`

What Would the ICJ Award? The Legal Determination of Compensation in the UIA Flight PS752 Case

By

Omid Jahanbozorgi

2093985

Law in an International Context

Date of Submission: 06/06/2025

Supervisor: Dr. Ville Kari

Second Reader: Dr. Mariana Gkliati

University College Tilburg
Tilburg School of Humanities and Digital Sciences
Tilburg University

Dedications:

I would like to dedicate my thesis to my parents for supporting me in this journey, and to all the victims of the PS752 flight and their families. Especially those international students whose dreams remained unfulfilled and whose parents' lifelong goal of seeing their children's success, despite all their sacrifices, vanished overnight.

List of abbreviations **4**
Introduction **5**
Background 5
Research Question 6
Methodology 7
Chapter 1: The Responsibility of States for Wrongful Acts in International Law **8**
Definition and scope 8
Fundamentals and Background of State Responsibility 8
The ARSIWA Framework 10
Elements and Relevant Precedents 10
International Law and Iran's Obligations 12
Application to Iran in The PS752 Case 13
Analysis of The Breaches of International Obligations 14
Precluding Circumstances? 18
Chapter 2: The ICJ and Aerial Incidents **20**
ICJ and Its History in Compensation Cases 20
Compensation in International Aviation Law 23
Outcomes in Past Cases Involving Aerial Incidents 24
Chapter 3: The Compensation Amount for PS752 **27**
Analysis 27
Conclusion **29**
Bibliography **30**
Primary sources 30
Secondary Sources 31

List of abbreviations

ARSIWA: Articles on Responsibility of States for Internationally Wrongful Acts
AIP: Application Instituting Proceeding
DRC: Democratic Republic of Congo
ICAO: International Civil Aviation Organization
ICJ: International Court of Justice
IKIA: Imam Khomeini International Airport
ILC: International Law Commission
IRGC: Islamic Revolutionary Guard Corps
MLA: Mutual Legal Assistance
PCIJ: Permanent Court of International Justice
SDR: Special Drawing Rights
UIA: Ukrainian International Airlines
UK: United Kingdom
UN: United Nations
US: United States

Introduction

Background

On January 8, 2020, Ukraine International Airlines (UIA) Flight 752 was scheduled to depart for Kyiv from Imam Khomeini Airport, Tehran. It was operated by UIA but was shot down by the IRGC and caused the death of all 176 passengers.[1] According to ICAO records, 146 passengers held Iranian passports, 10 Afghan, 5 Canadian, 4 Swedish, and 11 Ukrainian. It is worth noting that some Iranian nationals held dual citizenship in the United Kingdom and Canada. Later on, generals mentioned the reasoning behind this incident, which was due to the escalating situation in the region after the death of IRGC commander Qasem Soleimani.[2] Hence, the USA threatened Iran to attack 52 targets in case of Iran's response, with or without casualties.[3] In the early morning of January 08th, 2020, Iran carried out missile strikes on the American bases in Iraq, which are on the western side of the country, and the American base was 1000 km away from Imam Khomeini airport.[4] Consequently, Tehran's defense system was activated based on the C3 level of readiness.[5] However, this did not mean a red alert in the region since the fire at will is not permitted without a red alert situation.[6] The incident happened due to an unintentional human error by the commander of the TOR-M1 defense system, who mistook the plane's characteristics for a cruise missile and fired two missiles at the UIA PS752.[7]

The Iranian side, during the first round of negotiations, acknowledged the responsibility of shooting down the PS752 flight.[8] However, the Ukrainian party emphasized the legal liability of Iran under subparagraph b, paragraph 1, Article 1 of the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.[9] However, Iran denied this allegation based on the unintentionality of this incident due to human error and coincidental circumstances.[10]

As can be seen, in the current time of political conflicts, the civil aviation industry has suffered tremendously, especially in cases of aerial incidents that were caused by state actors. Despite the current international aviation legal framework, some areas remain unclear, particularly in determining responsibility and the amount of compensation due. One of the first treaties to come into effect regarding damages and liability was the Warsaw Convention, which established the limitation of liability of air carriers in 1929 and was later replaced by the Montreal Convention in 1999. The Convention on Damages Caused by Foreign Aircraft to Third Parties on the Surface was first introduced in 1952 and subsequently updated in 1978 with the Montreal Protocol. The most recent version was adopted in 2009. In all these conventions, the exact amount of compensation is

[1]Islamic Republic News Agency, 11 January 2020: 'Announcement of the General Staff of the Armed Forces about Ukrainian Passenger Plane Crash', in *ICJ, Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran)*, Joint Application Instituting Proceedings, 4 July 2023, Annex 4, 83. [Hereafter 'AIP']
[2] YouTube: 'General Hossein Salami speaking about the downing of Flight PS752 to Iranian Parliament', 12 January 2020, in ICJ, Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran), AIP, 4 July 2023, Annex 5, 86.
[3] Ibid.
[4] Ukraine to Iran, Note verbale (24 September 2020), ICJ, Aerial Incident of 8 January 2020, AIP 4 July 2023, Annex 10, note 10.1.
[5] Mizan Online, 16 April 2023: 'Issuing the Verdict for the Ukrainian Aircraft Case After 20 Court Hearings / First-row Defendant Sentenced to 13 Years in Prison', in ICJ, Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran), AIP, 4 July 2023, Annex 9.
[6] Ibid.
[7] Ibid.
[8] Ukraine to Iran, Note verbale (24 September 2020), ICJ, Aerial Incident of 8 January 2020, AIP 4 July 2023, Annex 10, note 10.1.
[9] Ibid.
[10] Ibid.

mentioned, along with the scope of the liability and its nature for the airlines. However, regarding aerial incidents caused by state actors, the matter is somewhat complicated, as it involves law and politics, particularly in cases where the passengers on the boarding flight are nationals of a state that does not have diplomatic relations with the state and is responsible for the wrongful act. Hence, the study of one of the recent incidents, which is the Ukrainian International Airlines flight PS752, is significant for international aviation law and the international law forum.

Research Question

Due to unsuccessful rounds of negotiations between Iran and the Ukrainian parties, four countries, Canada, Sweden, the UK, and Ukraine, known as the coordination group, decided to bring a joint application against Iran before the ICJ with a notice claim on June 03rd, 2021, to Iran.[11] In the UIA flight case, Iran's legal accountability has not been established, and the ICJ case is still ongoing. Five years after the incident, victims' relatives are still seeking different legal routes to seek compensation for their family members who lost their lives during that incident. In this application, the coordination group seeks full recognition of the wrongful acts committed by Iran and, consequently, full reparation.

Based on the facts mentioned, the likelihood of the ICJ holding Iran responsible is relatively high, given Iran's acknowledgement. Although the probability of establishing responsibility is high, the situation is further complicated by the complex structure of aerial incident cases. Particularly when state responsibility is involved, necessitating the determination of responsibility as the initial step towards securing damages. Not all cases regarding the aerial incident were concluded by the ICJ, including Flight El Al L402, Libyan Airlines Flight LN114, and Iran Air Flight 655. All payments were made on a humanitarian basis or *ex gratia*, which will be discussed later. Hence, one of the issues arising in the aerial incident cases is determining the amount of compensation. This research focuses on the likelihood of compensation that the ICJ might offer. Hence, the research question that shall be answered is:

"What guidance do international legal precedents offer for determining the likely amount of compensation in the case of UIA Flight PS752, particularly given the ongoing proceedings before the ICJ?"

Societal relevance

One of the main reasons to examine the approach of the ICJ, especially regarding the UIA case, is that the jurisprudence of the ICJ plays the primary role in the improvement of the law of state responsibility.[12] The importance of determining the amount of compensation cannot be overstated, as it plays a significant role in future aerial incident cases. As can be seen throughout history, none of the previous aerial incidents has established a legal precedent before the ICJ for the future. Hence, successfully calculating the amount of damages for the victims of the UIA not only sets a legal precedent but can also serve as an excellent example for calculating compensation in future settlements. This plays a vital role in ensuring that victims of such incidents receive justice. Hence, determining the amount of compensation for victims in Iran's responsibility if the ICJ proves it is

[11] Coordination group to Iran, Note verbale (2 June 2021), ICJ, Aerial Incident of 8 January 2020, AIP 4 July 2023, Annex 10, note 19.

[12] Yang Liu, 'Compensation in the Jurisprudence of the International Court of Justice: Towards an Equitable Approach' (2024) 15 *Journal of International Dispute Settlement* 73-105.

beyond significant for other aerial incidents, such as a very recent Azerbaijani airline flight 8243, which happened in 2024.[13]

Methodology

The research aims to provide a legal opinion for the victims regarding the amount of compensation that the ICJ may award in the event of Iran's responsibility for the incident. Hence, this research first analyzes Iran's state responsibility to establish the legal basis for compensation. Subsequently, the compensation mechanisms employed by the ICJ or in previous relevant cases shall be examined in relation to state responsibility, primarily relying on primary sources. By assessing Iran's responsibility and then the compensation amount based on past rulings and treaty-based models (e.g., the Montreal Convention of 1999), it aims to provide a reasoned legal estimate of the compensation the ICJ might award to the victims of PS752. One of the crucial sources examined throughout the paper is the annexes to the claimant's AIP at the case before the ICJ, in which the applicants present the Court with relevant evidence and legal documents concerning the incident. These annexes were published electronically by the ICJ at the request of this research project, and therefore, the sources constitute a uniquely relevant substance for the research. This includes the note verbals between the coordination group and Iran.

This thesis is divided into three chapters, covering state responsibility, compensation models in international law, and their application to the present case. It includes a comparative analysis to estimate the compensation amount that the ICJ might offer.

The first chapter examines state responsibility under international law, focusing on ILC drafts on the Responsibility of States for Internationally Wrongful Acts. This chapter discusses the previous relevant precedents that the ICJ held states responsible and elaborates on the international legal framework and ARSIWA to determine Iran's responsibility.

The second chapter examines the international legal frameworks for compensation, with a focus on aviation conventions, such as the Montreal Convention, and the ICJ precedents regarding compensation.

The third chapter will discuss the likely amount of compensation that Iran may be required to pay under international law to the victims, using a speculative model that relies on the case precedents and treaties mentioned in the previous chapter.

[13] Euronews, 'Damage by Foreign Objects Caused Azerbaijan Airlines Crash, Official Report Shows' (Euronews, 4 February 2025).

