

INTERNATIONAL COURT OF JUSTICE

COMPROMIS

**BETWEEN THE REPUBLIC OF SAN LORENZO
(APPLICANT) AND THE STATE OF ILIUM
(RESPONDENT)**

**TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE
THE DIFFERENCES BETWEEN THE PARTIES
CONCERNING USE OF FORCE AGAINST A CIVILIAN
AIRCRAFT**

jointly notified to the Court on xx xxx 2016



**Universiteit
Leiden**
The Netherlands



INTERNATIONAL INSTITUTE
OF AIR AND SPACE LAW



**THE 2016 INTERNATIONAL AIR LAW MOOT
COURT COMPETITION:
THE REPUBLIC OF SAN LORENZO V. THE STATE OF ILIUM
IN THE MATTER OF THE USE OF FORCE AGAINST FLIGHT 423-9**

I. Background

1. For the purposes of this Case, both of the States relevant to the problem—Ilium and San Lorenzo—are parties to the following multilateral agreements:
 - a. 1945 United Nations Charter (U.N. Charter)
 - b. 1944 Convention on International Civil Aviation (Chicago Convention), including the amendments thereto. Neither the State of Ilium nor the State of San Lorenzo has notified differences to ICAO with respect to departures from Standards and Recommended Practices (SARPs) laid down in Annex 13 of ICAO.
 - c. 1969 Vienna Convention on the Law of Treaties
 - d. 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention)
2. Tralfamadore is an archipelago of six islands under the effective control of the State of Ilium, a relationship dating back to the mid-20th century.
3. In recent decades many Tralfamadoreans have objected to their continued status as a protectorate of Ilium and there have been on-and-off-again acts of political resistance and violence, turning Tralfamadore into a disputed zone.
4. In the most recent referendum on the subject, the citizens of Tralfamadore voted to remain under the control of Ilium. Advocates for independence have casted doubts on the integrity of the referendum vote.
5. These tensions are exacerbated by the reality that support for independence is concentrated on the three northernmost islands of the Ilium archipelago, collectively known as the North Islands, which have been in something of a silent uprising against the control by Ilium for decades, including occasionally violent acts perpetrated by a separatist group known as the Bokonon movement.
6. Further complicating matters is the nearby Republic of San Lorenzo, which used to exercise sovereignty over the North Islands at one time. San Lorenzo believes it still possesses a valid claim to the North Islands. Thus, San Lorenzo has for decades explicitly refused to recognize Ilium's legal authority over the North Islands. Historical polling has shown the residents of these Islands to be split as to whether they would prefer complete autonomy or to become a protectorate of San Lorenzo.

7. On June 1, 2015, San Lorenzo Airways Flight 423-9 departed from the international airport at the capital city of Aquafordia, San Lorenzo, en route to Ilium's capital city of Hoenikker. The majority of the 285 passengers were San Lorenzan nationals. The aircraft suddenly lost communication and disappeared from radar while flying at cruise altitude through the airspace above the North Islands. San Lorenzo is the state of registry of the aircraft operating flight 423-9.
8. Witnesses were reported to have observed a mid-air explosion and authorities from both Ilium and San Lorenzo quickly assumed that the aircraft had been struck by a surface-to-air missile.
9. Air traffic control and air navigation services for Tralfamadore and the surrounding regions of the territorial and high seas are provided under the authority of the Ilium government at facilities housed on Tralfamadore's largest island, Granfalloon, which is not part of the North Islands and is also home to Tralfamadore's capital city and governing institutions.
10. At the time of the accident, Ilium had not issued any notices to airmen or provided other States and interested parties with any other kind of warning that parts of the airspace above Tralfamadore should be considered a conflict zone.
11. It was subsequently revealed that Ilium had suppressed information about the nature of political unrest on Tralfamadore. The Ilium-allied authorities have essentially lost control of the three North Islands to the Bokonon movement and officials from Ilium and the Tralfamadorian regional government have largely evacuated the North Islands.
12. The tragedy also brought international attention to the extent to which the Republic of San Lorenzo had been covertly encouraging Bokonon separatists on the North Islands, including providing them with weapons.
13. San Lorenzo denies having supplied the separatists with surface-to-air missiles, but surveillance photographs taken by Ilium show bands of separatists in the possession of surface-to-air missiles of San Lorenzan manufacture. San Lorenzo insists that these must have been purchased on the black market.
14. As a consequence of San Lorenzo's covert activities on the North Islands, San Lorenzan intelligence agencies were aware of the extent of hostilities in the region as well as the commercial air carriers.
15. Wreckage from the aircraft was spotted in the archipelagic waters of the North Islands. It was believed that portions of the aircraft may have also landed on one of the North Islands.
16. Ilium, considering itself the State of Occurrence under Article 26 of the Chicago Convention and under Annex 13 to the Chicago Convention, opened an Aircraft Accident Investigation.

