

**THE LEGAL ISSUES ON THE
SHOOT-DOWN OF THE
RUSSIAN MILITARY AIRCRAFT
on 24th of November 2015**

**By Erkan AGIN
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* My views/slides are all in my individual personal capacity and represent neither the Turkish Government nor Turkish Armed Forces

TURKEY SHOT DOWN ~~RUSSIAN~~ JET

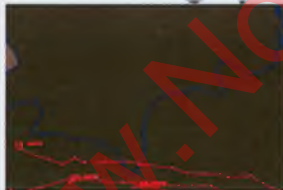
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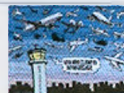
Was Sovereignty Violated?



YES!



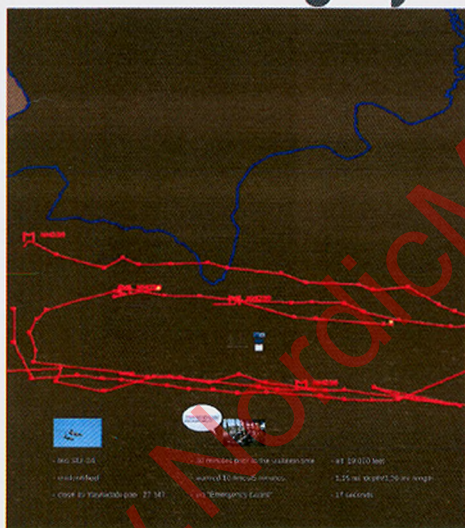
WHAT MEASURES CAN BE TAKEN?



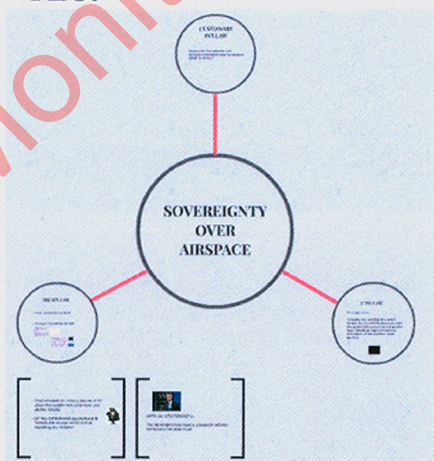
SELF-DEFENSE? YES!



Was Sovereignty Violated?



YES!



SOVEREIGNTY OVER AIRSPACE

CUSTOMARY INT.LAW

"every state has complete and exclusive sovereignty over the airspace above its territory"

TREATY LAW

- Paris Convention of 1919
- Chicago Convention of 1944



CASE LAW

Beijing Case:
"unaffected sovereignty of a state's territory by aircraft belonging to or under the control of the government of another state" directly infringes the national sovereignty of the overflown State (p. 254).



CUSTOMARY INT.LAW

"every state has complete and
exclusive sovereignty over the airspace
above its territory"

TREATY LAW

- Paris Convention of 1919
- Chicago Convention of 1944

Sovereignty Art. 1
The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.

Territory Art. 2
The territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.



Chart and name aircraft Art. 3
All States shall be responsible for the aircraft which are registered in their territory and shall be responsible for the aircraft which are registered in their territory.



State aircraft Art. 4
The State aircraft of a contracting State shall be immune from the jurisdiction of any other State in the event of an accident or collision with a civil aircraft.



Chicago Convention of 1944

Sovereignty-Art.1

The contracting States recognize that every State has **complete and exclusive sovereignty over the airspace above its territory.**

Territory-Art.2

The territory of a State shall be deemed to be the **land areas and territorial waters** adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.



Civil and state aircraft-Art.3

- This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft.
- Aircraft used in **military**, customs and police services shall be deemed to be state aircraft.
- No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with terms thereof.



Chicago Convention

Sovereignty-Art.1

The contracting States recognize that every State has **complete and exclusive sovereignty over the airspace above its territory.**

Territory-Art.2

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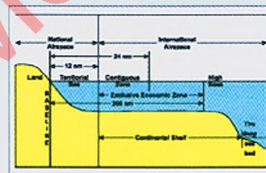


Figure 1 Maritime Zones
(Scherfeld, 2003: 16)

Civil and state aircraft-Art.3

a) This Convention shall **be applicable to aircraft**, and shall **not be applicable to state aircraft.**



Figure 1 Maritime Zones
(Schufeldt, 2003: 18)

Civil and state aircraft-Art.3

a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft.

b) Aircraft used in military, customs and police services shall be deemed to be state aircraft.

c) No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorization by special agreement or otherwise, and in accordance with terms thereof.

