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Case of The State of Boa Vista v. the Kingdom of Ambrosia

Regarding a claim for damages suffered by nationals of the State of Boa Vista following an aerial accident in the airspace of the Kingdom of Ambrosia.

It involves public international law, including international air law as well as international law governing treaties. The case also affects questions of State responsibility and liability, and enforcement of international safety rules.

AN UNEXPECTED AND UNDESIRED MID-AIR COLLISION

1. Boa Vista Airways is an airline having its principal place of business in the State of Boa Vista. Its aircraft are registered in the aircraft registry of Boa Vista. Its flight operations and aircraft comply with norms drawn up by the International Civil Aviation Organization (ICAO), including the Standards and Recommended Practices (SARPs) established and updated from time to time by ICAO, as laid down in the Annexes of Chicago Convention on international civil aviation (1944).
2. The State of Boa Vista has designated Boa Vista Airways for the operation of international air services to other States pursuant to the terms of Air Services Agreements (ASAs), concluded between Boa Vista and other States.
3. Boa Vista has engaged into a bilateral ASA with a State called Belka, and designated Boa Vista Airways to operate air transport services between points located in these two States, including their capitals. Belka has accepted the designation of Boa Vista Airways by the State of Boa Vista as the designated airline of the latter State (Boa Vista).
4. Graznavian Freight Airlines is a freight carrier which has its principal place of business in the State of Graznavia. Graznavian Freight Airlines has its principal place of business in the State of Graznavia. Its aircraft are registered in the aircraft registry of Graznavia. Its safety standards comply with the SARPs drawn up and updated from time to time by ICAO.
5. The State of Graznavia has designated Graznavian Freight Airlines to operate international freight services under an ASA concluded between the State of Graznavia and the State of Mynia. Mynia has accepted the designation of Graznavian Freight Airlines under the relevant ASA. Graznavian Freight Airlines operates its freight services between points located in the State of Graznavia and the State of Mynia, including their capitals.
6. Boa Vista Airways and Graznavian Freight Airlines are entitled to fly over national airspace falling under the sovereignty of a State called the Kingdom of Ambrosia, henceforth referred to as Ambrosia, pursuant to the adherence of the involved States to the International Air Services Transit Agreement of 1944, as confirmed in the applicable ASAs between the involved States.
7. Hence, Ambrosia provides permission to Boa Vista Airways and Graznavian Freight Airlines to operate their services through Ambrosia's airspace.
8. The State of Adjikistan is an adjacent State of Ambrosia. Adjikistan has nominated its Air Traffic Control (ATC) provider called Adjicontrol to provide ATC services in Adjikistan's national airspace. Adjicontrol has its principal place of business in Adjikistan. Adjicontrol is subject to the relevant ICAO Annexes as incorporated in the national legislation of Ambrosia, and to the regulations of Adjikistan implementing ICAO's SARPs.

9. In 2003, Adjikistan and Ambrosia agreed that ATC in a portion of airspace coming under Ambrosia's sovereignty, which portion neighbours Adjikistan (Portion K), would be performed exclusively by Adjicontrol. This agreement is based on the SARPs laid down in ICAO Annex 11, regarding *Air Traffic Services*. Consequent upon this agreement, Adjicontrol has effectuated these ATC services for that portion K of Ambrosia's airspace since 2003.
10. The agreement between Adjikistan and Ambrosia regarding the relocation of ATC responsibilities and functions from Ambrosia to Adjikistan has not been ratified by the government of either State (Adjikistan and Ambrosia). This agreement has not been registered with ICAO pursuant to the relevant provisions of the Chicago Convention (1944).
11. Article 30 of the last mentioned bilateral agreement on the transfer of ATC responsibilities and tasks requires the agreement to be ratified in order for it to enter into force.
12. According to Article 7 of the ATC agreement between Ambrosia and Adjikistan, Adjikistan is:

