

# Requests for Clarifications

## – Moot Court Compromis 2021



Universiteit  
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1. Can you please confirm whether the date regarding the receipt of the information of the medical situation of the co-pilot (July 2018) is correct (cf. para. 30)?  
*Yes, the date is correct.*
2. Can you please confirm whether the date regarding the decision of the ICAO Council to not make a determination in the matter (cf. para. 33) occurred on the 5th of September 2019, which seems to be prior to the take-off of Flight 1984 on 3rd of November 2019 (cf. para. 9)?  
*No, that date is not correct. It should read 5th of March 2020.*
3. Are Applicant and Respondent parties to the Statute of the International Court of Justice?  
*Yes. Both States are parties to the Statute of the International Court of Justice.*
4. Is it correct that Flight 1984 flew at 7000ft at 09:21 as stated in paragraph 21 and flew 120NM in 8 minutes (which is 1.666,8 km/h) (cf. para. 24)?  
*No, the timing is incorrect and the case description has been corrected:*
  - a. The aircraft did fly at 7000ft at 09:21
  - b. It flew the remaining 120NM at an average speed of 220kt;
  - c. The aircraft landed at Riviera International Airport at 10:02;
  - d. The co-pilot surrendered to the police at 10:05.
5. Did the co-pilot communicated a PAN PAN or MAYDAY call to Brocontrol and/or LettusFly.  
*The co-pilot communicated neither a PAN PAN nor MAYDAY.*
6. Is the aircraft operating Broccolair Flight 1984 registered in Broccoland?  
*Yes, the aircraft is registered in Broccoland.*
7. Air traffic services, such as air alerting service, air advisory service and flight information service, are distinguished in different airspaces pursuant to Chicago Convention Annex 11. Should LettusFly provide any air traffic service in the airspace where Flight 1984 crossed the State boundary?  
*The Riviera FIR covers the entire territory of Lettucia. The airspace sector in where Flight 1984 crossed the border is classified "G" under the ICAO ATS Airspace classification. ATS were provided accordingly.*
8. Under Chicago Convention Annex 13 Chapter 1, "incident" means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation. In this context, occurrences such as hijacking, interception by military fighters, fuel shortage and near-collision in this case can be defined as incidents respectively. Does the "incident" mentioned in Compromis Submission (d) refer to all occurrences as a whole or a specific one?"  
*The incident refers specifically to the fact that Flight 1984 landed with a critical fuel shortage.*
9. Did Lettucia raise any objection to the terms of the applicable ICAO Regional Air Navigation Plan in the Regional Air Navigation Meeting?  
*Lettucia raised no objection in the Regional Air Navigation Meeting that formalized the terms of the applicable ICAO Regional Air Navigation Plan.*
10. Did Flight 1984 enter the Lettucian airspace where repeated safety incidents had been reported as mentioned in Compromis paragraph 5?  
*Repeated safety incidents have occurred over all parts of Lettucian territory.*
11. Would it be possible to provide teams with a map of both Broccoland and Lettucia delineating their airspace with their classification<sup>1</sup> selected by the relevant state and any other information listed in the recommendation for delineation of airspace? <sup>2</sup> If not, an illustration of the class of the airspace that

Flight 1984 entered during the incident would also be appreciated.

*A simplified airspace and air navigation facilities map has been added to the case.*

12. Did Lettucia make any efforts to carry out the recommendations issued by the ICAO Council, e.g. conducting investigations about its feasibility, or make any statements or notification to ICAO Council concerning its failure to carry out these recommendations after they had been issued?

*The only action undertaken by Lettucia in response to the recommendations issued by the ICAO Council was to authorise the use of GNSS signals for navigation in its airspace. It did not make any particular statement or notification.*

13. "Would it be possible to provide teams with detailed information concerning the aircraft at issue, including data of the flight recorder of Broccolair Flight 1984 (both FDR and CVR), the ATS records of this incident from all relevant parties, whether the two military jets of Broccolandian Airforce was armed during the incident, and any other relevant information, such as the degree of visibility during the incident?

