**Unauthorised Aerial Intervention: An International Stratagem**

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**Semester:** VI **Semester:** II

**Course:** B.Sc. LL.B. (Hons.) **Course:** B.A. LL.B. (Hons.)

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INTRODUCTION:

Since 1945, and especially during the Cold War, many incidents have occurred in which foreign aircraft, both civilian and military, have made incursions into foreign airspace. In a number of cases the trespassing aircraft was destroyed by the military force of the subjacent state. Among the most publicized incidents have been: the shooting down of an Israeli airliner by Bulgaria in 1955; of a US military reconnaissance aircraft U-2 by the Soviet Union in 1960; of a Libyan airliner by Israel in 1973; and perhaps the most celebrated case-the shooting down by Soviet fighter planes of a South Korean airliner in 1983[[1]](#footnote-1). In a more recent incident, in 2001, the emergency landing at a Chinese military airfield of a US surveillance plane, badly damaged in a collision with a shadowing Chinese jet fighter (whose pilot was killed in the collision) over the high seas off the South China coast, was certainly an unauthorised entry of the Chinese airspace, but could be justified in International Law by such exculpatory reasons as distress or *force majeure.*

UNAUTHORISED AERIAL INTRUSION AND THE DOWNING OF CIVILIAN AIRLINERS[[2]](#footnote-2):

The International Court has emphasised that the principle of respect for territorial sovereignty is directly infringed by the unauthorised over-flight of a state’s territory by aircraft belonging to, or under the control of, the government of another state.[[3]](#footnote-3) Such unauthorised over-flight would justify interception and a demand to land. However, a number of incidents have occurred since 1945 of the destruction of foreign alien intruders. In 1955 a civil airliner of El Al Israel Airlines was shot down while intruding into Bulgarian airspace by Bulgarian warplanes. An action was commenced before the International Court of Justice which, however, dismissed the case on grounds of lack of jurisdiction. The Israeli Memorials emphasised that a state faced with an unauthorised aerial intrusion may deal with it in one or both of two ways: first, by informing the intruder that it is performing an unauthorised act (and this may include compelling it to land); secondly, by taking diplomatic action.[[4]](#footnote-4)

In 1973, Israeli jets shot down a Libyan airliner straying several score miles into Israeli-occupied Sinai. It was alleged that the airliner had been warned to land but had refused to comply with the order. After an investigation, the council of ICAO condemned Israel’s action and declared that ‘such actions constitute a serious danger against the safety of international civil aviation’. Israel’s attitude was criticised as a ‘flagrant violation of the principles enshrined in the Chicago Convention’.[[5]](#footnote-5)

On 1 September 1983, Soviet jets shot down a Korean Airlines airplane which had strayed several hundred miles into sensitive Soviet airspace, causing the deaths of 269 persons.[[6]](#footnote-6) A week later, the USSR vetoed a draft Security Council resolution which reaffirmed the rules of international law prohibiting acts of violence against the safety of international civil aviation.[[7]](#footnote-7) The Council of ICAO directed on 16 September that an investigation be held and that the Air Navigation Commission should review the Chicago Convention and related documents to prevent a recurrence of such a tragic incident and to seek to improve methods of communication between civil and military aircraft and air traffic control services.[[8]](#footnote-8)

After the submission of the report,[[9]](#footnote-9) the Council of ICAO adopted a resolution condemning the shooting down of the Korean Airliner.[[10]](#footnote-10) In addition, an amendment to the Chicago Convention was adopted.[[11]](#footnote-11) This amendment was to article 3 of the Convention, which had laid down as one of its general principles that contracting states undertook to have due regard for the safety of navigation of civil aircraft. In addition to the general provision in article 3, Annex II to the Convention had provided for detailed procedures to be followed in cases of interception, procedures which were apparently not complied with in the case of the Korean Airlines tragedy.[[12]](#footnote-12) Annex II also provided that ‘intercepting aircraft should refrain from the use of weapons in all cases of interception of civil aircraft’. Despite this provision and ICAO Council action in 1973 regarding Israel’s attack on the Libyan airliner over Sinai, the need was felt to strengthen the general principle in article 3 itself in order to add greater force to the concern felt.