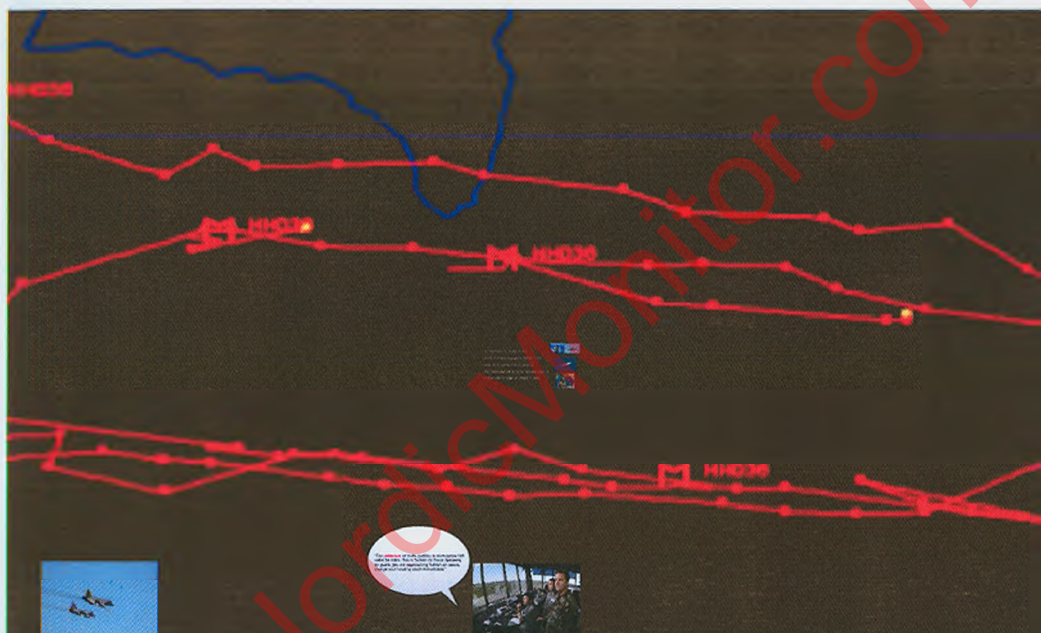


CASE LAW

Nicaragua Case:

“unauthorized overflight of a state's territory by aircraft belonging to or under the control of the government of another state” directly infringes the territorial sovereignty of the overflown State (pa.251).





- two SU-24
- unidentified
- close to Yayladağı-pop : 27,347

- 30 minutes prior to the violation time
- warned 10 times/5 minutes,
- via "Emergency Guard"

- alt: 19.000 feet
- 1,15 mi. depth/1,36 mi. length
- 17 seconds

"The **unknown** air traffic position to Humaymim 020 radial 26 miles. This is Turkish Air Force Speaking on guard, you are approaching Turkish air space, change your heading south immediately."



- no response - no change in track
- one SU-24 been engaged by Turkish F-16s
- other SU-24 left the Turkish airspace
- the intruder was still in Turkish airspace when hit
- crashed into the adjacent territory in Syria



- TGS informed the military attache of RF about the incident with valid radar and aircraft records
- RF has not delivered any evidence to Turkish side except verbal denials regarding any violation.





NATO SG STOLTENBERG :

"the information they have is consistent with the
information the allies have"

WHAT MEASURES CAN BE TAKEN?

???



RESPONSES

- indifference
- forcing the intruder to leave the airspace or to land
- control of the intruder's movements until it exits
- use of force against the intruder

In addition:

- resort to the local courts
- international judicial/administrative actions.
- diplomatic measures



DEPENDENT ON

- aircraft is civilian or military ?
- aircraft is in distress ?
- state of war or peace ?
- existing political climate ?
- hostile or peaceful intentions ?



what measures?



