

# WORC<sup>TM</sup> 2026

World Overflight Risk Conference

## The Downing of Ukraine International Airlines Flight 752 January 8, 2020

Joe Fiorante, K.C. / Partner / CFM Lawyers LLP  
Jamie Thornback / Partner / CFM Lawyers LLP



# UIA Flight 752

## Overview

- On January 8, 2020 Ukraine International Airlines Flight 752 departed Tehran's Ayatollah Khomeini International Airport (IKA) bound for Kiev
- Shortly after take off, the flight was hit by two surface to air missiles launched by members of the Iranian Islamic Revolutionary Guard (IRGC)
- All 176 passengers and crew onboard died including 55 Canadian citizens and 30 permanent residents of Canada
- Flight 752 occurred at a time of rapidly increasing tensions between Iran and USA

# UIA Flight 752

## Rising Military Tensions

- Tensions between US and Iran date back at least as far as the overthrow of the Shah
- For the most part, the tensions involved acts carried out by proxies for both states
- Tensions started to escalate again in 2018
- April 2018-US Government designated the IRGC as a foreign terrorist organization.
- May 2018-The US government officially withdrew from the 2015 Joint Comprehensive Plan of Action (JCPOA) nuclear agreement.

## Key Events in 2019

- May/June 2019-oil tankers from Saudi Arabia, the UAE and Norway were attacked-the US blamed the IRGC
- June 20, 2019-Iran shots down an unmanned American Drone that Iran says violated its airspace.
- July 18, 2019-US forces downed an Iranian drone jamming the Strait of Hormuz
- September 2019-via a proxy (Houthi movement in Yemen) Iran launched a cruise missile attack against Saudi Arabian energy infrastructure

# UIA Flight 752

## Key Events 2019

- December 27, 2019-Iran launches an attack in Iraq killing an American contractor was killed, and wounding four US troops
- December 29, 2019- in response, the US launches airstrikes on targets in Iraq and Syria against the Iranian backed group-Kata'ib Hezbollah (Hezbollah)
- December 31, 2019- supporters of Hezbollah and Shia militias surround and enter the US embassy compound in Baghdad. Outer buildings were set on fire. Militia withdrew upon the promise that the Iraqi parliament would hold a vote to expel US forces from Iraq.

## Events of January 2020

- January 3, 2020, the US launches a targeted airstrike by drone killing Qods Force commander Major General Qasem Soleimani and Hezbollah leader Abu Mahdi Al-Muhandis.
- General Soleimani was arguably the second most powerful person in Iran.
- Iran's Supreme Leader threatens to retaliate for the killings.
- President Trump warns via Twitter that if there is any retaliation by Iran, the US will attack 52 sites in Iran including culturally important sites.

# UJA Flight 752

## Morning of January 8, 2020

- Iran launches ballistic missile attack on US forces at two bases in Iraq in the early morning hours of January 8, 2020 (local time)
- Missiles transit through busy commercial airspace without warning
- Iran places its military and air defence systems on high alert in anticipation of US counterattack
- Iran does not issue any NOTAMs or advisories
- Flight 752 departs at 6:12 am local time and is shot down by two missiles shortly after takeoff



Figure 2: Global News – Parking lot camera showing first missile launch



Figure 3: Global News – Parking lot camera showing second missile launch



Figure 4: Global News – Parking lot camera showing aircraft on



Figure 5: *The New York Times* – Ground security camera footage

# UIA Flight 752

## Legal Action in Canada

- 101 individual claims and a class action filed against UIA in Superior Court of Ontario in Toronto
- Cases proceeded to trial under common case management on the issue of liability under Montreal Convention
- Trial conducted as a hybrid trial – all direct evidence filed in form of affidavits
- Case proceeded trial within 4 years of the downing
- Trial lasted 17 days before judge alone

## Key Issues in the Case

- Passenger Rights governed by Montreal Convention 1999
- Lessons of MH 17
- Industry Regulations, Standards and Practices for operations in conflict zones
- Adequacy of risk assessments conducted by UIA
- Conduct of other airlines in region

# UIA Flight 752

## Legal Context

- The rights of the passengers against the airline are governed by Montreal Convention of 1999
- Convention applies to international carriage of passengers by air
- Sets out rules on jurisdiction and liability but not measure of damages
- Courts of Canada have jurisdiction on the basis of residency of passengers and/or place of final destination (Toronto)

## Montreal Convention 1999 – Article 21

### Article 21 — Compensation in Case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.
2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:
  - (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
  - (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

# UIA Flight 752

## Legal Context

- Article 21 establishes two-tiered liability regime
- Airline strictly liable up to approximately \$180,000 USD per passenger in the event of injury or death due to an *"accident"*
- *Accident* broadly defined in case law to include events external to the passenger including terrorist attacks and hijackings
- Airline cannot avail itself of the limits on liability if it was negligent
- Airline bears the burden of disproving negligence

# Malaysian Airlines Flight 17

July 17, 2024



- Shot down by Russian BUK 2 surface to air missile from an altitude of 30,000 feet over Eastern Ukraine
- 298 fatalities including 15 crew
- No survivors
- Investigated by Dutch Safety Board which produced three landmark reports

# MH17 Dutch Safety Board Report #1

- Dutch Safety Board Report #1 published October 2015
- Identified serious gaps in the industry's perception and assessment of risks of operating in or near conflict zones
- Open airspace does not necessarily mean safe airspace
- Vast majority of states engaged in conflict do not close airspace to civilian traffic

- Onus is on the operator to assess the safety route

If a particular foreign airspace is not closed or restricted, and the state in which an operator is based has not issued an overflight prohibition or restriction that applies to this particular airspace, it is the operator that decides whether to use that airspace or not. This means that operators have a responsibility to determine whether a flight route is safe enough to be used. Operators can use various information sources, such as public sources, sources from the government of the state in which they are based, external consultants, other operators and its own personnel. The latter also includes staff specifically charged with security aspects.

# MH17 Dutch Safety Report #1

- Deficiencies in Risk Assessment of Low Probability but High Severity Events

## 9.2 MH17: no integrated risk assessment

This investigation reveals that, prior to the crash of flight MH17, none of the parties involved adequately identified potential threats that the conflict in the eastern part of Ukraine posed to civil aviation flying over the area.

- Most operators assumed that an airspace which is not closed must be safe. Operators adapted their flight plans to accommodate the airspace restrictions, but did not make a connection with the armed conflict taking place below. Insofar as the Dutch Safety Board has been able to ascertain, there was one operator that discontinued its flights over that area out of caution due to the increasing unrest in Ukraine. But that was already before the armed conflict had arisen in the eastern part of the country.

# MH17 Dutch Safety Report #1

- Recommendations to the aviation industry

## To ICAO:

1. Incorporate in Standards that states dealing with an armed conflict in their territory shall at an early stage publish information that is as specific as possible regarding the nature and extent of threats of that conflict and its consequences for civil aviation. Provide clear definitions of relevant terms, such as conflict zone and armed conflict.