The doctrine of self-defence may be of relevance in certain situations, for example, if the intruding aircraft was clearly involved in an act of aggression or terrorism. The intercepting forces may have to take action, within the parameters of proportionality, to forestall that threat and force may be necessary. While a civilian airliner will rarely pose this level of threat, justifying a shooting down, the attack on the World Trade Centre on 11 September 2001 demonstrates that it is a possibility. It appears that the USSR believed that the Korean airliner was an American spy plane.[[13]](#footnote-13) Even if that were true or the belief were genuine, it would seem that the actions taken to require it to land were inadequate and the course actively embarked upon beyond the bounds of proportionality.

The general issue was again raised by the shooting down by the US Warship *Vincennes* in July 1988 of an Iranian civil airliner over the Persian Gulf, although it should be noted in this case that there was of course no unauthorised aerial intrusion into domestic airspace.[[14]](#footnote-14) Both the US Defence Department and the ICAO Reports into the incident in essence placed the blame of the incident on the warship.[[15]](#footnote-15) Mistakes made as to the identification of the aircraft and with regard to the warnings issued to it combined with the tense atmosphere in that region during the Iran-Iraq war to create the disaster. Suggestions have been made that the US should not be regarded as legally responsible, since proof of fault beyond reasonable doubt has yet to be established and the fact that the incident took place in a war zone is of utmost relevance in assessing this.[[16]](#footnote-16) However, it is undisputed that the airliner was shot down by a US Warship and this is certainly contrary to article 3 *bis*, which could well now be regarded as the principle of customary law. While self-defence may well have been an initial consideration, its application is circumscribed by the principles of necessity and proportionality. The incident came before the International Court of Justice upon Iran’s application on 17 May, 1989, but was removed from the Court’s list upon notification of a full and final settlement between the US and Iran.[[17]](#footnote-17)

The shooting down of two civilian planes by Cuban military aircraft over international waters in February 1996 led to strong condemnation. ICAO adopted a resolution on 28 June 1996, following the preparation of a report,[[18]](#footnote-18) reaffirming the following principles: first, that states must refrain from the use of weapons against civil aircraft in flight and that, when intercepting civil aircraft, the lives of persons on board and the safety of the aircraft must not be endangered; secondly, that states must take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that state or operated by an operator who has his principle place of business or permanent residence in that state for any purpose inconsistent with the aims of the Convention on International Civil Aviation; and thirdly, that the use of weapons against civil aircraft in flight was incompatible with elementary considerations of humanity, the rules of customary international law as codified in article 3 *bis* of the Convention on International Civil Aviation, and the Standards and Recommended Practices set out in the Annexes to the Convention.[[19]](#footnote-19) These principles were reaffirmed in Security Council resolution 1067 (1996).[[20]](#footnote-20)

The situation is different with regard to military aircraft intruding without authorization into foreign airspace. The self-defence argument may be stronger and the burden of proof thus lower, but it is questionable whether the need for a prior warning has been dispensed with.[[21]](#footnote-21)

KAL 007 INCIDENT: CRITICAL ANALYSIS

While the attack on KAL Flight 902 passed into history with hardly a second look, another attack on a Korean Airlines flight a little over five years later is no doubt the most famous incident involving the shooting down of a civilian aircraft. On September 1, 1983, fighter jets from the Soviet Union shot down Korean Airlines Flight 007, operated with a Boeing 747-200 aircraft, while en route from New York to Seoul, South Korea, killing all 269 passengers and crew aboard. It is also undisputed that the global reaction was swift and entirely against the Soviet Union. Moreover, a number of countries, including the United States, imposed various sanctions on the Soviet Union. Nevertheless, the Soviet Union claimed that the aircraft had violated its airspace, speculated that it was on a spy mission, and denied any liability to the victims’ families.

The United Nations Security Council met in a special session and considered a draft resolution that included the statement that “such use of armed force against international civil aviation is incompatible with the norms governing international behaviour.” The membership of ICAO gathered for an emergency meeting on September 15, 1983, just two weeks after the incident, and on September 17, the ICAO council adopted a resolution and an amendment which was not ratified by a sufficient number of ICAO members to take effect until fourteen years later on October 1, 1998, with two subsequent resolutions of ICAO having been adopted urging its ratification by member states.

