

The 2010 International Air Law Moot Court Competition

STRANGERS AND DANGERS IN THE AIR

Case of Mayur v. Bulbuldesh

This Case concerns a claim for damages suffered by nationals of the State of Mayur following an aerial accident in the airspace of the State of Bulbuldesh. It involves public international law, including the law of treaties and questions regarding state responsibility and liability, public international air law and the binding force of international safety rules.

STRANGERS AND DANGERS IN THE AIR

1. Mayur Airways is an airline established and regulated under the laws of the State of Mayur and its nationals. It is substantially owned and effectively controlled by the State of Mayur. Its aircraft are registered in the national registry of Mayur. Its flight operations and aircraft meet internationally recognised safety standards.
2. Mayur Airways is designated by Mayur to operate international air services to third states under bilateral air services agreements (BASA) between Mayur and such states. Mayur has such a BASA with a state called Koelia. Mayur Airways designation by Mayur to operate scheduled and non-scheduled air transport services between the capitals of Mayur and Koelia has been accepted by Koelia.
3. MorianCargo Airlines is an airline established and regulated under the laws of the State of Moria and is substantially owned and effectively controlled by nationals of Moria. Its aircraft are registered in the national registry in Moria. Its flight operations and aircraft meet internationally recognised safety standards.
4. The business of MorianCargo Airlines is international carriage by air of cargo. Moria has designated MorianCargo Airlines to operate international air services under a BASA between Moria and the State of Mynia, which has accepted MorianCargo Airlines' designation. MorianCargo Airlines operates its services between the capitals of Moria and Mynia.
5. While operating their respective services to the capitals of Koelia and Mynia, Mayur Airways and MorianCargo Airlines fly over national airspace falling under the sovereignty of a third state, Bulbuldesh. Bulbuldesh has granted both airlines the right to fly across its airspace.
6. Minar is a neighbouring state of Bulbuldesh. Minar has designated a privatised air navigation service provider called MinarControl to provide air traffic control services in Minar's sovereign airspace. MinarControl is established, organised and regulated under the laws of Minar.
7. In 1962, Minar and Bulbuldesh agreed that air traffic control (ATC) in a block of airspace falling under Bulbuldesh's sovereignty which is adjacent to the border of Minar would be carried out exclusively by MinarControl. As a result, MinarControl has been providing such ATC services for that airspace block continuously since 1962.

8. The agreement between Minar and Bulbuldesh transferring air traffic control tasks from Bulbuldesh to Minar was signed and submitted for ratification by the Parliaments of the two states. However, the agreement has not been ratified by either Government nor has it been registered with the International Civil Aviation Organization, a UN specialised agency (ICAO).
9. Article 5 of the agreement between Bulbuldesh and Minar states that Minar is *"liable for damages caused by its negligence, or that of its agents or any other person acting on its behalf, in relation to the provision of air traffic services falling under the agreement."* Article 30 requires the agreement to be ratified in order to enter into force.
10. On 17 October 2007 an aircraft operated by MorianCargo Airlines and Mayur Airways collide in mid-air while en route to the capitals of Mynia and Koelia respectively. The collision happened within the block of airspace of Bulbuldesh which is controlled by MinarControl.
11. All 50 passengers aboard the Mayur Airways aircraft together with its 6 crew members, and 3 crew members aboard the MorianCargo Airlines aircraft, are killed. The wreckage of the two aircraft is scattered across both sides of the border between Bulbuldesh and Minar, seriously damaging a football stadium and killing and severely wounding the players and public attending a top-league football match in Bulbuldesh, as well as causing harm and damage to private persons and property on the surface in both countries.
12. An official investigation of the accident by Bulbuldesh reveals that the cause of the accident hinged on the following circumstances (all times are local):
 - a) The crew of the Mayur Airways flight reported in to MinarControl while flying at an altitude of 36,000 feet at 11:30:11. MorianCargo Airlines had been cleared by MinarControl to climb the same altitude at 11:29:50. The two aircraft were therefore approaching each other.
 - b) At 11:34:42 a traffic announcement (TA) was made in both aircraft simultaneously by their on-board airborne collision avoidance system (TCAS) containing the words *"traffic traffic"*. TCAS works independently of any ground based system or ATC unit.
 - c) At 11:34:49 the on duty MinarControl controller instructed the Mayur Airways aircraft to descend immediately to 35,000 feet, pointing out conflicting traffic. The Mayur Airways crew initiated a descent, but without confirming it to the controller.
 - d) At 11:34:56 the TCAS of both aircraft simultaneously generated a resolution

advisory (RA) to their crew for the Mayur Airways aircraft to climb, and for the MorianCargo Airlines aircraft to descend.