## To IATA:

7. Ensure that the Standards regarding risk assessment are also reflected in the IATA Operational Safety Audits (IOSA).

# ICAO Manual 10084

- First published in 2017 in response to DSB recommendations
- 2<sup>nd</sup> Edition in effect at time of UIA 752
- Provides comprehensive guidance on the assessment of risks of operating over or near conflict zones



ICAO

Doc 10084

Risk Assessment Manual for Civil Aircraft  
Operations Over or Near Conflict Zones

Second Edition, 2018



Approved by and published under the authority of the Secretary General

INTERNATIONAL CIVIL AVIATION ORGANIZATION

# ICAO Manual 10084

**Conflict zones.** Airspace over areas where armed conflict is occurring or is likely to occur between militarized parties, and is also taken to include airspace over areas where such parties are in a heightened state of military alert or tension, which might endanger civil aircraft.

**Risk.** The potential for an unwanted or calculated outcome resulting from an occurrence. Risk can be estimated by considering the likelihood of threats, vulnerabilities and consequences or impacts.

**Safety.** The state in which risks associated with aviation activities, related to, or in direct support of the operation of aircraft, are reduced and controlled to an acceptable level.

**Security.** Safeguarding civil aviation against acts of unlawful interference. This objective is achieved by a combination of measures and human and material resources.



Doc 10084

Risk Assessment Manual for Civil Aircraft  
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INTERNATIONAL CIVIL AVIATION ORGANIZATION

# ICAO Manual 18004

- Requires comprehensive assessment of risks of operation over or near conflict zone from both security and safety perspectives

4.1.2 The characteristics of armed conflicts require a risk assessment process that should appropriately consider both security and safety elements. Although security and safety assessments are different in nature, and follow distinct processes, they need to be complementary. The integration of these two types of assessment is also necessary to consider any possible cross-interference between the two. Security deals with the intentional act to commit an act of unlawful interference, whereas safety is concerned with the management of hazards stemming from unintentional negative impact on the performance of the systems related to the operation. A comprehensive risk assessment process will address all potential actions involving implications for civil aircraft operations over or near conflict zones.

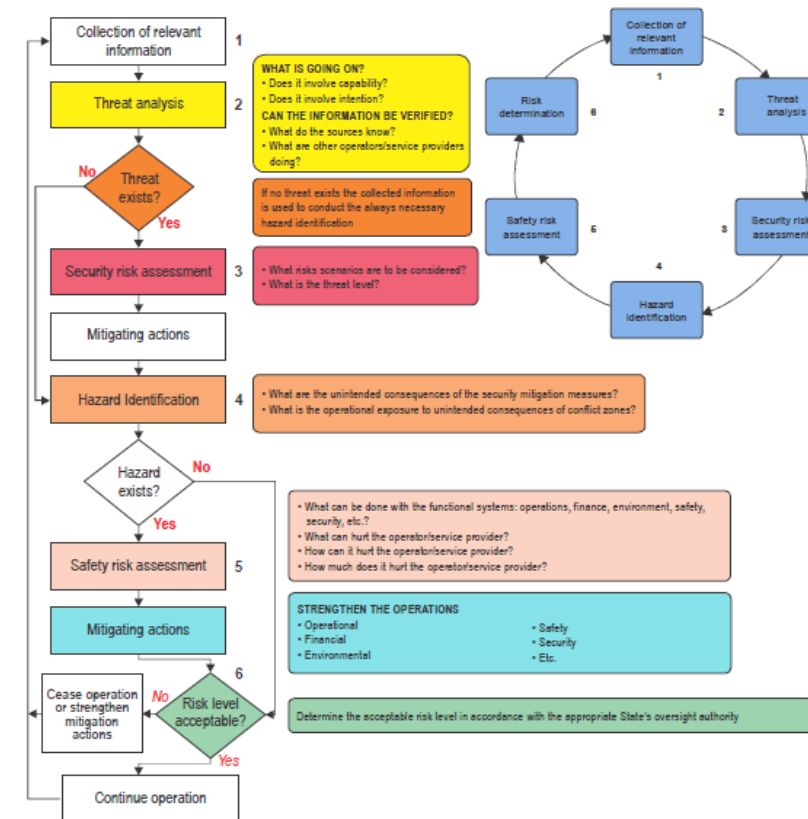


Figure 4-2. Flow chart of the risk assessment cycle for operators and service providers

# ICAO Manual 10084

- Collection of information, especially open source data, is critical to the process

4.6.4 The illustrative risk assessment process in Figure 4-2 is an inclusive mechanism to determine the correlated operational risk from operations over or near conflict zones and serves as enabler for an informed risk-based decision on the continuation of affected operations. The six components — collection and sharing of relevant information, threat analysis, security risk assessment, hazard identification, safety risk assessment, and risk determination — are complementary in nature and build on interfaces designed to address appropriately any unintended consequences of applied mitigation strategies. It is important to consider this process as a continuous mechanism that should be an ongoing activity. Emphasis is placed on the availability of appropriate information which is the prerequisite for a functioning risk assessment process.

- Those who do not have reliable access to this sort of information may wish to consider subscribing to services provided by organizations that specialize in providing information and analysis about conflict and security issues. Some aircraft operators are known to be already using such information and analysis to inform their risk assessments.

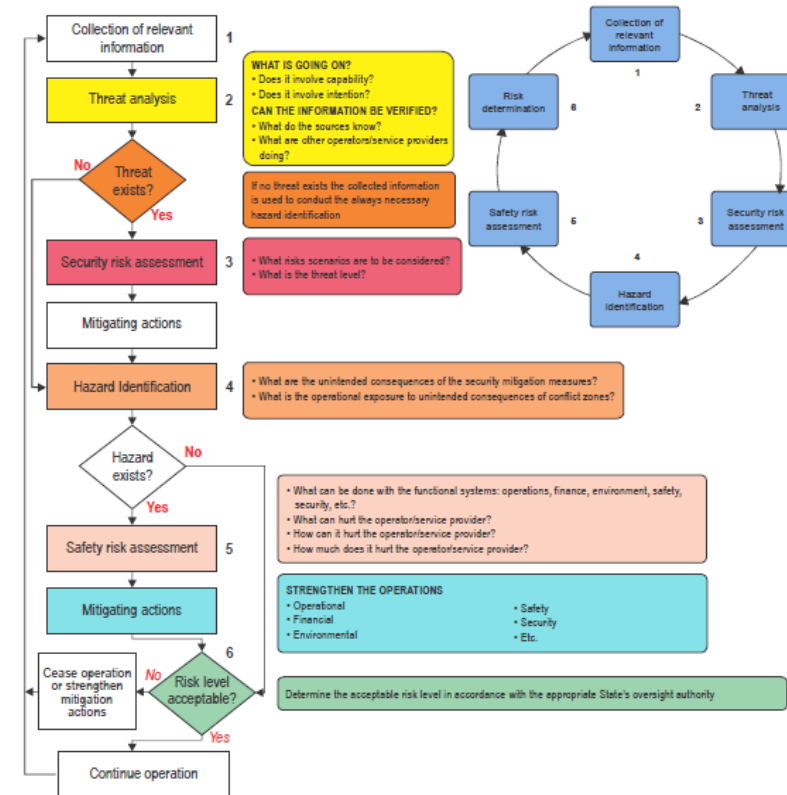


Figure 4-2. Flow chart of the risk assessment cycle for operators and service providers