Presuming that the Soviet Union truly believed that Korean Air Lines Flight 007 was operating a spy mission, which belief must still have been speculative, they could not know for sure until the spy camera was recovered from the wreckage. The issue therefore comes down to a balance between the risk of taking no action versus the risk of taking military action. In analyzing that balance, however, the global community is very intolerant of armed action against civilian aircraft. That intolerance is further demonstrated by the fact that, except for armed action against drug traffickers, no case in which firing on a civilian aircraft has been accepted as a favourable decision-although the Israeli shooting down of the Cessna aircraft after its substantial efforts to avoid doing so might have passed into the realm of acceptability.

It appears that a rule prohibiting the use of force against civilian aircraft sits at the cusp of becoming a norm of international law. The strongest item that lends weight to this position is the unanimous vote for the adoption of Article 3 *bis* to the Chicago Convention and its ultimate entry into force. In addition to a law prohibiting the use of armed force against civil aircraft, the further norm of making *ex gratia* payments on humanitarian grounds when military force is used with proper military intent, but unknowingly against a civilian target, has wide acceptance.

Nevertheless, several key factors detract from the establishment of a clear rule. The first is that there are fortunately few cases. Second, even if countries do refrain from taking armed action against civilian aircraft, such abstention does not necessarily establish a position that they would consider such action illegal.

The initial Soviet response on September 1, 1983 was that an unidentified aircraft had twice violated Soviet airspace and had ignored attempts by Soviet interceptors to guide it to a Soviet airfield for a landing. The report further said that the aircraft was operating without navigation lights. There was no mention of the airliner being attacked and destroyed by Soviet aircraft. The next day, the Soviets announced that their aircraft had fired tracer shells to warn the aircraft but that the aircraft had ignored the warning and continued its flight.[[22]](#footnote-22) It was not until September 6 that the Soviets announced that, after attempts to communicate with the intruder on the international emergency frequency, 121.5 megacycles (MHz), and after tracer shells had been fired across the path of the intruder, did the pilot fulfil “the order of the command post to stop the flight.”[[23]](#footnote-23)

The Soviet News Agency TASS asserted that the attack on the airliner was “fully in keeping with the law on the state border of the USSR” and that the Soviet Union would “continue to act in keeping with [Soviet] legislation” as the Soviet Union had a right to protect its borders and its airspace.[[24]](#footnote-24)

In a preliminary report of the Soviet Accident Investigation Commission, the Soviets concluded that the deviation by KAL-007 was a ‘‘pre-planned intelligence gathering and provocative mission” by the United States and Korea.[[25]](#footnote-25) The Soviet report alleged that KAL-007 had been in contact with a United States Air Force RC-135 reconnaissance aircraft and that the two aircraft flew together for some time.[[26]](#footnote-26) The report noted that the aircraft was flying over strategic areas of the Soviet Union.[[27]](#footnote-27)

Having concluded that the unknown intruder aeroplane was an intelligence aircraft, the Area Air Defence Command decided to terminate its flight. On instructions from the ground control unit the pilot of the SU-15 interceptor launched two rockets at the intruder aeroplane at 22.24 Moscow time on 31 August 1983 (06.24 Sakhalin time on 1 September 1983) over the territory of the USSR and turned back to its base aerodrome.

In justifying the interception and attack, the report stated that the intruder aeroplane’s penetration of USSR airspace resulted in the violation of Soviet law, the 1944 Chicago Convention and the Standards of ICAO. The actions of the crew of the intruder aeroplane, which conflicted with the provisions of national and international legal rules governing the conduct of international flights by civil aircraft, in conduction with other circumstances, led to the conclusion that this violation of the State frontier of the USSR was pre-planned.

The Soviet report concluded that the actions of the Soviet anti-aircraft defence interceptors were conducted in strict conformity with current Soviet legislation and the provisions set out in AIP [Airman’s Information Publication] USSR. The intruder aeroplane ignored the actions of the intercepting fighters and altered its heading, altitude and flight speed, which proves that the crew was in full control of the flight. In view of the complete refusal of the intruder aeroplane to obey the instructions given by the Air Defense aircraft, the intruder aeroplane’s flight was terminated on orders from the ground.

