

A Case Study on the United States' Response to the 3 July 1988,
Downing of Iran Air Flight 655 by the *USS Vincennes* in the Persian Gulf.

A Senior Studies Report

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The following is a case study of the United States' response to the 3 July 1988 downing of Iran Air Flight 655 (hereafter referred to as IR 655) by the *USS Vincennes* in the Persian Gulf.

The United States Navy, in conjunction with the navies of five other European nations, had been increasing its presence in the Persian Gulf since 1987 to protect shipping in international waters from hostile actions that were the result of the ongoing war between Iran and Iraq (Stohr 15 Jul. 1988). The Captain of the *USS Vincennes*, Will Rogers, was operating against the backdrop of several incidents: the mine attack on the *USS Bridgeton* in July of 1987, the Iraqi F-14 attack on the *USS Stark*, and the attacks by Iranian gunboats on unarmed merchant ships in the Persian Gulf.

On the morning of 3 July 1988, the Captain and crew of the *Vincennes* were on heightened alert. This was due in part to threats of aggression by Iran on or near the 4 July holiday (Whitehead 16 Jul. 1988). On the morning of the accident, the *USS Vincennes* and the *USS Sides* were involved in a skirmish with Iranian gunboats. The skirmish began when one of the Iranian gunboats fired on the *Vincennes*' helicopter, which had been sent to investigate their activities.

The *USS Sides* and the *USS Vincennes*, after receiving permission to engage the gunboats, pursued them into Iranian waters and began firing on them. In the midst of this engagement, IR 655 took off from Bandar Abbas, an Iranian joint military and civilian airport. At the time, the Captain of the *Vincennes* was more concerned with the ensuing surface battle than he was with the plane taking off from Bandar Abbas. However, seven minutes and forty seconds later, he would be turning the key on his

console to engage the two rockets that were launched to bring down IR 655. The chain of events that transpired during this time was well documented in the Department of Defense's investigation, known as the "Fogarty Report," the International Civil Aviation Organization's (hereafter referred to as ICAO) report, and media accounts into the matter (Fogarty 19 Aug. 1988).

However, on the *Vincennes* at that time, things were not that orderly. As Captain Rogers directed the surface battle, he was misinformed that the plane leaving Bandar Abbas was emitting a military identification signal. This occurred due to a mistake made by the *Vincennes*' radar operator, who failed to reset his equipment, so instead of following the plane that was in the air, the equipment picked up the signal of a military plane, (an F-14) that was on the ground. This resulted in the plane's being tagged as military, and it was assumed hostile due to the ongoing sea battle. This notion was enforced by the fact that the plane's flight path was taking it directly over the *Vincennes* (Fogarty 19 Aug. 1988).

The first thought of the crew was to check the commercial flight books to see if it could be a comair flight. The flight plans for commercial flights through the Gulf were extremely confusing due to the large amount of air traffic in the region. This, in addition to the fact that IR 655 was more than twenty minutes behind schedule, contributed to the fact that the personnel looking for the flight failed to locate it (Fogarty 19 Aug. 1988).

Captain Rogers ordered warnings to be sent to the plane that it was flying into danger, and if it did not alter its course it would be in danger of US defensive actions.

Warnings were sent out on two channels continuously for more than four minutes. The Fogarty Report would later reveal that the radio operator of the *Vincennes* had sent the messages in a format that would have been difficult for the crew of IR 655 to interpret correctly. The *Vincennes* was broadcasting its warnings on two channels, 121.5 MHz. and 243 MHz. IR 655 had only the capabilities to receive the messages broadcasted over 121.5 Mhz it is speculated that he was using this channel to listen the tower at his point of destination. The transcripts of the messages from the *Vincennes* reveal that the only message IR 655 may have received, and fully understood, would have come 40 seconds before it was shot down. Even at that, it was doubtful that the warnings were specific enough for the crew of IR 655 to have known it was the aircraft the *Vincennes* was preparing to engage (Fogarty 19 Aug 1988).