# ICAO 10084 Key Qualitative Factors

## RELEVANT INFORMATION FROM SOCIAL SOURCES

1. Bearing in mind the key risk factors identified to be taken into account when conducting a risk assessment, States or aircraft operators wishing to conduct their own assessment of the risk of flying over or near a particular zone of conflict or high tension may wish to understand:

- a) the types of military equipment available to the parties and, in particular, the likelihood that they may have access to SAMs. This might be evidenced by reporting of the use of missile attacks against military aircraft;
- b) the broader military capabilities of parties. Larger State military actors would be more likely to have access to SAMs and the training to use them. At the same time they are likely to have more robust command and control regimes and be better trained in target identification than non-State actors;
- c) the nature of the conflict, and in particular whether one side was reported to be using, or was considered likely to use, air power against the other;
- d) indications or notifications of the loss of effective control over the relevant airspace by the State or organization responsible for providing air navigation services; and
- e) specific areas or locations that may be of particular strategic importance or sensitivity in the context of the conflict, such as key infrastructure or sites of military importance, and which might therefore be considered as likely targets for air attack and are more likely to be guarded by SAMs.

# UIA Flight 752

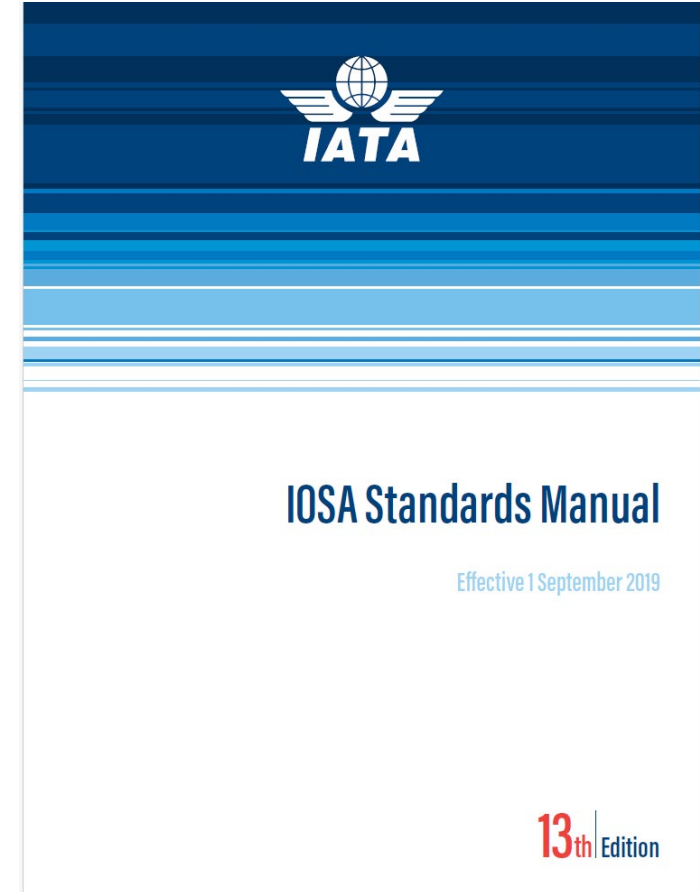
## IATA/IOSA Manuals

- IATA is the global trade association for airlines
- Incorporates ICAO standards into set of standardized airline standards known as IOSA
- UIA was a member of IATA
- IOSA Standards Manuals required Flight and Dispatch units of member airlines to assess hazards of operations in areas affected by armed combat prior to flight:

Risk assessment and mitigation is an element of the Safety Risk Management component of the SMS framework.

Hazards relevant to the conduct of aircraft operations are potentially associated with:

- Weather (e.g. adverse, extreme and space);
- Geophysical events (e.g. volcanic ash, earthquakes, tsunamis);
- Operations in airspace affected by armed conflict;



# UIA Risk Assessment of Iranian Airspace January 2020

## AVSEC Manual Procedures

- Manuals lacked detailed procedures for assessment of conflict zone risks
- No reference to ICAO Manual 10084
- No requirement to liaise with safety, dispatch or flight operations units

## Aviation Security Program of “Ukraine International Airlines”

03.01.2020

№ 1

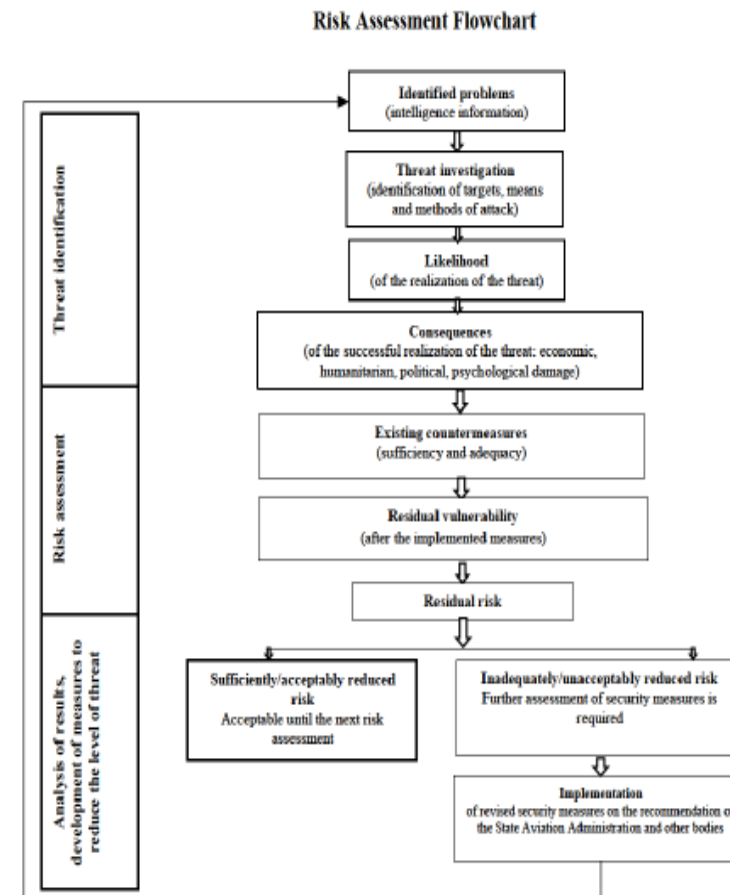
### 3.4.10 Threat assessment and risk management.

The assessment of the degree of threats, actual and potential risks to UIA in the field of aviation security shall be carried out on an ongoing basis by the Deputy President for Aviation Security based on the analysis of the situation at UIA, at the airports of the countries where flights are operated, taking into account information received from the authorized civil aviation body, competent authorities (intelligence and law enforcement) of Ukraine, and the media, and shall be carried out with the aim of timely response to threats. The methodology for threat assessment and risk management is set out in the Aviation Security Risk Management Program of Ukraine International Airlines JSC.