17. The Republic of San Lorenzo objected to Ilium's authority over the Investigation and requested the ability to conduct its own investigation, but was denied access to the islands and the surrounding waters by Ilium. Ilium offered the Republic of San Lorenzo an opportunity to send one representative to observe the accident investigation, but San Lorenzo refused.

18. When Ilium produced its final accident report, San Lorenzan media reported that the investigation was hampered by the lack of control by Ilium over the North Islands. Significant portions of the aircraft as well as a majority of the bodies of passengers were recovered, but no flight recorder was found. The report confirmed that the aircraft was shot down by an anti-aircraft missile, but reflected a lack of certainty as to whether the missing aircraft segments and bodies had landed in the ocean or in particularly hostile regions on the North Islands which the Ilium authorities had been unable to probe.

19. The report also did not take a position as to who fired the missile, or even from which island the missile had been fired, allowing only that possibilities included that the missile had been fired by Bokonon separatists or subversive Bokonon agents who had infiltrated Ilium's military forces on the North Islands.

20. The report stated that the aircraft passed through prohibited airspace before it was struck. Ilium has a retired naval base on one of the North Islands and the airspace directly above and surrounding the base has been designated by Ilium as a prohibited area under Article 9 of the Chicago Convention dating back to when the base was active. This designation has long been a source of tension with the Republic of San Lorenzo, which never acknowledged Ilium's authority over the North Islands. The Republic of San Lorenzo has publicly refused to recognize Ilium's authority to prohibit Lorenzan aircraft from operating in any portion of that airspace and San Lorenzan airlines have been found to be operating within that airspace on prior occasions. Although Ilium has warned San Lorenzo verbally, it has never previously enforced the prohibitions on that airspace by force or even by ordering the aircraft to land on the closest airport. Instead, the issue has been a source of diplomatic tension regarding authority over the North Islands.

21. The Republic of San Lorenzo, asserted that its own interests as the State of registry, and concerns about Ilium's ability to objectively fulfill its obligations as the State of Occurrence, entitled it to produce its own accident investigation report.

22. The San Lorenzan report concluded that the missile was most likely fired from one of the islands of the archipelago (other than the North Islands) over which Ilium retains effective control, and that it was fired by military operatives loyal to Ilium who may have mistakenly believed that they were shooting down a cargo aircraft carrying weapons and other supplies to the Bokonon rebels.

23. The San Lorenzan report also disputes that the aircraft was operating in prohibited airspace.

24. 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.

25. Ensuing consultations and negotiations between the authorised representatives of the State of Ilium and the Republic of San Lorenzo failed to resolve the disagreement. Both States agreed to bring their dispute before the International Court of Justice by way of this Compromis.

II. Action

1. The Republic of San Lorenzo has asked the International Court of Justice to rule that:
 - a. The State of Ilium is responsible for the shooting down of flight 423-9 and liable for the damages arising from this breach of an international obligation
 - b. The State of Ilium is not entitled to establish a prohibited area in the airspace
 - c. The State of Ilium is not entitled to draw up an Accident Investigation Report pursuant to the terms of Annex 13.

2. The State of Ilium has asked the International Court of Justice to rule that:
 - a. The State of Ilium is not responsible for the shooting down of flight 423-9 and liable for compensation of damages
 - b. The State of Ilium is entitled to established a prohibited area in the airspace
 - c. The State of Ilium is the only state authorised to draw up an investigation report.