*All aircraft and flight data relevant for the case are provided in the case description. The military jet aircraft carried live ammunition. The in-flight visibility was good above 8000 ft (more than 10KM) but poor below that altitude (low lying clouds).*

14. Did Lettucia request other States, especially Broccoland, to offer assistance, or coordinate their search and rescue organizations with such States during the incident?

*No such request was made.*

15. What is Broccoland's domestic regulation stipulating the conduct of pilots relating to aviation safety, including any procedural regulations concerning relevant investigations and determination, and obligations of relevant agency concerning aviation safety?

*Broccoland's domestic regulations regarding safety replicate the relevant ICAO provisions governing international civil aviation.*

16. Does the Federal State of Lettucia has the capacity to improve ANS infrastructure as required by Regional Air Navigation Plan and the recommendations issued by the ICAO Council , or it is unable to comply.

*The Federal State of Lettucia has never made any statement regarding its ability to improve its ANS infrastructure. However, upgrading the air navigation facilities to meet the requirements set under the applicable regional air navigation plan would be a significant investment for Lettucia.*

17. Paragraph 6 of the Compromis makes reference to the "applicable Regional Air Navigation Plan". Does this refer to a specific RANP already in force for a particular region, or RANPs in general?

*The term "applicable Regional Air Navigation Plan" refers to the specific RANP that is applicable to the region in which Broccoland and Lettucia are located. The precise location is irrelevant for the purpose of the case.*

18. Prayer 1(ii) makes reference to ICAO recommendations. Would these recommendations refer to the relevant SARPs, or the specific separate recommendations made by the ICAO council after its investigations in Lettucia (Compromis Paragraph 7)?

*The term "recommendations" refers to the recommendations issued by the ICAO Council under Compromis Title C, Paragraph 7.*

19. Does LettusFly have an equivalent to a rescue coordination centre (RCC) or a body that performs the same function as the RCC?

*LettusFly itself does not provide any search and rescue service. That responsibility is entrusted to a*

*State run Lettucian RCC that is independent from LettusFly.*

20. Paragraph 30 of the Compromis mentions that the co-pilot was treated for depression previously. What was the extent of her mental health issues, and was she still undergoing treatment at the time of the incident or had she already completed it?

*At the time of the incident, the investigation of the co-pilot's health situation was still ongoing. The only available information is provided in the case.*

21. How often was the sector through which Flight 1984 entered Lettucia used for civil and military operations?

*That sector of airspace was not used for military operations. The only civil airspace users that flew in that airspace were private flights operating under Visual Flight Rules, primarily for leisure purposes. Such flights occurred on average less than once a week.*

22. On page 8 of the case, paragraphs 6 & 7, what exactly was the investigation of ICAO conducted? Was it a part of the ICAO Universal Safety Oversight Audit Programme? What were the recommendations or the nature of the recommendations made by the ICAO Council for the investigation?

*Alleged shortcomings of the Lettucian's air navigation facilities were raised to the Council by other contracting States. The ICAO Council consequently investigated the allegations in accordance with the functions entrusted to the Council under the Chicago Convention.*

23. In paragraph 19, "that is not usually for civil aviation and that stretches over a vast mountainous area of wilderness with very little ground air navigation infrastructure". Was there any specific classification of this particular sector of airspace in Lettucia?

*Yes, the concerned airspace sector was classified "G" under the ICAO ATS airspace classification (see the map that was added to the case).*

24. Is it acceptable to make the assumption that "the civil aviation authorities" mentioned in the Compromis is the unit in Broccoland responsible for pilot licensing matters?

*Yes, that assumption is correct.*

25. What are the details of the recommendation by ICAO Council regarding the facilities (required under the ICAO RANP) that have been decommissioned unilaterally by Lettucia or have become technically unserviceable?

*The recommendations were of general nature and advised that Lettucia should replace or or upgrade of the installations used for international civil aviation to ensure that all the facilities listed in the Air Navigation Plan were continuously available and provided accurate and reliable navigational assistance.*

26. What is the meaning for the statement regarding the political situation in Broccoland and Broccoland Airforce is on high alert and why is this statement relevant to this case?

