

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

DE SAISINE DE LA COUR INTERNATIONALE DE JUSTICE,
AU SUJET DU DIFFÉRENCE ENTRE LA RÉPUBLIQUE
DEMOCRATIQUE DE BROCCOLAND ET L'ÉTAT FÉDÉRAL DE
LETUCCIA RELATIF
À LA MISE EN DANGER DU VOL DE BROCCOLAIR 1984

notifié conjointement à la Cour le 1er juillet 2020

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

SEISING THE INTERNATIONAL COURT OF JUSTICE OF THE DISPUTE
BETWEEN THE DEMOCRATIC REPUBLIC OF BROCCOLAND AND
THE FEDERAL STATE OF LETUCCIA
IN THE MATTER OF THE ENDANGERING OF BROCCOLAIR FLIGHT
1984

jointly notified to the Court on the first of July 2020

JOINT NOTIFICATION
ADDRESSED TO THE REGISTRAR OF THE COURT

The Hague, the 1st of May 2020

On behalf of the Government of the Democratic Republic of and the Federal State of Lettucia, and in accordance with Article 40(1) of the Statute of the International Court of Justice, we have the honour to transmit to you a certified true copy of the Special Agreement for Submission to the International Court of Justice of the Dispute between the Democratic Republic of Broccoland (Applicant) and the Federal State of Lettucia (Respondent) concerning the endangering of Broccolair flight 1984, signed at The Hague, The Netherlands, on 20 November, 2019.

(Signed)

His Excellency Mr. Nohra Kimro,
Ambassador of the Democratic
Republic of Broccoland
to the Kingdom of the Netherlands

(Signed)

Her Excellency Mme Felicia Zurs
Ambassador of the Federal State
of Letuccia
to the Kingdom of the Netherlands

THE 2021 LEIDEN/SARIN AIR LAW MOOT COURT COMPETITION

COMPROMIS

DEMOCRATIC REPUBLIC OF BROCCOLAND (*applicant*)

v.

THE FEDERAL STATE OF LETTUCIA (*respondent*)

IN THE MATTER OF THE ENDANGERING BROCCOLAIR FLIGHT 1984

A. APPLICABLE SOURCES OF INTERNATIONAL LAW

1. The parties to this Case are the Democratic Republic of Broccoland (Broccoland) and the Federal State of Lettucia (Lettucia). Both States are parties to the following Conventions.

(i) *The Convention on International Civil Aviation*, signed at Chicago on 7 December 1944 (Chicago Convention), including the amendments there. Neither of the States has notified any difference between its own legislation and the corresponding Standards and Recommended Practices of ICAO included in Annexes 11 and 13 to the Chicago Convention;

(ii) *The United Nations Charter*, signed at San Francisco on 26 June 1945 (U.N. Charter);

(iii) *The Convention on the Law of Treaties*, signed at Vienna on 23 May 1969;

In addition, neither Broccoland, nor Lettucia are parties to any of the following Conventions, or to amendments of or protocols to these conventions:

(i) *The Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963;

(ii) *The Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970;

(iii) *The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on 23 September 1971;

(iv) *The Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation*, signed at Beijing on 10 September 2010.

B. INTRODUCTION

2. The Democratic Republic of Broccoland (Broccoland) and the Federal State of Lettucia (Lettucia) are two adjacent countries. Riviera is the capital of Lettucia and is located 150 NM (Nautical Miles) from the State boundary with Broccoland.

3. Both Broccoland and Lettucia have established Air Traffic Services (ATS) authorities (Brocontrol and, respectively, LettusFly) in accordance with Standard 2.1 of Annex 11 to the Chicago Convention. These entities are governmental agencies who provide Air Traffic Services within the limits of their respective State sovereign boundaries.

4. Military Air Traffic Services in Broccoland are provided by the Broccolandian Airforce itself, independently from the services provided by Brocontrol. Each organisation has deployed and uses its own infrastructure. Civil-military coordination is done by means of telephone exchanges between the different units.

C. BACKGROUND

5. Over the past 10 years, several States have relayed complaints from their airlines to the International Civil Aviation Organization (ICAO), arguing that the air navigation facilities established by Lettucia are inadequate to satisfy the needs of international civil aviation. They claim in particular that Lettucia has invested too little in ground infrastructure. Loss of radio-communication, malfunctioning of navigational aids and loss of radar data are frequent, especially in the mountainous parts of the country. The situation has caused an increasing number of safety incidents.