As a result, the *Vincennes*' warnings were never acknowledged, and as the plane closed in, Captain Rogers sought permission from headquarters to engage the assumed F-14 if the plane continued to exhibit hostile intent on its present course (Morgan 8 Jul 1988). When one of the crew members falsely reported that the plane was descending altitude and gaining speed, Captain Rogers waited as long as he could, then he gave the order to launch the two missiles that brought down Iranian Air Flight 655 and all 290 people who were on board (Fogarty 19 Aug 1988).

At first, Captain Rogers believed that they had just shot down an Iranian F-14 that was intent on attacking them. When a sailor on watch spotted one of the wings falling into the sea and observed that the wing was too large to have been an F-14, Captain Rogers had his first inkling that something was wrong. When he got news

shortly thereafter that IR 655 was overdue for landing at Dubai, and had disappeared from radar around the time that he had given the order to shoot down the assumed F-14, his fears were validated (Barry and Charles 16).

As news of the incident spread, rescue personnel from Iran arrived on the scene, and they discovered a mass of floating debris and bodies. There were no survivors; all 290 people on board had perished. With reports coming in from the Gulf and the international press picking up the story, Washington was forced to say something quickly. At a news conference, on the afternoon of the third of July, Admiral Crowe, Chairman of the Joint Chiefs of Staff, told reporters all that he knew at the time (Barry and Charles 16).

Crowe told reporters that he did not have all the information at the time. However, what he did have from the *Vincennes* was that the plane was flying outside its air corridor; it had not acknowledged several warnings; and was descending in an attacking fashion as it closed in on the *Vincennes*. The *Vincennes*, in international waters at the time, had no alternative but to defend itself from what seemed an imminent attack. Crowe ordered an investigation commission later that day, and appointed Rear Admiral William Fogarty to chair it. The "Fogarty Report" assumed great importance in the coming months in the eyes of the world and the investigating bodies of the United Nations (Morgan 8 Jul 1988).

Between 3 and 4 July, Mr. Ranaeifar, Iran's Vice Minister of Roads and Transportation and Administrator of Civil Aviation, sent three telexes to Dr. Assad Kotaite, the Council President of the International Civil Aviation Organization,

(hereafter referred to as ICAO). The first telex reads “. . . informing Council members of the latest aggressive and criminal attack by hostile forces of U.S.A. in the Persian Gulf towards civil aviation . . . please take effective measures in condemning said hostile and criminal acts” (Whitehead 6 Jul 1988). In the second telex, he urges, “. . . members of the Council to give this matter your personal attention and invite you and your experts to have a visit and study of this inhuman act of the U.S.A. in Persian Gulf promptly” (Whitehead 6 Jul 1988). In the third telex, Ranaeifar, “urgently requests that this grave matter be tabled in the ICAO Council as a matter of urgency with the view that an Extraordinary Session of the ICAO Assembly be urgently convened to conduct a thorough investigation of all aspects of the catastrophe” (Whitehead 6 Jul 1988).

In response to the telexes from Iran, Dr. Assad Kotaite wrote a letter to all ICAO board members on 4 July and informed them of the situation and Iran’s desire for an Extraordinary Session of ICAO’s Council to look into this matter. On 5 July, Kotaite sent another letter informing Representatives on the Council that an Extraordinary Session would be held on Wednesday, 13 July 1988 in Montreal (Whitehead 6 Jul 1988).

ICAO is the technical agency of the UN that deals with the safety of international civil aviation. In this role, ICAO is, if invited to do so by national authorities, charged with investigating civil airline accidents, writing regulations, developing procedures, and conducting research to ensure that civil aviation remains safe. ICAO is the agency that investigated the Soviet’s downing of KAL 007 in 1983,

and Israel's downing of a Libyan jet in 1973. In both of these situations, the climate of ICAO was politically charged, and the nations involved were able to win the condemnation of both the Soviet Union and Israel in the resolutions that were adopted by the Council (Jamison 7 Jul 1988).