The Soviet explanation was contradicted by intercepted tape recordings of transmissions between the interceptors and their ground control unit. These tapes were played before the United Nations Security Council on September 6, 1983 by the U.S. Ambassador, Jeane Kirkpatrick. The tapes revealed that, contrary to the Soviet reports, the interceptor pilot reported on three separate occasions that the airliner’s navigation lights were on. At no time did the pilot report firing any tracer rounds as a warning; the only reported firing was the launch of two missiles. The Soviets alleged that the interceptor pilots tried to communicate with the airliner by visual signal and radio. Yet, at no time did the tapes indicate that the interceptor pilots reported to the ground control unit any attempt to communicate with the airliner by radio or aerial manoeuvre. Ambassador Kirkpatrick suggested that Soviet military aircraft are technically incapable of communicating on the international emergency frequency. The tapes showed that the interceptor which attacked KAL-007 had had the airliner in sight twenty minutes before firing the missiles. At no time did the pilot on his own initiative or at the request of the ground control unit attempt to visually identify the aircraft as civilian or military, nor was there an attempt to examine the aircraft’s markings. The only recorded attempt at identification was the use of electronic interrogation by the IFF (identify friends or foes) system. However, only military aircraft carry this system and a civilian airliner would not respond to electronic interrogation of this type.[[28]](#footnote-28)

International Action against the Soviet Union:

The Soviet explanation was rejected by the majority of nations. Many nations, in accordance with international practice, imposed sanctions against the Soviet Union. The United States reacted by suspending negotiations in a number of cultural, economic, and scientific areas. The ban on the Soviet airline, Aeroflot, was reaffirmed and several Aeroflot offices in the United States were closed.[[29]](#footnote-29) Canada, Japan, Switzerland, most NATO countries, and a number of other nations imposed a ban on Aeroflot landings for periods ranging from 14 to 60 days.[[30]](#footnote-30)

In the private sector, the International Federation of Air Line Pilot’s Associations, representing some 57,000 affiliated members from 67 countries, passed a recommendation that its members not fly to the Soviet Union for a period of 60 days. Numerous national airline pilot associations followed suit with Finnish, British, Dutch, West German, Irish, French, and Spanish pilots refusing to fly to the Soviet Union.

The International Civil Aviation Fact Finding Investigation sanctioned by the resolution was completed in December 1983. In considering the reasons why the airliner may have been off course, the report dismissed as too unlikely to warrant further investigation the possibilities of unlawful interference, crew incapacitation, and extensive avionics/navigation systems failure or malfunction. They also dismissed as implausible the theory raised by some that the airliner had been deliberately flying off course to save based upon Soviet reports and observations by Japanese civil and defense force radar,[[31]](#footnote-31) the report found no records of any such previous deviations. The report also discounted Soviet allegations that the airliner was on an intelligence-gathering mission. The Soviets had alleged that KAL-007 had delayed its departure time to coordinate with American intelligence aircraft and satellites. The report found that the departure was timed instead to coordinate with a navigational satellite’s orbital position.[[32]](#footnote-32) The investigation concluded that the most likely explanation for the course deviation of KAL-007 was crew error through the improper use and programming of navigational equipment. The report noted that this type of error assumed “a considerable degree of lack of alertness and attentiveness on the part of the entire flight crew but not to such a degree that is unknown in international civil aviation.”

The ICAO also investigated the evidence concerning the identification, signalling, and communication procedures used by the Soviets during the interception and found that interceptions of KAL-007 had been attempted by USSR military interceptor aircraft, over Kamchatka Peninsula and in the vicinity of Sakhalin Island. Moreover, the USSR authorities had assumed that KAL-007 was an “intelligence’ aircraft; therefore, they did not make exhaustive efforts to identify the aircraft through in-flight visual observations.