*Because of the domestic political situation, the authorities of Broccoland fear a risk of popular uprising. Therefore, all military forces, including the air force are on alert in order to be able to intervene immediately anywhere in Broccoland, should military intervention be required. It is for the Teams to determine if and why this information is relevant.*

27. Where is the territory of these countries, this is related to the regional air navigation plan documents, and which areas of the two countries are included in the RANP?

*The geographical location of the two States is irrelevant. The general principles applicable to Regional Air Navigation Plans should be sufficient for the purpose of the case, regardless of the precise location of the States.*

28. What is the reason that Lettucia did not heed the recommendation to provide the air navigation facilities according to the ICAO, is Lettucia not competent enough (unable) to build such facilities or unwilling to heed the ICAO recommendation according to ICAO?
- Lettucia never provided any formal explanation. However, upgrading the air navigation facilities to meet the requirements set under the applicable regional air navigation plan would be a significant investment for Lettucia.*
29. Has the Federal State of Lettucia (Respondent) formally notified the ICAO council about the differences between the Regional Air Navigation Plan (RANP) and their Standard Practices, as per article 38 of the convention, or are the complaints and the reasons for Investigations made solely on the basis of the complaints of other States?
- Lettucia has not filed any notification of difference about the differences between the Regional Air Navigation Plan (RANP) and their Standard Practice. The ICAO Council's investigation was based solely on complaints of other States.*
30. If Lettucia had not notified any differences to the ICAO Council, for non-Fulfilment of standard practices under article 38 of the charter, was Lettucia stripped of their voting rights from the ICAO Assembly/ Council as per article 88, for noncompliance?
- Lettucia was never subject to any measure under art. 88 of the Chicago Convention.*
31. Did Broccoland abide by Annex 1 of the ICAO with regards to the SARP for depression and consequently applied basic safety management principles to the medical assessment process of licence holders as a part of their State safety programme? In regards to the same, have the medical authorities of the civil aviation authorities issued a decision which would impact the co-pilot's license?
- Broccoland's regulations comply with Annex 1 to the Chicago Convention. They have established a regulatory framework for safety management that also complies with relevant ICAO regulations. On the date of the incident, the investigation of the medical situation of the co-pilot was still ongoing and no decision regarding the license of the latter had been issued.*
32. Are both States parties to the following conventions:
- Universal Declaration of Human Rights
  - International Covenant on Civil and Political Rights
  - International Convention against the Taking of Hostages
  - 1951 Convention Relating to the Status of Refugees
  - 1967 Protocol Relating to the Status of Refugees.
- None of the States are a party to any of these conventions.*
33. After surrendering herself to the Lettucian Police, was the Co-Pilot arrested and detained in Lettucia or has Lettucia agreed to grant political asylum to her? Have Lettucia and Broccoland signed bilateral extradition treaties?
- The co-pilot was arrested by the Lettucian Police. She was charged by the Lettucian authorities and sentenced to a 6 years jail penalty by a Lettucian court under the terms of the Lettucian criminal code that qualifies the unlawful capture of a civil aircraft as a severe criminal offense. Lettucia and Broccoland have not signed any extradition treaty. Lettucia has not granted political asylum to the co-pilot to this date.*
34. Who does the pronoun 'she' mentioned in paragraph 16 ("The controller advises the co-pilot of Flight 1984 that she is not informed of the fighters' presence...") refer to? The female co-pilot or the air traffic controller?
- It is a grammatical mistake. The sentence should read "The controller advises the co-pilot of Flight*

*1984 that he is not informed of the fighters' presence". The pronoun refers to the air traffic controller, who is not informed of the presence of the military aircraft.*

35. If the 'she' in paragraph 16 refers to an air traffic controller, then are the air traffic controllers mentioned in paragraphs 13, 16 and 17 the same person?