In the case of the Soviet's downing of KAL 007, the U.S. led the field of nations seeking to have the Soviets condemned. Now five years later, the U.S. delegation was staring similar sentiment from the Soviets squarely in the face. In fact, the resolutions that the Soviets introduced seeking the condemnation of the United States came almost verbatim from the U.S.'s resolutions against the Soviets five years earlier (Buche 2 Mar. 1989).

In light of these developments, over the next few days the State Department crafted a plan to avoid having this incident compared to the KAL 007 shoot down and to avoid public condemnation by the ICAO and the UN. As the first part of this plan, President Reagan was asked to set the tone of the United States position. In a 5 July speech before Congress, he expressed deep regret for the tragic loss of life, and the willingness of the United States to pay compensation to the families of those who lost their lives (Whitehead 15 Jul 1988).

The State Department plan operated on several levels. Damage control was the name of the game. The first point was for the U.S. to be fully cooperative with the investigating parties on all levels that were appropriate. This would be in marked contrast to the Soviet's refusal to cooperate with the ICAO investigation into KAL 007. Secondly, the plan stressed the basic principle that ICAO is a technical

organization and that the politics of the situation should be directed to the UN Security Council. The plan placed heavy emphasis on conditions in the Gulf and stressed the unintentional/accidental nature of the incident in contrast to the deliberately hostile act of the Soviets against KAL 007. The State Department also put forward the idea that Iran should bear at least some of the responsibility for the incident, (this was a negotiating tactic that was eventually abandoned). The State Department also sought to emphasize the need to make operations and procedures in the Persian Gulf safer for civilian air travel (State Dept. 8 Jul 1988).

The meeting of the Extraordinary Session of the ICAO Council was scheduled for 13 and 14 July. The UN Security Council was already scheduled to meet on 14 July. Assistant Secretary of State for International Organizations Richard Williamson, was slated to present the United States' position at the ICAO meeting in Montreal, and Vice President George Bush was selected to present the United States' position to the UN Security Council in New York. By July 8, 1988, (Buche 8 Jul. 1988) the State Department had already formulated the United States Delegation's positions, written drafts of the speeches to be delivered, informed US embassies of the US Government's official position and instructed them to begin lining up support for the US from their host nations (Whitehead 5 Jul. 1988).

At the opening of the Extraordinary Session of the ICAO Council, the President, Dr. Assad Kotaite, helped to set the tone that the United States delegation was seeking. In his opening address, Dr. Kotaite, stated that the job of the Council was to gain, "a complete technical understanding of the chain of events which led to

this tragedy . . . we have to look ahead and take every technical preventive action possible . . . to make sure that similar tragedies will never occur again” (Kotaite 13 Jul. 1988).

After Dr. Kotaite spoke, Richard Williamson presented the United States’ position to the Council. His speech dealt with three specific areas. He commented on the background of the situation in the Persian Gulf, the circumstances that led to the shoot down of IR 655, and steps that ICAO needed to take to ensure the safety of civilian air travel in the Persian Gulf. In concluding his speech, Williamson called on the Council members to, “reach its conclusions only after all of the facts have been received”(Williamson 13 July 1988).

The Iranian statement at ICAO centered around five issues. They disputed the US’s version of events and the circumstances that led up to and resulted in the downing of IR 655. Iran maintained that IR 655 was over Iranian territorial waters, in its prescribed flight corridor, and in the process of ascending when it was shot down. Iran asserted that, “US naval forces targeted and shot down a civilian airliner. . . the fact is undisputable. . . and is a flagrant violation of international law” (Iran ICAO 13 July 1988). Iran called for the US to be held accountable for its actions. In addition to being held accountable, Iran also believed that the US’s actions should be condemned. Iran called for an investigative commission to be established to ascertain the technical and legal aspects of this incident. Lastly, Iran called for the immediate termination of restrictions and threats of force against the airspace and territorial waters of Iran and other states in the Persian Gulf (Whitehead 15 Jul. 1988).