Chapter 1: The Responsibility of States for Wrongful Acts in International Law

Definition and scope

In the international law forum, the term responsibility is used to indicate the idea that some entity can be condemned for unacceptable conduct.[14] It is essential to understand the terminology of the word responsibility. The word responsibility is often differentiated from the terms liability and accountability.[15] The term responsibility stipulates that a particular entity can be held responsible for a wrongdoing and is liable to pay compensation, since the term liability contains a financial obligation. Consequently, the term Responsibility contains the term liability in itself.[16]

When it comes to the concept of state responsibility, the responsibility of the state only lies for internationally wrongful acts.[17] The determination of the internationally wrongful acts is within the scope of international obligations and treaties.[18] According to Crawford, state responsibility arises in case of treaty breaches and/or obligation violations.[19] Hence, unlike the domestic jurisprudence, international law does not distinguish forms of liability for a breach of an obligation based on crime, contract, tort, or delict.[20] Establishing responsibility is crucial primarily to secure reparations. Therefore, the term "responsibility" implies reparation if the obligation is not fulfilled.[21]

Fundamentals and Background of State Responsibility

To establish the responsibility of Iran before the ICJ, it is vital to discuss the relevant legal precedent within the ICJ jurisprudence. Several key cases set the fundamental principles of state responsibility within the history of international law. One of the very early cases is the Phosphates Morocco case, in which the PCIJ affirmed that when a state commits an international wrongful act against another state, international responsibility is established immediately between the two states. Later, the Court applied this principle in other cases, including the Corfu Channel Case and the Gabčíkovo–Nagymaros Project.[22]

In the Corfu Channel Case, a dispute arose between the UK and Albania due to mines existing in the Albanian waters that caused damage to two British ships, resulting in the deaths and injuries of 44 people and injuries to 42 personnel in 22th October 1946 .[23] Looking at the facts of the case is vital because the court held Albania responsible. Two weeks after the explosion, British minesweepers swept the mines from the northern part of the Corfu Channel and sent them for examination to Malta. Later on, it was discovered that those mines were the German GY type, and they were freshly painted, and they were recently laid off.[24] Additionally, the UK argued that Albania laid the mines off with

[14] Jan Klabbers, *International Law* (3rd edn, Cambridge University Press 2021) 138.
[15] Ibid.
[16] Ibid.
[17]Malcolm D Evans, *International Law* (6th edn, Oxford University Press 2024) 437.
[18] Ibid.
[19] James Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012) 541
[20] Malcolm D Evans, *International Law* (6th edn, Oxford University Press 2024) 437.
[21] James Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012) 543
[22] International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) II(2) Yearbook of the International Law Commission 31, 32, UN Doc A/56/10.
[23] *Corfu Channel Case* (United Kingdom v Albania) (Merits) [1949] ICJ Rep 4, 12–14.
[24] Ibid.

certain documents. The inconsistency from the Albanian side regarding this matter can be seen since they only disputed this matter in pleading and not in the hearing.[25] Additionally, a recognition was made by a member of the Albanian council that the mine was recently laid alongside similar declarations from the other council members.[26] The court's primary concern was not whether Albania laid the mines but rather another question that arose in the judgment concerning Albania's responsibility for the explosion. [27]

It is essential to mention that the ICJ stated that Albania had no capacity to lay those mines since it did not have a navy and rejected the UK's claim regarding this statement.[28] However, the mines were laid off by the Yugoslavian warships very recently.[29] Additionally, the court held Albania responsible for a wrongful international act based on the Albanian authorities' lack of attempt to prevent such an accident. As the court stated, no matter the time of the mine laying, it requires close surveillance by Albania over the Strait. Hence, Albania should have taken all possible measures to warn the ships near the danger zone.[30]

Furthermore, the Gabčíkovo–Nagymaros Project case concerned a joint treaty between Hungary and Czechoslovakia to build a joint hydroelectric project on the Danube in 1977.[31] In 1989, Hungary suspended the project due to environmental concerns.[32] However, Czechoslovakia continued the project independently and attempted to divert the Danube with an alternative solution. As a result, Hungary's water level significantly dropped, and there was disagreement about whether either party was acting legally under the 1977 Treaty and international law.[33] The court held both parties responsible for an international unlawful act since both parties breached their international obligations. This meant that Hungary breached its treaty obligation by unilaterally suspending the 1977 treaty, and Czechoslovakia breached its agreement under the 1977 treaty by diverting the Danube through the alternative project without Hungary's agreement.

These two examples clearly illustrate the court's implementation of the principle mentioned in the Phosphates Morocco case, which entails establishing state responsibility between two states when one commits internationally unlawful conduct. Subsequently, this played a significant role in the shaping of ARSIWA as a cornerstone of international law by codifying the responsibility of states for their internationally wrongful conduct.

[25] Ibid.
[26] Ibid.
[27] Ibid, 23-24.
[28] Ibid 15-16.
[29] Ibid 17.
[30] Ibid 23
[31] *Gabčíkovo–Nagymaros Project* (Hungary/Slovakia) [1997] ICJ Rep 7, [15].
[32] Ibid [22].
[33] Ibid [23].

The ARSIWA Framework

The adoption of the ILC Articles on the responsibility of the state for internationally wrongful acts is considered one of the pillars of international law.[34] Hence, ARSIWA plays a crucial role in clarifying the obligations of states and the consequences of breaching them.[35] This essential contribution of the ARSIWA is based on the distinction between primary and secondary norms of international law.[36] For instance, the primary rules are the substantive obligations that states must comply with, such as the prohibition of genocide or the prohibition of aggression.[37] Nonetheless, secondary norms indicate how those primary rules are created, enforced, or interpreted, and ARSIWA is considered one of these examples.[38] By drawing such a distinction between primary and secondary rules, the ILC tried to exclude the primary rules of international law while drafting the ARSIWA.[39] According to both Klabbers and David, the Commission's main objective was to focus only on the state responsibility since, by violating primary rules, the responsibility of states will consequently arise.[40]

Elements and Relevant Precedents

The elements of an internationally wrongful act of a state are defined under Article 2 of the ARSIWA. The two elements which are mentioned are: first, the attributability to the state under international law, and second, the constitution of a breach of an international obligation.[41] As can be seen throughout the history of the Court, the fulfilments of these two elements are considered adequate for international responsibility.[42] The court specified these two elements throughout several cases, one of which is the Phosphates in Morocco case. In this case, the court specified that the international responsibility arises only if it is linked to an attributable act of the state and is against the treaty rights of another state.[43] Additionally, one of the most significant cases in which the ICJ mentioned these two elements several times is the United States Diplomatic Consular Staff in Tehran case alongside the Corfu Channel Case.[44]

The matter of attributability is addressed under Articles 4-11. These Articles concern actors whose actions may include state responsibility in general or specific situations.[45]According to Evans, responsibility for violating the state's international obligations is at stake here. Therefore, it does not address other concerns, such as requiring an attribution process and determining which authorities can

---

[34] Marko Milanovic, 'The Tenacity of the Articles on State Responsibility as a General and Residual Framework: An Appraisal' (EJIL: Talk!, 22 April 2024) accessed 24 May 2025.
[35] Guy S Goodwin-Gill, 'State Responsibility and the "Good Faith" Obligation in International Law' in Malgosia Fitzmaurice and Dan Sarooshi (eds), *Issues of State Responsibility before International Judicial Institutions* (Hart Publishing 2004) 75.
[36]Jan Klabbers, *International Law* (3rd edn, Cambridge University Press 2021) 138.
[37] Ibid, 139.
[38] Ibid.
[39]Eric David, 'Primary and Secondary Rules' in James Crawford, Alain Pellet and Simon Olleson (eds), *The Law of International Responsibility* (OUP 2010) ch3.
[40]Eric David, 'Primary and Secondary Rules' in James Crawford, Alain Pellet and Simon Olleson (eds), *The Law of International Responsibility* (OUP 2010) ch 3; Jan Klabbers, *International Law* (3rd edn, Cambridge University Press 2021) 19-140.
[41] International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) UN Doc A/56/10, ch IV.
[42]Malcolm D Evans, *International Law* (6th edn, Oxford University Press 2024) 442..
[43]IInternational Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) II(2) Yearbook of the International Law Commission 31, 34, UN Doc A/56/10.
[44] Ibid.
[45]Malcolm D Evans, *International Law* (6th edn, Oxford University Press 2024) 442.

initially enter into those obligations on behalf of the state.[46] Therefore, this discussion is limited to the state's breaches of international obligations by conduct of organs of state. This matter is specifically mentioned under Article 4, which includes what constitutes organs of state. This encompasses the exercise of legislative, executive, judicial, or any other functions within the governmental system. Furthermore, the term organ involves any individual or entity that possesses such status under the domestic legislation of the state.[47] However, as Crawford mentions, the individual status is only one of the factors in instituting responsibility. The most significant factor is whether the harmful act can be causally linked to the state as a whole corporate entity and not just to the individual's actions.[48]

To attribute the breach of an international obligation to the state, the direct perpetration of an unlawful act by a state agent is not needed. Nonetheless, a state can be held liable for the consequences of an act that is not unlawful, but rather the result of it. For instance, in the Corfu Channel case, as mentioned earlier, the court held Albania responsible due to the authorities' awareness of the mine deployment by Yugoslavian warships and their failure to notify other vessels of the existence of the mines.[49]

Regarding attributability, the United States Diplomatic Consular Staff in Tehran case is one of the significant precedents within the ICJ. This case concerned the seizure of the US Embassy in Tehran and its Consulates in Shiraz and Tabriz. The embassy was invaded due to the Muslim Student Followers (militants) of Imam Khomeini's policy, who was the leader at that time. [50] The militants were not recognized as agents or organs of the Iranian state. Hence, the seizure conduct is not attributable to the Iranian state because there was no direct link between the Iranian state and the charging of the militant group.[51] However, Iran was held responsible for the violation of its obligation not to take appropriate measures to protect the United States Embassy and Consulates or even to prevent the attack.[52] The lack of such action is in contrast with other occasions that occurred regarding the UK and Iraq consulates at that time, and the authorities protected them.[53] Hence, Iran was held responsible for its breaches of its international commitments to the United States, which were based on both general international agreements like the Vienna Convention on Diplomatic Relations and bilateral agreements like the 1955 Treaty of Amity, Economic Relations, and Consular Rights.[54]

The Tehran Hostages case and the Corfu Channel case illustrate the ICJ's consistent approach to the issue of attributability, especially how and when a state can be held responsible for actions that may not have been directly carried out by its official organs but were nevertheless connected to the state.

