

PLS317 Class Trial

**Written Memorial on Behalf of the State of Mercuria
(Respondent)**

in

Aerial Accident Case
(Icara v. Mercuria)

(1) TABLE OF CONTENTS.....ii
(2) LIST OF ABBREVIATIONS.....iii
(3) LIST OF SOURCES.....iii
(4) STATEMENT OF RELEVANT FACTS.....iv
(5) ISSUES.....v
(6) SUMMARY OF ARGUMENTS.....vi
(7) JURISDICTION OF THE COURT.....vii
(8) ARGUMENT.....viii
(9) SUBMISSIONS.....ix

(1) Table of Contents

A. INTERNATIONAL LAW HAS NOT BEEN VIOLATED BY THE STATE OF MERCURIA.....1

1. MERCURIA DID NOT BREAK ITS OBLIGATIONS UNDER THE CHICAGO CONVENTION.....1

2. MERCURIA FOLLOWED ITS DUTIES THAT WERE DELEGATED BY CUSTOMARY LAW.....2

B. THE STATE OF ICARA ARE NOT IN ACCORDANCE WITH INTERNATIONAL LAW.....3

1. IS MERCURIA RESPONSIBLE FOR THE ACTIONS OF PATRICOCONTROL...3

2. DOES ICARA HAVE A CLAIM UNDER INTERNATIONAL LAW.....3

C. MERCURIA, NOT BEING RESPONSIBLE FOR THE INCIDENT, IS NOT RESPONSIBLE FOR THE COMPENSATION BEING SOUGHT BY ICARA.....4

1. MERCURIA DID NOT CAUSE THE AERIAL COLLISION and IS THERE ENOUGH EVIDENCE TO LINK THE ACCIDENT TO MERCURIA.....4

2.

D. ICARA IS RESPONSIBLE FOR THE COMPENSATION OF DAMAGES IN RELATION TO THE STADIUM AS WELL AS PRIVATE PROPERTY ON MERCURIAN TERRITORY.....4

(2) Abbreviations

ATC	Air Traffic Control
ESARRs	Eurocontrol Safety Regulatory Requirements
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
RA	Resolution Advisory
TA	Traffic Announcement
TCAS	Traffic Collision Avoidance System
UN	United Nations

(3) List of Sources

Jurisprudence

- Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Jurisdiction and Admissibility, 1984 ICJ REP. 392 June 27, 1986.
- Burney Law Firm. "Burney Law Firm | A Primer on International Law." The Burney Law Firm, LLC | Outstanding white collar criminal defense and civil litigation in New York. 2007-2008. The Burney Law Firm, LLC. 24 Apr. 2009 <Error! Hyperlink reference not valid.>.

Conventions

Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface,
October 7, 1952, 310 UNTS 181
cited as: Rome Convention on Damage Caused
by Foreign Aircraft on the Surface

Convention on International Civil Aviation, Annex 2:
Rules of the Air, International Standards and
Recommended Practices
(ICAO, 10th ed., July 2005)
cited as: Annex 2 to the Chicago Convention

Convention on International Civil Aviation, Annex 11:
Air Traffic Services, International Standards and
Recommended Practices
(ICAO, 13th ed., July 2001)
cited as: Annex 11 to the Chicago Convention

Convention on International Civil Aviation, Chicago,
December 7, 1944, 15 UNTS 295
cited as : Chicago Convention
Convention for the Unification of Certain Rules
For International Carriage by Air., Montreal, 1999,
cited as: Montreal Convention.

Books

- Slomanson, William R. Fundamental Perspectives on International Law.
Belmont: Wadsworth, 2006.

(4) Statement of Relevant Facts

Icarex Airlines is a substantially owned and effectively controlled airline established and regulated under the laws of the State of Icara. The aircraft and flight operations meet internationally recognized safety standards and are registered in the national registry of Icara. Icarex Airlines is designated by the State of Icara to operate international air services to third states under bilateral air services agreements (ASA) between such states. One of these states with which Icara has an ASA is the State of Montania. Montania has accepted Icara's designation of Icarex Airlines to operate non-scheduled and scheduled air transport services between the capitals of Icara and Montania.

CargoGalax Airways is an airline regulated and established by the laws of the State of Galaxy, in which CargoGalax Airways is effectively controlled and substantially owned by Galaxian nationals. These aircraft are registered in the Galaxian national registry, and its flight operations and vessels meet internationally recognized standards for safety. CargoGalax Airways divulges in the business of international transportation of cargo by the form of air. CargoGalax Airways has been designated by the State of Galaxy to operate under an ASA between the State of Limonia and the State of Galaxy, which has been accepted by the State of Limonia. This operation consists of international air services between the capitals of Limonia and Galaxy.

