

QATAR AIRWAYS/McGILL AIR LAW SPEED MOOT COURT COMPETITION

2019

International Court of Justice

*CASE CONCERNING DRONE INTERFERENCE WITH
OPERATIONS*

AT ROBERTS INTERNATIONAL AIRPORT

THE FEDERAL REPUBLIC OF GUILDER

(Applicant)

v.

THE STATE OF FLORIN

(Respondent)

Agreed Statement of Facts

1. For the purposes of this Case, both of the States relevant to this problem – the Federal Republic of Guilder and the State of Florin – are parties to the following agreements:
 - a. *Convention on International Civil Aviation (Chicago Convention)*, concluded at Chicago on 7 December 1944, including the amendments and Annexes thereto;
 - b. *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, concluded at Montreal on 23 September 1971;
 - c. *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 (with Final Act)*, concluded at Montreal on 24 February 1988; and
 - d. *Bilateral Air Services Agreement between the Federal Republic of Guilder and the State of Florin* (excerpt included as Annex 1).
2. Guilder and Florin are neighboring States, sharing a border that is approximately 500 kilometers long. Guilder is directly east of Florin.
3. Florin’s primary airport is Roberts International Airport, located only 25 kilometers from the border with Guilder. Any aircraft approaching from the east with the intent of landing at Roberts Airport will have to begin its descent and approach through Guilderian airspace.
4. The Guilderian town of Westley hosts a drone festival every August. Drone enthusiasts from across the globe attend and fly their drones in races, stunt competitions, and other events, all sanctioned by the Westley municipal government.
5. Given Westley’s proximity to the border with Florin many of these drones inevitably cross into Florinian airspace at various points throughout the festival.
6. Westley also happens to be directly in the path of a common approach route for aircraft landing at Roberts Airport in Florin.
7. As the drone festival has grown in size, Roberts Airport officials have become increasingly concerned about the potential for drone interference with approaching aircraft during the weekend of the festival.

8. During the most recent festival, in August 2018, a national from a neighboring State, Montoya, operating at a computer located in another neighboring State, Fezzik, hacked the smartphone app which dozens of festival attendees of various nationalities were using to pilot their drones.
9. The hacker, known only by her hacker name of Buttercup, then piloted multiple drones across the border into Florinian airspace immediately proximate to Roberts Airport and directly in and out of the path of aircraft approaching or taking off from the airport.
10. The Roberts Airport authorities, alarmed by the erratic drone activity, grounded flights for 24 hours, causing significant inconvenience and economic loss to numerous carriers using the airport.
11. Two weeks later, the hacker, having left Fezzik to hide out in the State of Vizzini, was apprehended by Vizzinian authorities.
12. The Vizzinian authorities extradited the hacker to the Federal Republic of Guilder, where she was charged with malicious telephonic communications, the penalty for which under Guilderian law is a small fine.
13. Authorities from Florin demanded that the hacker be extradited to Florin where she could be properly prosecuted under the laws of Florin for malicious interference with aviation operations, an offense that does not exist in Guilder and for which the maximum penalty under Florinian law is an extended period of incarceration.
14. Guilderian authorities refused extradition, insisting that the Guilderian citizens of Westley were the primary victims of the hacking, given that it was the festival that was targeted for attack, and that therefore it was appropriate that Guilderian authorities dispense justice according to the laws of Guilder.
15. The Guilderian authorities invited the Florinian officials to observe the prosecution of the hacker and to testify before the Guilderian courts as to additional damages caused by the hacking which could be considered in sentencing. The Guilderian authorities insisted, however, that the prosecution be managed by Guilderian officials and carried out entirely under Guilderian law.
16. Florinian aviation officials sought consultation with the Guilderian authorities in accordance with the bilateral Air Services Agreement between the Federal Republic of Guilder and the State of Florin.

17. During the consultations, Florin contended that Guilder was not fulfilling its obligations under the 1971 Montreal Convention, whereas Guilder in response insisted that it was and continues to be in full compliance.
18. During the consultations, the Florinian aviation officials also demanded that Westley be required to discontinue its drone festival. The Guilderian authorities refused this request.
19. Following the failed consultations, Florin publicly stated that until the hacker, a/k/a Buttercup, was delivered to Florinian authorities for prosecution, all Guilderian carriers would be denied landing rights at Roberts International Airport.
20. Guilder responded by disallowing all Florinian aircraft from using Guilderian airspace in their approach to Roberts Airport.
21. Both States agreed, pursuant to their prior acceptance of the jurisdiction of the International Court of Justice (ICJ) and Article 14 of their Air Services Agreement, to bring the following contentious case before the ICJ.

The Parties' Contentions

1. The State of Florin alleges the following claims before the ICJ:
 - a. The Federal Republic of Guilder failed to fulfill its obligations under the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971;
 - b. The Westley drone festival violates Article 8 of the Chicago Convention;
 - c. As a result of the above-listed violations, Florin was justified in its revocation of Guilderian landing rights at Roberts International Airport.
2. The Federal Republic of Guilder alleges the foregoing claims before the ICJ:
 - a. The Federal Republic of Guilder acted in accordance with its obligations under the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971, by exercising the jurisdiction granted to Guilder under that treaty to prosecute the hacker under Guilderian law, and by refusing to extradite the hacker to Florin.
 - b. The Westley festival causes no violation of Article 8 of the Chicago Convention.
 - c. Florin violated the Air Services Agreement by revoking Guilderian air traffic rights in these circumstances.