However, in some cases, the respondent's state statements may justify their non-performance by relying on circumstances precluding wrongfulness, such as self-defense or force majeure.[55] These circumstances are established under ARSIWA under Articles 20 to 25. These Articles entail that the circumstances precluding wrongful acts include consent, self-defence, countermeasures regarding an

[46] Ibid, 443.
[47] International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) UN Doc A/56/10, ch IV.
[48] James Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012) 543.
[49] Ibid, 543.
[50] *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)* (Judgment) [1980] ICJ Rep 3, [17].
[51] Ibid, [58].
[52] Ibid.
[53] Ibid, [20].
[54] Ibid, [60-62].
[55] Jan Klabbers, *International Law* (3rd edn, Cambridge University Press 2021) 139.

internationally wrongful act, force majeure, distress, and necessity. According to the ILC commentary on ARSIWA, one of the most invoked circumstances is the force majeure. This refers to a circumstance where a state is obligated to act contrary to its international obligations. Force majeure varies from distress and necessity since the State's conduct is involuntary and lacks free choice, rendering it internationally illegal.[56] Distress refers to a situation involving a threat and alternative courses of action that would require the actor to make a sacrifice. However, distress does not apply if the state's conduct caused the situation or may create a greater risk.[57] In contrast to distress, necessity is the most political premise for justifying wrongdoing to safeguard the state's vital interests.[58] Nonetheless, as klabbers suggests, the necessity factor can be easily abused, which is why Article 25 of ARSIWA indicates that the state's interest at risk must be an essential interest in grave and imminent peril, and the act in question must be relatively harmless to the state to which the obligation is owed or to the international community as a whole.[59] This controversial characteristic of necessity was addressed in the tribunal of the Rainbow Warrior case.[60] Nonetheless, as both Klabber and Shaw mentioned, the necessity was addressed remarkably in the Gabčíkovo–Nagymaros case based on ecological necessity being invoked by the Hungarian state for its non-performance of the 1977 treaty. In the case, the court specefied that when a state uses a state of necessity to defend its actions, it implicitly acknowledges that its actions would be illegal without such a justification. Hence, even if a state of necessity were established, it would not mean that the state had fulfilled its obligations under the treaty or that those obligations were no longer applicable; rather, it would simply mean that the state would not be held internationally responsible for its actions under the particular circumstances and would still be required to pay compensation.[61]

International Law and Iran's Obligations

State responsibility regarding aerial incidents under international law not only involves the principles mentioned under ARSIWA and relevant legal precedents in the ICJ, but also treaties relevant to the aviation industry, which need to be examined within the scope of the PS752 flight and Iran's obligations. Aviation is undeniably one of the most internationally regulated industries. These international standards are not only there to shape the laws but also effectively constitute the law by which it operates.[62] The ICAO adopts such standards under the terms of the Chicago Convention. These are called international Standards and Recommended Practices or SARP, which are specified in 19 annexes.[63] The Chicago Convention is the source of these standards, which serve as the law rather than merely standards, and 193 sovereign states are bound by them.[64] However, the important convention that shall be discussed is the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, also known as the Montreal Convention 1971, since the applicants have stated their claims based on this convention before the ICJ. [65] The goal of the aforementioned

[56] International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) II(2) Yearbook of the International Law Commission 31, 76, UN Doc A/56/10.
[57] International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) UN Doc A/56/10, ch IV, art 24.2.
[58] Jan Klabbers, *International Law* (3rd edn, Cambridge University Press 2021) 144.
[59]Jan Klabbers, *International Law* (3rd edn, Cambridge University Press 2021) 144.
[60] Malcolm N Shaw, *International Law* (6th edn, Cambridge University Press 2008) 798.
[61] *Gabčíkovo–Nagymaros Project* (Hungary/Slovakia) [1997] ICJ Rep 7, [48].
[62] Ronald I. C. Bartsch AM, *International Aviation Law: A Practical Guide* (3rd edn, Routledge 2025) preface.
[63] International Civil Aviation Organization, 'How ICAO Develops Standards' (ICAO, 2025).
[64] Ronald I. C. Bartsch AM, *International Aviation Law: A Practical Guide* (3rd edn, Routledge 2025) preface.
[65] Canada, Sweden, Ukraine and the United Kingdom v Islamic Republic of Iran (Application Instituting Proceedings) (filed 4 July 2023) ICJ Rep, Case No 190, para 41.

convention is to prevent the potential act of bombing commercial airplanes and nearby installations, and in incidents that occur during flight and in service.

Application to Iran in The PS752 Case

The Coordination Group's joint application against Iran has been brought before the ICJ. In this application, the coordination group seeks Iran's Public acknowledgment of its internationally wrongful conduct by violating the Montreal Convention of 1971. According to the Coordination Group, Iran has violated the Montreal Convention—specifically Articles 6, 7, 10, 11, and 13 by failing to fulfill its obligations under these provisions. [66]Hence, in this section, the matter of violation of each article shall be discussed, and further, the responsibility of Iran.

The UIA case, after 3 years, was referred to the military prosecutor of Tehran. The verdict was issued after 3 years of the incident and 20 court hearings; the verdict was based on several factors, including forensic evidence, statements, and military and judicial investigations.[67] Reviewing this case has been one of the most challenging procedures in Iran in recent years.[68] The case included 117 plaintiffs who filed complaints and 55 who spoke in Court with 20 lawyers.[69] The prosecutor acknowledged the importance of differentiation between human error and system error. As a result, the prosecutor acknowledged the difference in defense systems used by countries and the instability of the region's conditions at that time.[70] However, he also illustrated that this incident would not have occurred had the user and the commander been more careful and precise in their actions.[71]

Additionally, 10 indictments were issued for officials involved in the incident involving flight PS752. The first-row defendant was the commander of the TOR-M1 defense system, as he fired two missiles at the UIA PS752 flight in contravention of the relevant instructions and without obtaining the necessary authorizations.[72] Firing the rocket (s) was not permissible without authorization from the command post officer. Additionally, according to the General Staff of the Armed Forces, the commander of the defense system should have waited and put the system in cease-fire mode in case of momentary disconnection in his communication.[73] Sentences regarding the first row defendant included 3 years for the manslaughter of flight PS752 passengers and 10 years for overriding a given order and its consequences, in addition to paying blood money to the victims who are demanding it, plus supplementary punishments.[74] Furthermore, the court sentenced the second- and third-row defendants (TOR-M1 personnel) to one year in prison each; the fourth-row defendant (desk operator) and fifth-row defendant (command post supervisor) to three years each; the sixth-row defendant (commander of Tehran's fifth air defense system) and seventh-row defendant (shift supervisor) to two years each; the eighth-row defendant (commander of the control center) to eighteen months; and the ninth- and tenth-row defendants (commanders of Tehran's air defense system and the IRGC Aerospace Force system) to one year each. The court also imposed additional and extended

[66] 'Application Instituting Proceedings' in *Aerial Incident of 8 January 2020* (Canada, Sweden, Ukraine and the United Kingdom v Iran) (filed 4 July 2023), para 39.
[67] Mizan Online, 16 April 2023: 'Issuing the Verdict for the Ukrainian Aircraft Case After 20 Court Hearings / First-row Defendant Sentenced to 13 Years in Prison', in ICJ, Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran), AIP, 4 July 2023, Annex 9.
[68] Ibid.
[69] Ibid.
[70] Ibid.
[71] Ibid.
[72] Ibid.
[73] Ibid.
[74] Ibid.

punishments on the second to the tenth defendants. Unfortunately, no official court document was available, and these facts were obtained from the news agency mentioned in the annexes for the AIP in the ICJ.

It is worth mentioning that one of the lawyers for the victims of the PS752 flight discussed that the Supreme Court of Iran overturned the judgment of the case on September 10, 2024; hence, the case needs to be referred to the Military Prosecutor to be investigated again.[75] Unfortunately, no official document is available except the mentioned blog, in which the lawyer of the victims mentioned this matter.

Analysis of The Breaches of International Obligations

Examining the issue commences with assessing Iran's compliance with the duties stipulated in Article 6 of the Montreal Convention 1971. Article 6 specifies that if the offenders are present in a contracting state, the state must take measures such as preliminary enquiries into facts. Moreover, it mentions that if the offenders are present in a contracting state, the state is required to take measures such as taking the offender into custody, ensuring their presence, and enabling criminal proceedings.

The matter pertains to the transparency and fairness of these judicial proceedings and indictments. The information regarding the court judgment was published by the Iranian judiciary's agency, Mizan, on the 16th of April 2023. However, the identities of the offenders and the relevant documents regarding the judgment were not officially published by any legal bodies. This clearly illustrates the lack of transparency from the Iranian side, especially in this case, which is one of the most complicated cases in recent years in Iran.[76] Several international news agencies reported that several victims' families rejected the verdict and want the case reopened for investigation.[77] Some even called these trials sham trials due to the inquiry being biased by the Iranian side due to a lack of transparency and impartiality.[78]

It is essential to illustrate that the term immediate preliminary enquiry into facts is mentioned, focusing on the term ***immediate.*** The plane crash occurred on January 8, 2020, and three days after the incident, the General Staff of the Armed Forces made an announcement. In that announcement, it was clearly stated that due to the events at that time, the country was in a state of high alert. The plane appeared as a target to one of the IRGC military centers.[79] The General publicly announced that this was an unintentional human error and assured legal action for those who were responsible. One day after this statement on the 12th of January, 2020, General Salami appeared in front of the Iranian Parliament and elaborated on the circumstances that night. He implicitly mentioned that '*planes move at low altitudes when they take off, and so do cruise missiles'*.[80] Subsequently, he mentions that the person in charge, based on his *belief,* was certain that this was a threat. Later, on July 11, 2020, the

[75] Vokalapress, 'Lawyer for the Ukrainian Plane Case: Supreme Court Overturned the Verdict' (11 September 2023) https://vokalapress.ir/ accessed 27 May 2025.
[76] Ibid.
[77] BBC News, 'Ukraine plane: Iran court jails 10 over downing of flight PS752' (BBC News, 16 April 2023) https://www.bbc.com/news/world-middle-east-65298216 accessed 26 May 2025.
[78] NV, 'International groups slam Iran's "sham justice" in deliberate downing of UIA passenger plane' (18 April 2023) accessed 26 May 2025.
[79] YouTube: 'General Hossein Salami speaking about the downing of Flight PS752 to Iranian Parliament', 12 January 2020, in ICJ, Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran), AIP, 4 July 2023, Annex 5, 90.
[80] Ibid, 90 (emphasis added).

head of aerospace at the IRGC, in his announcement, accepted responsibility for the plane crash.[81] He specifically mentioned that: '*I want to say from the beginning of my speech that we will take full responsibility, without any objections, and will obey any decisions that the authorities will make*'. Moreover, he specifically mentioned that the missile operator requested the restriction of the country's aerospace several times since it is common at the 3-3 level readiness. However, some authorities did not respond to those requests due to some considerations, as the General mentioned.[82] One year later, on January 7, 2021, Tehran's Military Prosecutor presented new factors regarding the aerial incident. These factors included examinations by expert groups and crash simulations. The Significant factor he mentioned was the clear existence of human error, rather than any signs of system error. Furthermore, he mentioned that one defendant is under arrest and the rest are free on bail.[83] The first closed hearing of the UIA PS752 case took place on the 21st of November 2021 in the Military Prosecutor's office of the Armed Forces of Iran.[84] The final verdict was issued in 2023.