In the operations of both CargoGalax Airways to the capital of Limonia and Icarex Airlines to the capital of Montania, the two air services cross over national

airspace under the sovereignty of a third state of Mercuria. Both airlines have been given permission to fly in this airspace by the State of Mercuria.

Neighboring Mercuria is the State of Patriarcha. Patriarcha has designated air traffic control services in thus mentioned state's sovereign airspace to a privatized air navigation service provider called PatriControl. PatriControl is regulated and established under the laws of Patriarcha.

Mercuria and Patriarcha came to an agreement in 1952, that air traffic control (ATC) in an area falling under the sovereignty of Mercuria would be carried out exclusively by PatriControl. This area is adjacent to the Mercurian-Patriarchan border. Resulting from this agreement, PatriControl has been providing the ATC services for the mentioned block of airspace since 1952. The agreement transferring air traffic control tasks for the territorial block from Mercuria to Patriarcha was signed and submitted for ratification by the governments of the two states. This agreement, though, has not yet been ratified by the governments of the involved states, nor has it been recognized by the International Civil Aviation Organization, which is a United Nations (UN) specialized agency. Article 5 of the aforementioned agreement states that Patriarcha is "liable for damages caused by its negligence, or that of its agents in any other person acting on its behalf, in relation to the provision of air traffic services falling under the agreement." Article 30 of the same agreement requires ratification in order for entrance into force.

PatricControl, as well as Mercuria's own air navigation service provider) operates under the rules and procedures of Eurocontrol. This is in regards to Delegation of Air

Traffic Services as well as the Eurocontrol Safety Regulatory Requirements (ESARRs). This was implemented in the legislation of Mercuria and Patriarcha on the national level.

On 23rd of December 2006, two aircraft, one operated by Icarex Airlines and the other by CargoGalax Airways, suffered a mid-air collision while participating in their designated routes to the respective capitals of Limonia and Montania. This collision occurred within the PatriControl monitored airspace above Montania. The fifty passengers and six crew members aboard the Icarex Airlines aircraft were killed, along with the three crew members onboard the CargoGalax Airways aircraft. The wreckage and debris from the two aircraft and their cargo scattered across the borders of both Mercuria and Patriarcha. This debris caused damage to the property of both of these states including, but not limited to, intensive damage to a football stadium, killing and critically wounding the players and public attending the sporting event in the football stadium in Mercuria, and also including the cause of harm and damage to private citizens and property on the surface of the two states.

An official investigation into the collision by the State of Mercuria, reveals that cause of the accident was attributed to the following circumstances:

a) The crew of the IcarexAirlines 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.

The investigation also found certain inadequacies with 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 kilometers 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.

On April 12th, 2007 the State of Mercuria was brought before the International Court of Justice (ICJ) by the State of Icara. The State of Mercuria does not raise any preliminary objections to the application made by the State of Ithaca.

Both of the States of Mercuria and Icara are Eurocontrol contracting states are subject to the following:

- a) The Chicago Convention on civil aviation of 1944
- b) The International Air Services Transit Agreement of 1944
- c) The Montreal Convention for the unification of certain rules for international carriage by air of 1999
- d) The Vienna Convention of the Law of Treaties
- e) Rome Convention on damage by foreign aircraft

(5) Issues

A. MERCURIA HAS NOT VIOLATED INTERNATIONAL LAW:

1. Has Mercuria , under the Chicago Convention, held up to its treaty responsibilities?
 - a. Is Mercuria allowed to delegate its air traffic responsibilities to Patriarcha?
2. . Has Mercuria followed its duties that were delegated by customary law?
 - a. Did Mercuria correctly delegate ATC services to Patriarcha?
 - b. Is PatriControl capable of handling ATC services in the area delegated by Mercuria?
 - c. Through the delegation to PatriControl, did Mercuria have the ability to prevent the accident?

B. THE CLAIMS OF ICARA ARE CONTRARY TO INTERNATIONAL LAW:

1. Is Mercuria responsible for the actions of PatriControl?
 - a. Is PatriControl an agent of, Mercuria?
 - b. Is PatriControl subject to Mercurian law?
 - c. Did PatriControl act with the authority of Mercuria?
 - d. Was PatriControl acting under the instruction of Mercuria?
2. Does Icara have a claim under international law?

C. MERCURIA IS UNDER NO OBLIGATION TO PAY COMPENSATION TO ICARA FOR THE CLAIMS ARISING FROM THE AERIAL COLLISION:

1. Did Mercuria cause the aerial collision?

- a. Is there enough evidence to prove that it was reasonable for Mercuria to expect an accident like this to occur?
- b. Is it possible to reasonably link Mercuria to the incident which occurred?