The final statement approved and issued by the Council of the Extraordinary Session of ICAO, conveyed a number of things:

The Council expressed profound regret over the loss of 290 lives. It expressed its deepest sympathy and condolences to the parties involved. The Council deplored the use of weapons against a civil aircraft. It called for all nations, who had not done so, to ratify Article 3 bis of the Convention on International Civil Aviation, which urges all nations to refrain from actions that might harm civil aviation. The Council called for a fact-finding investigation to be conducted, for all parties involved to cooperate fully with the investigation, and for the commission to report back to the Council as early as possible during the 125th Session of the Council in September. The Council called for the President of the Council and Secretary General of ICAO to establish better lines of communication between civil and military operations in the Gulf and to take steps to ensure the safety of civilian air travel in the Persian Gulf (ICAO Statement of Extraordinary Session 14 July 1988).

The events that occurred in the UN Security Council and the ICAO Council before 1987 were normally posturing contests between the United States and the Soviet Union. However, a major turn of events had produced a thaw in the politics of the Cold War. As the war between Iran and Iraq escalated, and the hostilities in the Persian Gulf increased, Kuwait asked both the Soviet Union and the United States to increase their presences in the Gulf to protect Kuwaiti ships. In order to avoid losing their influence in the Gulf region, and to ensure the flow of oil, both countries saw the necessity of answering Kuwait's call for help (Schultz 925-926).

This interaction between the Soviet Union and the United States in the Gulf would prove to be the springboard for the passing of UN Resolution 598 that called for an unconditional cease-fire between Iran and Iraq and a mandatory withdrawal to internationally recognized borders. This turn in Cold War relations would prove to be

crucial in the role that the Soviets played in the events that were to unfold between 13 July 1988 and 17 March 1989 (Schultz 932-933).

If the US had downed IR 655 before 1987, the Soviets in all likelihood would have engaged in the normal diplomatic belief that the enemy of my enemy is my friend. In 1988, however, it was not clear how the old dictum should be applied. The relations between the Soviet Union and Iran were cool at best. The Soviet Union had supported Iraq during the war, and Iran had been encouraging the Muslims in the Soviet Union to stand up for their religious beliefs in the face of, what Iran labeled, "Soviet Atheism." Iran's case was also not helped by the fact that their gunboats had been attacking the vessels that the Soviets were escorting in the Gulf. In Iran's favor, it shared a long border with the Soviet Union and could cause further trouble among the USSR's Muslims if the Soviets were not cooperative. As a result of these circumstances, the relations between the USSR and Iran were strained at best. In the case of US-USSR relations, however, there were marked changes. The US and USSR were beginning to discuss and coordinate their policies on major international issues. The Soviets were not about to upset this trend in USSR and US relations by backing Iran anymore than the situation required. With the way things were warming up in Cold War relations, the Soviets did not want IR 655 to become a point of contention with the US. The Soviets did take up the cause of Iran, but not as intently as it could have or would have had there not been a spirit of reconciliation with the US (Schultz 935).

The briefing books, preliminary speeches, and instructions that the State

Department wrote for the UN Security Council and the ICAO session covered essentially the same material. The main difference between the instructions for the Security Council speech are that they contain five extra points that attempt to focus the situation on the role Iran played in the shoot down and in continuing the war with Iraq. However, the main thrust of Bush's speech was supposed to be technical in nature and to avoid inflammatory comments (Stohr 5 July 1988).

The speech that Bush ended up giving at the UN Security Council differed substantially from the draft. Instead of focusing on the technical aspects of the incident at hand, Bush framed almost his entire speech in terms of why Iran had to share in some of the specific responsibility for this accident. He also said that Iran bore responsibilities for continuing the war, and he illustrated some of the atrocities that had been committed during the war. Bush asserted that the US downing of IR 655 was unintended and accidental in nature. He reiterated the official US Government position that IR 655 had been shot down in defense from international waters because the airliner was outside of its flight corridor, descending and as such was perceived as a threat to a US naval ship. He asserted that this was in marked contrast to Iran's use of chemical weapons against civilians, and Iran's detention of citizens from the United States and other countries as hostages. In summing up the differences between the actions of the United States and Iran, Bush said, "one, of course, is civilized and the other barbaric" (Whitehead 15 Jul. 1988).