Firstly, the officials stated very early on that the plane crash was due to human error. The investigation took one year after these statements, and the court hearing took almost two years to issue the final verdict. This raises the question regarding the term immediate which is mentioned in the application of the Article 6.2 since the matter of plane shot down by a member of a state organ is undeniably needs an immediate measures to enquire the facts and not a lengthy process due to the duty that is owed to those affected states and the international community as a whole. This factor is not directly related to the investigation, which took place after a year, but the credible evidence, as preliminary enquiries of facts can be found through official announcements of the generals of the armed forces in the IRGC in 2020. They mentioned the matter of personnel error several times and took full responsibility, believing it was a threat. Later, the investigations elaborated on this matter in more detail, showing no technical errors. Hence, there was sufficient evidence to arrest all offenders in the early stages of the investigation. Even the General of the Aerospace of the IRGC publicly announced that the missile operators asked on multiple occasions to have the sky free of flight due to the high alert level of the defense system. However, authorities did not take that into consideration. This announcement itself plays a crucial role in the violation of Article 6.2 for immediate preliminary enquiries of the facts, since this counts as evidence. Furthermore, regarding Article 6.1, the first-row defendant was the only one initially under arrest, while the rest were not in custody, which is contrary to the requirements under Article 6.1 to facilitate criminal proceedings.

Another essential matter is the violation of Article 6.4, which states that the state that makes the preliminary enquiry of facts must report its findings promptly. Despite the issuance of the verdict, there was a lack of transparency and impartiality in the legal proceedings. Since then, no official records of the court hearings or the identities of the offenders have been published. As a result, Iran is responsible for violating Article 6 due to its wrongful conduct, including failing to immediately initiate preliminary enquiries, not taking all offenders into custody, and lacking transparency regarding the preliminary enquiries into the facts for the criminal proceedings. Hence, this constitutes a breach of an international obligation by Iran, which gives rise to Iran's responsibility following Article 2 of the ARSIWA.

---

[81] Iran Press News Agency, 'Head of IRGC Aerospace Division Accepts Responsibility for Plane Crash' (11 July 2020), video transcript in ICJ, *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran)*, AIP, 4 July 2023, Annex 2.
[82] Ibid
[83] Islamic Republic News Agency, 'Tehran's Military Prosecutor Describes New Aspects of Ukrainian Aircraft Crash' (7 January 2021), ICJ, *Aerial Incident of 8 January 2020*, AIP 4 July 2023, Annex 18.
[84] Iran to Ukraine, Note verbale (16 November 2021), ICJ, *Aerial Incident of 8 January 2020*, AIP 4 July 2023, Annex 10, note 24.1.

Subsequently, regarding the criminal proceedings, Article 7 specifies that the state where the offender is found shall establish its jurisdiction over the prosecution. This includes referring the offender to the competent authorities, as in the case of any ordinary offense under the domestic law of that state, if the offender is not being extradited. Hence, regarding the UIA incident, Iran is responsible for criminal proceedings of the perpetrators.[85] In this scenario, as mentioned, Iran referred the offenders to the Military Prosecutor of Tehran, and there, the indictment was established based on the Iranian Penal Code, which included a period for objection to the judgment. As mentioned earlier, the lawyer of the victims announced that the Supreme Court overturned the court's judgment as it was against certain requirements under the criminal panel codes of Iran, thanks to the objection. Hence, due to the absence of these criteria, the case is now being referred to the military prosecutor of Tehran again.[86] This clearly illustrates that the criminal proceedings are being handled thoroughly under Iranian jurisdiction as they have the right to exercise the jurisdiction under Article 1 of the Chicago Convention 1944.[87] Hence, Iran took all the necessary legal actions within its territory to comply with its domestic laws, despite a lack of transparency and lengthy procedures. Thus, Iran is not in violation of Article 7 of the Montreal Convention 1971.

Additionally, Article 10 establishes that the contracting states are required to take all the possible measures in order to prevent offences mentioned under Article 1, one of which is destroying an aircraft in service.[88] As mentioned earlier, at the time of the flight, there was an escalating situation, and several Generals made it clear in their announcement that Iran's defense system was on a very high alert. In note 13 of the note verbals, Iran provided Ukraine with the final record of the plane crash incident. The Iranian authorities have compiled this report, which mentions several key factors.[89]

Firstly, the matter of a non-existent threat is clarified. During this report, Iran clarified that despite the USA threatening to target Iran, this has never happened, and it is a form of psychological war over the past 40 years, referencing the words of the past leader.[90] On the night of the attack on the military base, Iran's assessment specified that US officials were not determined to respond, and there was no sign of a probable attack.[91] Hence, the defense system was on high alert and not war alert.[92] However, this measure is contrary to Iran's statement of not expecting threats from the USA. By repeating this several times throughout the report regarding no sign from the US to attack, the necessity of having a high-alert system does not apply in this situation.

Furthermore, in this report, preventive measures that Iran took after the attack on the US military base in Iraq are mentioned in both the military and civil aviation industries.[93] The common preventive

[85] Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (adopted 23 September 1971, entered into force 26 January 1973) 974 UNTS 177 (Montreal Convention) art 10.
[86] Vokalapress, 'Lawyer for the Ukrainian Plane Case: Supreme Court Overturned the Verdict' (11 September 2023) https://vokalapress.ir/ accessed 27 May 2025.
[87] Convention on International Civil Aviation (adopted 7 December 1944, entered into force 4 April 1947) 15 UNTS 295 (Chicago Convention), art 1.
[88] Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (adopted 23 September 1971, entered into force 26 January 1973) 974 UNTS 177, art 10.
[89] Iran to Ukraine, Note verbale (12 January 2021), *ICJ, Aerial Incident of 8 January 2020*, AIP 4 July 2023, Annex 10, note 13, p. 198.
[90] Ibid, 201.
[91] Ibid, 201.
[92] Ibid, 201-202.
[93] Ibid, 202-203.

measures included closing down four western air routes, closing the air routes between Iraq and Iran, and requiring all flights to obtain a permit from the Integrated Antiaircraft Defense System.[94] This clearly shows that, despite Iran's earlier statement saying this was just a psychological war and its assessment showing that US did not intend to attack back, Iran took certain measures contrary to those statements. Iran still took preventive measures only on the western side of the country and only on four air routes. More importantly, they cleared the Iran-Iraq airspace of flights only on the Iran-Iraq route.[95] Hence, this clearly indicates that Iran had a sense of the probable risk, despite no indication of a USA attack, according to the intelligence services.[96] Therefore, they could have closed down all the country's air routes that morning, not only the ones in the West. These measures are contrary to Iran's statement that it does not expect any counterattack from the US. Thus, such measures could have been taken for the entirety of Iran's airspace to prevent the PS752 incident.

Moreover, the report mentions that the state of the operation was limited to a controlled fire, not a fire at will.[97] Despite the limited firing state, the operator decided, at will, to fire the missile due to the low altitude of the plane, which exhibits a similar characteristic to a cruise missile, as mentioned in the statements by the commanders earlier. Moreover, the matter of lack of communication is mentioned as one of the contributing reasons,[98] which is an unacceptable reason for a person who has such a high duty of care at a time when the airspace of the country is open. Additionally, according to the generals and the report, there were no signs of a counterattack and a high threat from the US to act at will, as there was no indication of a necessity to act firmly at will to begin with.

This clearly illustrates the fact that there is a lack of checks and balances between the defense bodies to make such decisions, which is vital for an operation of this nature. To summarize, these factors clearly demonstrate that Iran's statements of being in only a psychological war with the USA are contrary to the defensive measures and consequent prevention methods afterward to close down the Western air routes only. As a result, this highlights Iran's awareness of potential risks, but its insufficient implementation of preventive measures, demonstrating a clear understanding of such risks. Consequently, this constitutes a violation of Article 10 of the Montreal Convention..

Additionally, the authorities' refusal to act upon the missile operator's request to close the airspace constitutes a significant procedural failure contributing to the incident.[99] Hence, by relying on precedents such as the Corfu Channel case and the United States Diplomatic Consular Staff in Tehran, there is no need for a direct connection to the matter of downing the plane to constitute Iran's attribution, but rather measures that the Iranian authorities should have taken to prevent such an accident from happening. This includes issuing a warning to the airlines, canceling all flights, or even closing the country's airspace for the safety of civilians. Hence, subsequently, by violating Article 10 of the mentioned convention, the state can be held responsible under Article 1 of ARSIWA, as the state is in breach of an international wrongful act, which is an international unlawful conduct. These wrongful acts institute the violation of Article 10, which means a breach of an international obligation attributable to the state under Article 2 of ARSIWA.

---

[94] Ibid, 203.
[95] Ibid, 203.
[96] Ibid, 201.
[97] Ibid, 202.
[98] Ibid, 205.
[99] Iran Press News Agency, 'Head of IRGC Aerospace Division Accepts Responsibility for Plane Crash' (11 July 2020), video transcript in ICJ, *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran)*, AIP, 4 July 2023, Annex 2.

Furthermore, Article 11 requires contracting states to provide each other with the highest possible level of cooperation and support. The Ukrainian side requested an MLA from the Iranian side. However, Iran did not give a proper response to such a request.[100] Moreover, during the negotiations, the Ukrainian side emphasized that Iran had not adequately responded to four specific requests: (1) the formation of a joint investigative team, (2) the provision of aircraft parts and flight recorders as material evidence, (3) copies of procedural documents confirming the guilt of prosecuted individuals, and information regarding the circumstances of the TOR-M1 missile strike and passenger identities, and (4) investigative actions and documentation concerning the technical condition of the aircraft during its stay and departure from Tehran airport.[101] The responses received by Ukraine were predominantly formal, vague, or incomplete, and, conversely, Iran's requests to Ukraine failed to meet the requirements of the bilateral agreement, lacking proper offense qualification, mandatory annexes, and relevance to the subject of the investigation.[102] Subsequently, Article 13 established the state's obligation to promptly report any information related to the incident to the ICAO, despite the request of the Ukrainian party on multiple occasions to Iran to inform the ICAO council of relevant information about the measures regarding the criminal prosecution of the offenders.[103] However, the Iranian side did not acknowledge the mentioned matters throughout the negotiations, and they remained unresolved.[104] These factors demonstrate Iran's lack of cooperation and transparency with the affected states and the ICAO, which violates Articles 11, and 13 of the Montreal Convention 1971 and consequently raises Iran's state responsibility under Article 2 of the ARSIWA for breaching an international obligation.

Precluding Circumstances?

In light of the potential rise of state responsibility, Iran may argue to invoke certain circumstances that preclude the wrongfulness of its internationally wrongful acts under Articles 20 to 25 of the ARSIWA. This section will discuss matters of self-defense, force majeure, distress, and necessity concerning the PS752 flight.

Regarding the matter of self-defense, Article 21 of ARSIWA specifies that the act of self-defense shall be lawful only if it is in accordance with the Charter of the United Nations. Under the UN charter, the act of self-defense is mentioned under Article 51, which gives the right of self-defense in case of an armed attack, and such measures shall be immediately reported to the Security Council.[105] However, as mentioned in the facts of the case, there was no sign of direct armed attack from the USA, but rather a matter of safety. Moreover, during the initial round of negotiations, the Iranian delegation refuted the existence of an armed war between Iran and the United States.[106] This clearly illustrates that Article 21 of ARSIWA cannot be invoked in such circumstances to preclude Iran's unlawful acts.