6. These concerns have been raised to the ICAO Council, who has conducted an investigation. The latter has confirmed significant shortcomings in the Lettucian ANS system. It has declared, in particular, that the ANS infrastructure deployed by Lettucia no longer complies with the terms of the applicable ICAO Regional Air Navigation Plan (RANP). Some Lettucian facilities that are required under the RANP have either been decommissioned unilaterally by Lettucia, or have become technically unserviceable.

7. The ICAO Council has issued a number of recommendations regarding measures to improve the facilities. Except for authorising the use of GNSS signals for navigation in its airspace, the Federal State of Lettucia has not implemented any of the other recommended measures and has not brought its facilities back to conformity with the applicable Regional Air Navigation Plan.

8. 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.

D. STATEMENT OF FACTS

9. At 07:15 LT, on Saturday November 3, 2019, Broccolair Flight 1984 takes off from Greentown, Broccoland's capital on a scheduled domestic flight to Garden-City.

10. 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. The co-pilot advises Brocontrol that she has hijacked the aircraft. She explains that no harm will be done to the passengers if her instructions are obeyed. 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.

11. Meanwhile, Brocontrol informs all authorities concerned in Broccoland and Lettucia of the situation. The police authorities of Lettucia are quick to react and communicate an instruction to Brocontrol that Flight 1984 is not allowed to cross the border and must remain in the airspace of Broccoland.

12. Brocontrol explains the situation to the co-pilot. The co-pilot responds that she will enter a holding pattern in close proximity to the boundary until the Lettucian authorities give her the clearance to proceed.

13. The Broccolandian air traffic controller also calls his military counterpart to inform him of the situation. The military controller responds that "we are taking care of the situation" and requests the civil controller to keep him advised of any development. The Broccolandian Airforce decides to dispatch a patrol of two military jet fighters, who are instructed to monitor the trajectory of Flight 1984 but to remain out of sight of the latter, in order not to alarm the co-pilot. The presence of the military jets is not notified to Brocontrol.

14. The aircraft operating Flight 1984 reaches the boundary of Lettucia at 08:15 and starts flying a holding pattern on the Broccoland side of the border.

15. At 09:15, the co-pilot of Flight 1984 informs that she is running short of fuel and that she will need to land the aircraft. The commandment of the Broccolandian Airforce immediately orders the patrol of military jets to intercept Flight 1984 and to instruct the aircraft

to land at the Broccoland Beetroot Airbase, located approximately 50 NM from the aircraft's position. This initiative is not communicated to Brocontrol.

16. At 09:16, the co-pilot of Flight 1984, obviously confused and frightened, reports to Brocontrol that 2 military jet fighters are flying dangerously close to her aircraft and implores the fighters not to shoot. The controller advises the co-pilot of Flight 1984 that he is not informed of the fighters' presence or intentions and recommends that the co-pilot monitors the emergency radio frequency and follows any instruction from the military pilots.

17. The co-pilot, however, responds that she is setting course to Riviera regardless of the interdiction to proceed. The air traffic controller immediately relays the information to his supervisor who, in turn, passes it on to LettusFly.

18. The Broccolandian military fighter jets follow the aircraft to the boundary, performing repeated attempts by means of visual signals, aerial manoeuvres and radio calls to intercept the aircraft and force it to follow them.

19. At 09:20, Flight 1984 crosses the boundary between Broccoland and Lettucia. It enters Lettucian airspace in a sector that is not usually used for civil aviation and that stretches over a vast mountainous area of wilderness with very little ground air navigation infrastructure.

20. The Broccoland air traffic controller orders the co-pilot to contact LettusFly for further instructions. The military jet fighters abandon the pursuit and return to their airbase.

21. At 09:21, the co-pilot establishes contact with LettusFly. The co-pilot reports that she is flying in clouds at an altitude of 7000ft and receiving erratic signals from the navigational aids used for the approach to Riviera airport.

22. The Lettucian air traffic controller replies that LettusFly's radar equipment is unfortunately under emergency maintenance and therefore he cannot see the position of the aircraft and cannot offer a radar service. He further explains that the reason for which the co-pilot is receiving unreliable signals is because the aircraft is flying at a low altitude and the topography is blurring or blocking the transmission of the navigational signals. The quality of

the navigational signals should improve as the aircraft gets closer to the controlled airspace. He assures the co-pilot that, as soon as he has located the position of the aircraft, the Lettucian air traffic controller will provide her navigational assistance to bring the aircraft back into the airways' structure, where adequate technical facilities are available and where he will be able to lead Flight 1984 to a safe landing.

