



## **International Law and the Downing of Ukraine International Airlines Flight 752**

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**EXECUTIVE SUMMARY:** Iran's prevarications about its responsibility for the shooting down of Ukrainian International Airlines Flight 752 during the recent escalation of tensions with the US magnify its culpability and could lay it open to reparations claims by Canada, Ukraine, Sweden, and the UK, all of which lost citizens in the disaster.

The pro-regime protests that took place inside Iran following the killing of Quds Force commander Qassem Soleimani changed their tenor when the regime finally admitted, after lying to the public and the world for three days, that it had shot down Ukraine International Airlines Flight 752, a disastrous error that killed all 176 people on board. Canadian PM Justin Trudeau has said repeatedly that Canada will demand justice for the 74 Canadian victims on board (who were, for the most part, either ethnic Iranians or of Iranian origin). Also killed on the flight were Ukrainian, Swedish, and British citizens.

It is not yet clear whether these countries will seek a judicial remedy under international law for Iran's shooting down of a civilian aircraft carrying their citizens.

This situation echoes 1988, when an Iranian flight was shot down by the USS Vincennes, a missile cruiser of the US Navy in the Persian Gulf. At that time, Iran filed a case against the US at the International Court of Justice. The US, which claimed that the Court lacked jurisdiction, nevertheless reached an agreement with Iran and settled the case.

The ability of Canada and the other affected states to apply international law to seek justice in the case of Flight 752 can be better understood by examining international

law covering civil aircraft. The Convention on International Civil Aviation 16 (Chicago Convention) is the key document on this matter.

Iran signed and ratified the Convention and is thus legally obliged to uphold it. Article 3 explicitly states:

The contracting states must refrain from resorting to the use of weapons against civil aircraft and in that case of interception, the lives of persons on board and safety of aircraft must not be endangered. Secondly, the Montreal Convention for the suppression of unlawful acts against the safety of Civil Aviation remains the other necessary black letter legal mechanism available in international law.

Also, the UN Charter—considered the zenith of international law—frames specific conditions regarding the use of force. In particular, Article 2 (4) requires all member states to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” The use of force against a foreign civil aircraft, even within the boundaries of a nation state, triggers international law in that it constitutes a “use of force” within the meaning of this rule.

If Canada or any other country does choose to apply international law to seek justice for its citizens in this case, Iran will likely invoke Article 51 of the UN Charter, which verifies member states’ right of self-defense. The question of self-defense arises in this case because the shooting down of Flight 752 occurred shortly after a sharp escalation of tensions between the US and Iran (albeit outside Iranian territory): the US had just conducted the targeted killing by drone strike in Baghdad of Quds Force commander Soleimani, and Iran had responded by shooting cruise missiles at US bases in Iraq.

But the self-defense argument might not be applicable in this instance. Self-defense is generally invoked to justify actions taken in cases of imminent threat. Long before the creation of Article 51 in the UN Charter, the scope of “imminent threat” was a complex issue in international law.

As long ago as 1837, during the diplomatic crisis between the US and Britain known as the Caroline Affair, US statesman Daniel Webster described an imminent threat as “instant, overwhelming and leaving no choice of means and no moment for deliberation”. Given that Flight 752 was shot down just hours after Iran had attacked two US bases in Iraq, Tehran could argue that the human error of having misidentified the Ukrainian plane as an American missile can be at least partly explained by the context of the military escalation. But the civilian aircraft was never an imminent threat, no matter what the errant Iranian missile operator or his superiors might have thought in the heat of the moment.

The flight was downed as the result of a tragic mistake, and there are very few remedies for mistakes in international law.

In this particular situation, Iran's liability appears more severe than is suggested by its claim that the calamity was simply a grave error. Tehran's culpability is increased by its initial attempts to obstruct the investigation of the crash and to portray it deceptively as the result of a technical error. More importantly, the plane would never have been shot down had Iranian authorities closed the country's air space that day — a reasonable precaution in view of the possibility of US escalation following the Iranian missile strikes.

Thus: even if the disaster was caused by an honest mistake, Tehran's actions both before and after the event may increase its liability.

Iran's wisest move, ahead of any legal action by Canada, Ukraine, Sweden, or Britain, might be to admit liability and commit to paying reparations for the lives lost. By conducting a fair investigation, providing reparations, and unconditionally apologizing, Iran can mitigate its descent into greater isolation as a pariah state.

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