*The word "she" should read "he" and refers to the air traffic controller. The situation involves only one air traffic control at Brocontrol and one controller at LettusFly. Both of them are men.*

36. Are there any specific recommendations by the ICAO Council or Regional Air Navigation Plan or Global Air Navigation Plan or National Air Navigation Plans that are allegedly breached?

*The specific ICAO Council recommendation that was breached is a general call upon Lettucia to take measures to ensure that the Lettucian technical facilities supporting international air navigation over its territory should be upgraded or replaced in order to ensure that they are continuously available and provide reliable and accurate signals and information. The recommendation pertains in particular to communication, navigation and surveillance facilities.*

37. Are the ICAO recommendations applicable to the facts limited to Annexes 11 and 13 to the Chicago Convention?

*The recommendations issued by the ICAO Council are not limited to any particular Annex to the Chicago Convention. They are addressing the general inadequacy of the air navigation facilities deployed by Lettucia.*

38. What is the nationality of the co-pilot? Why did she think hijacking was the best option available to her?

*The co-pilot of Flight 1984 is of Broccolandian nationality. She expressed no opinion regarding why she thought that hijacking the aircraft was the best option.*

39. Does the designated air route of Flight 1984 go through the territorial airspace of Lettucia?

*No, the air route of Flight 1984 assigned by the air traffic control service remains over Broccolandian territory for the entirety of the planned operation.*

40. Were the fighter jets of Broccoland equipped with weapons and has there been any display of weapons?

*The fighter jets of Broccoland were equipped with weapons. Whereas these weapons were visible, there was no active display.*

41. May it please further illustrate the relationship between Brocontrol and Military Air Traffic Service in Broccoland?

*The Broccolandian civil and military air traffic control services are segregated. Both are provided by formally separate organisations (Brocontrol and, respectively, the Broccolandian air force). Each of these organisations has its own infrastructure. These systems are not interconnected and there is no exchange of electronic data between them. Coordination is performed by means of telephone exchanges between civil and military units. The position of military aircraft is not displayed on the radar screens of Brocontrol but the position of civil aircraft can be displayed on the radar screens of the air force, who is equipped to detect civil aircraft.*

42. May it please further illustrate the details of air navigation facilities established by Lettucia?

*See the simplified map that has been added to the case description.*

43. Is there any provisions in Broccoland's domestic laws or policies requiring psychological examination for pilots and/or restricting issuing a pilot license to a person suffering from depression, or deploying such a person as crew member?

*The domestic regulations of Broccoland regarding the licensing of personnel comply with the relevant ICAO provisions.*

44. [par.15] Did the Broccoland Beetroot Airbase provide an appropriate aerodrome for the touchdown of the aircraft type which operated flight 1984, so as to ensure a safe landing?

*Yes, Beetroot Airbased provided an appropriate landing site for Flight 1984.*

45. [par.16] Does the verb “implores” mean that a communication had been already established between the co-pilot and the intercepting jets?

*No direct communication had not yet been established between the co-pilot and the intercepting jets. The imploration expressed by the co-pilot was received by the Broccolandian civil air traffic controller. Direct communication with the intercepting jets was only established once the co-pilot decided to head towards the boundary.*

46. According to par 29 the Lettucian Bureau of the investigation qualified the event as a serious incident. However in the “Relief Sought” section, claim D (both sides) the event is qualified as an “incident”. Should we have to consider that both sides to the dispute agree that this was an incident instead of a “serious incident” as described in the investigation report?

*The word "serious incident" refers to a technical qualification in the context of an ICAO based safety investigation. The word "incident" in the "Relief Sought" is used with a diplomatic connotation to designate the situation that has triggered the dispute. Both States agree that under the ICAO framework, the safety occurrence technically qualifies as a "serious incident".*

47. Did the co-pilot finally landed Flight 1984 on her own initiative and actions or did she have any guidance from Lettucian ATC? (In other words, is there any ATC intervention in-between the events described in paras. 25 and 26?)

*The co-pilot performed a visual final approach to the runway after the facts described in para 25. There was no further assistance by the Lettucian air traffic control between that moment and the moment the aircraft landed and vacated the runway.*

48. Claim C (for both sides) refers to the breach or not, by Broccoland, of “its obligations under Art. 3 of the Chicago Convention”. Does reference to Art. 3, in this claim, also comprises article 3bis of the Chicago Convention?

