

The Telders International Law Moot Court Case 2008: *Aerial Accident Case* (*Icara v. Mercuria*)*

This case concerns a claim for damages suffered by nationals of the State of Icara following an aerial accident in the State of Mercuria.

It involves public international law, including the law of treaties and questions regarding state responsibility and liability, public international air law, the application of European aviation rules and the binding force of international safety rules.

1. Icarex Airlines is an airline established and regulated under the laws of the State of Icara. It is substantially owned and effectively controlled by the State of Icara. Its aircraft are registered in the national registry of Icara. Its flight operations and aircraft meet internationally recognised safety standards.
2. Icarex Airlines is designated by Icara to operate international air services to third states under bilateral air services agreements (ASA) between Icara and such states. Icara has such an ASA with a state called Montania. Icarex Airlines designation by Icara to operate scheduled and non-scheduled air transport services between the capitals of Icara and Montania has been accepted by Montania.
3. CargoGalax Airways is an airline established and regulated under the laws of the State of Galaxy and is substantially owned and effectively controlled by nationals of Galaxy. Its aircraft are registered in the national registry in Galaxy. Its flight operations and aircraft meet internationally recognised safety standards.
4. The business of CargoGalax Airways is international transportation by air of cargo. Galaxy has designated CargoGalax Airways to operate international air services under an ASA between Galaxy and the State of Limonia, which has accepted CargoGalax's designation. CargoGalax Airways operates its services between the capitals of Galaxy and Limonia.
5. While operating their respective services to the capitals of Montania and Limonia, Icarex Airlines and CargoGalax Airways fly over national airspace falling under the sovereignty of a third state, Mercuria. Mercuria has granted both airlines the right to fly across its airspace.
6. Patriarcha is a neighbouring state of Mercuria. Patriarcha has designated a privatised air navigation service provider called PatriControl to provide air traffic control services in Patriarcha's sovereign airspace. PatriControl is established and regulated under the laws of Patriarcha.

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7. In 1952, Patriarcha and Mercuria agreed that air traffic control (ATC) in a block of airspace falling under Mercuria's sovereignty which is adjacent to the border of Patriarcha would be carried out exclusively by PatriControl. As a result, PatriControl has been providing such ATC services for that airspace block continuously since 1952.
8. The agreement between Patriarcha and Mercuria transferring air traffic control tasks from Mercuria to Patriarcha was signed and submitted for ratification by the Parliaments of the two states. However, the agreement has not been ratified by either Governments nor registered with the International Civil Aviation Organization, a UN specialised agency (ICAO).
9. Article 5 of the agreement between Mercuria and Patriarcha states that Patriarcha 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. As well as operating to international safety rules established by ICAO, PatriControl (and Mercuria's own air navigation service provider) operate under the rules and procedures drawn up by Eurocontrol regarding Delegation of Air Traffic Services as well as the Eurocontrol Safety Regulatory Requirements (ESARRs), as implemented in the national legislation of Mercuria and Patriarcha.
11. On 23 December 2006 aircraft operated by CargoGalax Airways and Icarex Airlines collide in mid-air while en route to the capitals of Limonia and Montania respectively. The collision happened within the block of airspace of Mercuria which is controlled by PatriControl.
12. All 50 passengers aboard the Icarex Airlines aircraft together with its 6 crew members, and 3 crew members aboard the CargoGalax Airways aircraft, are killed. The wreckage of the two aircraft is scattered across both sides of the border between Mercuria and Patriarcha, seriously damaging a football stadium and killing and severely wounding the players and public attending a top-league football match in Mercuria, as well as causing harm and damage to private persons and property on the surface in both countries.
13. An official investigation of the accident by Mercuria reveals that the cause of the accident hinged on the following circumstances (all times are local):
 - a) The crew of the Icarex Airlines flight reported in to PatriControl while flying at an altitude of 36,000 feet at 11:30:11. CargoGalax Airways had been cleared by PatriControl 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 PatriControl controller instructed the Icarex aircraft to descend immediately to 35,000 feet, pointing out conflicting traffic. The Icarex 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 Icarex aircraft to climb, and for the CargoGalax aircraft to descend.
 - e) At 11:34:58 the acoustic short-term conflict alert (STCA) in the PatriControl tower, warning of aircraft closing on one another, sounded at the PatriControl's controller workstation. However, this alarm was not noticed by the controller.
 - f) At 11:35:01, the PatriControl controller again instructed the Icarex 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 CargoGalax 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 CargoGalax aircraft to descend.
 - h) At 11:35:24 the TCAS-RA was activated in the Icarex aircraft instructing the crew to 'increase climb, increase climb'. Five seconds later the two aircraft collided.
14. The investigators also identified the following shortcomings at PatriControl:
- a) By reason of technical works at PatriControl, 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 PatriControl), 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.
15. On 12 April 2007 the State of Icara brought a case against the State of Mercuria before the International Court of Justice. The State of Mercuria does not raise any preliminary objections to the application made by the State of Icara.
16. The State of Icara has asked the Court to rule that:
- a) Mercuria is responsible for all damage caused by the mid-air collision in the airspace of the State of Mercuria on 23 December 2006;
 - b) Mercuria compensates Icara for the value of the destroyed aircraft (i.e. EUR 30m);
 - c) Mercuria indemnifies and holds harmless Icarex Airlines in respect of all claims made by:

- (i) third parties in connection with the accident, including claims by CargoGalax Airways;
 - (ii) the legal successors of the deceased passengers and crew aboard both aircraft, including present and future claims;
- d) Mercuria compensates Icara 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.
17. In its response, Mercuria has requested the International Court of Justice:
- a) to recognise that the state of Mercuria has not violated rules of international law;
 - b) to dismiss the claims made by Icara as being contrary to international law;
 - c) to determine that Mercuria is under no obligation to pay compensation to Icara in relation to the claims arising from the above aerial accident;
 - d) to hold Icara responsible for the compensation of damages in relation to the football stadium and private property on its territory.
18. The oral pleadings will take place on 10, 11 and 12 April 2008 in the Peace Palace, The Hague.

ADDITIONAL INFORMATION:

Icara, Mercuria, Patriarcha, Montania and Limonia 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.

Icara, Mercuria, Patriarcha, Montania and Limonia 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.

Icara and Mercuria are parties to the Statute of the International Court of Justice and have accepted the compulsory jurisdiction of the Court.

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

Icara and Mercuria are Eurocontrol contracting States.