RESPONSES

SENTIMENT OF
INDIFFERENCE



- indifference
- forcing the intruder to leave the airspace or to land
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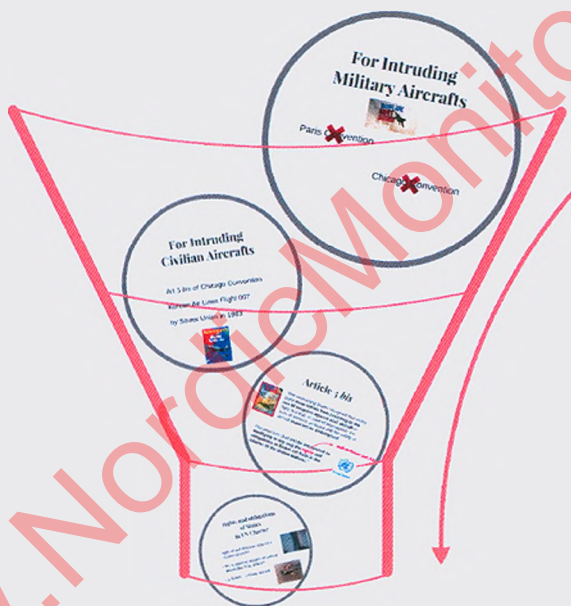


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what measures?



For Intruding Military Aircrafts



Paris Convention

Chicago Convention

ending

For Intruding Civilian Aircrafts

Art.3 *bis* of Chicago Convention

Korean Air Lines Flight 007

by Soviet Union in 1983



Article 3 bis



"The contracting States recognize that every State **must refrain from resorting to the use of weapons against civil aircraft** in flight and that, in case of interception, the lives of persons on board and the safety of aircraft **must not be endangered**."

This provision shall **not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations.**"

self-defense (art.51)



United Nations

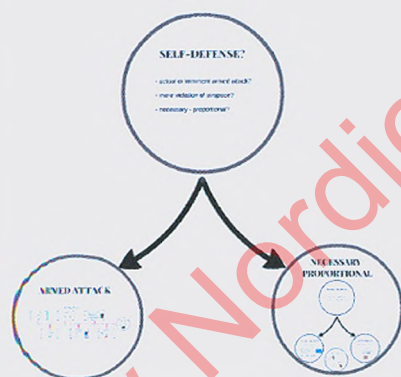
rights and obligations of States in UN Charter

- right of self defense against a civilian aircraft?
- If it is used as means of armed attack like 9/11 attack?
- *a fortiori* - military aircraft



SELF-DEFENSE?

YES!



SELF-DEFENSE?

- actual or imminent armed attack?
- mere violation of airspace?
- necessary - proportional?

ARMED ATTACK



NECESSARY/ PROPORTIONAL



SELF-DEFENSE?

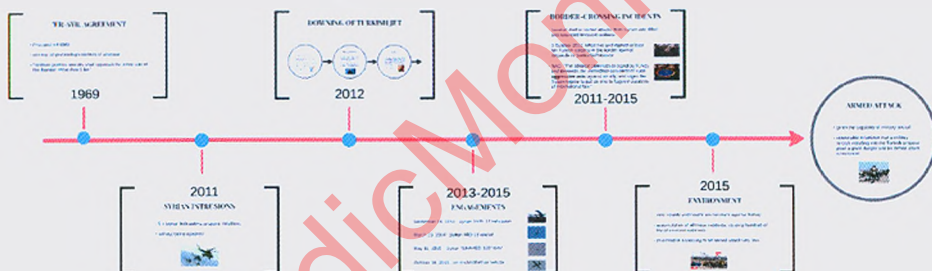
- actual or imminent armed attack?
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- necessary - proportional?