# UIA Risk Assessment of Iranian Airspace January 2020

## AVSEC Manual Procedures

- Manual contained basic risk assessment flowchart
- No instructions on collecting necessary information to assess conflict zone situation



# UIA Risk Assessment of Iranian Airspace January 2020

## Safety Responsibility

- Ops Manual identifies number of units within company with responsibility for safety of flights including Flight 752
- VP Safety
- OCC
- Flight Operations
- Commander

## OPERATIONS MANUAL PART A GENERAL FLIGHT OPERATIONS MANUAL



# UIA Risk Assessment of Iranian Airspace January 2020

## Commander – Non Shared Responsibility Model

- Commander has final authority

### **1.4 AUTHORITY, DUTIES AND RESPONSIBILITIES OF THE COMMANDER**

#### **1.4.1 General Responsibilities**

The commander exercises the final Authority as to the operation of the airplane. He shall take all measures required by safety, whether on the ground or in flight.

**Maintain familiarity with relevant Ukraine Civil Aviation Regulations and international air legislation and accepted aviation practices and procedures.**

Maintain familiarity with such provisions of the UIA Operations Manual as are necessary to fulfill his function

# UIA Risk Assessment of Iranian Airspace January 2020

## OCC Manual

- Reflects requirements of IATA/IOSA
- No detailed instructions on assessing conflict zone risks
- No reference to ICAO 10084 guidance

## OPERATIONS CONTROL MANUAL



OCC Safety Action Group (OCC SAG) provides hazards analysis, safety risk assessment and mitigation.

The role of OCC SAG determines hazards that relevant to operations control and associated with:

- Weather (e.g. adverse, extreme and space);
- Geophysical events (e.g. volcanic ash, earthquakes, tsunamis);
- Operations in airspace affected by armed conflict;
- ATM congestion;

# UIA Risk Assessment of Iranian Airspace January 2020

## January 3, 2020 Assassination of General Soleimani

- Updated assessment conducted January 6, 2020 – 3 days later
- Limited collection of open source information
- No review of FAA conflict zone NOTAMs
- No review of Osprey
- No contemporaneous records of risk assessment meeting
- No “native” version of risk assessment certificate

**CERTIFICATE**  
on the Assessment of Security Threats and Risks During Flights to Imam Khomeini International Airport, Tehran, Islamic Republic of Iran

No.	Type of threat	Probability	Consequence severity	Vulnerability	LEVEL OF RISK	Risk acceptance criterion
1	Use of MANPADS OR SAMs	Medium-low	High	Medium	Medium-low	Acceptable
2	Use of remotely piloted aircraft systems (RPAS)	Medium-low	Medium-high	Medium-high	Medium-low	Acceptable

On the night of January 3, 2020, US troops launched an airstrike using RPAS near Baghdad Airport (Republic of Iraq), killing Qasem Soleimani, commander of the Quds Force of the Islamic Revolutionary Guard Corps (Islamic Republic of Iran). After the general's assassination, the Iranian official authorities and Iran's supreme leader ayatollah Ali Khamenei promised to take revenge on the United States for the murder of Soleimani.

Due to these events, relations between the United States and Iran have deteriorated.

As a result of monitoring and assessment of security threats and risks, it was found that Imam Khomeini International Airport, to which the airline operates flights, is operating normally. The overall security situation at the airport apron is stable. According to information received from crew members during the survey after flights on the Kyiv - Tehran - Kyiv route from January 03 to January 06, 2020, no suspicious persons, suspicious military activities, armed persons or military equipment were observed directly at the airport or in the surrounding area. The distance from the Imam Khomeini International Airport (Tehran, Iran) to Baghdad, Iraq is approximately 900 km.

All flights to Imam Khomeini International Airport are carried out according to the requirements of the current NOTAMs of both the aviation authorities of Ukraine and other countries, including the Islamic Republic of Iran, as well as EASA bulletins. There are no restrictions on flights to the Islamic Republic of Iran. The situation related to the events that took place on January 3, 2020, is also monitored and assessed on an ongoing basis. Information on the state of security is being monitored both throughout the Islamic Republic of Iran and near the Imam Khomeini International Airport.

Airlines operating flights to Imam Khomeini International Airport: Azerbaijan Airlines, Qatar Airways, Lufthansa, Austrian Airlines, AtlasGlobal, Aeroflot, Iran Air, Iran Airtour, Mahan Airlines, Turkish Airlines, Emirates.

The Deputy President for Aviation Security-Director

January 06, 2020

/signature/

P.M. Martynenko

# UIA Risk Assessment of Iranian Airspace January 2020

## January 8, 2020 Iranian Ballistic Missile Attack on US Forces

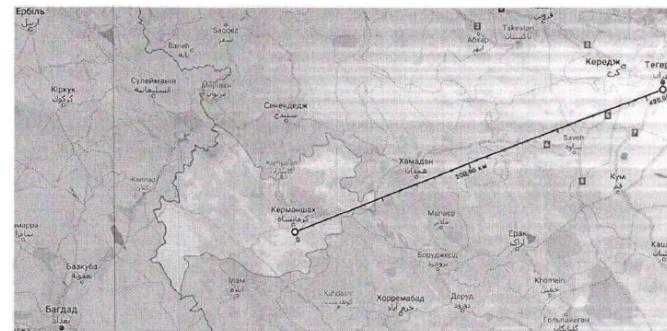
- One person on duty monitoring events in Iran
- Collection of open source information limited to a few media outlets
- No review of FAA conflict zone NOTAMs
- No review of Osprey alerts
- No communication with safety group in UIA
- No communication with commander of Flight 752
- No “native” version of risk assessment certificate retained

**CERTIFICATE**  
on the Assessment of Security Threats and Risks During Flights to Imam Khomeini International Airport, Tehran, Islamic Republic of Iran

Seq. No.	Type of threat	Probability	Consequence severity	Vulnerability	LEVEL OF RISK	Risk acceptance criterion
1	Use of MANPADS OR SAMs	Medium	High	Medium	Medium	Acceptable
2	Use of remotely piloted aircraft systems (RPAS)	Medium-low	Medium-high	Medium-high	Medium-low	Acceptable

At approximately 02:00 Tehran time (00:30 Kyiv time) on January 08, 2020, Iran launched missile strikes on the US military bases in Iraq.

Using open sources on the Internet, it was found that the missiles were fired toward Iraq from the Kermandshah province ([https://www.rbc.ru/rbcfreenews/5e151e5f9a794786f8f09c6d?utm\\_source=yxnews&utm\\_medium=desktop&utm\\_referrer=https%3A%2F%2Fyandex.ru%2Fnews](https://www.rbc.ru/rbcfreenews/5e151e5f9a794786f8f09c6d?utm_source=yxnews&utm_medium=desktop&utm_referrer=https%3A%2F%2Fyandex.ru%2Fnews), <https://www.depo.ua/ukr/svit/iran-pidverdiv-udar-po-amerikanskiy-aviabazi-v-iraku-202001081091129>), which is located near the border with Iraq. The distance from Tehran to this province is approximately 420 km. The map is attached.