*The claim refers specifically to Art. 3 of the Chicago Convention. It is not intended to extend to Art. 3 bis.*

49. At para. 10 of the Compromis, it is stated that the co-pilot forced the captain out of the cockpit and locked the door. Did the captain subsequently undertake any measures to regain control over the aircraft?

*The captain attempted to reason the co-pilot by talking to her through the locked cockpit door.*

50. According to para. 15 of the Compromis, “at 9:15 the co-pilot <...> informs that she is running short of fuel...” What are the authorities that she informs thereupon?

*That report was made to the Broccolandian civil air traffic controller.*

51. From para. 18–20 of the Compromis it does not unequivocally follow whether the fighter jets abandoned the pursuit before reaching the boundary with Lettucia or thereafter. Did the fighter jets cross the air boundaries with Lettucia or they remained within the airspace of Broccoland?

*The Broccolandian jet fighters never crossed the border and remained over Broccolandian territory at all times.*



52. At para. 27 of the Compromis it is stated that the co-pilot eventually surrendered herself to the Lettucian police. Did the competent authorities of Lettucia undertake any measures to prosecute and punish her afterwards?

*The co-pilot was arrested by the Lettucian Police. She was charged by the Lettucian authorities and sentenced to a 6 years jail penalty by a Lettucian court under the terms of the Lettucian criminal code that qualifies the unlawful capture of a civil aircraft as a severe criminal offense.*

53. What type of aircraft was carrying out Flight 1984? Is it designated solely for domestic flights, or it is also capable of flying at longer distances?

*Flight 1984 was carried out by an Airbus A-320.*

54. Was there an exchange of information between Brocontrol and Lettusfly with regard to the fact that Flight 1984 had entered into a holding pattern in close proximity to the boundary until the Lettucian authorities gave the co-pilot the clearance to proceed (Refer to para. 12)?

*There was no exchange of information between Brocontrol and Lettusfly between the moment the Lettucian authorities notified the interdiction for Flight 1984 to enter Lettucian airspace and the moment Flight 1984 declared its intention to enter Lettucian airspace regardless of the interdiction.*

55. Did Brocontrol, on receiving information from the co-pilot about the presence of 2 military jets (Refer to Paragraph 16) establish any form of communication with its military counterpart or seek any further directions from the military controller?

*No, the only actions taken by the Brocontrol controller are those described in the facts of the case.*

56. Was any sort of information released by the Lettucian Air Traffic Authorities with regard to the emergency maintenance of radar equipment (Refer to Paragraph 22), which would effectively notify other States and civil aviation flights about the same?

*There was no information released by the Lettucian Air traffic Authorities regarding the emergency maintenance.*

57. Paragraph 6 mentions that some Lettucian facilities that are required under the RANP have become technically unserviceable. What was the status of technological advancement/ infrastructure in Lettucia?

*The Lettucian air navigation facilities relied primarily on:*

- I. Analogic radio-communication system*
- II. VOR beacons for navigation (supplemented by GNSS);*
- III. Primary and secondary surveillance radar.*

*Most of these systems had reached the end of their lifecycles. Some had been decommissioned when they became unserviceable. The others were kept operational but suffered repeated failures and often required emergency maintenance.*

58. Can it be implied that Flight 1984 proceeded to land under Visual Flight Rules, on the basis of the fact that the pilot clearly indicated that she shall set course to the north-east until she can see the airport (Refer to Paragraph 24)?