KAL-007’s climb from FL 330 to FL 350 during the time of the last interception, a few minutes before its flight was terminated, was thus interpreted as being an evasive action, further supporting the presumption that it was an “intelligence” aircraft. As the ICAO was not provided any radar recordings, recorded communications or transcripts associated with the first intercept attempt or for the ground to-interceptor portion of the second attempt, it was not possible to fully assess the comprehensiveness or otherwise of the application of intercept procedures, signalling and communications. Finally, in the absence of any indication that the flight crew of KAL-007 was aware of the two interception attempts, the report concluded that they were not.[[33]](#footnote-33)

Based upon the ICAO Fact-Finding Investigation, the ICAO’s 33 member governing council voted 20 to 2, with 9 abstentions, to condemn the Soviet Unions’ destruction of KAL-007 as violative of accepted international practice. The resolution also condemned the Soviet’s failure to cooperate in the search and rescue efforts of other involved nations and with the ICAO investigation of the incident.

Following the vote, the Soviet delegate withdrew a counter-resolution accusing the United States and Japan of withholding information on the incident.[[34]](#footnote-34)

Legal status of the Soviet attack on KAL-007:

The weight of international legal authority does not support the Soviet attack on KAL-007. KAL-007 did violate Soviet territorial airspace in violation of Soviet law and Article 6 of the Chicago Convention. It committed no other violations. This mere violation of Soviet territorial airspace alone could not justify the use of force against KAL-007.

The Soviets attempted to invoke the security interest exception by claiming that KAL-007 had over-flown sensitive military areas of the Soviet Union. This justification must fail. The Soviets offered no credible evidence that the airliner was engaging in aerial spying or carrying out any type of hostile mission. Their claim that the airliner delayed its departure in order to coordinate with a United States spy satellite was rejected by the ICAO Fact Finding Investigation. Their allegation that the airliner was flying a joint mission with one of the American RC-135 reconnaissance aircraft, which routinely operate in the area, is also unsupported by evidence.[[35]](#footnote-35) At the time of the incident, the Soviet Union was at peace and there was no hostile action taking place in the area. The security interest exception, as demonstrated by the Libyan airliner incident, envisions more than the mere over-flight of a military sensitive area. The Soviet security interest pales when compared to the Israeli security interest invoked in the destruction of the Libyan airliner.

The Soviet explanation of the facts surrounding the destruction of KAL-007 is also weak. Given the inconsistencies between Soviet statements and the evidence provided by the radio interceptions, their claims that they attempted to make contact with KAL-007 are probably no more than fabrications. Their explanation and justification for the attack was a carbon copy of almost every other incident in which their interceptors have attacked an aerial intruder.

CONCLUSION:

The need for the amendment of the Chicago Convention was best expressed by Dr. Assad Kotaite, the President of the 25th Session (Extraordinary) of the Assembly, in his opening remarks to the Assembly: There may be some who believe that the prohibitions of use of force against civil aircraft is already a firm part of general international law and there is no need to codify that provision in the body of the Convention….However, the international community believes that only written law can remove the uncertainties of the other prime source, customary law; it fills existing gaps in the law and gives precision to abstract general principles, the practical applications of which have not been previously settled….A written rule is far superior to general principles recognized as customary law because frequently the very existence of a customary law or its exact scope and content may remain subject to challenge.[[36]](#footnote-36)

As finally drafted, Article 3 *bis* met the major concerns of the nations represented at the Assembly. Paragraph 3 *bis* (a) clearly prohibits the use of force against civil aerial intruders. In addition to prohibiting the use of weapons against civil aircraft, it provides that the lives of the passengers and the safety of the aircraft must not be endangered thus prohibiting aerial manoeuvres by interceptors designed to force an aircraft down which at the same time endangers the safety of the intruder aircraft. The only situation where force could be used against an aerial intruder would be in circumstances involving self-defense as defined by Article 51 of the United Nations Charter. As civil airliners have rarely been used to carry out armed attack as defined in Article 51, this would virtually eliminate the possibility of armed force being used against the civil intruder.

Paragraph 3 *bis* (a) clearly rules out the use of force in those situations where an intruder merely flies over a highly sensitive area without manifesting any intent to conduct an armed attack. While it may be argued that this proposal will lead to civil aircraft engaging in intentional intrusions for the purpose of conducting intelligence gathering activity, this is unlikely to occur with such frequency so as to pose a problem. Given the sophistication of today’s intelligence gathering satellites, the same sort of result may be achieved at less risk to human life and political reputation.