"liable for the compensation of damages caused by its fault, or that of its agents or any other person acting on its behalf, pertaining to the provision of air traffic services, falling under the agreement."
13. On 23 March 2011, a flight operated by Graznavian Freight Airlines labelled GF 694 bumped into a flight operated by Boa Vista Airways, flight BO 375, while flying to the capitals of Mynia and Belka respectively. The collision happened within portion K of the airspace of Ambrosia, which is controlled by Adjicontrol pursuant to the agreement mentioned in section 9.
14. The 65 passengers, and the 7 crew members, including the pilot and co-pilot, who had embarked the tragic Boa Vista Airways flight BO 375, as well as 4 airline staff, again, including the pilot and co-pilot, piloting the Graznavian Freight Airlines flight GF 694, died. The wreckage of the aircraft operated by Boa Vista Airways and Graznavian Freight Airlines were disseminated on the two sides of frontier between Ambrosia and Adjikistan.
15. As a consequence of this movement – dissemination of aircraft parts near the border of the two mentioned States – an ice hockey hall located in Ambrosia was substantially damaged, whereas 7 hockey players and 4 persons participating in this ice hockey match in the Ambrosian sports hall died as a consequence of the aircraft crash. The accident also occasioned bodily injury of people and destruction of three private properties of these people on the two sides of the frontier between Ambrosia and Adjikistan. One private property was located on the territory of Ambrosia, two on the side of Adjikistan.
16. Since the accident had occurred in the airspace of Ambrosia, the Ambrosian Aviation Safety Board, tasked with the investigation of accidents and incidents, henceforth referred to as AASB, started an investigation into the cause of this

accident. This investigation identified the following conditions as having contributed to the cause of the accident. Times are expressed according to the Ambrosian time scheme:

- a) The aircraft operated by Boa Vista Airways (flight BO 375) and Graznavian Freight Airlines (flight GF 694) had neared each other at 13.25.09 hrs, flying at an altitude of 35,800 feet.
- b) Their flight movements had been cleared just before, that is, at 13.24.23 hrs, by Adjicontrol, permitting the pilots of the two airlines to reach the same altitude (35,800 ft).
- c) A few minutes later, that is, at 13.27.11 hrs, the pilots of the two airlines read at the same time in their cockpit a warning issued by their Traffic Collision Avoidance System (TCAS) a Traffic Announcement (TA) signalling 'traffic traffic'. The TCAS systems functions independently of any ground based system or ATC unit.
- d) At 13.33.32 hrs, the Adjicontrol agent ordered the pilot of the Boa Vista Airways flight (BO 375) to immediately go down to 34,500 feet, because of an approaching aircraft (GF 694). The pilot of the Boa Vista Airways flight (BO 375) instantly started to go down. However, he did not notify this movement to the agent of Adjicontrol.
- e) In the few minutes after that moment, that is, after 13.33.32 hrs, the TCAS of the two approaching aircraft emitted signals, for the pilot of the Boa Vista Airways flight BO 375 to go up, and for the Graznavian Freight Airlines to go down.
- f) In the same period, the ATC centre of Adjicontrol received digital messages containing alerts regarding the two aircraft dangerously approaching each other. However, the agent of Adjicontrol did not perceive these warnings.
- g) At 13.37.51 hrs, the agent of Adjicontrol commanded again the pilot of the Boa Vista Airways flight BO 375 to instantly go down to 34,500 feet. The said pilot of flight BO 375 confirmed straight away receipt of this order.
- h) However, the responsible agent of Adjicontrol unit did not perceive that, at 13.37.59 hrs, Graznavian Freight Airlines flight GF 694 started to also go down. Because the TCAS is not connected with the ATC unit of Adjicontrol, which is sitting on the ground, the agent of Adjicontrol had not noticed that a TCAS warning had commanded the pilot of the Graznavian Freight Airlines flight GF 694 to also go down.
- i) At 11.44.33 hrs, the aircraft of Graznavian Freight Airlines GF 694 and Boa Vista Airways BO 375 crashed as a consequence of a mid-air collision in Ambrosian's airspace.

17. The AASB also recorded the following facts:

- a) Lack of maintenance in the offices of AdjiControl prevented the agents of AdjiControl from observing alerting messages, especially Short Term Conflict Alert (STCAs). These messages are normally displayed on the ATC's detector. Hence, such STCAs could not be transmitted when the tragic accident occurred in Ambrosian's airspace. Moreover, the agents of AdjiControl had not been informed of this omission.
- b) At the time of the accident, only one agent was controlling flight in the tower of AdjiControl. Normally, at least two ATC agents must handle flights. Therefore, the ATC agent had to supervise two ATC monitors, moving from one to another monitor.