Annex 1

AIR SERVICES AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF GUILDER AND THE STATE OF FLORIN

[Relevant extracts only]

The Government of the Federal Republic of Guilder and the Government of the State of Florin, hereinafter referred to as the Contracting Parties,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December 1944,

Desiring to conclude an agreement for the purpose of establishing air services between their territories,

Have agreed as follows:

ARTICLE 1 Definitions

For the purpose of this Agreement, unless otherwise stated:

- (a) the term "Aeronautical Authorities" means: for the Federal Republic of Guilder and for the State of Florin, their respective Ministries of Transport and Communications, or in either case any person or body authorized to perform any functions at present exercised by the said Authorities including the Civil Aviation Authority of each State;
- (b) the terms "Agreed Service" and "Specified Route" mean: international air service pursuant to this Agreement and the routes specified in the Annex to this Agreement respectively;
- (c) the term "Agreement" means: this Agreement, its Annex drawn up in application thereof, as well as any amendment to the Agreement or the Annex;
- (d) the terms "Air Service", "International Air Service", "Airline" and "Stop for non-traffic purposes" shall have the meaning respectively assigned to them in Article 96 of the Convention;
- (e) the term "the Convention" means: the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes any Annex adopted under Article 90 of that Convention and any amendment

of the Annexes or the Convention under Articles 90 and 94 thereof, insofar as those Annexes and amendments have become effective for, or been ratified by both Contracting Parties;

- (f) the term “Designated Airline” means: the Airline which has been designated and authorized in accordance with Article 3 of this Agreement (Designation and Authorization);
- (g) the term “Territory” in relation to either Contracting Party shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of the Contracting Party, in accordance with Article 2 of the Convention.

ARTICLE 2 Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air transportation by the Designated Airline(s) of the other Contracting Party:
 - a. the right to fly across its Territory without landing;
 - b. the right to make stops in its Territory for non-traffic purposes; and
 - c. While operating an Agreed Service on a Specified Route, the right to make stops in its Territory for the purposes of taking up and discharging international traffic in passengers, baggage, cargo and mail, separately or in combination, including the freedom to take up and discharging international traffic to or from a third State. Nothing in paragraph 1 of this Article shall be deemed to grant the right for one Contracting Party’s Airline(s) to participate in air transportation between points in the Territory of the other Contracting Party (cabotage).
2. Any intermediate points and/or points beyond may be served by the Designated Airline(s) of one Contracting Party without exercising fifth freedom traffic rights between those points and the Territory of the other Contracting Party. Such fifth freedom traffic rights may, however, be exercised by the Designated Airline(s) of one Contracting Party after having obtained prior approval of the Aeronautical Authorities of the other Contracting Party.

ARTICLE 3 Designation and Authorization

1. Either Contracting Party shall have the right, by written notification through diplomatic channels to the other Contracting Party, to designate two airlines to operate International Air Services on the routes specified in the Annex and to substitute another Airline for an Airline previously designated.
2. On receipt of such a notification and of applications from the Designated Airline, in the form and manner prescribed for operating authorizations and technical permissions, either Contracting Party shall, with minimum procedural delay, grant to the Airline so designated by the other Contracting Party the appropriate operating authorizations, provided that the Designated 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.
3. Upon receipt of the operating authorization of paragraph 2 of this Article, the Designated Airline may at any time begin to operate the Agreed Services, in part or in whole, provided that it complies with the provisions of this Agreement.

ARTICLE 4 Revocation and Suspension of Authorization

1. Each Contracting Party shall have the right to withhold, revoke, suspend or limit the operating authorizations of an Airline designated by the other Contracting Party in the event of any of the following:
 - a. such airline is not able to prove upon request that the majority ownership and effective control of such airline are vested in nationals or corporations of the other Contracting Party or in that Party itself; or
 - b. in case that Airline has failed to comply with the laws and regulations referred to in Article 9 (Application of Laws, Regulations and Procedures) of this Agreement; or
 - c. in case the other Contracting Party is not maintaining and administering the standards set forth in Article 11 (Safety) and Article 12 (Aviation Security); or
 - d. in the event of failure by such Airline to qualify before the Aeronautical Authorities of the Contracting Party assessing the authorization, under the laws and regulations normally and reasonably applied to the operation of International Air Services by these Authorities in conformity with the Convention; or

- e. in case the Airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.
2. Unless immediate action is essential to prevent further non-compliance with paragraph 1 of this Article, the rights established by this Article shall be exercised only after consultation with the other Contracting Party. Unless otherwise agreed by the Contracting Parties, such consultations shall begin within a period of sixty (60) days from the date of receipt of the request.
3. This Article does not limit the rights of either Contracting Party to withhold, revoke, limit or impose conditions on the operating authorization of an Airline or Airlines of the other Contracting Party in accordance with the provisions of Article 12 (Aviation Security).

