



2020

Qatar Airways/McGill

Air Law Speed Moot Court

Competition

Compromis

THE STATE OF BUENDIA
v.
THE STATE OF MACONDO

*IN THE MATTER OF FLIGHT BANS
IN RESPONSE TO A GLOBAL
HEALTH EMERGENCY RELATING
TO THE SPREAD OF THE
CORONAVIRUS*

I. Background

1. For the purposes of this Case, both of the fictional States relevant to this problem – Macondo and Buendia – are parties to the following agreements:
 - a. The 1944 Convention on International Civil Aviation (Chicago Convention), including the amendments and Annexes thereto;
 - b. The Bilateral Air Services Agreement (ASA) between the State of Macondo and the State of Buendia (excerpt included as Annex 1);
 - c. The 1946 World Health Organization Constitution, including amendments and Annexes thereto.
2. On 17 September 2019 reports began circulating of an outbreak of a newly discovered virus, dubbed the “coronavirus,” in the State of Aureliano.
3. By October 2019, cases of coronavirus, believed to have been transmitted by visitors from Aureliano, had been reported in multiple other States, including the State of Buendia.
4. Buendia immediately imposed a quarantine on its affected regions, which did not include the capital city in which Buendia’s international airport was located.
5. By December 2019, the World Health Organization pronounced coronavirus a Public Health Emergency of International Concern, but did not at that time recommend any travel restrictions.
6. On 7 December 2019, the State of Macondo, a frequent trade partner with and tourist destination for the State of Buendia, announced that effective immediately it would not accept flights from any States in which a coronavirus outbreak had been detected, unless those States used biothermal imaging scanners at their airports to detect possible carriers of the virus.
7. The State of Buendia did not have such scanners at its airport, as the scanners were found by the Buendian Supreme Court to be in violation of Buendian laws protecting privacy and bodily autonomy.
8. Macondo halted all flights to and from a handful of countries, including Buendia, but continued to accept flights from States that met its criteria.
9. Buendia objected to Macondo’s ban on Buendian flights, and claimed the measure violated the bilateral Air Services Agreement (ASA) between the two States. Buendia sought consultations on the issue under the ASA.

10. Buendia argued that under Article 11 of the ASA, Macondo was required to first request consultations and then provide notice before revoking airspace access due to safety concerns.
11. Macondo replied that Article 11 did not apply to the spread of infectious diseases.
12. Macondo also argued that under Articles 9 and 14 of the Chicago Convention, and in compliance with its obligations under the Constitution of the World Health Organization, including the Organization's International Health Regulations of 2005, it has the authority to shut down its airspace in an emergency to protect its population, and to take necessary measures to protect its population from the spread of infectious diseases.
13. Buendia argued that Article 9 explicitly prohibits closing airspace on a discriminatory basis, and only permits airspace closures applied uniformly to all States.
14. Consultations on these issues failed, and both States agreed to bring the following action before the International Court of Justice (ICJ).

II. Action

1. The State of Buendia brings the following action before the ICJ alleging that:
 - a. The State of Macondo violated its obligations under the bilateral ASA to seek consultations regarding any possible safety concerns before revoking operating authority.
 - b. The State of Macondo's airspace closure was illegal and discriminatory under the terms of Article 9.
2. The State of Macondo answers, alleging that:
 - a. The airspace ban was not unfairly discriminatory as the conditional requirement of adequate screening was applied equally to all States.
 - b. Buendia's failure to effectively screen its passengers was a violation of Article 14 of the Chicago Convention.

Annex 1: the Air Services Agreement

AIR SERVICES AGREEMENT *BETWEEN* MACONDO AND BUENDIA [relevant extracts only]

The Government of the State of Macondo and the Government of the State of Buendia, 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 State of Macondo and for the State of Buendia, 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 discharge 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 the Designated Airline 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 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.

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 air crew, 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 Chicago Convention and its Annexes.

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 amending 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 endeavour 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 therefor in their respective countries, have been complied with.