Paragraph 3 *bis* (b) gives the over-flown sovereign the right to require landing upon a violation of its aerial sovereignty. Earlier terms of the Chicago Convention allowed for the over-flown state to require a landing only when the intruder overflies a restricted or prohibited area. As most states have designated only a small portion of their airspace as restricted or prohibited, except for the Soviet Union which has restricted or prohibited nearly all of its airspace, this portion of the proposal greatly expands the amount of control a state may exercise against an intruder under the terms of the Chicago Convention.

Paragraph 3 *bis* (c) adds further force to paragraph 3 *bis* (b) by making it a requirement of the intruder’s national law to comply with the demand of an interceptor of the over-flown state. The additional force of an intruder’s national law requiring him to land if intercepted removes any discretion or doubt on the part of the pilot to do otherwise. This in turn reduces the possibility of force being used so long as proper interception procedures are utilized.

The final paragraph, 3 *bis* (d), addresses the concern set forth by the Soviet Union. It requires member states to take steps to prohibit aircraft operated under their registry or by an operator who has his principal place of business or permanent residence in that state from engaging in any activity that is inconsistent with the purposes of the Chicago Convention. This portion emphasizes the principle that civil aircraft should be operated for peaceful purposes and not for military purposes or intelligence gathering purposes. The proposal goes to the heart of the Soviet position that KAL-007 was on an intelligence gathering mission for the United States.

Incidents such as KAL-007 will become as they should, diplomatic incidents with diplomatic and economic consequences. This is the most positive step that has been taken since the advent of flight concerning the treatment of aerial intruders. For the first time, there is a clearly written standard, which the nations of the world have been asked to adopt, as their standard of practice. Rightly put by the Italian delegate to the Convention, Dr. A. Sciolla Lagrange, “Words fly away but what is written remains forever.”[[37]](#footnote-37)

