

Telders Case 2014

The Roundsian Rescue Dispute

1. A commercial aircraft of Roundsia with 90 Roundsian nationals (passengers and crew) on board and 10 passengers of other nationalities is hijacked by five heavily-armed, unidentified individuals. Due to inclement weather, the hijackers make an emergency landing in Achtagonia on 31 December 2013. The aircraft lands at a rural airport, near the border between Achtagonia and Roundsia, and the hijackers take the passengers and crew to an abandoned building in the airport complex.
2. Both Roundsia and Achtagonia are members of the United Nations and have signed and ratified the Vienna Convention on the Law of Treaties. Roundsia, but not Achtagonia, is a party to the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention). Roundsia is a small, developed country with a unitary central government and – due to longstanding restrictive immigration policies – an ethnically homogenous population. Achtagonia is an ethnically diverse developing country composed of four provinces governed in a loose federal system. Roundsia and Achtagonia share a 100 km border, and this border is entirely along territory of the Achtagonian province of Quad. Historically, Achtagonia and Roundsia have had peaceful relations, although tensions have arisen in recent years due to intermittent skirmishes between the Roundsian government's special forces and militant groups located in Achtagonia's Quad province. Although the Achtagonian government has protested Roundsia's military actions along the border, Achtagonia has not taken its own steps to control the militant groups in Quad. Roundsia's Minister of Defence has maintained that the goal of these missions is to disarm militants, and that these special forces have strict orders to use force only in self defence.
3. A Roundsian family of four was held hostage for several days during one of these border skirmishes in 2010. Although the incident was resolved peacefully through negotiation and the family was not harmed, the incident caused great public outcry in Roundsia. Thereafter, the Circular Times (Roundsia's flagship newspaper) reported that the militant group involved in that incident routinely received assistance from the government of Achtagonia's Quad province, and that the militants spoke with a dialect unique to that province. Roundsia requested that Achtagonia pursue the militants involved in the 2010 incident. No arrests have been made, and the matter remains on Roundsia's diplomatic agenda.
4. After the 31 December 2013 hijacking and through the first week of January 2014, the authorities of Roundsia are in continuous contact with those of Achtagonia at the highest political and diplomatic levels. Roundsia's Prime Minister urges Achtagonia's President to take all action necessary to bring the situation to an end and to safeguard the passengers and crew who remain detained. In the course of 1-3 January, 15 individuals with severe health problems (seven of whom are Roundsians) are released. The Roundsian commercial airliner reports that aircraft of the type hijacked generally carry food and water rations sufficient for passengers and crew to survive for seven to ten days. Those released from the aircraft report that the hijackers are providing adequate food to the passengers and crew, and that the hijackers appear to be sharing the aircraft's food supplies with local Quad residents.
5. On 1 January 2014 the Foreign Minister of Roundsia writes to the Secretary-General of the United Nations expressing Roundsia's grave concern for the safety of the passengers and crew. Roundsia's Foreign Minister notes the limited food rations on-board the aircraft and recalls the 2010 hostage incident involving militant forces operating in Achtagonia. Roundsia's Foreign Minister does not however call for any action by any UN body, and neither the General Assembly nor the Security Council considers the matter formally. Nor does Roundsia raise the matter with a regional organisation with broad competence, including political and security matters, of which both Roundsia and Achtagonia are members.
6. In the first week after the hijacking, Achtagonia takes no action in response to Roundsia's demands. While no formal statements are made, Achtagonia appears content to leave the matter to Roundsia. Achtagonia's President also declines the hijackers' request for a meeting and refuses the

hijackers' demands for refuelling and safety servicing of the aircraft. The hijackers from 4 January 2014 publicly threaten to kill the hostages at random if Achtagonia refuses to facilitate the onward flight. Roundsia makes no attempt to negotiate with the hijackers.

7. At 2.00 am on 7 January 2014, under heavy cloud cover, and without any notice to Achtagonia, the special forces of Roundsia undertake what its Prime Minister refers to later as a rescue mission. All the remaining passengers and crew are returned safely to Roundsia or their other home states. All the hijackers are killed. All of the members of the special forces unit also return to Roundsia, but with one exception. That individual, Captain Jack Squarejaw, is left at the airport in a seriously injured state. He is now recovering in a military hospital in Achtagonia. He has been charged with the murder of the five hijackers. Several weapons carried by members of the Roundsian special forces are left at the site of the mission. The Achtagonian government reports that only one of these weapons appears to have been discharged, and that weapon bears Captain Squarejaw's fingerprints.

8. Roundsia has claimed that Captain Squarejaw is entitled to State immunity and cannot be prosecuted in Achtagonia unless that immunity is waived, a step which Roundsia refuses to take. Roundsia notes that Captain Squarejaw is not only a captain in its special forces, but also Deputy Minister of Defence. In an official statement, Roundsia's Prime Minister calls Captain Squarejaw a national hero and commends his years of service to Roundsia, particularly his peaceful resolution of the 2010 hostage incident involving the Roundsian family.

9. Roundsia and Achtagonia have a treaty on Mutual Assistance in Criminal Matters concluded in 1985. It requires each Party to provide information which it holds relevant to an inquiry into alleged criminal offences over which the other has jurisdiction. According to Article V of the Mutual Assistance Treaty:

A request for information shall contain such information as required to execute the request, including:

- a) a description of the nature of the investigation or proceedings in the State requesting information;
- b) a description of the essential acts or omissions or matters alleged or sought to be ascertained;
- c) the purpose for which the request for information is made and the nature of the assistance sought.

That obligation to provide information is however subject to limits. Specifically, Article VI of the Mutual Assistance treaty states that "[a]ssistance may be refused when execution of the request would seriously impair [a State's] sovereignty, national security, or other essential public interest or for any reason provided by its domestic law."

10. Achtagonia requests from Roundsia information about the general training provided to its special forces and the particular instructions and rules of engagement applicable to the January exercise. Roundsia refuses to disclose any information referring generally to concerns about "national sovereignty, national security and the requirements of national law relating to the secrecy of defence operations." Achtagonia seeks a more specific statement of reasons, but Roundsia again refuses, citing national security concerns and its on-going intelligence-sharing relationship with a third country. Achtagonian newspapers have reported that multiple agencies of the Roundsian government contribute to the actions of its special forces, including its Ministry of Defence and Ministry of Communications, and that prior actions by the Roundsian special forces against militant groups in Achtagonia have been extensively documented by Roundsia for use in training.

11. Achtagonia commences proceedings in the International Court of Justice, founding the jurisdiction of the Court on the declarations which each has made under Article 36 (2) of the Court's Statute. Roundsia's has no relevant reservation but Achtagonia's, as of 2011, excludes (c) disputes relating to the national defence of Achtagonia, as determined by Achtagonia.

In its earlier declaration, the reservation took the following form:

(c) disputes relating to the national defence of Achtagonia.

12. Achtagonia seeks declarations

- (1) that the mission undertaken by Roundsia on 7 January was unlawful;
- (2) that it may exercise criminal jurisdiction over Captain Squarejaw notwithstanding Roundsia's claim that Captain Squarejaw has immunity; and
- (3) that Roundsia is in breach of its obligations under the Mutual Assistance treaty.

13. Roundsia, in a letter to the Court, states that the Court does not have jurisdiction because of the terms of reservation (c) of Achtagonia's declaration which it invokes on the basis of reciprocity. It also says that it has no intention of filing a counterclaim. Finally, Roundsia states that Achtagonia's claims are, in any event, without foundation. The Parties agree to an expedited procedure with only one round of written pleadings and with the jurisdictional issue being dealt with at the hearing along with the merits.