ARMED ATTACK



ARMED ATTACK

BACKGROUND



TR-SYR. AGREEMENT

- Procotol of 1969
- aiming at preventing violations of airspace
- "neither parties aircrafts shall approach the either side of the border more than 5 km"

1969

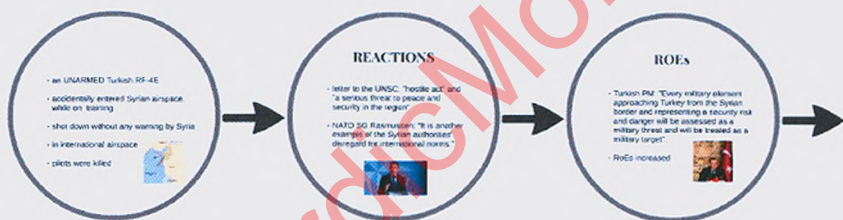
2011

SYRIAN INTRUSIONS

- 5 x Syrian helicopters airspace violations
- without being attacked



DOWNING OF TURKISH JET



2012



- an UNARMED Turkish RF-4E
- accidentally entered Syrian airspace, while on training
- shot down without any warning by Syria
- in international airspace
- pilots were killed



REACTIONS

- letter to the UNSC: "hostile act" and "a serious threat to peace and security in the region"
- NATO SG Rasmussen: "It is another example of the Syrian authorities' disregard for international norms."



ROEs

- Turkish PM: "Every military element approaching Turkey from the Syrian border and representing a security risk and danger will be assessed as a military threat and will be treated as a military target".
- RoEs increased



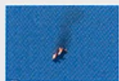
2013-2015

ENGAGEMENTS

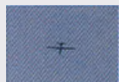
September 16, 2013 - Syrian 1XMI-17 helicopter



March 23, 2014 - Syrian MIG-23 aircraft



May 16, 2015 - Syrian "SHAHED-129" UAV



October 16, 2015 - an unidentified air vehicle



BORDER-CROSSING INCIDENTS

- Several shell or rocket attacks from Syrian side killed and wounded innocent civilians
- 3 October 2012, killed five and injured at least ten Turkish citizens in the border town of Akçakale in Şanlıurfa Province.
- NAC: "The alliance continues to stand by Turkey and demands the immediate cessation of such **aggressive acts** against an ally, and urges the Syrian regime to put an end to flagrant violations of international law."



2011-2015

2015

ENVIRONMENT

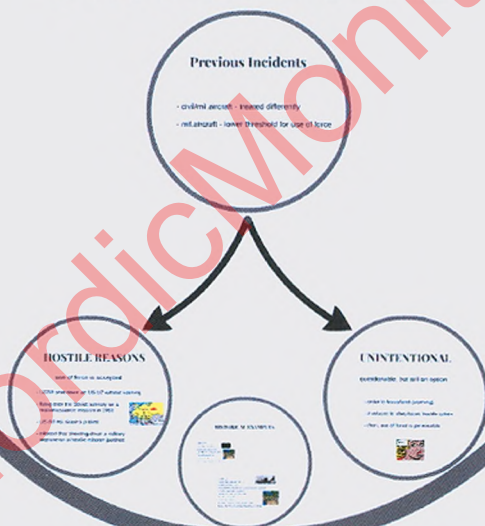
- very volatile and hostile environment against Turkey
- accumulation of all these incidents, causing hundred of life of innocent nationals
- threshold in assessing of an armed attack very low



ARMED ATTACK

- given the capability of military aircraft
- reasonable to believe that a military aircraft intruding into the Turkish airspace pose a great danger and an armed attack is imminent





Previous Incidents

- civil/mil. aircraft - treated differently
- mil. aircraft - lower threshold for use of force

HOSTILE REASONS

use of force is accepted

- USSR shot down an US U2 without warning
- flying over the Soviet territory on a reconnaissance mission in 1960
- US did not issue a protest
- inferred that shooting down a military airplane on a hostile mission justified



HISTORICAL EXAMPLES



UNINTENTIONAL

questionable, but still an option

- order to leave/land (warning)
- if refuses to obey/takes hostile action
- then, use of force is permissible



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HISTORICAL EXAMPLES

- August 24, 1976
- Turkish military aircraft (RF-5A)
- violated Russian airspace - 1-1.5 km
- accidentally - due to the weather conditions
- hit by Soviet Russia with SAM
- without any warning
- pilot & wreckage of the aircraft landed in Turkey