Bush also attacked Iran's interactions with the UN in his comment that "we respect Iran's right to air its grievances. But Iran cannot have it both ways. Iran

cannot simultaneously complain to this body and yet defy it" (Whitehead 15 Jul. 1988). With this statement, Bush took up the issue of UN resolution 598 that called for an end to the war between Iran and Iraq. He called for Iran to accept the provisions of UN Resolution 598 and encouraged other nations to apply the means that were available to them to bring Iran to the table (Whitehead 15 Jul 1988).

At this time, Bush was running for President, and accordingly, he used his appearance before the UN Security Council as a chance for publicity. However, the State Department had chosen to focus the speech on a foreign audience. Bush felt he needed to bolster his stance on domestic politics, so he incorporated points that would sit well with the American people.

Iran's statement at the Security Council was very similar to the statement it made at ICAO. Iran again disputed the US Government's version of the downing of IR 655. In addition to using Iranian sources, the Iranian delegate quoted US newspapers that verified Iran's version of events that placed IR 655 in territorial waters, within its prescribed flight corridor, and ascending when it was shot down. Iran made three primary demands of the Security Council. They called for the condemnation of the US's downing of IRA 655 because, "anything less would be disrespectful to the innocent human lives lost . . ." (Whitehead 15 July 1988). In light of the evidence, Iran requested that the Security Council reject the US's position that the downing of IRA 655 was an accident that resulted from legitimate defensive measures. Lastly Iran called for the Security Council to take immediate action to ensure that the US Navy, stationed in the Gulf, would not be in a position to commit

similar acts in the future which might lead to another tragedy (cite ref.).

The UN Security Council concluded on 14 July 1988, and as this was just the first hearing and information was still being gathered, the Security Council decided that more investigations needed to take place. The Security Council decided that ICAO would be the proper agency to conduct such an investigation and it was content with waiting to see what the outcomes of the ICAO and Department of Defense investigations were.

The next meeting the US officials had with ICAO officials was scheduled for 3 August 1988. The meeting was set up to be an informal discussion between US Representatives and ICAO Officials. The US Representatives were from the Department of Defense and the Federal Aviation Association. The ICAO officials present were the newly elected Secretary General Dr. Sidhu; President of ICAO, Dr. Kotaite; Dr. Fromm, ICAO Director of Air Navigation Bureau; and Mr. Bradberry, Air Traffic Control specialist for ICAO (Nye 3 Aug 1988).

The discussion focused on ways to improve the safety of air travel in the Gulf and did not make any mention of the downing of IR 655. Several of the options that were discussed were the ones that the US Delegation brought up at the Extraordinary Council Meeting of ICAO and at the UN Security Council (Am Consul Montreal 4 Aug 1988). The majority of the options stemmed from preliminary findings, which at the time remained unreleased, from the DOD's Fogarty Report. The officials discussed nine measures that could improve safety conditions in the Gulf. These nine measures were:

encouraging civil airlines to turn on their airborne weather radar and radio altimeters so military vessels would be able to identify them more clearly. The need to make secondary surveillance information on civil aircraft available to US Military Forces in the Gulf. Formulate standard procedures and phraseology to be followed when using emergency frequency 121.5 MHZ. Install equipment that would allow the US military to monitor civil aviation frequencies. Arrange for civil flight plan information to be made available to the US military electronically. Civil aircraft should 'squawk' an identification code to make it easier for the US military to identify aircraft as civilian. The need to make information given on emergency frequency 121.5 MHZ more specific for civil aircraft. The need to establish a direct line of communication between military and civilian air traffic control units. Lastly, the need to consider the establishment of a cell to coordinate and monitor military and civilian traffic" (Stohr 12 Aug 1988).

On 5 August 1988, Dr. Sidhu, the Secretary General of ICAO, wrote a letter to Mr. Stohr, the US chief delegate to ICAO, thanking him for the US's cooperation and participation in the efforts to improve safety in the Gulf. As part of the ICAO investigation into the downing of IR 655, Dr. Sidhu asked if it would be possible for two ICAO technical advisors to visit the *USS Vincennes*, "to discuss matters relevant to the identification of aircraft and other civil aviation safety issues" (Sidhu 5 Aug 1988).