23. The co-pilot of Flight 1984 responds that the fuel level is getting worryingly low and that she will not be able to perform an extended approach trajectory. She needs to perform a direct approach from her current position to Riviera. She informs the controller that she is receiving reliable GPS coordinates and she reports her current position to the controller.

24. At 09:23, the Lettucian air traffic controller informs Flight 1984 that he has checked the GPS coordinates provided by the co-pilot of Flight 1984 and that the airport is located approximately 120 NM to the north-east of the position given. The co-pilot responds that she shall set course to the north-east until she either can see the airport or receives reliable signals from the ground-based navigational aids.

25. At 09:50, the co-pilot calls LettusFly and, in an alarmed tone, informs the controller that she has narrowly avoided the top of a hill while descending towards the airport. She now has the airport in sight and will proceed for landing.

26. At 10:02, Flight 1984 lands at Riviera International Airport, with a fuel reserve of 8 minutes.

27. At 10:05, the co-pilot of Flight 1984 surrenders herself to the Lettucian police.

E. FOLLOW-UP

28. The incident of Flight 1984 has affected the public mood not only in the States of Broccoland and Lettucia but also on the international scene. Political and public pressure has mounted on both States regarding their responsibilities and significantly soured their bilateral relations. Although there were, fortunately, no casualties, the situation escalated into a huge political embarrassment for both States.

29. The incident investigation subsequently conducted by the Lettucian Bureau of Investigation, in accordance with Annex 13 of the Chicago Convention, has qualified the event as a serious incident and concluded that it was caused by:

- a) A fuel shortage of the aircraft operating Flight 1984 resulting from an extended unplanned en-route holding procedure;
- b) An approach procedure conducted through an airspace sector deprived of the navigational facilities required to perform an approach procedure under Instrument Flight Rules (IFR) conditions.

The report also mentions the following as a contributory factor:

- a) Pilot disorientation; and
- b) Inadequate coordination among the various stakeholders involved.

30. Finally, the report reveals that, in July 2018, Broccolair had received information that the co-pilot was treated for depression. That information had been passed on to the medical services of the civil aviation authorities who announced they would issue a decision regarding whether this fact would impact the co-pilot's licence upon completion of their investigation. At the time of the incident, the investigation was still ongoing.

31. Both Broccoland and Lettucia deny any responsibility and blame the other for the incident. Broccoland also sees an opportunity to put additional pressure on Lettucia to improve its Air Navigation Services in conformity with the ICAO Regional Air Navigation Plan and the recommendations issued by the ICAO Council.

32. In the following months, the competent authorities of Democratic Republic of Broccoland and the federal State of Lettucia conducted consultations and negotiations in order to solve their disagreement. However, the two States agreed that their differences were “irreconcilable”.

33. Following Art. 84 of the Chicago Convention, the two States brought their disagreement to the attention of the ICAO Council pursuant to the applicable rules of procedure. On 5 March 2020, the ICAO Council decided that it could not make a determination in the matter, following which the two States agreed to bring their dispute before the International Court of Justice (the Court) by way of the present Compromis

34. Broccoland consequently brings a case against Lettucia before the Court where it alleges various breaches of the Chicago Convention and the international instruments as specified above. Lettucia raises no preliminary objection.

F. RELIEF SOUGHT

(1) The Democratic Republic of Broccoland requests the Court to rule that:

(a) The Federation of Lettucia has breached its obligations under Art. 28 of the Chicago Convention and Annex 11 to that Convention and is obliged to bring its air navigation facilities in conformity with:

- (i) the terms of the applicable ICAO Regional Air Navigation Plan;
- (ii) the recommendations issued by the ICAO Council;

(b) The Federation of Lettucia has breached its obligations under Art. 25 of the Chicago Convention;

(c) The Democratic Republic of Broccoland has not breached its obligations under Art. 3 of the Chicago Convention;

(d) The Federation of Lettucia is responsible for the incident.

(2) The Federal State of Lettucia requests the Court to rule that:

(a) Lettucia did not breach its obligations under Art. 28 Chicago Convention and under Annex 11 to that Convention and cannot be obliged to comply with:

- (iii) the terms of the applicable Regional Air Navigation Plan;
- (iv) the recommendations issued by the ICAO Council;

(b) Lettucia did not breach its obligation under Art. 25 Chicago Convention;

(c) The Democratic Republic of Broccoland has breached its obligations under Art. 3 of the Chicago Convention;

(d) The Democratic Republic of Broccoland is responsible for the incident.

Appendix: Simplified airspace and air navigation facilities (extract from the incident investigation report)