

**THE PHILIP C. JESSUP INTERNATIONAL LAW MOOT
COURT COMPETITION**

1971

**Case Concerning an Aerial
Hijacking Incident, Aegea and
Barcelona v. Franconia, 1971.**

Problem

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On January 20, 1970, two nationals of the Republic of Barcelona, Berthold Bessner and Benedict Bosch, boarded a passenger aircraft at Anatol National Airport in Asner, the Aegean capital, for a scheduled flight to the Republic of Damascus. The aircraft was owned by Aegean National Airlines, a privately owned company, incorporated in Aegea with 55% of its outstanding stock owned by Edenite nationals. The aircraft was registered with the Aegean Aeronautical Board and had been leased without support personnel to Barcelona Intercontinental Airways which is owned and controlled by the Barcelona government.

Due to recent hijackings, an electronic surveillance system had been installed at Anatol National Airport and had received its bi-monthly maintenance inspection on January 17. Thirty minutes prior to takeoff, it became inoperative and due to heavy air traffic on the morning of the 20th, other security measures were disregarded.¹ When Bossner boarded the aircraft, he was carrying an object approximately one meter in length covered by a plain cloth wrapping. The stewardess asked him to store his package in the rear compartment; he answered that he was entitled to carry it with him and the stewardess did not protest. Other passengers on the flight included Bunnar Baxomozev, a Barcelona national and UN employee, enroute to a peace-keeping mission for the UN in the Republic of Damascus, Benjamin Boerr, Barcelona's ambassador to Aegea, and nationals of Aegea, Barcelona, Damascus, Eden and Franconia.

Thirty minutes after entering Edenite airspace, Bossner with a

1971. 1. On September 18, 1969, the Aegean Secretary of Customs issued a government order stating: "The Bureau of Customs shall examine the hand baggage of outbound passengers, and, whenever appropriate, suspected individuals will be searched for instruments of piracy or sabotage."

rifle and Bosch with a hand grenade seized a stewardess and by threatening to kill her, gained entrance to the cockpit. Bossner ordered the pilot to change course for Franconia and the change in course was radioed to both Aegean and Barcelona ground stations concurrent with the fact of a hijacking. In an attempt to subdue the hijacking and while still in Edenite airspace, two security guards of Securite, Inc., a Barcelona corporation, attacked the hijackers. During the ensuing struggle, a Franconian national was killed by the security guards and after the hijackers regained control, they murdered the guards, nationals of Aegea and Barcelona.

After entering Franconian airspace, the hijacked airliner was intercepted by Aegean and Barcelona fighter planes in an unsuccessful attempt to prevent a landing. They fired rockets across the bow of the airliner with the result that while the airliner, crew, and passengers were not injured, Franconia's only factory in its only major industry suffered severe damage. The damage to the Franconian sulphur mining complex was estimated to be \$300,000 but more importantly, Franconia's production of sulphur has decreased by 45% and representatives of the Agency for International Development have confirmed that it will take 9-18 months for the mine to reach its previous production level of 400,000 tons per year. Three workmen were also killed as a result of the rocket attack on the mine.

Subsequent to landing in Franconia, Bossner and Bosch destroyed the aircraft after evacuating the passengers. The Franconian National Police made no effort to stop the hijackers and immediately after their surrender placed them in maximum security confinement. On January 21, the Franconian government announced that the hijackers

had revealed that they were members of the Barcelona Liberation Front, a militant political movement in Barcelona which is seeking to end Barcelona's control of Bemen province and form a separate state in union with Franconia. Franconia announced that the hijackers had asked for political asylum which had been granted and refused any further comment on the incident.

Twelve months prior to this incident, Barcelona and Franconia had severed diplomatic relations. [Barcelona charged that Franconia was fomenting armed insurrection in Barcelona and cited as evidence three violent border clashes in Bemen province from June, 1968 to October, 1968]. Aegea, meanwhile, has maintained full diplomatic relations with Franconia and, in addition, in 1966 they concluded a bilateral air agreement which is still in effect. This agreement confers mutual landing rights and other reciprocal facilities upon each party. A specific condition of that agreement is: "Each party will adhere to and perform the obligations imposed by the Tokyo Convention of 1963". Franconia, which has not ratified the 1963 Tokyo Convention, presented a statement of understanding to the Aegean representative.

The Tokyo Convention will not become operative until both of the signatories to this agreement have ratified it. In the event of a dispute arising out of actions prohibited by the 1963 Tokyo Convention, Franconia agrees to conform to Article 24 of that Convention,² and

2. "Any dispute between two or more contracting states concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them,

further agrees that the decision of the ICJ will be final and binding on Franconia." Aegea who has ratified the 1963 Tokyo Convention did not respond to this statement.