- e) At 11:34:58 the acoustic short-term conflict alert (STCA) in the MinarControl tower, warning of aircraft closing on one another, sounded at the MinarControl's controller workstation. However, this alarm was not noticed by the controller.
- f) At 11:35:01, the MinarControl controller again instructed the Mayur Airways aircraft to descend immediately to 35,000 feet. The crew immediately confirmed this instruction.
- g) The controller failed to notice, however, that at 11:35:17 the MorianCargo Airlines aircraft started to descend as well. As TCAS is not linked to the ground, the controller was unaware that a TCAS-RA had instructed the crew of the MorianCargo Airlines aircraft to descend.
- h) At 11:35:24 the TCAS-RA was activated in the Mayur Airways aircraft instructing the crew to "*increase climb, increase climb*". Five seconds later the two aircraft collided.

13. The investigators also identified the following shortcomings at MinarControl:

- a) By reason of technical works at MinarControl, visual STCAs, which appear on a controller's monitor about 120 seconds before the impending closing of two aircraft to less than 12 kilometres horizontally, were not available on the day of the accident from 11:13:00. The controllers had not been properly informed of this situation. The supervisor had given a general briefing, which was inadequate.
- b) According to internal arrangements agreed between controllers (and known to and tolerated by the management of MinarControl), only one controller was working in the control room at the time of the accident, instead of the usual of two controllers and two assistants. Therefore, the duty controller had to man two workstations, switching between them from time to time. These workstations also differed in their configuration.

14. On 12 October 2009 the State of Mayur brought a case against the State of Bulbuldesh before the International Court of Justice. The State of Bulbuldesh does not raise any preliminary objections to the application made by the State of Mayur.

15. The State of Mayur has asked the Court to rule that:

- a) Bulbuldesh is responsible for all damage caused by the mid-air collision in the airspace of the State of Bulbuldesh on 17 October 2007;
- b) Bulbuldesh compensates Mayur for the value of the destroyed aircraft (i.e. USD 40m);
- c) Bulbuldesh indemnifies and holds harmless Mayur Airways in respect of all claims made by:
 - (i) third parties in connection with the accident, including claims by MorianCargo Airlines;
 - (ii) the legal successors of the deceased passengers and crew aboard both aircraft, including present and future claims;
- d) Bulbuldesh compensates Mayur 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.

16. In its response, Bulbuldesh has requested the International Court of Justice:

- a) to recognise that the state of Bulbuldesh has not violated rules of international law;
- b) to dismiss the claims made by Mayur as being contrary to international law;
- c) to determine that Bulbuldesh is under no obligation to pay compensation to Mayur in relation to the claims arising from the above aerial accident;
- d) to hold Mayur responsible for the compensation of damages in relation to the football stadium and private property on its territory.

17. The oral pleadings will take place on 3, 4 and 5 March 2010 in the Peace Palace, The Hague.

ADDITIONAL INFORMATION:

Mayur, Bulbuldesh, Minar, Koelia and Mynia are all member states of the International Civil Aviation Organization (ICAO), whereas they have made no reservations regarding the relevant Standards of the Annexes to the Chicago Convention.

Mayur, Bulbuldesh, Minar, Koelia and Mynia are all parties to:

- the Vienna Convention on the Law of Treaties,
- 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.

Mayur and Bulbuldesh are parties to the Statute of the International Court of Justice and have accepted the compulsory jurisdiction of the Court.

Mayur is a party to the Rome Convention on damage caused by foreign aircraft to third parties on the surface of 1952.

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