1. 23 ILM 864 (1984). [↑](#footnote-ref-1)
2. See e.g. O. Lissitzyn, ‘The Treatment of Aerial Intruders in Recent Practice and International Law’, 47 AJIL, 1953, p. 554; Greig, *International Law,* pp. 356-60; F. Hassan, ‘The Shooting Down of Korean Airlines Flight 007 by the USSR and the Furtherance of Air Safety for Passengers’, 33 ICLQ, 1984, p.712, and J. Dutheil de la Rochere, ‘L’Affaire de l’ Accident du Boeing 747 de Korean Airlines’, AFDI, 1983, p. 749. See also Matte, *Treatise,* pp. 175-7, and Cumulative DUSPIL 1981-8, vol. II, pp. 2167 ff. [↑](#footnote-ref-2)
3. The *Nicaragua v. US* case, ICJ Reports, 1986, pp. 3, 128; 76 ILR, pp. 349, 462. [↑](#footnote-ref-3)
4. *Aerial Incident* case, ICJ Reports, 1959, pp. 127, 130; 27 ILR, p. 557. [↑](#footnote-ref-4)
5. 12 ILM, 1973, p. 1180. Israel apologized for the incident and paid compensation to the victims. See also DUSPIL, 1973, pp. 312-13. [↑](#footnote-ref-5)
6. See the Report of the Secretary-General of ICAO, 23 ILM, 1984, p. 864. See also 88 ILR, p. 55 and Cumulative DUSPIL 1981-8, vol. II, pp. 2169 ff. [↑](#footnote-ref-6)
7. 22 ILM, 1983, p. 1148. [↑](#footnote-ref-7)
8. See M.N. Leich, ‘Destruction of Korean Airliner: Action by International Organizations’, 78 AJIL, 1984, pp. 244-5. [↑](#footnote-ref-8)
9. 23 ILM, 1984, p. 864. [↑](#footnote-ref-9)
10. *Ibid.*, p. 937. Note also that an ICAO investigation in June 1993 concluded that the evidence obtained supported the first hypothesis listed in the 1983 Report, i.e., that the flight crew had mistakenly flown on a constant magnetic heading because it had not been realized that the autopilot had been left in use. It was also concluded that the USSR Command Centre had assumed that the aircraft was a US RC-135 aircraft: see 33 ILM, 1994, p. 310. [↑](#footnote-ref-10)
11. 23 ILM, 1984, p. 705. This amendment, the Montreal Protocol, 1984, required ratification by two-thirds of the ICAO membership before coming into force. [↑](#footnote-ref-11)
12. De la Rochere, ‘L’Affaire’. [↑](#footnote-ref-12)
13. See 22 ILM, 1983, pp. 1126-28. [↑](#footnote-ref-13)
14. See e.g. *Keesing’s Record of World Events*, pp. 36064, 36169, 36631 and 37423, and ‘Agora: The Downing of Iran Airflight 655’, 83 AJIL, 1989, p.318. See also 28 ILM, 1989, p.896. [↑](#footnote-ref-14)
15. *Keesing’s Record of World Events,* and 83 AJIL, 1989, p. 332. See also Security Council Resolution 616 (1988). [↑](#footnote-ref-15)
16. See e.g. H. Maier, ‘*Ex-Gratia* Payments and the Iranian Airline Tragedy’, 83 AJIL, 1989, p. 325. [↑](#footnote-ref-16)
17. See Court’s Order of 22 February, 1996. See also the Pakistan application to the Court concerning the downing of a Pakistan plane by India in 1999. The Court rejected this on jurisdictional grounds: see ICJ reports, 2000. [↑](#footnote-ref-17)
18. S/1996/509, annex. [↑](#footnote-ref-18)
19. PIO 6/96 and <http://www.icao.int/icao/en/nr/pio9606.htm>. See also the resolution adopted on 6 March 1996. [↑](#footnote-ref-19)
20. See also *Alejandre v. Cuba* 996 F. Supp. 1239 (1997); 121 ILR, p. 603. [↑](#footnote-ref-20)
21. See e.g. O. Lissitzyn, Editorial Comment, 56 AJIL, 1962, pp. 135, 138. [↑](#footnote-ref-21)
22. Report of ICAO Fact-Finding Invest. 1, App. C, at C-10 (Dec. 1983). [↑](#footnote-ref-22)
23. *Keesings Contemporary Archives* 32514 (Nov. 1983). [↑](#footnote-ref-23)
24. *Id.* [↑](#footnote-ref-24)
25. Report of ICAO Fact-Finding Invest. 1, App. F, at F-10 (Dec.1983). [↑](#footnote-ref-25)
26. The United States admitted that an RC-1353 reconnaissance aircraft had been operating off the Kamachatka Peninsula for the purpose of monitoring Soviet compliance with the SALT treaties. The Soviet claim that it was an a joint mission with KAL-007 was denied. The United States pointed out that the two aircraft were no closer than 75 nautical miles and that, at the time of actual interception of KAL-007, the RC-135 had been at its base in Alaska for over one hour. The United States argued that no military pilot using proper intercept procedures could mistake a Boeing 747 airliner with an RC-135 military reconnaissance aircraft. Dep’t St Bull., Oct. 1983, at 1, 19. [↑](#footnote-ref-26)
27. Report of ICAO Fact-Finding Invest. 1, App. F at F-6 (Dec. 1983). [↑](#footnote-ref-27)
28. Dep’t St. Bull., Oct. 1983, at 1, 8-9. Also see Report of ICAO Fact-Finding Invest. 1, App. D, at D-1 - D-4 (Dec. 1983). [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. *Keesings Contemporary Archives* 32516 (Nov. 1983). [↑](#footnote-ref-30)
31. *Id* at Article 44. [↑](#footnote-ref-31)
32. 9 M. Whiteman, Digest of International Law 393 (1968). [↑](#footnote-ref-32)
33. N.Y. Times, Mar. 7, 1984, at A4, col. 2. [↑](#footnote-ref-33)
34. *Id.* [↑](#footnote-ref-34)
35. Dep’St t. Bull., Oct. 1983, at 1, 6. [↑](#footnote-ref-35)
36. 38 ICAO Bull., June 1984, at 13. [↑](#footnote-ref-36)
37. Contemporary International Legal Issues, Aerial Intrusions by Civil and Military Aircraft in Time of Peace, Winter, 1985 107 Mil. L. Rev. 255. [↑](#footnote-ref-37)