Barcelona, which has also ratified the 1963 Tokyo Convention demanded the extradition of the hijackers under the terms of the Barcelona-Franconia Extradition Treaty of 1933.³ Franconia refused extradition of the hijackers and, in fact, refused to release any Barcelona nationals, including Baramozov and Boerr, and the flight crew of the aircraft composed of Aegean and Barcelona nationals. They conditioned the release of these individuals on (1) a Barcelona decree of amnesty for all members of the Barcelona Liberation Front

be submitted to arbitration. If within six months from the date of request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of the Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."

3. This treaty states: "Extradition shall be granted for the following crimes and offenses: 1. Murder; 2. Arson; 3. Robbery, defined to be the act of feloniously and forcibly taking from the person of another money, goods, documents, or other property, by putting him in fear or by violence; 4. Willful and unlawful destruction or obstruction of railroads, trains, bridges, vehicles, or vessels, when the act committed endangers human life; 5. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons in order to exact money from them or their families, or for any other unlawful end; 6. Larceny, defined to be the theft of money, effects, documents, or other movable property of the value of more than fifty dollars; 7. Obtaining by threat of doing injury, money, valuables, or other personal property.

A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if proven that the requisition for his surrender has, in fact, been made with a view to try to punish him for an offense of a political character. If any question shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the government on which the demand has been made for surrender, shall be final."

held or sought by Barcelona and (2) the payment of \$400,000 to compensate for the damage to the Franconian sulphur mine and the deaths of the three workmen occasioned by the rocket attack of the Aegean and Barcelona Air Forces.

The Aegean Airline Pilots Association (AAPA), a state funded and chartered labor organization and a member of the International Federation of Airline Pilots Association (IFAPA), announced on January 22 that it would boycott all flights into and out of Franconia in response to (1) the murder of an Aegean national, (2) the detention of Aegean flight crew personnel by Franconia, (3) the seizure and destruction of an Aegean registered aircraft, (4) the serious threat that hijacking poses to world peace and the intention of the AAPA to take such measures as are necessary to force governments to impose suitable penalties on hijackers. The AAPA called on all IFAPA members to refuse air service to Franconia even if requested by Franconia, in support of the AAPA's action. Within one week, 80% of IFAPA's total membership agreed to support the AAPA's request. The result of this action was that Franconia, a small, impoverished, and developing state, dependent on air service from Aegean National for the carriage of 90% of its import-export trade suffered an 85% decrease in its former trade level. Also, all mail and medical supplies were halted as a result of the boycott.

Aegea, Barcelona, and Franconia commenced negotiations in March, 1970 to resolve the crisis. Barcelona charged that Franconia has detained Barcelona nationals without cause and has prevented their

access to Franconian courts in order to procure their releases; has detained Barcelona diplomatic personnel contrary to international law; is responsible for the destruction of the airliner leased by Barcelona and Franconia. Aegea's charges were exactly the same as the reasons advanced by the AAPA in justification of their boycott except that the Aegean government demanded the immediate trial of the hijackers in Franconia under Franconian Public Law 1234 which states: "Whoever commits or attempts to commit aircraft piracy as herein defined, shall be punished--(1) by death if the verdict of the Supreme Judicial Court shall so recommend; or by imprisonment for not less than 20 years, if the death penalty is not imposed. (2) As used in this subsection, the term "aircraft piracy" shall mean any seizure or exercise of control, by force or violence or threat of force or violence and with wrongful intent, of an aircraft in flight in air commerce." This law was enacted by Franconia as a condition of Aegean ratification of the 1966 Aegea-Franconia Air Agreement.

All of the Aegean and Barcelona charges were denied by Franconia. It claimed that its actions were justified because (1) Aegea and Barcelona had violated its territorial sovereignty; (2) due to the rockets fired by the invading Aegean and Barcelona aircraft, Franconia's economy had suffered \$40 million damage and three Franconian nationals had been killed; (3) the boycott of the AAPA and its support by the IFAPA had completely and inequitably isolated Franconia; (4) Aegea as a member of the Universal Postal Convention had violated its treaty

obligations by refusing to deliver mail to Franconia; and (5) since Franconia has not ratified or signed the 1963 Tokyo Convention, it is under no duty to adhere to its provisions.

After prolonged negotiations, Aegea in April, 1970 requested that the matter be submitted to arbitration. No agreement had been reached by October, 1970 regarding the organization of the arbitration, therefore, all parties agreed to submit the dispute to the ICJ for its determination. Aegea and Barcelona appear as joint applicants and Franconia as respondent. The parties are all members of the United Nations. The parties have waived all preliminary objections and have stipulated the foregoing facts.