffered a complete loss of radio contact with ground control about two hours after take-off from Akira's main airport. The aircraft was flying on a major international air route in airspace over international waters about 205 NM south of Mayur when this incident occurred. With no radio contact with ground controllers, the crew struggled for a few minutes to keep the aircraft on its filed flight plan. Ultimately, radio contact was restored and the flight continued to its destination without further incident.
9. An incident investigation subsequently launched by Akira's authorities established that the aircraft's loss of radio contact was caused by powerful electromagnetic waves emitted from a set of drones manufactured in Mr. Wrist and Ms. Young's troll factory and registered in Mayur. The investigation found that the drones, which were intended for export, were being tested by Mr. Wrist and Ms. Young from a floating platform located in Mayur's Exclusive Economic Zone on the same day and at about the same time as aircraft A2-BCF suffered the total loss of radio contact. The investigation further established that there had been no previous notifications issued by the authorities of Mayur although they were fully aware of the planned testing of the drones from the floating platform located in close proximity to a major international air route and the possible emission of powerful electromagnetic waves during the testing of the drones. The incident investigation report concluded that the incident constituted a grave danger to the safe operation of aircraft.
10. In the following weeks, that is, between 10 April 2018 and 15 May 2018, the authorities of Akira expressed deep concern about the said incidents. They issued several Press Releases denouncing the two incidents and describing them as "targeted cyber-attacks sponsored by the Mayurian Government against civil aircraft registered in Akira". Akira further issued two diplomatic démarches to the Government of Mayur attaching the two incident investigation reports and requesting comments or responses from the authorities of Mayur.
11. On 19 May 2018, the Government of Mayur acknowledged receipt of both diplomatic démarches from Akira without providing any comments or responses.

C. The Dayton Agreement of 2014

1. Among others, the Dayton Agreement (2014) stipulates the following:

- a) Both States confirm their adherence to international aviation conventions to which they are party, including but not limited to, the *Chicago Convention* (1944), the *Transit Agreement* (1944), as well as the *Beijing Convention* (2010) when it enters into force.
- b) Both States confirm that they have implemented the International Standards and Recommended Practices (SARPs) adopted by ICAO in their respective national legal frameworks, and consider those SARPs as minimum norms governing their international aviation operations;
- c) Both States allow airlines designated by either State to fly through their respective airspaces and operate international air services between points in the territories of both States without restrictions, with the exclusion of purely domestic services in each States which said services may only be operated by aircraft registered in the concerned State;
- d) Both States agree to a free pricing, capacity and frequency regime for the operation of the agreed international air services;
- e) Both States agree to work together in their fight against acts of violence against civil aviation as set out in Article 17 of this Agreement which is attached to the present *Compromis*;
- f) On disagreements and settlement of disputes, Article 18 provides:

“If any disagreement between the Parties relating to the interpretation or application of this Agreement, and the international Conventions to which it refers, cannot be settled by consultations or negotiations, or by way of arbitration agreed upon *ad hoc* by the States party to this Agreement, it shall, on the application of any State concerned in the disagreement, be decided by the International Court of Justice.”

2. Both Akira and Mayur have independently ratified the Dayton Agreement in accordance with their respective national constitutional provisions. The Agreement entered into force on 1 May 2016.

D. The measures adopted by Akira:

1. On 20 May 2018, Akira broke off diplomatic relations with Mayur, accusing it of sponsoring cyber-terrorism and protecting the perpetrators thereof, thereby severely endangering the safety of international air navigation. Akira closed its Embassy in Mayur and recalled its Ambassador to Mayur. Akira further issued a notice to the Ambassador of Mayur and all Mayurian citizens living in Akira to leave its territory within 48 hours.
2. On 10 June 2018, the Government of Akira issued Executive Order AK007/18 declaring a swath of its territory 150 NM in width along its entire border with Mayur as a prohibited area, citing Article 9 of the *Chicago Convention* (1944). The Executive Order further stated that all Mayuri-registered aircraft are prohibited from entering, flying through or landing in the said prohibited area until further notice.
3. The following day (11 June 2018) the Civil Aviation Authority of Akira published the following NOTAM ('Notice to Airmen') at 11:22 a.m. local time:

NOTAM ISSUED AKIRA.

A0170/18 – ...