- September 2, 1968
- US military aircraft, Lockheed C-130A-11 (M)
- reported incursion at base in Turkey
- on a reconnaissance mission along the Turkish-Soviet Republic of Armenia border
- was in fly a course parallel to the Soviet border
- NOT to approach the border closer than 100 miles
- shot down by four Soviet MIG-17s
- at no north ward of Moscow
- the six flight crew died, but the other 11 personnel unknown
- the exact cause of why the aircraft strayed into Soviet airspace is unknown



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- violated Russian airspace - 1-1,5 km
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- hit by Soviet Russia with SAM
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- September 2, 1958,
- US military aircraft, (Lockheed C-130A-II-LM)
- departed Incirlik Airbase in Turkey
- on a reconnaissance mission along the Turkish-Soviet Republic of Armenia border
- was to fly a course parallel to the Soviet frontier,
- not to approach the border closer than 100 miles
- shot down by four Soviet MiG-17s
- 34 mi north-west of Yerevan
- the six flight crew dead, but the other 11 personnel unknown
- the exact cause of why the aircraft strayed into Soviet airspace is unknown



WARNED?
YES!

- the 'Karpagonyi Quasi' channels which can be found by the end of railway stretch
- no publicly agreed by all delegates that were reached on 27th October 2011

• 'to change their handling with
immediacy' as an act to avoid
Turkish money market

—(1) *purpose and leadership issues*

- a British passport just being used as evidence, no sightings, other than a newspaper article about a man named Thomas Leggett

- The increasing difficulty with access to support early in life is a potential for future citizens and potential health care
- The increasing demand for participation and involvement in the health care system

—

100

**PRIVATE
PROPERTY
NO
TRESPASSING**

WARNINGS

- warned 10 times/5 minutes
- via "Emergency Guard" channels which can be heard by any civil or military aircraft
- as verbally agreed by RF delegation that was hosted on 15th October 2015
- "to change their heading south immediately" so as not to violate the Turkish national airspace

VERIFIED

- US aircraft and battleships heard
- the spokesman of the "OIR" verified
- a Dutch airliner pilot flying over area witnessed warnings while there was no response and had visual contact with Turkish fighters

HOSTILE INTENT

- the intruding aircrafts were warned appropriately in order to prevent air space violation and possible hostile act
- no response raised the perception and belief that they have hostile intent

DUE DILIGENCE TAKEN?

YES!



DUE DILIGENCE

sovereignty: not only rights - but also legal obligations

- Corfu Channel Case
- Albania mined the Corfu Channel in its ter.waters
- In time of peace - without warning others
- October 22, 1946, 2 British destroyers damaged

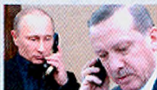


DUTY TO WARN

- The ICJ - Albania "under a duty to warn" of the presence of the mines
- "... every State's obligation not to knowingly allow its territory to be used for acts contrary to the rights of other States."
- states are under an obligation, particularly in peacetime, if they are going to use hostile force, they must first give warning

WARNINGS

- to jets in flight
- to RF about TR perception/robust ROEs



VIOLATIONS of RF - WARNINGS

VIOLATIONS

- October 5, 2015 - RF SU-26
- October 4, 2015 - RF SU-24
- October 29, 2015 - RF helicopter

MEETINGS

- Ambassador of RF - MSA
- Defence Attaché of RF - TGS
- Vice Undersecretary of RF Ambassador - TGS
- Deputy Chief of RF Air and Space Forces - TGS

ISSUES ADDRESSED

- violations by RF
- RF authorities duly notified about our ROEs
- recurrently warned that RF's set to use force against all unauthorized aircraft violating Turkish airspace approaching from Syria
- request not to come closer to Turkish borders more than 5 NM
- to later VHF Guard Frequency (emergency)

RF RESPONSES

- the precision and accuracy of their regional maps - increased in m.
- the air crew notified about the issues negotiated
- the emergency calls towards RF aircraft expected through VHF Guard channel

VIOLATIONS of RF - WARNINGS

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TURKEY SHOT DOWN RUSSIAN JET

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Was Sovereignty Violated?



YES!



NO! SOVEREIGNTY TAKEN?



WHAT MEASURES CAN BE TAKEN?



SELF-DEFENSE?



WAR?



NO JUMPING OFF BRIDGE

Questions?

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