---

[100] Ukraine to Iran, Note verbale (12 June 2020), ICJ, *Aerial Incident of 8 January 202*0, AIP 4 July 2023, Annex 10, note 5.
[101] Ukraine to Iran, Note verbale (24 September 2020), ICJ, *Aerial Incident of 8 January 2020*, AIP 4 July 2023, Annex 10, note 10.1.
[102] Ibid.
[103] Ukraine to Iran, Note verbale (12 June 2020), ICJ, *Aerial Incident of 8 January 2020*, AIP 4 July 2023, Annex 10, note 5; Ukraine to Iran, Note verbale (24 September 2020), ICJ, *Aerial Incident of 8 January 2020*, AIP 4 July 2023, Annex 10, note 10.1.
[104] Notes verbales between Ukraine and Iran regarding their bilateral negotiations related to the downing of Flight PS752, including Ukraine to Iran, Note verbale (4 January 2021), ICJ, *Aerial Incident of 8 January 2020*, AIP 4 July 2023, Annex 10, note 12.1.
[105] Charter of the United Nations (opened for signature 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 51.
[106] Ukraine to Iran, Note verbale (24 September 2020), ICJ, *Aerial Incident of 8 January 2020*, AIP 4 July 2023, Annex 10, note 10.1, p 181.

Additionally, for the force majeure, there needs to be an irresistible force of unforeseen events under Article 23 of ARSIWA. The unpredictability of the aircraft crash can be contested due to various preceding events, including the death of the IRGC commander, the escalating tensions between Iran and the United States, and Iran's assault on American forces in Iraq in the early hours of the flight. Furthermore, General Salami, who spoke before the parliament, emphasized that Planes move in low altitudes when they take off, so do the Cruise missiles. This clearly illustrates the foreseeability of mistaking the plane as a cruise missile after hours of striking missiles at the American bases in Iraq. Moreover, Iran's closing down of the air routes in the western side near Iraq clearly illustrates Iran's acknowledgment of such risks and circumstances. Hence, Force majeure cannot be invoked.

Regarding the matter of distress, Article 24 elaborates that there were no other reasonable measures to be taken in a situation of distress to save lives. The argument regarding distress that might take place is that the commander of the defense system was in a distress situation in which he had little time to decide to save the lives of others. However, the distress situation was due to his ignorance and misconception of the plane as a cruise missile, resulting from other factors such as a lack of navigation adjustment and declaring operational readiness without communication.[107] Hence, according to Article 24.2.a of ARSIWA Iran is not able to invoke the distress factor since the situation of the distress was the result of Iran's conduct in not taking the checks and balances measures into the system in the defense operator sector, and consequently resulting in a greater harm, as mentioned in Article 24.2.b.

Lastly, concerning the matter of necessity, Iran may invoke the use of Article 25, which entails that there must be an essential interest of the state. However, this essential interest cannot be invoked if the state is the one that contributed to the situation of necessity. As mentioned earlier, Iran's conduct of firing missiles in the early morning of the flight to the American bases and having its defense system in high alert without checks and through communications between the organs illustrates a clear contribution of Iran to the situation of necessity. Furthermore, the authorities' refusal to clear the airspace at the request of the missile operator is another contributing factor resulting from Iran's contribution.[108] Hence, based on Article 25.2.b Iran cannot invoke necessity as a reason for its internationally wrongful act.

In conclusion, due to Iran's international unlawful act, based on its violation of international obligations and failure to invoke circumstances precluding the mentioned violations, the state responsibility of Iran arises. Consequently, Iran's obligation for reparation will arise under Article 31 of ARSIWA. However, there is no mention of the limit of liability for the state under ARSIWA. The state's responsibility is established based on the violations of Articles 6, 10, 11, and 13 of the Montreal Convention of 1971; hence, Iran is required to make reparations. The next chapter will examine the matter of compensation as a form of reparation.

[107] Mizan Online, 16 April 2023: 'Issuing the Verdict for the Ukrainian Aircraft Case After 20 Court Hearings / First-row Defendant Sentenced to 13 Years in Prison', in ICJ, Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran), AIP, 4 July 2023, Annex 9.
[108] Iran Press News Agency, 'Head of IRGC Aerospace Division Accepts Responsibility for Plane Crash' (11 July 2020), video transcript in ICJ, *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran)*, AIP, 4 July 2023, Annex 2.

Chapter 2: The ICJ and Aerial Incidents

As Iran's responsibility has been established in the previous chapter, this chapter will focus on the matter of financial compensation that the ICJ may award to the claimant party. However, determining the amount is a somewhat complicated task. Hence, this chapter will elaborate on past compensation cases that were concluded in the Court, alongside aerial incidents cases, and their compensation outcomes via different measures, such as settlements or voluntary payments, known as *ex gratia*.

ICJ and Its History in Compensation Cases

The matter of reparation is addressed under ARSIWA. The power of ordering compensation by the ICJ has been established by the case Gabčíkovo–Nagymaros Project, in which it is clearly stated that the injured party is entitled to obtain compensation from the state which has committed an international wrong for the damage caused by it.[109] Furthermore, as the Commentary to ILC Articles suggests, compensation is one of the common forms of reparation which has been practiced in international law.[110]

However, the fundamental principle of reparation by the ICJ turns back to the Chorzów Factory Case (1928, PCIJ).[111] At the time of the application, despite applying the relevant treaties, the term reparation was used in a general sense by the PCIJ without setting any limitation or any kind of reparation, since it was not in the court's jurisdiction to decide on the type and the amount of reparation.[112] Hence, this case is considered one of the fundamental cases for repartition within the ICJ. This case introduced a general principle in which it is mentioned that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation, which would, in all probability, have existed if that act had not been committed.[113] This case suggests that restitution in kind is a preferable remedy; if not, the restitution must include an equivalent value to the damages.

Furthermore, additional damages may be awarded if restitution or compensation covers the damages.[114] Restitution, the principal means of reparation aimed at reinstating the *status quo ante*, is endorsed by Article 36.1 of the ARSIWA concerning compensation, which mandates compensation to the extent that such damage cannot be remedied by restitution.[115] More specifically, restitution refers to "restitution in kind" *(restitutio in integrum)*, or returning to the situation as it existed before the unlawful conduct. Following the approach of the International Law Commission's Articles on State Responsibility, this Article focuses on a less broad definition. Hence, the concept of *status quo ante* is applicable, which means the state of affairs that existed before.[116]

This concept has been reevaluated by numerous bodies, including the International Court of Justice.[117] As a result, the Chorzów Factory Case played a fundamental role in drafting ARSIWA. Additionally, the *status quo ante* alongside the Chorzów Factory case influenced Article 34 of ARSIWA regarding

---

[109] *Gabčíkovo–Nagymaros Project* (Hungary/Slovakia) (Judgment), 81.
[110] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries (2001) 99.
[111] James Crawford, *State Responsibility: The General Part* (Cambridge University Press 2013) ch 15, 480. https://doi.org/10.1017/CBO9781139033060 accessed 14 April 2025.
[112] Ibid.
[113] *Factory at Chorzów (Germany v Poland)* (Merits) (1928) PCIJ Ser A No 17.
[114] Ibid.
[115] Atilla Tanzi, 'Restitution' (2021) Max Planck Encyclopedia of Public International Law, accessed 27 May 2025.
[116] Justia, 'Status Quo Ante' (Justia US Law Dictionary) https://dictionary.justia.com/status-quo-ante accessed 14 April 2025.
[117] James Crawford, *State Responsibility: The General Part* (Cambridge University Press 2013) ch 15, 481. https://doi.org/10.1017/CBO9781139033060 accessed 14 April 2025.

the concept of full reparation in different categories.[118] Article 34 specifies various types of reparations, including restitution, compensation, and satisfaction. Subsequently, Article 36.2 of ARSIWA provides financial compensation for damages. However, ARSIWA does not provide any guidance regarding how the compensation determination should be approached, and this consequently brings several ambiguities for the court.[119] Furthermore, other scholars mention that not only in the case of compensations but also in cases of awarding remedies, there are no clear models that can be applied by international tribunals, unlike domestic courts.[120] As can be observed, the primary concern of most scholars is regarding the ambiguity in determining compensation and its scope. Despite general practices in international law, seeking compensation has only been done on a few occasions.[121] It is worth mentioning that out of one-third of the cases which were brought before the PCIJ requesting compensation, only one case was successful.[122] However, later on in the ICJ cases, a pattern of improvements can be noticed.[123]

The Corfu Channel case as mentioned before not only is one of the most important precedents in the history of state responsibility, but also is one of the significant precedents for compensation in which the ICJ court held the Albanian state accountable for the damage which was caused to the British Royal Navy and the death of its personnel.[124] The UK brought a claim against Albania before the Court seeking £875,000.[125] However, one of the complexities of this case was fixing the amount of compensation needed to be paid.[126] In the Corfu case, the ICJ ordered a group of experts from the Royal Norwegian Navy, Swedish Navy, and the Dutch Navy, and £ 844,000 was calculated based on their reports.[127]ICJ relied on the report of experts for the amount fixation of the compensation, which resulted in the third judgment of the case for the amount of £ 844000, including £794000 for the damages to store and equipment and £50000 in respect of deaths and injuries of the naval personnel according to claims which were made by UK based on the cost of pensions, cost of administration, medical treatment, etc.[128]

Another example is the Guinea v. DRC case of 2012. Guinea brought a claim against the DRC for a violation of international law, seeking damages on behalf of one of its citizens, Ahmadou Sadio Diallo. In this case, the Court decided that DRC must compensate the Guinean citizen based on material and non-material damages for $95000.[129] This case highlights essential factors, such as a state bringing a claim on behalf of its citizens to protect their international rights. However, despite Guinea seeking $11 million in compensation, the ICJ ruled in favor of $95,000, which highlights the ICJ's cautiousness in cases where states bring a claim on behalf of their citizens. The ICJ sought evidence thoroughly throughout the case, and Guinea was not able to provide such evidence.[130] This

[118] Yang Liu, 'Compensation in the Jurisprudence of the International Court of Justice: Towards an Equitable Approach' (2024) 15 *Journal of International Dispute Settlement* 73-105 https://doi.org/10.1093/jnlids/idad023 accessed 20 April 2025, 73.
[119]Ibid, 74.
[120] Ashley Barnes, *Fair Compensation: Reality or Aspiration in International Law?* (EUI AEL Working Paper 2024/02, European University Institute 2024) 2.
[121] Victor Stoica, *Remedies before the International Court of Justice: A Systemic Analysis* (Cambridge University Press 2021) https://doi.org/10.1017/9781108855006 accessed 20 April 2025, 108.
[122] Ibid, 109.
[123] Ibid,109.
[124]*Corfu Channel Case* (United Kingdom v Albania) (Merits) [1949] ICJ Rep 4, 12–14.
[125] Ibid, page 11.
[126] *Corfu Channel Case (United Kingdom v Albania)* (Assessment of Compensation) [1949] ICJ Rep 244 (Judgment of 15 December 1949), page 7.
[127] Ibid, 7.
[128] Ibid,7.
[129] *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)* (Compensation)[2012] ICJ Rep 324.
[130] Ibid.

