



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A MAIN EXAMINATION

AUGUST – DECEMBER 2018 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 403: INTERNATIONAL AIR AND SPACE LAW

**P.O. Box 62157
00200 Nairobi - KENYA
Telephone: 891601-6
Fax: 254-20-891084
E-mail: academics@cuea.edu**

Date: DECEMBER 2018	Duration: 2 Hours
INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions	

Q1. FACTS OF THE CASE

On 3 July 1988, a commercial Iran-Air flight was shot down in the Strait of Hormuz by the USS Vincennes. The incident occurred in a zone dominated by political and military conflict against the backdrop of the Iran-Iraq War.

The airliner took off from Bandar Abbas airport in Iran, which was jointly used by military and civilian planes. It ascended on its usual climb profile, when it was picked up by the USS Vincennes' radar. Records indicate that the highly sophisticated instruments aboard the AEGIS-Cruiser monitored the airplane's flight path correctly.

Nonetheless, the commander of the USS Vincennes argued having erroneously considered it to be an Iranian F-14 with hostile intent, which after attempting to contact the incoming plane and receiving no response, two missiles were launched, breaking the airplane in half and killing all 290 passengers and crew.

The US attributed the downing to a combination of human error and technical shortcomings arguing that the USS Vincennes had no capability for broadcasting on civilian frequencies, while military frequencies were not monitored by the airliner. The US further argues that the continued silence was interpreted as a vindication of the commander's belief in an imminent threat.

In light of a previous Iraqi missile attack on another US vessel and the narrow

time window for a decision, the US claimed that the crew succumbed to 'scenario fulfilment', where they would follow a trained pattern, disregarding any sensory data pointing to the contrary.

Iran rejected such explanation arguing that the ship was able to handle a far greater degree of complexity than a single radar contact. Instead it blamed the disaster on the commander's over-aggressiveness and claimed the plane was knowingly and willingly shot down.

Iran argued that even if a fighter jet had flown over the USS Vincennes, downing an airplane in Iranian airspace would have constituted a breach of international law regardless of the plane's affiliation.

As an expert of air and space law, write a short legal essay addressing the substantive matter giving rise to the case. **(30 Marks)**

Q2. Annex 13 of the 1944 Chicago convention on Civil Aviation discusses accidents of airplanes and incident investigation. Explain the process of investigation of airplane accidents. **(20 Marks)**

Q3. Discuss the question of liability in Air Space and Outer Space Law with a special focus on:

1. When the damage is caused on earth **(10 Marks)**
2. When the damage is caused in the outer space **(10 Marks)**

Q4. After having defined the concepts of "air law" and "outer space law", establish the difference if any between the two legal regimes. **(20 Marks)**

Q5. International customary law considers the moon and other celestial bodies as common heritage of humankind, free for exploration and use by all States, as they cannot be subject to national appropriation by any means.

Discuss various reasons justifying why the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies known as the Moon Agreement, (MA) capturing such principle has received limited acceptance.

(20 Marks)

END