Flight routes to/from Imam Khomeini International Airport did not pass through Iraqi airspace. After taking off from Imam Khomeini International Airport, UIA aircraft moved northwest toward Turkey and their route was far from the Iraqi border.



There was no information that would give grounds for not operating the Tehran-Kyiv flight. In connection with these events, it was decided to continue monitoring the situation that has developed against the backdrop of deteriorating military-political relations between the United States and Iran.

The risk acceptance criterion for flights to/from Imam Khomeini International Airport was "Acceptable".

The Deputy President for Aviation Security – Director /signature/

P.M. Martynenko

January 08, 2020

# UIA Risk Assessment of Iranian Airspace January 2020

## January 8, 2020 Risk Assessment

- No assessment of Iranian military command and control structures
- No understanding of the location of high value military targets in relation to flight path

# UIA Flight 752

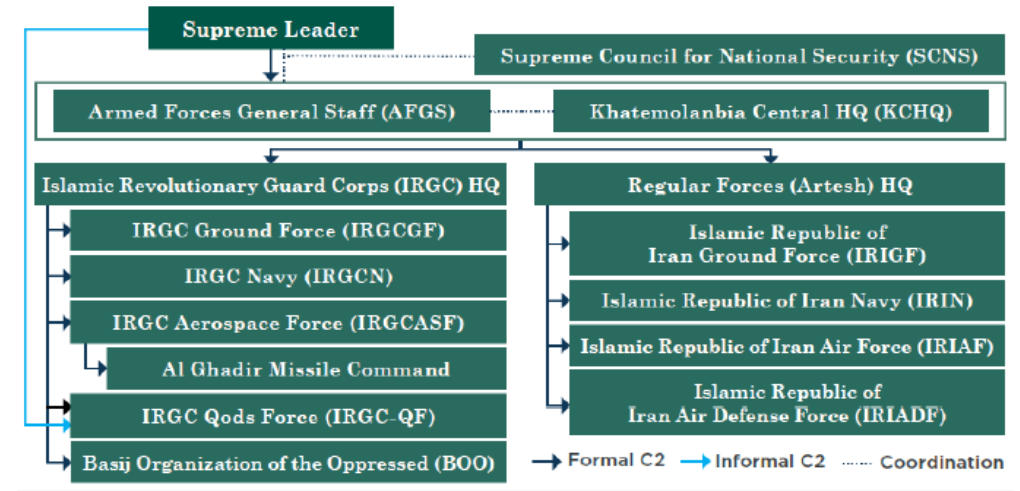
## Iran Military Structure

- Iran's military consists of 2 separate armies – the Artesh (regular army) and the Iranian Revolutionary Guard
- Both have responsibility for air defence
- Command and control structure is complex
- At times of heightened alert, decision making responsibility is believed to be delegated down to the field level

## Command & Control

### National Military Command and Control

1805-17889



Source: "Iran Military Power, Ensuring Regime Survival and Security Regional Dominance" Defense Intelligence Agency