case, according to scholars, is considered one of the extraordinary cases since it was the first time after the Corfu Channel case that the ICJ awarded compensation.[131] The ICJ mentioned the amount was appropriate based on equitable considerations.[132] Despite mentioning the reason, the approach of the court in determining the compensation is not straightforward, and there was no elaboration on what equitable consideration means exactly.[133]

Another precedent worth mentioning regarding the determination of compensation is the case of DRC v. Uganda (2022). The ICJ held Uganda accountable to pay reparations to the DRC for the damages caused by its internationally wrongful acts. This case is one of the noteworthy cases in the history of compensation in the ICJ since it introduced a discretionary compensation module in which a total sum out of 5 different categories of damages was mentioned under damages to persons.[134] Furthermore, the Court held Uganda accountable for a total of $ 325,000,000 for damages to persons, property, and natural resources.[135] In this case, like the Corfu Channel, the court appointed experts to determine the damages for each category.[136]

Despite these precedents, the ICJ's cautious approach is evident in all the cases, particularly in the Corfu Channel case and the 2022 DRC v. Uganda cases, as they illustrate that the Court, to some extent, relies on expert opinions. However, an article by Sean D. Murphy and Yuri Parkhomenko suggests that the Court's reliance on the experts' opinion in the DRC v. Uganda, 2022, can be seen to a lesser extent. This matter can be seen since the Court mentioned that evidentiary deficiencies cannot be resolved solely based on experts' opinions.[137] The Court's bold approach may have influenced the 2022 DRC v. Uganda judgment from the case of Guinea v. DRC (2012).[138] Since Guinea v. DRC, the 2012 judgment was one of the very first judgments in which the ICJ did not rely on any expert opinion to decide the amount of compensation.[139] Nonetheless, it is noticeable that the compensation amount was relatively lower than what the claimant state asked for, which again shows the reserved attitude that the ICJ has towards offering compensation.[140]

As Crawford mentions in the ILC commentary on ARSIWA regarding Article 36.2, the matter of restitution has primacy over compensation.[141] However, obtaining restitution might be relatively complex since it is frequently unavailable or inadequate.[142] Furthermore, he notes that the function of Article 36 is purely compensatory, assessing the damages that the injured state has suffered.[143]Hence,

---

[131] Ashley Barnes, *Fair Compensation: Reality or Aspiration in International Law?* (EUI AEL Working Paper 2024/02, European University Institute 2024) 5.
[132] *Diallo – Compensation*, *supra* note 26 at para 13.
[133] Ashley Barnes, *Fair Compensation: Reality or Aspiration in International Law?* (EUI AEL Working Paper 2024/02, European University Institute 2024) 5-6.
[134] *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v Uganda) [2005] ICJ, [132-384] (Judgment, 9 February 2022).
[135] Ibid.
[136] Sean D Murphy and Yuri Parkhomenko, 'Now You See Them, Now You Don't: International Court-Appointed Experts, Wartime Reparations, and the DRC v. Uganda Case' (2023) GWU Legal Studies Research Paper No 2023-22 https://scholarship.law.gwu.edu/faculty_publications/1656 accessed 20 April 2025.
[137] Ibid.
[138] Ashley Barnes, *Fair Compensation: Reality or Aspiration in International Law?* (EUI AEL Working Paper 2024/02, European University Institute 2024) 4.
[139] Victor Stoica, *Remedies before the International Court of Justice: A Systemic Analysis* (Cambridge University Press 2021) https://doi.org/10.1017/9781108855006 accessed 20 April 2025, 109.
[140] Ibid, 109.
[141] James Crawford, The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries (CUP 2002) 220, para 3.
[142] Ibid.
[143]Ibid, para 4.

the ICJ's approach is neither punitive nor expressive nor exemplary.[144] The matter of compensation assessment is one of the most challenging aspects, as it involves not only the content of the specific primary obligation but also concerns reaching an equitable and acceptable result.[145] Although the improvement can be noticed through recent judgments, there is still a need for transparency in how they determine compensation, since it might lead to a fear of obtaining justice and fair compensation.[146]

It is notwithstanding that the significant influence of the ICJ on the law of state responsibility is undeniable, particularly in cases relevant to compensation for internationally unlawful acts. The ICJ has clarified the ambiguities that appeared in ARSIWA and customary international law provisions, illustrating the ICJ's extensive character.[147] Despite other courts and tribunals dealing with compensation in their respective jurisdiction, such as the Iran-US Claims Tribunal, the ICJ's precedents play a vital role for different judges.[148] The interpretation and application of compensation principles are still guided by core cases, such as the Chorzów Factory and Corfu Channel, illustrating the importance of understanding the ICJ's evolving approach to this complex area of international law.[149]

Compensation in International Aviation Law

International aviation law has been a rapidly evolving topic within international law. Determining the amount of compensation for damages has been a challenging concept, especially in aerial incidents caused by states, as this concept is only mentioned within the scope of airlines' liability, not that of states. The Warsaw Convention is one of the earliest conventions in the aviation industry, established in 1929. The Warsaw Convention mentioned that the amount of compensation was limited in gold Francs regarding the loss of property or harm to a passenger, which was equal to 8,300$.[150] This resulted in a unification of the international air carriage industry and protecting the passengers' rights.[151] However, after 70 years, the need for improvement in this uniformity became apparent. Hence, in 1999, the Warsaw Convention was replaced by the Montreal Convention due to the ineffectiveness of the Warsaw Convention.[152]

One of the key improvements made in the Montreal Convention of 1999 was the increase in compensation limits, which had been relatively low before this revision. Hence, this resulted in more stabilization and standardized systems in the commercial realm. One of the main changes was introducing the matter of strict liability for the airlines.[153] The Montreal Convention only applies to

[144] Ibid.
[145] Ibid, para 7.
[146] Ashley Barnes, *Fair Compensation: Reality or Aspiration in International Law?* (EUI AEL Working Paper 2024/02, European University Institute 2024) 15.
[147] Yang Liu, 'Compensation in the Jurisprudence of the International Court of Justice: Towards an Equitable Approach' (2024) 15 *Journal of International Dispute Settlement* 73-105 https://doi.org/10.1093/jnlids/idad023 accessed 20 April 2025, 74.
[148] Ibid, 74.
[149] Ibid, 75.
[150] Ronald I C Bartsch, *International Aviation Law: A Practical Guide* (3rd edn, Informa Law from Routledge 2025) page 28.
[151] Ibid.
[152] Ibid.
[153] Ibid.

airlines that operate for international carriage of persons, baggage, or cargo.[154] Moreover, there needs to be a transnational scope to their operation, which means flights from the territory of one state to another state, either directly or via stops.[155]Additionally, the Montreal Convention holds the airline liable in case of death or injury of the passengers, which occurred either on board or while embarking or disembarking.[156]The liability for damages regarding death or injury to the passengers is strict liability.[157] The limit for compensating such damages is 100,000 SDR. [158]However, the airline cannot be held liable for exceeding 100,000 SDR under the 2003 convention if the airline proves that the damage was not caused by negligence or wrongful acts of the airline or the damage caused by the claimant.[159] As of 2024, the limit for strict liability was raised to 151,880 SDR.[160]

As mentioned before, another significant convention regarding the aviation industry is the Chicago Convention. However, unlike the Montreal Convention of 1999, the Chicago Convention does not mention compensation. The Chicago Convention's primary focus is airspace safety and sovereignty. The similarity between the Montreal Convention of 1999 and the Chicago Convention is that the scope of both treaties is limited to civil aviation, excluding military or any other type of aviation. Like the Chicago Convention, the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation does not address the matter of compensation or liability.

Outcomes in Past Cases Involving Aerial Incidents

The liability limit, as set in the Montreal Convention, is a valuable tool for assessing the amount of compensation, even in cases where states are the liable parties. As an example, the Israeli El Al flight L402 was shot down by Bulgarian jet fighters on 27 July 1955.[161] The USA brought a case against Bulgaria on behalf of its citizens on board and sought damages. However, the USA later did not proceed with the application of the case.[162] In the application, the USA sought compensation for the total sum of $258,000. However, the Bulgarian government responded to the US government by mentioning not taking responsibility for the accident and rewarding 56000 Bulgarian currency as an *ex gratia* basis for each victim.[163]In addition, the USA dropped its case after the ICJ dismissed the Israel vs. Bulgaria case regarding this flight due to a matter of jurisdiction. After 8 years of the incident, Israel agreed to accept the $195,000 based on the limits mentioned in the Warsaw Convention.[164]Furthermore, Bulgaria already compensated the non-Israeli victims before reaching the agreement with Israel.[165]As can be seen, the previous version of the Montreal Convention of 1999, also known as the Warsaw Convention, played a crucial role in enabling the Bulgarian government to establish an amount for ex gratia compensation based on established legal principles.

---

[154] Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), 1999(entered into force 4 November 2003) 2242 UNTS 309, art 1.
[155] Ibid, art 1.
[156] Ibid, art 17.1.
[157] Ibid, art 17.1.
[158] Ibid, art 21.1.
[159] Ibid, art 21.2.
[160] SDR, or Special Drawing Rights, is a unit of account defined by the International Monetary Fund, and it is equivalent to approximately 1.35 USD.
[161] See *Aerial Incident of 27 July 1955 (United States of America v Bulgaria)*, "Overview" (ICJ, available at https://www.icj-cij.org/case/36).
[162] Ibid.
[163] "Application instituting proceedings " *in Aerial Incident of 27 July 1955 (United States of America v Bulgaria),* filed on 28th October 1957, page 45.
[164] "El Al Flight Is Shot Down" (Center for Israel Education, 27 July 1955) https://israeled.org/el-al-flight-is-shot-down/ accessed 1 March 2025.
[165] Max Fisher, "7 times militaries have shot down civilian planes" (Vox, 17 July 2014)https://www.vox.com/2014/7/17/5912699/7-times-militaries-have-shot-down-civilian-planes accessed 1 March 2025.