18. On 9 February 2012, the State of Boa Vista (Boa Vista) brought a case against the Kingdom of Ambrosia (Ambrosia) before the International Court of Justice (the Court).

19. The Kingdom of Ambrosia has not presented preliminary objections to the application introduced by the State of Boa Vista.

20. The State of Boa Vista has asked the Court to rule that:

- a. The Kingdom of Ambrosia is responsible for the safety of Air Traffic Control in the portion of airspace (K), where Air Traffic Control is managed by AdjiControl;
- b. The Kingdom of Ambrosia has failed to apply the applicable, and mandatory, SARPs of ICAO Annexes, in particular ICAO Annexes 10, 11 and 15.
- c. As a consequence, the Kingdom of Ambrosia must compensate the damages incurred by the State of Boa Vista, including those of its nationals, caused by the mid-air collision in the airspace of the State of Ambrosia on 23 March 2011, which include:
 - 1) the loss of life of the 65 passengers, flying on Boa Vista flight BO 375, on 23 March 2011, calculated at 65 x 30 M (million) Russian roubles per passenger, amounting in total to 208.000.000 Russian roubles;
 - 2) the value of the destroyed aircraft, amounting to 3.268.718.000 Russian roubles.The total amount of these damages is therefore 3.556.718.000 Russian roubles.
- d. Ambrosia holds harmless Boa Vista in respect of claims made by third parties in connection with the accident, including claims from Graznavian Freight Airlines;
- e. Ambrosia compensates Boa Vista for any damage, expenditure, costs, including legal costs and lawyer's fees, or injury already incurred and/or incurred in the future as a result of the accident.

21. In its response, Ambrosia has requested the International Court of Justice to:

- I. recognise that the Kingdom of Ambrosia has not infringed rules of international law, including international air law;
- II. determine that Ambrosia is under no obligation to pay compensation to Boa Vista in relation to the claims arising from the above accident;
- III. hold Boa Vista responsible for the compensation of damages in relation to the football stadium and private property on its territory, which is specified as follows:
 1. the death of 7 hockey players, the value of their lives calculated at 4 M (million) Russian roubles per player, totalling 28 M roubles;
 2. the death of 4 persons attending the ice hockey match, calculated at 3 M (Million) Russian roubles per person, totalling 12 M roubles;
 3. the damage caused to the ice hockey hall, calculated at 4 M (million) roubles;
 4. the value of the damaged property which is calculated at 1,6 M (million) roubles.

The total amount claimed by Ambrosia in relation to the damage caused by Boa Vista and its nationals amounts therefore to 45,6 M roubles.

- IV. Rule that Boa Vista compensates Ambrosia for any damage, expenditure, costs, including legal costs and lawyer's fees, or injury already incurred and/or incurred in the future as a result of the accident.

22. The oral pleadings will take place on 6, 7 and 8 October 2023 in the Court Room of the International Court of Justice, which is located in the Peace Palace in The Hague.

RATIFICATION OF TREATIES AND MEMBERSHIP OF ICAO

The State of Boa Vista, the Kingdom of Ambrosia and the States of Adjikistan, Belka and Graznavia are all Member States of the International Civil Aviation Organization (ICAO), whereas they have made no reservations regarding the relevant SARPs of the Annexes, which are attached to the Chicago Convention on international civil aviation (1944), and updated from time to time.

Said States, that is, Boa Vista, Ambrosia, Adjikistan, Belka and Mynia are all parties to:

- the Vienna Convention on the Law of Treaties (1969);
- the Chicago Convention on international civil aviation of 1944;
- the International Air Services Transit Agreement of 1944;
- the Montreal Convention for the unification of certain rules for international carriage by air of 1999;
- the Rome Convention on damage caused by foreign aircraft to third parties on the surface of 1952.

Boa Vista and Ambrosia are parties to the Statute of the International Court of Justice and have accepted the compulsory jurisdiction of the International Court of Justice.