The DOD agreed to Dr. Sidhu's request to send two delegates to visit the *USS Vincennes*. In addition to this, the DOD offered to make arrangements for members of the ICAO investigation team to visit the Aegis Combat System Engineering Development Site in Moorestown, New Jersey. This is where the *USS Vincennes's* defense system was engineered and tested (Morgan 10 Aug 1988). The State Department also suggested that copies of the unclassified version of the Fogarty Report be made available to the ICAO investigating body, and the DOD approved

(Buche 15 Aug 1988).

A memo briefing Assistant Secretary of State Williamson, 19 August 1988, provided: an update on the main points of the Fogarty Report; the US Military's response to the nine items discussed 3 August 1988; Congress's debate on compensation for the families of the victims; and the progress made in gathering information on the passengers to make compensation possible. The Fogarty Report can be summarized in three points, "the Aegis system worked; the Captain of the *USS Vincennes* made the correct decision based on the information presented to him; and the information from the Aegis system and other sources was incorrectly interpreted by *USS Vincennes* staff officers" (Buche 19 Aug 1988). The unclassified version of the Fogarty Report was delivered to the ICAO Investigation Committee on 19 August (Buche 20 Aug 1988).

In regard to the meeting US officials had with ICAO on 3 August 1988, the military had approved or implemented eight of the nine ICAO recommendations and they were actively considering the ninth. The matter of compensation was discussed in Congress on 4 August, and some Members aired concerns over whether they should be compensating Iranian families at all while US hostages were still being held. The Office of the Legal Advisor in State's International Claims Office had started the tedious process of gathering the information that would be needed to compensate the families of those who perished on IR 655. In addition to gathering this information, the lawyers in the Legal Advisor's Department were still working out where the money to pay the compensation was going to come from (Buche 19 Aug 1988).

After having provided ICAO with copies of the unclassified version of the Fogarty Report, arranging for tours of the *USS Vincennes*, and the Aegis Development Site in Moorestown, New Jersey, it was largely a waiting game for the State Department. The US had provided all the information that ICAO had requested by 1 September and the ICAO Council was not scheduled to meet until 29 September. The ICAO investigation was scheduled for completion by mid-September, but then it would have to be translated into other languages. According to Dr. Kotaite, the Council would be involved with other matters during the 29 September meeting, so it would be doubtful if the Council were to debate ICAO's report before mid-November (Vogelgesang 1 Sept 1988).

The State Department's strategy for the upcoming ICAO Council meeting had not changed substantially since early July. The main strategy was to keep the focus of the Council on positive changes that were being made with ICAO to increase the safety in the Gulf. By doing this, the State Department hoped they could deflect motions to condemn the US. The other key aspect of the State Department's strategy was to do everything possible to delay consideration of ICAO's report (Vogelgesang 1 Sept 1988). The motivation for postponing the debate of ICAO's report was the hope that as time elapsed, so would some of the tensions surrounding the incident.

In October, Iran moved to keep debate stirred up by trying to have IR 655 inscribed on the agenda at the 31 October annual meeting of the International Air Transportation Association (IATA). The US did not want this to happen and made it a point to make sure that other members of IATA did not want it to happen either (Stohr

6 Oct 1988). Mr. Stohr, the US Delegate to ICAO, contacted the IATA Director General who reassured Stohr that he would oppose Iran's request to include IR 655 on the agenda for the meeting. The Director General added that IATA was not the proper forum for such a discussion to be held, since IATA deals primarily with setting the prices for airfares on international flights and international standards for pilots, navigators, flight attendants, and other passenger-related matters. However, he did comment that there would be mention of the IR 655 in IATA's annual report, but the way it would be stated was noncontroversial (Buche 6 Oct 1988). The report from the IATA Executive Committee for the 31 October- 1 November meeting did mention IR 655 and, as the IATA Director General had promised, it was noncontroversial in nature. Essentially, the report reiterated the statement that was approved at the close of the 13 -14 July ICAO Council (IATA 31 Oct - 1 Nov 1988).