D. ICARA IS RESPONSIBLE FOR COMPENSATION OF DAMAGES IN
RELATION TO THE FOOTBALL STADIUM AND PRIVATE PROPERTY ON
MERCURIA'S TERRITORY:

1. Does Mercuria have a claim under international law?
2. Is Icara liable for the damage caused in Mercuria?
3. Under international law is Icara responsible for the collision and under obligation to pay compensation?
 - a. Is Icarex Airlines a responsible agent of Icara?
 - b. Is Icarex Airlines responsible for the actions taken by their pilot?
 - c. Has Icara broken international law?
 1. By not following the TCAS-RA alerts, did Icara break its international responsibilities?
 2. Did pilot do everything in his/her power to avoid the collision?

(6) Summary of Arguments

- A. Under Annex 11 of the Chicago Convention , the State of Mercuria has not violated international law, because Mercuria used its sovereign authority to delegate its responsibility of ATC to Patriarcha. This was a mutual agreement between Mercuria and Patriarcha.
- B. Mercuria has fulfilled its obligations under customary law due to the fact that Mercuria had all reason to believe that PatriControl was a capable service provider. Patriarcha is a party to rules set by Eurocontrol, as well as the Chicago Convvention, as is Mercuria, who reasonably assumed PatriControl could handle these ATC services. Mercuria gave full oversight of ATC services to Patriarcha and through PatriControl, therefore was not responsible for their actions.
- C. The State of Mercuria is not responsible for the actions of PatriControl. PatriControl is an agent of the State of Patriarcha. Mercuria ceded all ATC services and responsibility thereof to PatriControl. PatriControl was established and is regulated by the laws of Patriarcha, and is not subject to the laws and authority of Mercuria. Mercura was not directing the actions of PatriControl.
- D. Icara has no claim under international law due to their being no possible way to predict that the incident would occur. Mercuria also under Annex 11 of the Chicago Convention would not be allowed to interfere with PatriControl as airspace can only be under the services of a single ATC at one time.
- E. Mercuria did not cause the collision in any way. Although PatriControl was given delegation from Mercuria, Mercuria did not have a direct link with PatriControl

and its execution of ATC procedures. In giving PatriControl responsibility over the area in question, Mercuria acted on the belief that PatriControl was willing and able to provide sufficient ATC services. In doing this, Mercuria took the appropriate precautions in assuring the proper safety procedures would be followed.

- F. Mercuria has a claim under international law for recovering compensation from the State of Icara for the damages inflicted upon the football stadium and other private property in the State of Mercuria. Due to people of the state of Mercuria's injuries and deaths, Mercuria exercises its right to make claims on behalf of its nationals.
- G. Icarex Airlines, an agent of the state of Icara, flew an aircraft over the state of Mercuria with the risk that the plane could crash. Because of this Mercuria has a claim against Icara for the damages caused.
- H. Icara is responsible for the compensation for the damages against Mercuria. Icarex Airlines, being established under and regulated by the laws of Icara, acts as an agent of Icara. Icara is liable for the actions of their agents.

(7) Jurisdiction

The involved parties, the States of Mercuria and Icara, have agreed upon the compulsory jurisdiction of the ICJ in this matter. There is no dispute over this jurisdiction put forward by Mercuria or Icara.

(8) Arguments

A. MERCURIA HAS NOT VIOLATED INTERNATIONAL LAW:

International law is the organization of rules which states consider necessary in the relations between one another. It consists of the standards, norms, procedures, etc. by which the international system abides. In order for a state to break international law, they must take action against these obligations or fail to meet these obligations. Mercuria has not broken its obligations in international law in this case. (Sломanson)

1. MERCURIA DID NOT BREAK ITS OBLIGATIONS UNDER THE CHICAGO CONVENTION:

- a. In the Chicago Convention, rules and regulations are established dealing with ATC. Included in this convention were Patriarcha, Icara, and Mercuria. While this convention states that control and responsibility of ATC services and procedures belong to the territorial state, in Annex 11 it also states that these responsibilities may be delegated to other agents. These agents can be states, but they also can be other suited agents. This delegation must be made by a mutual agreement between the two parties. PatriControl, which operates under the procedures drawn up by the ICAO as well as Eurocontrol and ESARRs, is suited for the responsibilities delegated by Mercuria. PatriControl is regulated under the laws of Patriarcha, with whom

Mercuria entered a mutual agreement delegating ATC control in the specified region to Patriarcha.