FLIGHTS OPERATED BY AIRCRAFT REGISTERED IN THE PRINCIPALITY OF MAYUR ARE PROHIBITED FROM ENTERING, FLYING THROUGH OR LANDING IN THE ENTIRE PORTION OF AKIRA'S NATIONAL TERRITORY DESIGNATED AS A PROHIBITED AREA UNDER EXECUTIVE ORDER AK007/18. AKIRA'S AIR TRAFFIC SERVICE UNITS WILL NOT PROVIDE CLEARANCES TO ANY SUCH MAYURI-REGISTERED AIRCRAFT FOUND WITHIN THE SAID PROHIBITED AREA. SUCH AIRCRAFT WILL BE FORCED TO LAND AT THE NEAREST AIRFIELD AND THE CREW WILL BE SUBJECT TO DETENTION AND PROSECUTION. ALL OTHER FLIGHTS CONDUCTED BY MAYURI-REGISTERED AIRCRAFT IN THE REMAINDER OF AKIRAN TERRITORY OUTSIDE OF THE PROHIBITED AREA MAY CONTINUE AS USUAL.

4. As a result of the Executive Order and the NOTAM, it has become difficult and expensive for aircraft of the Flying Prince to reach their international destinations located to the north, east and west of Mayur. In order to avoid entering the prohibited area established by Akira, upon take-off from Akira's main airport, such aircraft must fly on a southerly heading for about 2 hours before turning east or west. They are then obliged to make other detours and take longer routes in order to arrive at their final destinations. In consequence, such flights are no longer competitive or profitable since they cost more in fuel charges and maintenance costs.
5. In one day, not only did the Flying Prince lose 22 destinations, representing 11 percent of its network, but it also lost the ability to access major trunk routes to the north, east and west of its territory connecting it with major cities. This significantly impacted the Flying Prince's operations, causing delay of its passengers and cargo traffic and dramatically increasing its operational costs.

6. Mayur estimates that the losses incurred by the Flying Prince as a direct consequence of the measures imposed by Akira amount to approximately 37 million US\$ per day.
7. Akira has opened a criminal investigation against Mr. Wrist and Ms. Young claiming that they have committed offences in breach of international law and Akiran national law. According to the criminal laws of Akira, any person who commits an offence that seriously endangers the safety of international air navigation shall, upon conviction, be punishable by life imprisonment or the death penalty. Akira has requested Mayur to extradite Mr. Wrist and Ms. Young pursuant to the provisions of the *Beijing Convention* (2010).

E. Actions undertaken by Mayur

1. On 1 July 2018, the Government of Mayur issued a Press Release categorically denying any involvement whatsoever in the activities of the troll factory and those of its owners, in particular the two cyber-attack incidents allegedly targeting Akiran-registered aircraft. While reaffirming its commitment to the safety and security of international air navigation, the Government of Mayur took exception to the allegation that it was a State sponsor of cyber-terrorism targeting international air navigation.
2. In the said Press Release, the Government of Mayur also rejected the extradition requests from Akira based on the following arguments: a) absence of extradition treaties between Mayur and Akira; b) inconsistency between the alleged offences and the provisions of the *Beijing Convention* (2010); and, c) the Constitution of Mayur expressly prohibits the extradition of its nationals to States which impose capital punishments such as life imprisonment or the death penalty. Mayur further expressed the view that it has substantial grounds to believe that the extradition request was motivated by a desire to punish Mr. Wrist and Ms. Young on account of their unsympathetic political opinions about the Government of Akira.
3. Mayur announced that in order to safeguard the rights of Mr. Wrist and Ms. Young, it will conduct its own criminal enquiry in conformity with its national laws and relevant applicable international law to determine whether Mr. Wrist and Ms. Young had committed the alleged offences. Mayur declared that should the enquiry yield sufficient evidence to prove beyond a reasonable doubt that the alleged offenders had indeed committed the alleged offences, they would be prosecuted and punished under Mayurian law. Under Mayur's penal law, the maximum penalty for the most serious criminal offences is a term of imprisonment or house arrest not exceeding seven years.
4. Despite the breakdown of diplomatic relations between Mayur and Akira, the Government of Mayur sent a diplomatic *démarche* to the Government of Akira on 2 July 2018 requesting consultations and negotiations in order to resolve the aviation aspects of the impasse as foreseen in the Dayton Agreement. The Government of Mayur made several other overtures to Akira between July and August 2018. However, these diplomatic actions did not yield any results.
5. As the two States could also not agree on *ad hoc* arbitration, Mayur submitted its claims as set out in Section F below to the International Court of Justice in accordance with Article 18 of the Dayton Agreement.
6. On becoming aware that Mayur had filed claims before the International Court of Justice, Akira submitted its counterclaims as set out in Section F below.
7. On 7 April 2019, the two parties jointly notified the present *Compromis* to the court.