# UIA Flight 752

## Iran Military Structure

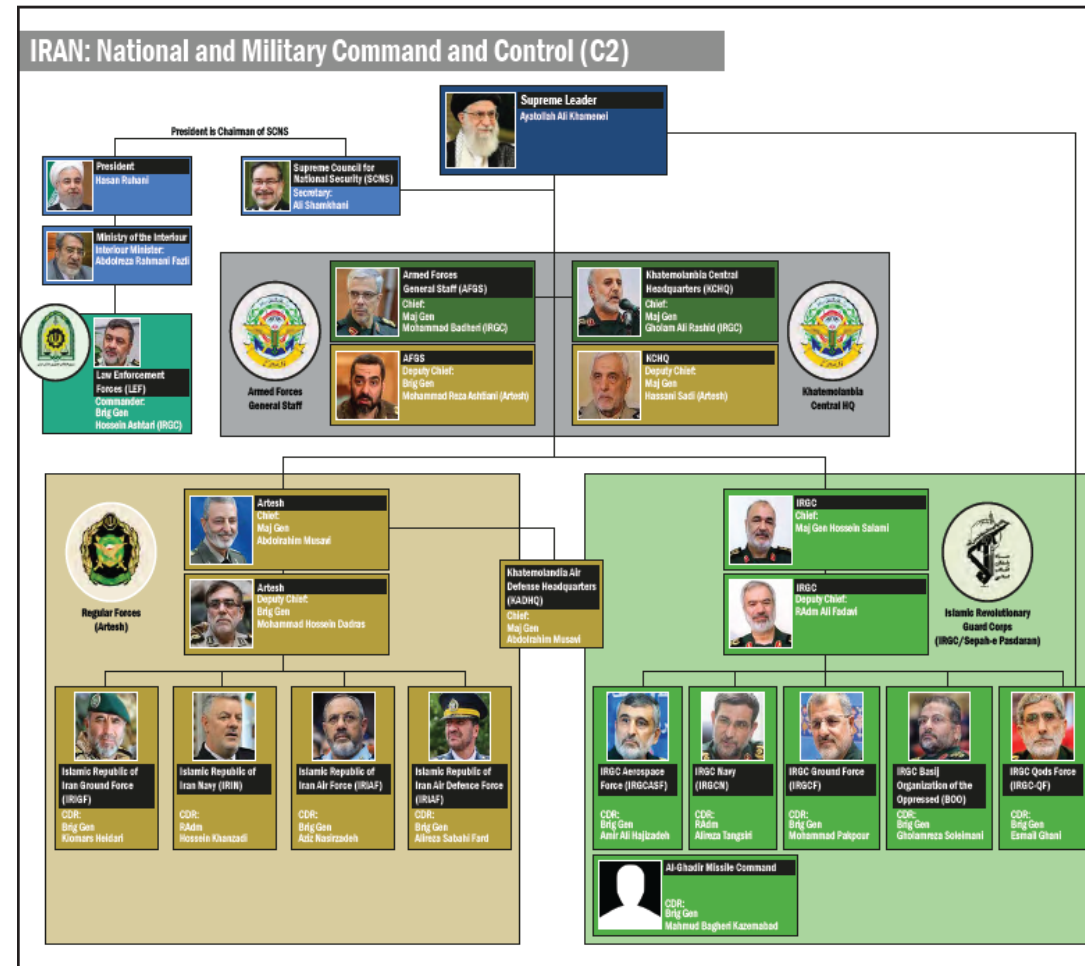


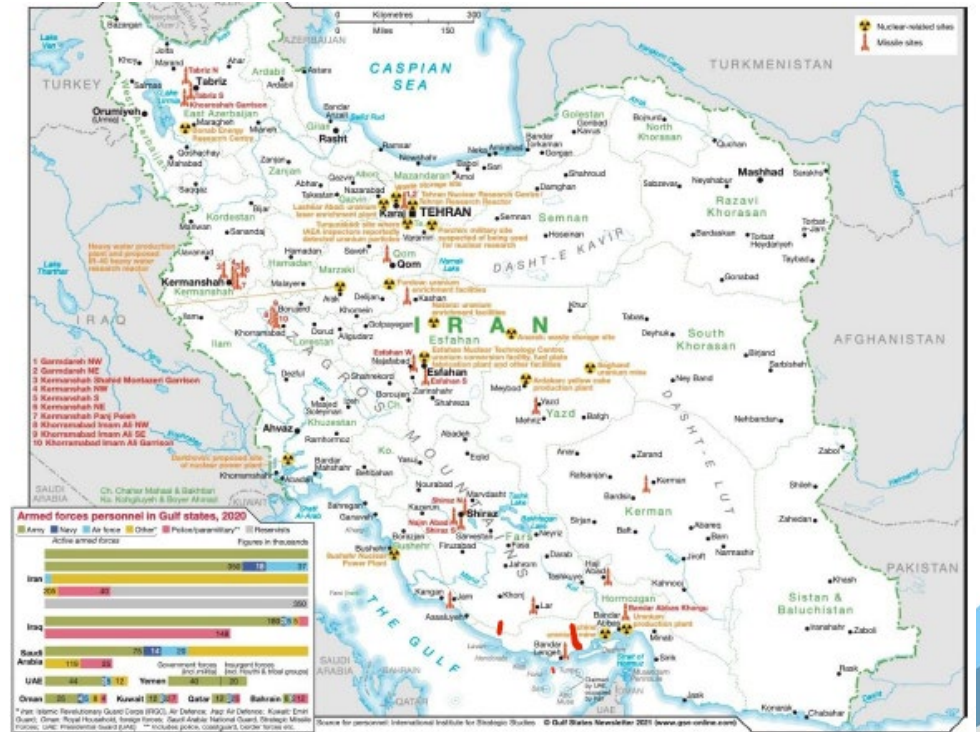
Figure 15: Organizational chart of key Iranian military and civilian leadership in January 2020<sup>159</sup>

# Flight Path vs. Location of High Value Targets

## Flight 752 Route



## Military Sites in Iran (open source)



# FAA Assessment of Iranian Airspace January 8, 2020

- Issued at 00:07 UTC time
- Prohibits American aircraft from entering Iranian airspace
- Flight 752 departed IKA at 2:42 UTC (6:12 am local time)



## Federal Aviation Administration

A0002/20 NOTAMN

Q) KICZ/QRDLP/////

A) KICZ PART 1 OF 2

B) 2001080010

C) PERM

E) SECURITY.. UNITED STATES OF AMERICA PROHIBITION AGAINST CERTAIN FLIGHTS IN THE TEHRAN FLIGHT INFORMATION REGION (FIR) (OIIX).

THOSE PERSONS DESCRIBED IN PARAGRAPH A (APPLICABILITY) BELOW ARE PROHIBITED FROM OPERATING IN THE TEHRAN FLIGHT INFORMATION REGION (FIR) (OIIX) DUE TO HEIGHTENED MILITARY ACTIVITIES AND INCREASED POLITICAL TENSIONS IN THE MIDDLE EAST, WHICH PRESENT AN INADVERTENT RISK TO U.S. CIVIL AVIATION OPERATIONS DUE TO THE POTENTIAL FOR MIS-CALCULATION OR MIS-IDENTIFICATION.

A. APPLICABILITY. THIS NOTAM APPLIES TO: ALL U.S. AIR CARRIERS AND COMMERCIAL OPERATORS; ALL PERSONS EXERCISING THE PRIVILEGES OF AN AIRMAN CERTIFICATE ISSUED BY THE FAA, EXCEPT SUCH PERSONS OPERATING U.S.-REGISTERED AIRCRAFT FOR A FOREIGN AIR CARRIER; AND ALL OPERATORS OF AIRCRAFT REGISTERED IN THE UNITED STATES, EXCEPT WHERE THE OPERATOR OF SUCH AIRCRAFT IS A FOREIGN AIR CARRIER.

B. PERMITTED OPERATIONS. THIS NOTAM DOES NOT PROHIBIT PERSONS DESCRIBED IN PARAGRAPH A (APPLICABILITY) FROM CONDUCTING FLIGHT OPERATIONS IN THE ABOVE-NAMED AREA WHEN SUCH OPERATIONS ARE AUTHORIZED EITHER BY ANOTHER AGENCY OF THE UNITED STATES GOVERNMENT  
END PART 1 OF 2

# Osprey Assessment of Iranian Airspace January 8, 2020

- Issued at 00:07 UTC time
- Distributed free by email to registered subscribers
- Based on analysis of open-source intelligence collected from over 200,000 sources in 65 languages
- Summary version posted on Twitter



OSPREY

FLIGHT SOLUTIONS

**CRITICAL ALERT**

**07-Jan-2020: Iraq - Iran conducts ballistic missile strikes against US military targets, defer all flight over Iraq & Iran**

The US Department of Defense has confirmed that at approximately 2230Z on 7 January, Iran launched more than 12 short-range ballistic missiles (SRBMs) targeting Ain Al Asad Air Base (ORAA/IQA) in Iraq's Anbar Province and Erbil International Airport (ORER/EBL) in Iraq's Kurdistan Region. No information has been verified regarding casualties and/or material damage; however, details are still emerging as the situation remains fluid and subject to change. Additional SRBM launches from Iran into Iraq targeting locations where US military advisers are present could occur within the next 12-24 hours with no notice. On 2 January, the US conducted airstrikes against Iranian-linked targets at Baghdad International Airport (ORBI/BGW). Abu Mahdi al-Muhandis, the leader of the Iraqi Popular Mobilisation Unit (PMU) Kataib Hezbollah (KH) militia, and Iran's Islamic Revolutionary Guard Corps Quds Force (IRGC-QF) commander, Qasem Soleimani, were killed in the strikes. Iranian Supreme Leader Ayatollah Ali Khomeini has vowed to seek revenge for the killing of Soleimani, and Iraqi PMU militias have also called for retaliation to the strikes. Of note, KH has warned Iraqi security forces to stay at least 1000m away from bases where US military advisers are present in Iraq, starting on 5 January. EASA as well as the US, UK, German and French civil aviation authorities have each issued similar stringent guidance to operators in the past year regarding the enduring hazardous security situation over Iraq, predominately at altitudes below FL260.

# Osprey Assessment of Iranian Airspace January 8, 2020

- Warns of dangers of ballistic missiles in commercial airspace
- Warns of Iranian history of launching missiles without warning
- Warns of Iran's aggressive shootdown policy

## Advice

**Approvals:** As a precaution, conduct operational risk-based identification of divert and alternate airports for flight schedules with planned stops at aerodromes in the country or with overflight of the airspace. Operators are advised to ensure flight plans are correctly filed, attain proper special approvals for flight operations to sensitive locations and obtain relevant overflight permits prior to departure. In addition, ensure crews scheduled to operate to or over the country in the near term are fully aware of the latest security situation.