ARTICLE 9 Application of Laws, Regulations and Procedures

1. The laws, regulations and procedures of either Contracting Party relating to the entrance or entry into or departure from its Territory of aircraft engaged in the operation of the agreed international air services, or to the operation and navigation of such aircraft, shall be complied with by the Designated Airline(s) of the other Contracting Party upon entrance into, while within the Territory of the Contracting Party, and until and including departure from, the said Territory.

ARTICLE 11 Safety

1. Each Contracting Party may request consultations at any time concerning safety standards in any area relating to aircrew, aircraft or their operation adopted by the other Contracting Party. Such consultations shall take place within 30 (thirty) days of that request.
2. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in any such area that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by

the other Contracting Party to take appropriate action within 15 days or such longer period as may be agreed, shall be grounds for the application of Article 4 of this Agreement (*Revocation and Suspension of Authorization*).

3. Each Contracting Party shall see to it that each Designated Airline will be provided with communicative, aviation and meteorological facilities and any other Services necessary for the safe operations of the Agreed Services in conformity with the Convention and its Annexes.

ARTICLE 12 Aviation Security

1. The Contracting Parties agree to provide assistance to each other as necessary with a view to preventing unlawful seizure of aircraft and other unlawful acts against the safety of aircraft, its passengers and crew, airports and air navigation facilities and any other threat to security of civil aviation.
2. Each Contracting Party agrees to observe non-discriminatory and generally applicable security provisions required by the other Contracting Party for entry into the Territory of the other Contracting Party and to take adequate measures to inspect passengers and their carry-on items. Each Contracting Party shall also give sympathetic consideration to any request from the other Contracting Party for special security measures for its aircraft or passengers to meet a particular threat.
3. The Contracting Parties shall act in accordance with applicable aviation security provisions established by the International Civil Aviation Organization and its Annexes. Should a Contracting Party depart from such provisions, the other Contracting Party may request consultations with that Contracting Party. Unless otherwise agreed by the Contracting Parties, such consultation shall begin within a period of 60 (sixty) days from the date of receipt of such a request. Failure to reach a satisfactory agreement could constitute grounds for the application of Article 15 of this Agreement.
4. 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: the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo, 14 September 1963, the

Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague, 16 December 1970, 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.

5. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the aviation security provisions of this Article, the Aeronautical Authorities of the first Contracting Party may request immediate consultations with the Aeronautical Authorities of the other Contracting Party. Failure to reach a satisfactory agreement within 30 days from the date of such request shall constitute grounds to withhold, revoke, limit or impose conditions on the operating authorization of an Airline or Airlines of that other Contracting Party. When required by an emergency, a Contracting Party may take interim action prior to the expiration of these 30 days.

ARTICLE 13 Consultation and Amendment

1. In a spirit of close cooperation, the Aeronautical Authorities of the Contracting Parties may consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement.
2. Either Contracting Party may request consultations with a view to amend this Agreement. These consultations shall begin within sixty (60) days from the date of the receipt of the request by the other Contracting Party, unless otherwise agreed. Such consultations may be conducted through discussion or by correspondence.
3. Any amendment of this Agreement agreed upon by the Contracting Parties, shall come into force on the date on which the Contracting Parties have informed each other in writing, through the exchange of diplomatic notes, of the completion of their respective constitutional requirements.

ARTICLE 14 Settlement of Disputes

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavor to settle their disagreement by bilateral consultations and negotiations.

2. If the Contracting Parties fail to reach a settlement by negotiation, the disagreement may at the request of either Contracting Party be submitted for decision to the International Court of Justice.
3. The Contracting Parties undertake to comply with any decision given under paragraph 2 of this Article.

ARTICLE 15 Duration and Termination

1. Either Contracting Party may, at any time, give notice in writing through diplomatic channels to the other Contracting Party of its decision to terminate this Agreement.
2. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. In such case, this Agreement shall terminate 12 (twelve) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement between the Contracting Parties before the expiry of this period. In the absence of acknowledgement of receipt of the notice of termination by the other Contracting Party, such notice shall be deemed to have been received fourteen (14) working days after the receipt of that notice by the International Civil Aviation Organization.

ARTICLE 16 Registration with ICAO

This Agreement shall be registered with the International Civil Aviation Organization.

ARTICLE 17 Applicability of Multilateral Agreements and Conventions

1. The provisions of the Convention shall be applicable to this Agreement.
2. If a multilateral agreement or convention, accepted by both Contracting Parties, concerning any matter covered by this Agreement, enters into force, the relevant provisions of that multilateral agreement or convention shall supersede the relevant provisions of this Agreement.
3. The Contracting Parties may consult each other to determine the consequences for the Agreement of the supersession, as mentioned under paragraph 2 of this Article, and to agree upon required amendments to the Agreement.

ARTICLE 18 Entry into Force

This Agreement shall come into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the formalities, constitutionally required therefore in their respective countries, have been complied with.