Another great assessment tool is the examination of the previous settlements in aerial incidents. For instance, Iran Air Flight 655 was shot down by US military forces with an anti-aircraft missile cruiser on 3rd July 1988 in the Persian Gulf.[166] In the ICAO observation document, ICAO demanded explicit condemnation and recognition of this unlawful act by the USA and demanded moral and financial compensation.[167]However, in 1996, the case was settled between Iran and the USA, in which the US agreed to pay a total of $131.8 million, from which 61.8 million was awarded to the Iranian families of the victims on an ex gratia basis.[168] Regarding other nationalities on the board from India, Pakistan, Yugoslavia, and the UAE, the USA made an offer of $250,000 for each victim with full-time wage earnings and $100,000 for all other victims.[169]

Another aerial incident which occurred without any court proceeding taking place was the Libyan Arab Airlines flight 114, which was shot down by Israeli Fighter jets in 1973.[170]Israel made a compensation to the family of 106 persons who were wage earners, each receiving $30,000 on an ex gratia basis.[171]

In the event of Iran's responsibility, the question of compensation will arise under international law, as per Article 27 of the ARSIWA. According to Article 31 of the ARSIWA, the responsible state is obligated to provide full restitution for injury, including both moral and material, resulting from its wrongful international act. [172]Within ICJ precedents, it has occurred that not only has the Court held the state responsible, but it has also fixed the compensation amount. Additionally, the scope of such reparation is more detailed in ARSIWA, under Article 34, which suggests different types of reparation to mitigate the consequences of illegal acts. These types include restitution, compensation, and satisfaction, either independently or in combination.[173]Under Article 36, the matter of compensation is described, which consists of the obligation of the state to compensate for the damage and shall cover financially any assessable damage.[174]The ARSIWA articles establish a clear path for states to fulfill their obligations to pay compensation. Moreover, when determining the limit of the state's liability regarding aviation incidents, case precedents in this area play a leading role, with the assistance of the Montreal Convention of 1999, which supersedes the Warsaw Convention.

In cases like aerial incidents, transparency plays a crucial role. However, this matter mostly depends on the international relations of the involved parties.[175] Consequently, transparency in communication and investigation results in more apparent determination for liability and subsequently remedies and

---

[166] Richard Boucher, 'U.S. to Pay for Non-Iranians It Shot Down' Los Angeles Times (Washington, 18 July 1989) https://www.latimes.com/archives/la-xpm-1989-07-18-mn-4076-story.html accessed 1 March 2025.
[167] Observations of the International Civil Aviation Organization *in Aerial Incident of 3 July 1988 (Islamic Republic of Iran v United States of America), submitted on 4 December 1992, available at https://www.icj-cij.org/case/79*.
[168] Settlement Agreement between the Islamic Republic of Iran and the United States of America in *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v United States of America)*, signed on 9 February 1996, 12, available at https://www.icj-cij.org/case/79.
[169] Richard Boucher, 'U.S. to Pay for Non-Iranians It Shot Down' Los Angeles Times (Washington, 18 July 1989) https://www.latimes.com/archives/la-xpm-1989-07-18-mn-4076-story.html accessed 1 March 2025.
[170] Aviation Safety Network, 'ASN Aircraft Accident Boeing 737-8KV (WL) UR-PSR, 08 Jan 2020' (Aviation Safety Network, 8 January 2020) https://asn.flightsafety.org/asndb/330261 accessed 14 April 2025.
[171] station T, '[News Script: Libyan Arab Airlines Flight 114]' [2025] The Portal to Texas History <https://texashistory.unt.edu/ark:/67531/metadc1736323/> accessed 14 April 2025.
[172] Articles on Responsibility of States for Internationally Wrongful Acts, UNGA Res 56/83 (12 December 2001) UN Doc A/RES/56/83, Art 1, art 31.
[173] Ibid, art 34.
[174] Ibid, art 36.
[175] ASM Mahmudul Hasan and Md Syful Islam, 'Reparation of Civil Aerial Accidents under International Air Law: A Case Study of the 2020 Ukrainian Plane Incident in Iran' (2024) 28 *Erzincan L Rev* 71, page 82.

compensation mechanisms.[176] The complexity here arises in terms of determining the amount of compensation for victims rather than compensation for the air carrier, since there is no ambiguity in the latter.[177] Nonetheless, the significance of this wrongful act is undeniable, considering Iran taking responsibility for shooting down the plane as a human error.[178]

This chapter has illustrated that the scope of such reparation is detailed in ARSIWA, under Article 34, which suggests different types of reparation to mitigate the consequences of illegal acts. These forms include restitution, compensation, and satisfaction either singly or in combination.[179]Under Article 36, the matter of compensation is described, which consists of the obligation of the state to compensate for the damage, and states shall cover financially any assessable damage.[180]The ARSIWA articles provide a clear path for states to comply with their obligations to pay compensation before the ICJ. However, the matter of compensation is clearly explained under Article 17 of the Montreal Convention of 1999, which concerns airlines, not the state.[181] As a result, a Combination of relevant case precedents, settlements, and the Montreal Convention of 1999 can determine the compensation amount for the accident. A speculative approach shall be discussed in the next chapter to evaluate the amount that the ICJ might offer based on the mentioned factors in this chapter.

[176] Ibid.
[177] Mojtaba Eshraghi Arani, 'The Downing of Ukraine International Airlines Flight 752 in Iran: A Legal Analysis of the Compensation That Iran Should Pay to the Victims' Relatives' (2020) 45 *Annals Air & Space L* 105, page 111.
[178] Ibid.
[179] International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UNGA Res 56/83 (28 January 2002) UN Doc A/RES/56/83, art 34.
[180] Ibid, art 36.
[181] Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention) (adopted 28 May 1999, entered into force 4 November 2003) 2242 UNTS 309 art 17.

Chapter 3: The Compensation Amount for PS752

Regarding the UIA case, Iran has already suggested $150,000 as an *ex gratia* base without prejudice to the nationality of the victims.[182] In all the above-mentioned countries, an agreement has been reached to pay compensation to the victims. However, in the UIA, no deal has been reached by the parties; then, Ukraine filed a joint application with other injured parties, including Canada, Sweden, and the UK .[183]

Concerning other precedents, a question arises here as to whether this joint application will be successful in determining the compensation and obliging Iran to make payment or not. By relying on the previous chapter and the mentioned incidents, one might argue that the amount of fixation for compensation for the UIA flight can be approached internationally. However, regarding aerial incidents, compensation is intricately linked to the liability of various stakeholders. In most aerial incidents, either the case was dismissed or dropped. According to an article by Eshraghi, notable past aerial incident cases involving compensation and reparation matters include Iran Air Flight 655, Libyan Airlines Flight NL114, and El Al Flight L402. None of these cases were concluded in the ICJ, but rather the compensation was paid to the victims on an *ex gratia* basis.[184] Another article by Hasn and Islam elaborates that in the aerial incidents, such payments were commonly made voluntarily.[185] As a result, they became part of customary international law, and the authors suggest that the outcome of the UIA case is likely to be on an *ex gratia* basis.[186] Hence, no successful outcome of a solid legal framework for aerial incidents by states can be observed. As a result, it is crucial to analyse the compensation precedents alongside the settlements of these incidents to determine how the ICJ may approach the UIA incident.

Analysis

Under Article 36.2 of the ARSIWA, states are allowed to seek compensation as one of the forms of reparations. However, determining the compensation models by the Court has been a significant challenge, according to several scholars, since there is a vagueness in the guidance for applying this Article for assessing the amount of the compensation.[187] Throughout the history of the Court, compensation cases have rarely been successful due to the ICJ's unclear and cautious approach. As mentioned in instances such as the Corfu Channel, experts play a crucial part. In other cases, such as DRC v. Uganda, the role of experts for the court to rely on in deciding how to award compensation became less influential due to other precedents, such as Guinea v. DRC. This was one of the first cases in which the ICJ determined the amount of compensation based on reference to equitable consideration. However, later in DRC v. Uganda, the court adopted a more cohesive approach in determining the appropriate compensation. Since the DRC v. Uganda (2022) establishes the categorization of damages, relying on this case provides a more practical approach to determining compensation. In this case, the damages were categorized into primary sections, and each section was

[182] Letter from Iran to the United Nations Secretary-General in response declaration of futility (31 January 2022) , ICJ, Aerial Incident of 8 January 2020, AIP 4 July 2023, Annex 10, note 37.
[183] "Application Instituting Proceedings" in *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and the United Kingdom v Iran)*, filed on 4 July 2023.
[184] Mojtaba Eshraghi Arani, 'The Downing of Ukraine International Airlines Flight 752 in Iran: A Legal Analysis of the Compensation That Iran Should Pay to the Victims' Relatives' (2020) 45 *Annals Air & Space L* 105, page 126.
[185] ASM Hasan and MS Islam, 'Reparation of Civil Aerial Accidents under International Air Law: A Case Study of the 2020 Ukrainian Plane Incident in Iran' (2024) 28 Erzincan Law Review, 89.
[186] Ibid.
[187] Yang Liu, 'Compensation in the Jurisprudence of the International Court of Justice: Towards an Equitable Approach' (2024) 15 *Journal of International Dispute Settlement* 73-105 https://doi.org/10.1093/jnlids/idad023 accessed 20 April 2025, 74.

further subdivided into subcategories. Relying on these precedents, the ICJ can successfully break the chains of similar patterns concerning compensation for the victims in aviation incidents. In all the above-mentioned aerial incidents, countries reached a mutual agreement to pay the victims, unlike in the UIA case .[188]

The mentioned case precedents in the ICJ provide a blueprint for evaluating the UIA flight case more consistently, ensuring that different sets of damages are acknowledged and addressed. This approach relies on the DRC v. Uganda case, based on equitable consideration, as seen previously in the Guinea v. DRC case. Regarding the amount of compensation for aerial incidents, one can rely on past settlements, such as those involving the Iran Air flight, the El Al airline, and the Libyan Airline incidents. The primary reason for focusing on these three incidents is the settlement, by which the amount of the damages is acknowledged. According to the El Al flight, the Bulgarian government offered compensation under the Warsaw Convention, with a limit of $8300 for the loss of life of each passenger.

In the Libyan Arab Airlines incident, ex gratia-based compensation of $30,000 was provided to the individual who was a wage earner. Likewise, this condition was applied in the Iran Air settlement case in which the USA differentiated between the victims' families based on their wage-earning. This was $250,000 for the wage-earning and $100,000 for the non-wage-earning passengers, concerning the non-Iranian passengers. For the Iranian passengers, the total amount was $ 61.8 million, which was distributed among 254 Iranian citizens, equating to approximately $243,000 per victim. All these settlements occurred before the establishment of the Montreal Convention of 1999, in which the compensation amount for the loss of life is clearly defined as a strict liability for airlines, which, as of 2024, is 151,880 SDRs, equivalent to $ 202,500. A total sum that can be derived from all these cases to be fair for all citizens to decide the amount of compensation for the day as of today, should follow the inflation rate.

In conclusion, several case precedents within the ICJ can be helpful alongside settlements and international conventions such as the Warsaw Convention and the Montreal Convention for the assessment of the compensation for the victims. Despite the ICJ having no specific mechanism for assessing the amount, the likely amount can be established based on the mentioned factors. Considering inflation, the Iran Air settlement price is worth nearly $126 million in 2025 for the relatives of the 176 victims.[189] Additionally, considering the Montreal Convention of 1999, the total amount of compensation for all the families is approximately $ 36 million for death injuries. However, as can be seen through several cases, including the Corfu Channel and the Guinea v. DRC cases, the ICJ awarded less than what was claimed by the states, either based on expert opinion or equitable consideration, as in the DRC v. Uganda (2022) cases. Therefore, the final compensation amount might reasonably fall between $36 million (as established by international convention) and $126 million for the victims, reflecting both precedent and the Court's traditionally equitable, cautious approach and relying on international treaties and previous settlements.