2. MERCURIA FOLLOWED ITS DUTIES THAT WERE DELEGATED BY CUSTOMARY LAW:

- a. In delegation of ATC services to Patriarcha, Mercuria acted in accordance with customary law. In the previous case of *Nicaragua v. United States* heard in the ICJ, customary law can be a source of international law in international conflicts. It is separate from convention law and treaty law, as it must be applied even if the countries are parties to a treaty. The foresaid delegation was a mutual agreement between Patriarcha and Mercuria in 1952. Through the fifty-four years that this agreement has been consistently followed, PatriControl has successfully provided adequate ATC services over the block of airspace delegated to PatriControl in the agreement. In *Portugal v. India*, the ICJ decided that customary relations between nations become binding. Mercuria gave this delegation to Patriarcha, and therefore PatriControl as an agent, who adheres to the regulations and procedures of ESARRs, Eurocontrol, and the ICAO. Under these circumstances, PatriControl is both an adequate and suitable for the control of ATC in the questioned region. Through the delegation, Mercuria gave PatriControl sole oversight in ATC procedures, and therefore eliminated Mercurian oversight, direction, and liability. This

results in Mercuria having no obligation towards ATC in the area of the collision.

B. THE CLAIMS OF ICARA ARE CONTRARY TO INTERNATIONAL LAW:

a. IS MERCURIA RESPONSIBLE FOR THE ACTIONS OF PATRicontrol:

i. Mercuria is not responsible for the actions of PatriControl. PatriControl is not an agent of Mercuria. PatriControl was created under and is regulated by the laws of Patriarcha, and therefore not subject to Mercurian law. PatriControl, while delegated by Mercuria, acted under its own authority. Mercuria gave the sole authority of the airspace to Patriarcha, relending its authority. PatriControl acted under its own authority, as given by the 1954 agreement. PatriControl gained no instruction from Mercuria in this matter. Mercuria forfeited its sovereignty of control of that airspace with the aforementioned agreement.

b. DOES ICARA HAVE A CLAIM UNDER INTERNATIONAL LAW:

i. Icara has no claim under international law. The State acted negligently by not taking all precautions to avoid the collision themselves. Mercuria is not liable in this instance due to the transfer of responsibility of the ATC in the delegated airspace to PatriControl, who has been overseeing this airspace since 1954. This delegation to PatriControl is in accordance with international law, making Icara's claim null and void in international law.

C. MERCURIA IS UNDER NO OBLIGATION TO PAY COMPENSATION TO ICARA FOR THE CLAIMS ARISING FROM THE AERIAL COLLISION:

a. MERCURIA DID NOT CAUSE THE AERIAL COLLISION and IS THERE ENOUGH EVIDENCE TO LINK THE ACCIDENT TO MERCURIA

i. Mercuria did not cause the aerial collision. It is not reasonable for the State of Mercuria to assume or believe that such an accident would occur. Mercuria gave responsibility of ATC in this airspace to PatriControl, with full faith that PatriControl would act in accordance with international law. It is not reasonably possible to link Mercuria to the incident which occurred. Through international law, Mercuria made a mutual agreement with PatriControl giving sole responsibility of ATC in the area to PatriControl. This agreement lasted consistently in good faith for fifty-four years, and nullifies any possible link between Mercuria and the collision.

D. ICARA IS RESPONSIBLE FOR COMPENSATION OF DAMAGES IN RELATION TO THE FOOTBALL STADIUM AND PRIVATE PROPERTY ON MERCURIA'S TERRITORY:

a. DOES MERCURIA HAVE A CLAIM UNDER INTERNATIONAL LAW

i. Mercuria has a claim under international law because the pilots of Icarex Airlines were acting as an agent of the State of Icara. The Traffic Collision Avoidance System Resolution Advisory (TCAS-RA) was ignored by the pilots. After receiving orders to descend by PatriControl, the pilots issued no confirmation to the ATC on the

ground. The pilots of Icarex Airlines also failed to fulfill their responsibilities under Annex Two to the Chicago Convention. In 3.6.5, the convention mandates that pilots must maintain continuous air-ground communication with the appropriate ATC unit. In the pilots' failing to confirm the descent of the Icarex Airlines aircraft, this communication line was broken. The negligence of the pilots makes them liable in the collision due to the break in of international law. Due to Article Twenty-Two of the Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, because the pilots died in the collision the State of Icara is liable for their obligations. Article One of this convention also states that states that suffer damage caused by an aircraft in flight will be entitled to compensation. Because of the negligence of the pilots acting on behalf of Icarex Airlines, an agent of Icara, their obligations to international law were broken.

(9) Submissions

MERCURIA HAS REQUESTED THE INTERNATIONAL COURT OF JUSTICE TO DECLARE:

- That the state of Mercuria has not violated rules of international law
- The claims made by Icara to be dismissed as being contrary to international law
- That Mercuria is under no obligation to pay compensation to Icara in relation to the claims arising from the above aerial accident
- Icara responsible for the compensation of damages in relation to the football stadium and private property on its territory