**Missile Launches:** Unannounced rocket and missile launches that transit airspace used by civilian aircraft pose a latent threat to operations at all altitudes. The country has a history of not issuing adequate notice of activities in its airspace that could affect flight safety. Multiple safety of flight concerns emanate from a situation where a missile malfunctions during the boost, mid-course or terminal phases of flight. Such an event would cause the missile to fly an unplanned trajectory and altitude profile which could expose overflying aircraft to mid-air collision, route diversion and or debris splashdown issues. Leading civil aviation governing bodies have standing notices advising operators of the threat to civil aviation in the airspace due to unannounced military activity, rocket test firings and or missile launches.

**Shoot-down Policy:** The country has an aggressive air intercept and shoot-down policy which allows air and air defence forces to intercept and disable aerial targets violating airspace regulations. Military air and air defence assets may be employed to down aerial targets under the auspice of the policy. While legal civil aviation flights are unlikely to be directly targeted, there remains a latent but credible risk of misidentification and interception by military air and air defence assets.

# Osprey Assessment of Iranian Airspace January 8, 2020

- Warns US retaliation likely
- Reports that ballistic missiles launched by Iran likely transited busy commercial airways
- Assesses risk level as EXTREME for all Iranian airspace at all levels

## Analysis

The US is likely to respond to the reported SRBM attacks into Iraq with strikes against military-centric targets in Iran within the next 72-96 hours. Follow-on Iranian ballistic and/or cruise missile as well as drone strikes against US interests in the Middle East region would become a credible scenario depending on the scale and severity of any US strikes. Further short-notice airspace restrictions in the Middle East region may be enacted should open armed conflict between the US and Iran escalate further. Operators should remain prepared for at least a temporary loss of access to FIR Tehran (OIIX) and FIR Baghdad (ORBB) as a result of the escalating tensions between the US and Iran. Based on a typical flight profile, the reported SRBMs would have transited western Iranian airspace (FIR Tehran (OIIX)) and flown across Iraqi airspace (FIR Baghdad (ORBB)) prior to impacting the sites noted above. As such the SRBMs transited through, over or near multiple ATS routes in western Iran in FIR Tehran (OIIX) utilised by civil aviation flights. In addition, SRBMs transited Iraqi airspace in close proximity to ATS routes UM688 and UM860, which are the primary airways used by civil aviation flights transiting FIR Baghdad (ORBB). Egyptian flag carrier EgyptAir and Bahrain's Gulf Air have suspended flights at Baghdad, and Gulf Air has also suspended flights at Najaf (ORNI/NJF) due to the security situation. Royal Jordanian Airlines had resumed its operations at Baghdad after a multi-day suspension of flights. As a result of the current situation we now assess the entirety of Iraq and Iran to be EXTREME risk airspace operating environments at all altitudes; this is being kept under constant review.

# Other Airlines in the Region

## Airlines continued to arrive at IKA

Start: January 8, 2020, 00:04 Tehran Time  
End: January 8, 2020, 06:31 Tehran Time

No.	Flight	Airline	Last Point of Departure	Scheduled Time	Actual Time	Aircraft
1.	J29005	Azerbaijan Airlines	Baku, Azerbaijan	00:25	Landed 00:04	E190
2.	W5115	Mahan Air	Istanbul, Turkey	00:45	Landed 00:49	A310
3.	PS751	Ukraine International Airlines	Kyiv, Ukraine	00:55	Landed 00:57	B738
4.	TK874	Turkish Airlines	Istanbul, Turkey	00:50	Landed 01:17	A321
5.	IR750	Iran Air	Rimini, Italy	03:18	Landed 01:52	A310
6.	IR5318	Iran Air	Najaf, Iraq	—	Landed 01:59	A306
7.	W5143	Mahan Air	Damascus, Syria	—	Landed 02:13	A310
8.	IR710	Iran Air	London, UK	02:00	Landed 02:16	A332
9.	SU512	Aeroflot	Moscow, Russia	02:45	Landed 02:19	A320
10.	IR768	Iran Air	Istanbul, Turkey	02:30	Landed 02:37	A306
11.	KK1184	Atlas Global	Istanbul, Turkey	03:20	Landed 02:56	A321
12.	QR490	Qatar Airways	Doha, Qatar	3:35	Landed 03:18	A333
13.	B99717	Iran Airtour	Istanbul, Turkey	—	Landed 03:26	A306
14.	QR8408	Qatar Airways	Doha, Qatar	03:25	Landed 03:34	B77L
15.	TK872	Turkish Airlines	Istanbul, Turkey	03:50	Landed 03:47	A321
16.	QB2214	Qeshm Air	Istanbul, Turkey	02:50	Landed 03:49	A306

No.	Flight	Airline	Last Point of Departure	Scheduled Time	Actual Time	Aircraft
17.	IR726	Iran Air	Urmia, Iran	03:55	Landed 03:55	A332
18.	W582	Mahan Air	Kuala Lumpur, Malaysia	03:31	Landed 04:15	A343
19.	W576	Mahan Air	Shanghai, China	04:00	Landed 04:55	A346
20.	TK878	Turkish Airlines	Istanbul, Turkey	05:35	Landed 05:33	A333
21.	W570	Mahan Air	Delhi, India	05:20	Landed 05:37	A343
22.	EP3768	Aseman Air	Shiraz, Iran	06:25	Landed 06:31	Fokker 100

# Other Airlines in the Region

## Airlines continued to depart IKA

Start: January 8, 2020, 01:37 Tehran Time

End: January 8, 2020, 07:49 Tehran Time

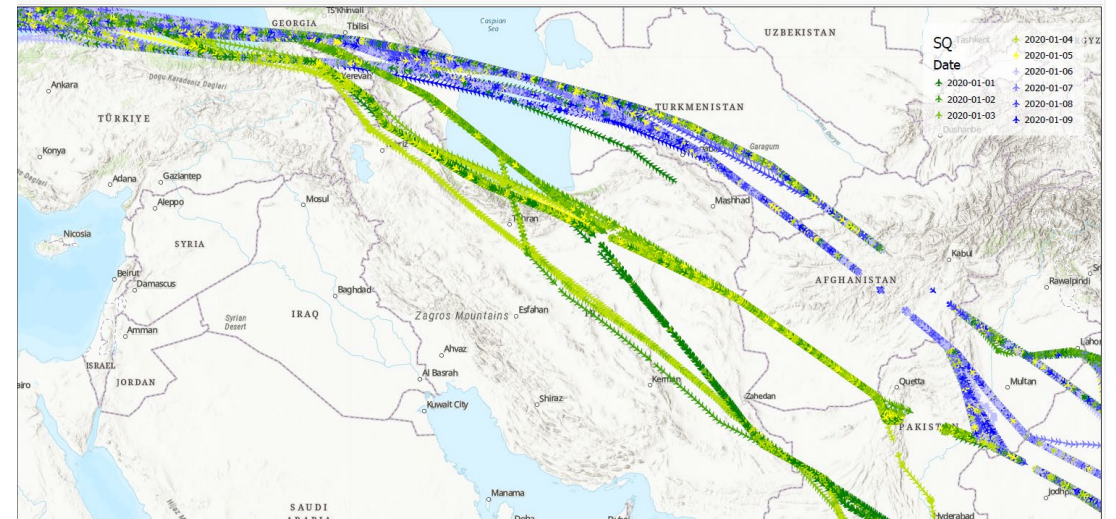
No.	Flight	Airline	Last Point of Departure	Scheduled Time	Actual Time	Aircraft
1.	J2 9006	Azerbaijan Airlines	Baku, Azerbaijan	01:25	01:37	E190
2.	LX 4021 / LH 601	Swiss/Lufthansa	Frankfurt, Germany	02:25	02:43	A330
3.	TK 875	Turkish Airlines	Istanbul, Turkey	03:00	03:35	A321
4.	OS 872	Austrian Airlines	Vienna, Austria	03:45	04:23	A320
5.	SU 513	Aeroflot	Moscow, Russia	04:30	04:32	A320
6.	QR 491	Qatar Airways	Doha, Qatar	04:45	05:00	A320
7.	TK 873	Turkish Airlines	Istanbul, Turkey	04:45	05:07	A321
8.	KK 1185	Atlas Global	Istanbul, Turkey	05:15	05:17	A330
9.	QR 8408	Qatar Airways	Hong Kong	05:15	05:39	B777
10.	PS 752	Ukraine International Airlines	Kyiv, Ukraine	05:15	06:12	Boeing 737-800
11.	IR 721	Iran Airlines	Frankfurt, Germany	07:15	07:49 <sup>189</sup>	A330