F. Reliefs sought by the respective Parties

Mayur requests the International Court of Justice to:

- I. *Declare* that Mayur's decision with respect to Mr. Wrist and Ms. Young is in conformity with the provisions of the *Beijing Convention* (2010) and other relevant sources of international law, including the Dayton Agreement (2014);
- II. *Declare* that Akira's establishment of a prohibited area 150 NM in width along its entire border with Mayur is a flagrant violation of its obligations under international law, including the *Chicago Convention* (1944) and the Dayton Agreement (2014);
- III. *Further declare* that Akira's NOTAM A0170/18 constitutes a violation of its obligation to provide, in its territory, facilities and services to facilitate international air navigation in accordance with the standards and practices recommended or established from time to time, pursuant to the *Chicago Convention* (1944);
- IV. *Order* Akira to cancel Executive Order AK007/18 with immediate effect and to pay damages to Mayur for the economic losses incurred by the Flying Prince, calculated at 37 million US\$ per day from 10 June 2018 until the date of final cancellation of the said Executive Order.

In its counterclaim, Akira requests the International Court of Justice to:

- I. *Declare* that Mayur's decision with respect to Mr. Wrist and Ms. Young is in violation of the provisions of the *Beijing Convention* (2010) and other relevant sources of international law, including the Dayton Agreement (2014);
- II. *Confirm* that the Akira's establishment of a prohibited area in a portion of its own territory is in conformity with international law, in particular, the *Chicago Convention* (1944);
- III. *Further declare* that Akira's NOTAM A0170/18 does not constitute a violation of its obligation to provide, in its territory, facilities and services to facilitate international air navigation in accordance with the standards and practices recommended or established from time to time, pursuant to the *Chicago Convention* (1944);
- IV. *Confirm* that Executive Order AK007/18 is a legitimate exercise of sovereign power by the Government of Akira and order accordingly that Akira is not liable to pay damages for the economic losses allegedly incurred by the Flying Prince as claimed above.

ATTACHMENT TO THE COMPROMIS

ARTICLE 17 - Security

- 1) In accordance with their rights and obligations under international law, the Parties reaffirm 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 Parties shall in particular act in conformity with the following agreements:
 - a) the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo, 14 September 1963,
 - b) the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague, 16 December 1970,
 - c) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal, 23 September 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal, 24 February 1988, and
 - d) the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation done at Beijing, 10 September 2010.
- 2) The Parties shall provide upon request all necessary assistance to each other to address any threat to the security of civil aviation, including the prevention of 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.
- 3) The Parties shall, in their mutual relations, act in conformity with the aviation security Standards and 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 registries, operators of aircraft who 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) Each Party shall ensure that effective measures are taken within its territory 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; and that those measures are adjusted to meet increased threats to the security of civil aviation. Each Party agrees that the security provisions required by the other Party for departure from and while within the territory of that other Party must be observed. Each Party shall give positive consideration to any request from the other Party for special security measures to meet a particular threat.
- 5) With full regard and mutual respect for each other's sovereignty as confirmed in Article 1 of the Convention on international civil aviation, a Party may adopt security measures for entry into its territory. Where possible, that Party shall take into account the security measures already applied by the other Party and any views that the other Party may offer. Each Party recognizes, however, that nothing in this Article limits the ability of a Party to refuse entry into its territory of any flight or flights that it deems to present a threat to its security.
- 6) A Party may take national emergency measures including amendments to meet a specific security threat. Such measures shall be notified immediately to the responsible authorities of the other Party and to the ICAO Council in accordance with the relevant provisions of the Convention on international civil aviation (1944).
- 7) 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 Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.
- 8) When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the responsible authorities of that Party may request immediate consultations with the authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, 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 Party may take interim action prior to the expiry of 15 days.