Icara v. Mercuria Court Decision

To be Announced and Disseminated on May 4, 2009

As Given by Justices Boyer, Muir, Kruse, and Courtwright

After hearing the arguments of both the Icarian and Mercurian Counsels on May 2, 2009 the Court has determined the following:

1. Under international law, did Mercuria legally designate air traffic control (ATC) of its territorial airspace to PatriControl?

   - No, under international law the State of Mercuria failed to fully enter into a legally binding agreement with Patriarcha that would absolve Mercuria's duty to properly regulate and control its territorial airspace.

2. Did Mercuria break international law by failing to provide adequate, necessary, and vital ATC services on the day of the crash?

   - Yes, the State of Mercuria broke international law by failing to provide proper ATC services.

3. Does Mercuria have a legal obligation to compensate Icara for damages incurred by the aerial accident?

   - Yes, international law requires compensation for the damages that resulted from the collision of an Icarex Airline plane and a CargoGalax Airways plane over Mercuria's territorial airspace.

4. Can Mercuria hold Icara responsible for the accident and subsequently claim for damages incurred by the collision due to the communication (radio) errors of the Icarian pilot?

   - No, under international law the pilot of the Icarex Airline flight and subsequently the State of Icara cannot be held responsible nor be expected to pay damages to the State of Mercuria.

The court offers the following detailed explanation for its judgment:

1. **No, under international law the State of Mercuria failed to fully enter into a legally binding agreement with Patriarcha that would absolve Mercuria's duty to properly regulate and control its territorial airspace.**

Article 14 (*consent to be bound by a treaty expressed by ratification, acceptance or approval*) of the Vienna Convention on the Law of Treaties states,

> "1. The consent of a State to be bound by a treaty is expressed by ratification when:
> a) the treaty provides for such consent to be expressed by means of ratification;
> b) it is otherwise established that the negotiating States were agreed that ratification should be required;
> c) the representative of the State has signed the treaty subject to ratification; or
> d) the intention of the State to sign the treaty subject to ratification appears from the full powers its representative or was expressed during the negotiation.
> 2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to its ratification."

Essentially, Mercuria cannot push the burden of responsibility onto Patriarcha's private air traffic control company (PatriControl) for the aerial accident because the treaty establishing ATC control of Mercurian airspace was never ratified and entered into force. Throughout the trial, the Mercurian Counsel consistently noted that the agreement had existed for 54 years. Therefore, the Mercurian Counsel argued that the agreement could be considered customary law. They bolstered this argument by noting the precedent of using customary law by citing the ICJ's decision in the case of *Nicaragua v. United States*. However, Article 14 of the Vienna Convention to which both Mercuria and Icara are parties to mitigates this line of argumentation. Although Article 11 of the Vienna Conventions notes that agreements between states may be binding by "any other means if so agreed," Article 14 expressly notes the importance of ratification when the option for ratification is included in a treaty. Basically, since the legality of the Mercurian-Patriarchan treaty rests upon its ability to be ratified and neither state did so, not only was the treaty never officially entered into force, but it cannot be considered binding within the confines of the international legal system – specifically the ICJ.

Chapter 2.1.1 of Annex 11 to the Chicago Convention states,

> "Contracting States shall determine, in accordance with the provisions of this Annex and for the territories over which they have jurisdiction, those portions of the airspace and those aerodromes where air traffic services will be provided. They shall thereafter arrange for such services to be established and provided in accordance with the provisions of this Annex, except that, by mutual agreement, a State may delegate to another State the responsibility for establishing and providing air traffic services in flight information regions, control areas or control zones extending over the territories of the former."

Moreover, the fact that this agreement cannot be considered legally binding highlights Mercuria's responsibility to maintain fully functional ATC services within its territorial airspace. The Mercurian Counsel did successfully argue that Annex 11 of the Chicago Convention on International Civil Aviation allows for the delegation of ATC services to different entities, but the fact that the agreement between Mercuria and PatriControl was never ratified voids its legality under international law. Therefore, Mercuria cannot be absolved of its duty to provide and maintain ATC services in its own airspace.

2. Yes, the State of Mercuria broke international law by failing to provide proper ATC services.

Article 28 of The Convention on International Civil Aviation states,

> "Each contracting State undertakes, so far as it may find practicable, to:
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> (a) Provide, in its territory, airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time, pursuant to this Convention;
> (b) Adopt and put into operation the appropriate standard systems of communications procedure, codes, markings, signals, lighting and other operational practices and rules which may be recommended or established from time to time, pursuant to this Convention
> (c) Collaborate in international measures to secure the publication of aeronautical maps and charts in accordance with standards which may be recommended or established from time to time, pursuant to this Convention."

As established previously, the agreement between Mecuria and PatriControl does not free them from their obligations under the ICAO which they failed to fulfill in the following two ways -- they failed to take precautions to manage PatriControl and failed to notify ICAO of their situation or the conditions of PatriControl. The understaffing of the control tower on the day of the accident also contributed to Mecuria's negligence. These facts are evidence of failure to uphold Article 28 on the part of Mecuria as well as PatriControl which, since the accident occurred in their airspace, is the responsibility of Mecuria.