*The co-pilot performed a visual approach for the final segment of the approach. The flight however remained an IFR flight throughout the entire flight.*

59. Whether the aircraft was operating under IFR or VFR?

*Flight 1984 filed an IFR flight plan.*

60. How close did the military jets get to the aircraft?

*Less than 100 m.*



61. Whether GNSS signals were provided in the mountainous areas?  
*GNSS signals were available in the mountainous area.*
62. What class of airspace does Lettucia classify as?  
*Airways and Terminal Areas are classified "C". The rest of the airspace is classified "G" (see simplified map added to the case description).*
63. Was the Flight 1984 an IFR flight throughout its journey in Lettucia?  
*Flight 1984 remained an IFR flight throughout the entire flight.*
64. In Para number 15 of the compromis, it is provided that the Co-pilot has informed about shortage of the fuel and the incumbency to land immediately. Thereafter, it has been provided that the Commandment of the Broccolandian Airforce has ordered the patrol of military Jets to intercept Flight 1984. We seek clarification regarding the fact ""who has relayed the information of the Co-pilot to the Commandment of Air Force?"" Whether it was the Brocontrol who gave the particular information or whether there was any direct link of communication between the Co-pilot and Commandment of Airforce?  
*The information that Flight 1984 was running out of fuel and intended to head towards the boundary was communicated by the civil air traffic controller to his military counterpart over the phone. Until the co-pilot decided to flee over the border into Lettucia, all radio-communication exchanges with the co-pilot occurred exclusively with the Brocontrol civil controller. It is only after Flight 1984 left the holding pattern and headed towards the boundary that the military jet pilots attempted to establish a communication with Flight 1984, but the co-pilot ignored these calls.*
65. Regarding the Annexes to the Chicago Convention that are relevant to our case, will you be providing us with those, considering they are not authentically and freely available online?  
*The ICAO Annexes can be found online, for instance via the website of the Swiss Federal Office for Civil Aviation, the Bundesamt für Zivilluftfahrt (BAZL), see [www.bazl.admin.ch](http://www.bazl.admin.ch).*
66. In "Paragraph 7" of moot case, What would exactly be the recommendation regarding measures to improve navigational facilities issued to the Federal State of Lettucia by the ICAO council ?  
*Such measures would take the form of replacing or repairing air navigation facilities to bring them to the level of availability, reliability and accuracy required by international air navigation.*
67. Did the Federal State of Lettucia ("Lettucia") notify the Democratic Republic of Broccoland ("Broccoland") of its inoperative radar services via NOTAMs or any other means prior to the Flight 1984 incident? Compromis, p. 8, para. 5.  
*No such notification was issued.*
68. Did the Broccolandian military fighter jets cross the boundary into Lettucia? Compromis, p. 10, para. 20.  
*The Broccolandian jet fighters never crossed the border and remained over Broccolandian territory at all times.*
69. Was Flight 1984 located in a published IFR airway when it first established radio contact with LettusFly? Compromis, p. 10, para. 21.  
*No. Flight 1984 was outside of the airways network, flying in an uncontrolled airspace sector.*
70. Is the ICAO Regional Air Navigation Plan for Broccoland and Lettucia available for review? Compromis, p. 8, para. 6-7.

*All the elements that are relevant for the case are displayed on the map that was added to case description.*

71. If Broccolair has now completed its medical investigation into the co-pilot, are the medical assessor's considerations available for review? Compromis, p. 12, para. 30.

*No, the investigation was never completed.*

72. "The political situation in the Democratic Republic of Broccoland is tense. Following a recent failed attempt by a coalition of opposition parties to seize power, the party in place has clamped down on the opposition, jailing a number of political opponents and putting restrictions on the media. Because of the political tension, the Broccolandian Airforce is on high alert." Was the pilot a member of the party? "

*The co-pilot was not a member of that party.*

73. "At 08:00 LT, halfway through the flight, the co-pilot brandishes a surgery knife that she was hiding in her briefcase, forces the captain out of the cockpit and locks the door, remaining alone in command of the aircraft." How did she transport the knife on board? "

*The knife was hidden in her pilot's briefcase and the security staff failed to detect it.*

74. "She intends to divert the aircraft to Riviera, where she plans to request political asylum from Lettucia. The co-pilot subsequently sets course to Riviera." Why did she want this political asylum in Riviera?"

*The co-pilot was deeply preoccupied by the deterioration of the political situation in Broccoland and feared it could lead to the persecution of citizens expressing dissenting views.*