[188] Arab News, 'Ukraine rejects Iran's offer of $150,000 compensation for each PS752 victim' (Arab News, 19 June 2021) https://www.arabnews.pk/node/1870876/middle-east accessed 5 June 2025.
[189] The inflation rate can be calculated using the US Inflation Calculator: https://www.usinflationcalculator.com accessed 27 May 2025.

Conclusion

The UIA PS752 flight incident is one of the most tragic aerial incidents that occurred in recent years. The incidents not only brought distress to the safety of civilian flight internationally but also caused an incredible amount of pain to the victims' families. A significant aspect to address in the incident for the victims' family is to obtain justice through a fair compensation mechanism under international law. Concerning the ongoing case in the ICJ regarding the PS752 incident, this paper answered the research question firstly by elaborating on Iran's responsibility and its violation of its international obligation under the Montreal Convention 1971 based on factual and legal grounds. As a result, Iran's wrongful conduct constitutes violations of Articles 6, 10, 11, and 13 of the Montreal Convention of 1971, which give rise to state responsibility under Article 1 of the ARSIWA due to Iran's internationally wrongful conduct. Subsequently, by establishing the matter of Iran's responsibility, Iran is obliged to make compensation as a form of reparations under Article 34 of ARSIWA. Hence, determining the approximate amount of compensation is a crucial step for victims' families to receive justice on an international level after the incident has occurred.

The assessment was driven by examining past precedents within ICJ jurisprudence and the aviation industry, as well as the approach taken to determine the amount. Hence, examining aviation treaties regarding compensation can be an excellent tool, such as the Montreal Convention of 1999 since in some previous aerial incidents, such as the El Al flight, the earlier version of the Montreal Convention of 1999, which is the Warsaw Convention, was used as a tool for assessment of the amount. Additionally, examining past settlements based on *ex gratia* payments in aerial incidents caused by states, such as the Iran Air and Libyan Airlines incidents, is helpful in conjunction with treaty-based models for assessing the compensation amount. However, the specificity relies on the ICJ's mechanism for deciding on the specification of the amount, which depends on expert opinion, as seen in the Corfu Channel case, alongside equitable consideration, as established in two cases: DRC v. Uganda (2022) and Guinea v. DRC. Hence, taking these factors into account, the likely amount of compensation for the relatives of the victims will fall between a total sum of $36 million and $126 million.

As the ICJ continues to address the complexities of compensation in such cases, this paper highlights the importance of transparency, accountability, and the rule of law in ensuring that victims of such tragedies receive adequate compensation. The goal is that this case will serve as a stepping stone toward the formulation of more precise compensation requirements in international law for aerial incidents caused by states. Hence, the judgments of the ICJ in the ongoing case could establish a clear legal precedent for future aerial incidents caused by a state, including the current one, such as the incident involving Azerbaijani Airlines in 2024. Therefore, a precise compensation mechanism for victims and their families can provide some closure to the afflicted families while upholding the values of justice on a global scale and ensuring the rule of law within the international civil aviation industry.

Bibliography

Primary sources

Treaties and International Instruments

Charter of the United Nations (opened for signature 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (adopted 23 September 1971, entered into force 26 January 1973) 974 UNTS 177 (Montreal Convention)

Convention on International Civil Aviation (adopted 7 December 1944, entered into force 4 April 1947) 15 UNTS 295 (Chicago Convention)

Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention), 1999 (entered into force 4 November 2003) 2242 UNTS 309

Convention for the Unification of Certain Rules Relating to International Carriage by Air (opened for signature 12 October 1929, entered into force 13 February 1933) 137 LNTS 11 (Warsaw Convention)

International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc A/56/10

International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001) UN Doc A/56/10

Cases and Court Documents

Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v Islamic Republic of Iran), Joint Application Instituting Proceedings, 4 July 2023, ICJ, Case No 190 (including all cited annexes and note verbales)

Corfu Channel Case (United Kingdom v Albania) (Merits) [1949] ICJ Rep 4

Corfu Channel Case (United Kingdom v Albania) (Assessment of Compensation) [1949] ICJ Rep 244 (Judgment of 15 December 1949)

Gabčíkovo–Nagymaros Project (Hungary/Slovakia) [1997] ICJ Rep 7

United States Diplomatic and Consular Staff in Tehran (United States of America v Iran) (Judgment) [1980] ICJ Rep 3

Factory at Chorzów (Germany v Poland) (Merits) (1928) PCIJ Ser A No 17

Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (Compensation) [2012] ICJ Rep 324

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) [2005] ICJ Rep [132-384] (Judgment, 9 February 2022)

Aerial Incident of 27 July 1955 (United States of America v Bulgaria), Application Instituting Proceedings, filed 28 October 1957, ICJ Rep, Case No 36

Observations of the International Civil Aviation Organization in Aerial Incident of 3 July 1988 (Islamic Republic of Iran v United States of America), submitted 4 December 1992, ICJ Case No 79

Settlement Agreement between the Islamic Republic of Iran and the United States of America in Aerial Incident of 3 July 1988 (Islamic Republic of Iran v United States of America), signed 9 February 1996, ICJ Case No 79

Secondary Sources

Books

Bartsch RIC, *International Aviation Law: A Practical Guide* (3rd edn, Routledge 2025)

Crawford J, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012)

Crawford J, *State Responsibility: The General Part* (Cambridge University Press 2013)

Crawford J, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge University Press 2002)

David E, 'Primary and Secondary Rules' in James Crawford, Alain Pellet and Simon Olleson (eds), *The Law of International Responsibility* (Oxford University Press 2010)

Evans MD, *International Law* (6th edn, Oxford University Press 2024)

Goodwin-Gill GS, 'State Responsibility and the "Good Faith" Obligation in International Law' in Malgosia Fitzmaurice and Dan Sarooshi (eds), *Issues of State Responsibility before International Judicial Institutions* (Hart Publishing 2004)

Klabbers J, *International Law* (3rd edn, Cambridge University Press 2021)

Shaw MN, *International Law* (6th edn, Cambridge University Press 2008)

Stoica V, *Remedies before the International Court of Justice: A Systemic Analysis* (Cambridge University Press 2021)

Journal Articles and Working Papers

Barnes A, 'Fair Compensation: Reality or Aspiration in International Law?' (EUI AEL Working Paper 2024/02, European University Institute 2024)

Eshraghi Arani M, 'The Downing of Ukraine International Airlines Flight 752 in Iran: A Legal Analysis of the Compensation That Iran Should Pay to the Victims' Relatives' (2020) 45 Annals Air & Space L 105

Hasan ASM and Islam MS, 'Reparation of Civil Aerial Accidents under International Air Law: A Case Study of the 2020 Ukrainian Plane Incident in Iran' (2024) 28 Erzincan L Rev 71

International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001) UN Doc A/56/10, chp IV

Liu Y, 'Compensation in the Jurisprudence of the International Court of Justice: Towards an Equitable Approach' (2024) 15 *Journal of International Dispute Settlement* 73-105

Milanovic M, ‘The Tenacity of the Articles on State Responsibility as a General and Residual Framework: An Appraisal’ (EJIL: Talk!, 22 April 2024)

Murphy SD and Parkhomenko Y, ‘Now You See Them, Now You Don’t: International Court-Appointed Experts, Wartime Reparations, and the DRC v. Uganda Case’ (2023) GWU Legal Studies Research Paper No 2023-22

News Articles and Media

Arab News, ‘Ukraine rejects Iran’s offer of $150,000 compensation for each PS752 victim’ (Arab News, 19 June 2021) https://www.arabnews.pk/node/1870876/middle-east accessed 5 June 2025.

BBC News, ‘Ukraine plane: Iran court jails 10 over downing of flight PS752’ (BBC News, 16 April 2023) https://www.bbc.com/news/world-middle-east-65298216 accessed 26 May 2025

Euronews, ‘Damage by Foreign Objects Caused Azerbaijan Airlines Crash, Official Report Shows’ (Euronews, 4 February 2025)

Arab News, ‘Ukraine rejects Iran’s offer of $150,000 compensation for each PS752 victim’ (Arab News, 19 June 2021) https://www.arabnews.pk/node/1870876/middle-east accessed 5 June 2025

Islamic Republic News Agency, ‘Announcement of the General Staff of the Armed Forces about Ukrainian Passenger Plane Crash’ (11 January 2020), in ICJ, Aerial Incident of 8 January 2020, AIP, 4 July 2023, Annex 4

Islamic Republic News Agency, ‘Tehran’s Military Prosecutor Describes New Aspects of Ukrainian Aircraft Crash’ (7 January 2021), ICJ, Aerial Incident of 8 January 2020, AIP, 4 July 2023, Annex 18

Justia, ‘Status Quo Ante’ (Justia US Law Dictionary) https://dictionary.justia.com/status-quo-ante accessed 14 April 2025

Mizan Online, ‘Issuing the Verdict for the Ukrainian Aircraft Case After 20 Court Hearings / First-row Defendant Sentenced to 13 Years in Prison’ (16 April 2023), in ICJ, Aerial Incident of 8 January 2020, AIP, 4 July 2023, Annex 9

NV, ‘International groups slam Iran’s “sham justice” in deliberate downing of UIA passenger plane’ (18 April 2023) accessed 26 May 2025

Richard Boucher, ‘U.S. to Pay for Non-Iranians It Shot Down’ *Los Angeles Times* (Washington, 18 July 1989) https://www.latimes.com/archives/la-xpm-1989-07-18-mn-4076-story.htmlaccessed 1 March 2025

Vokalapress, ‘Lawyer for the Ukrainian Plane Case: Supreme Court Overturned the Verdict’ (11 September 2023) https://vokalapress.ir/ accessed 27 May 2025

YouTube, ‘General Hossein Salami speaking about the downing of Flight PS752 to Iranian Parliament’ (12 January 2020), in ICJ, Aerial Incident of 8 January 2020, AIP, 4 July 2023, Annex 5

Websites and Online Resources

Aviation Safety Network, 'ASN Aircraft Accident Boeing 737-8KV (WL) UR-PSR, 08 Jan 2020' (Aviation Safety Network, 8 January 2020) https://asn.flightsafety.org/asndb/330261 accessed 14 April 2025

Center for Israel Education, 'El Al Flight Is Shot Down' (27 July 1955) https://israeled.org/el-al-flight-is-shot-down/ accessed 1 March 2025

Fisher M, '7 times militaries have shot down civilian planes' (Vox, 17 July 2014) https://www.vox.com/2014/7/17/5912699/7-times-militaries-have-shot-down-civilian-planes accessed 1 March 2025

International Civil Aviation Organization, 'How ICAO Develops Standards' (ICAO, 2025).

station T, '[News Script: Libyan Arab Airlines Flight 114]' [2025] The Portal to Texas History https://texashistory.unt.edu/ark:/67531/metadc1736323/ accessed 1 March 2025

Encyclopaedia Entries

Tanzi A, 'Restitution' (2021) Max Planck Encyclopedia of Public International Law accessed 27 May 2025