Annex 2 of Paragraph 7 The Convention on International Civil Aviation states,

> "Right-of-way rules in the air are similar to those on the surface, but, as aircraft operate in three dimensions, some additional rules are required. When two aircraft are converging at approximately the same level, the aircraft on the right has the right of way except that aeroplanes must give way to airships, gliders and balloons, and to aircraft which are towing objects. An aircraft which is being overtaken has the right of way and the overtaking aircraft must remain clear by altering heading to the right. When two aircraft are approaching each other head on they must both alter heading to the right."

While not mentioned in the trial in regards to this situation, the controllers order to Icarex Airlines flight and CargoGalax Airways flight directing them to turn downward instead of turning the heading of the plane to the right as dictated in Annex 2 Paragraph 7 the Chicago Convention on International Civil Aviation is another example of negligence on the part of Mecuria through Mecuria's not enforcing standards on PatriControl in accordance with the standards of The Convention on International Civil Aviation while PatriControl was managing their airspace. This is evidence of the controller's lack of knowledge of the rules and procedure binding upon Mecurian airspace via their involvement in The Convention on International Civil Aviation and also serves as evidence of Mecuria's negligence in regards to the proper management of their airspace through PatriControl.

3. Yes, international law requires compensation for the damages that resulted from the collision of an Icarex Airline plane and a CargoGalax Airways plane over Mercuria's territorial airspace.

Because the court has already argued the significance of Article 28 of the Chicago Convention on International Civil Aviation in the above sections, the only relevant document of International Law that applies to the compensatory aspect of the case is the Case Concerning the Factory at Chorzów 1927. In the Chorzow case the PCIJ found:

> "That by reason of its attitude in respect of the Oberschlesische Stickstoffwerke and Bayerische Stickstoffwerke Companies, which attitude has been declared by the Court not to have been in conformity with the provisions of Article 6 and the following articles of the Geneva Convention, the Polish Government is under an obligation to make good the consequent injury sustained by the aforesaid Companies from July 3rd, 1922, until the date of the judgment sought; (2) that the amount of the compensation to be paid by the Polish Government is 59.400.000 Reichsmarks for the injury caused to the Oberschlesische Stickstoffwerke Company and 16.775.200 Reichsmarks for the injury to the Bayerische Stickstoffwerke Company"

The case decision reflected the court's opinion in compensating for all damages past and future that may have occur or might occur due to the accident, the customary practice being to compensate the damaged State that the State would be as it were should the damages never have occurred. In application, the State of Mecuria being found responsible for the actions and incompetence of the PatriControl ATC, they should pay reparation to the State of Icara for the damages done to aircraft, football stadium, etc. incurred by the aerial accident. The amount to be paid by the Mercurian Government is 30 million Euros, and should be paid forthwith within a time and in equal intervals decided by the court and parties involved hereafter.

4. No, under international law the pilot of the Icarex Airline flight and subsequently the State of Icara cannot be held responsible nor be expected to pay damages to the State of Mercuria.

Chapter 3.6.5 of Annex 2 of the Chicago Convention states,

> "An aircraft operated as a controlled flight shall maintain continuous air-ground voice communication watch on the appropriate communication channel of, and establish two-way communication as necessary with, the appropriate air traffic control unit, except as may be prescribed by the appropriate ATS authority in respect of aircraft forming part of aerodrome traffic at a controlled aerodrome"

While the pilot of the Icarex Airline flight may have violated the above mentioned Annex to the Chicago Convention, his violation was significantly less dangerous than the mistakes made on behalf of PatriControl. Additionally, this Annex doesn't give any recourse for reparations to the offended State. Essentially, while the pilot did violate established law, there is no method for compensation of such an offense laid out in this treaty.

Article 22 of the Rome Convention on damage caused by foreign aircraft states,

> "In the event of the death of the person liable, an action in respect of liability under the provisions of this Convention shall lie against those legally responsible for his obligations."

During the trial the Mercurian Counsel based their claim that the pilot was responsible on Article 22 of the Rome Convention. This would have been an excellent argument that would have held the State of Icara liable for the actions of the pilot (failing to keep a constant radio communication with PatriControl). However, this claim cannot hold serious gravitas considering that the Icarian Counsel noted that Mercuria is not even a signatory of the Rome Convention. Therefore, Mercuria cannot claim reparations for the accident under a document to which it is not a party.

Article 36 of the Rome Convention states,

> "This Convention shall apply to all territories for the foreign relations of which a Contracting State is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph 2 of this Article or paragraph 3 of Article 37."

In the rebuttal period of the trial, the Mercurian Counsel claimed that although it was not a signatory to the Rome Convention, it had "foreign relations" with the member State of Icara, thus granting Mercuria the ability to claim damages under a treaty that it had never signed. The Court views this as a flagrant misinterpretation of Article 36. The Court holds that Mercuria isn't granted the ability to claim under this document because it is not a nation of which the Contracting State (Icara) is "responsible." This means that both States are equally sovereign and if either expects to garner the ability to claim for damages under a treaty, that State must have signed said treaty.