# Other Airlines in Region

## Overflying Aircraft Avoided Iranian Airspace

- A number of airlines re-routed flights to avoid overflying Iranian airspace
- Singapore Airlines appears to have commenced re-routing after the assassination of General Soleimani on January 3, 2020
- Other airlines took evasive action after the missile attack on January 8 including KLM, Air Canada and BA

## SQ Flight Data (open source)



# Other Airlines in Region

BA had 3 aircraft in the air

- BA had 3 aircraft in the air bound for Iraqi and/or Iranian airspace at the time of the missile attack
- Each aircraft took evasive measures

BA Flight Data (open source)



# UIA Flight 752 Trial - Legal Standards

## Negligence Standard

- Court applied local understanding of negligence
- Under Canadian law, conduct is negligent if it exposes someone to an unreasonable risk of injury
- In assessing conduct, court may have regard to industry regulations, standards and practices

## Regulatory Standards

[154] At para. 29 of *Ryan*, the Court described the relationship between legislative standards and the standard of care as follows:

Legislative standards are relevant to the common law standard of care, but the two are not necessarily co-extensive. The fact that a statute prescribes or prohibits certain activities may constitute evidence of reasonable conduct in a given situation, but it does not extinguish the underlying obligation of reasonableness. ... Thus, a statutory breach does not automatically give rise to civil liability; it is merely some evidence of negligence. ... By the same token, mere compliance with a statute does not, in and of itself, preclude a finding of civil liability. ... Statutory standards can, however, be highly relevant to the assessment of reasonable conduct in a particular case, and in fact may render reasonable an act or omission which would otherwise appear to be negligent. This allows courts to consider the legislative framework in which people and companies must operate, while at the same time recognizing that one cannot avoid the underlying obligation of reasonable care simply by discharging statutory duties. [Citations omitted.]

# UIA Flight 752 Trial - Legal Standards

## Regulatory Standards

- Where a statute strictly defines the manner of performance and precautions to be taken, it is more likely that compliance with the statute constitutes reasonable care
- Conversely, where a statute is general or provides or discretion as a manner of performance, mere compliance is not likely to exhaust the standard of care

## Industry Standards and Practices

[156] External indicators of reasonable conduct relevant to determining the content of the standard of care also include custom, industry practice, professional standards, and regulatory standards in addition to statutory standards: *Hill*, at para. 70, *Krawchuk v. Scherbak*, 2011 ONCA 352, 106 O.R. (3d) 598, at para. 125; *R. v. Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205, at pp. 227-228.

[157] Parties have been found to be negligent even when acting in compliance with statutory standards, or other external indicators of reasonable conduct, such as industry practice: see, for example, *Zsoldos v. Canadian Pacific Railway*, 2009 ONCA 55, at paras. 30, 42-44; *Murphy v. Atlantic Speedy Propane* (1979), 103 D.L.R. (3d) 545 (N.S.S.C.).

# UIA Flight 752 Trial – Breach of the Standard of Care

## Standard of Care Required compliance with ICAO 10084

[257] I find that mere compliance with UIA's manuals or the law of Ukraine was not sufficient to exhaust UIA's standard of care on the morning of January 8, 2020. None of those sources provided anything more than general information about conducting risk assessments related to flying over, in, or near conflict zones. To meet the standard of care, UIA was required to follow the guidance provided by ICAO with respect to security threat risk assessments, safety risk assessments, and flying over or near conflict zones, in addition to the guidance set out in its manuals and in the laws of Ukraine.

## Deficiencies

- UIA failed to collect relevant information including FAA NOTAM's and Osprey alerts
- UIA failed to conduct an assessment of the critical risk escalation factors in ICAO Manual 10084
- UIA failed to conduct the required safety assessment
- UIA failed to communicate with the Commander of Flight 752 to inform him of the missile attack

# UIA Flight 752 Trial – Breach of the Standard of Care

## Risk of Shoot Down Foreseeable

[443] In my view, the risk of PS752 being struck by a SAM was reasonably foreseeable:

- a. Osprey, using its sophisticated software and analysis, warned of the very risk that transpired;
- b. The FAA warned of the very risk that transpired in its NOTAM;
- c. There was a relatively recent example of a flight, MH17, being struck unintentionally by a SAM when flying in a conflict zone;
- d. Mr. Martynenko himself decided the risk was worth undertaking a security threat risk assessment and concluded the risk was medium;
- e. A passenger on the plane texted her brother expressing fear of the very risk that materialized.

## Judgment to Plaintiffs

### Summary of Orders

[480] In summary, I make the following orders:

- a. I declare that the defendant has failed to prove, on a balance of probabilities, under article 21 of the *Montreal Convention*, that the plaintiffs' damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or that such damage was solely due to the negligence or other wrongful act or omission of a third party.
- b. The defendant, UIA, shall pay costs to the plaintiff groups as set out below, within 60 days:
  - i. To the HSH and CFM plaintiffs: with respect to HSH, costs fixed at \$600,000 plus HST plus disbursements of \$86,433.89; and with respect to CFM, costs fixed at \$850,000 plus HST plus disbursements of \$292,219.69.

# Emerging Issues

- Need for validation of OSI in real time
- Politicization of airspace decisions
- Following activity of other airlines
- Need for integrated safety/security approach
- Advance preparation – gaming out possible scenarios

**Joe Fiorante, K.C.**

**Partner**

**Email: [jfiorante@cfmlawyers.ca](mailto:jfiorante@cfmlawyers.ca)**

**Jamie Thornback**

**Partner**

**Email: [jthornback@cfmlawyers.ca](mailto:jthornback@cfmlawyers.ca)**

**CFM Lawyers LLP**

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