On 10 November, the ICAO Report on the IR 655 downing was released. For the most part, it treads the same ground as the Fogarty Report. ICAO's Report is primarily factual and technical. It avoids fixing blame, and it fulfills what ICAO's investigations are supposed to do, namely to gather information. A formal presentation of the ICAO Report was planned for the full Council on 28 November. After a limited debate, it was recommended that ICAO's Report be referred to the Air Navigation Commission (ANC) for further study. The ANC would then provide its technical analysis of the Report, and return its decisions to the Council at its March session (Boyer 10 Nov 1988).

As it turned out, the ICAO Council did not meet until 5 December. After the

ICAO Report was presented on 5 December it was vigorously debated until 7 December, when it was referred to the ANC. The Council would receive the ANC's findings at its 15 March meeting. The debate that ensued lasted longer than the US had thought it would, but the end result was ultimately what the US Government had expected.

In the larger picture of world affairs, Gorbachev, President Reagan, President-elect George Bush and Secretary of State Schultz would be meeting in New York after Gorbachev's speech to the United Nations on 7 December. In Gorbachev's speech, he discussed the relationship between the USSR and the US. He said, "Look how our relations with the United States have changed: Little by little mutual understanding has started to be built up, elements of trust have arisen, without which it is very difficult to move forward in politics" (Shultz 1107). In the context of what was occurring simultaneously in Montreal at the ICAO Council, the Soviets made it clear that the USSR was not going to risk the improvements in USSR-US relations over the IR 655 incident.

The main points that were debated in the 5 -7 December Council meeting had not changed substantially from the 13-14 July Council meeting. Iran made its case for US condemnation on three points. The first point was that the US had violated international law, both when it entered Iran's territorial waters to engage Iranian gunboats, and when the US shot down IR 655 while the plane was in Iranian airspace. On this point alone, Iran made its case that the Council should follow the precedent it made in the Soviet's downing of KAL 007 and condemn the US's action. Iran also

brought up the legality of the Notice To Airmen (hereafter referred to as NOTAM), that the US had issued in the Persian Gulf. Iran stated that the US must be held, "responsible for the act and the need for compensation. Iran then called for the immediate termination of obstacles and threats to civil aviation, including the withdrawal of Naval Forces" (Stohr 7 Dec 1988).

In addition to the statements made by Iran, sixteen other nations raised their concerns and voiced their opinions. The countries that lined up behind Iran were: Czechoslovakia, Cuba, USSR, China, Pakistan, and Kenya. Czechoslovakia took issue with the conclusions made in ICAO's Report. Czechoslovakia maintained that several of the conclusions in the ICAO Report came directly from the Fogarty Report, and as such, the impression conveyed is that the US is not responsible for the downing of IR 655. These conclusions are in marked contrast to the facts of the Report which show that the Captain of the *USS Vincennes* was negligent in his actions and accordingly should be held accountable for them. In concluding its statement, Czechoslovakia called for a drafting group to be assembled to prepare a resolution reflecting the sentiments of condemnation it felt were in order. The Cuban and the Soviet statements reiterated the same sentiments as the Czechoslovakians. The Soviet statement differed in that it called for the ANC to, "supplement the report with 'objective conclusions' based on the Report" (Stohr 7 Dec 1988).

The content of the statements made by the other nations that spoke-Egypt, Nigeria, West Germany, Italy, France, Japan, and Sweden- basically reflect the sentiments found in the Canadian statement. The Canadians showed their

appreciation for the cooperation that all the parties involved displayed and called for the ANC to give its advice on the ICAO Report Recommendations. The Canadians urged the Council to concentrate their efforts on making civilian air travel as safe as possible while they were waiting to receive the findings of the ANC's report in March (Stohr 7 Dec 1988).

On 7 December, ICAO Council President Kotaite opened debate by stating the objectives that all the Members seemed to share: the fundamental obligation forbidding the use of armed force against civilian aviation, the need for all members of ICAO who had not already done so to ratify Article 3-bis to the Chicago Convention, and the need for improved coordination between civilian air travel and the military presence in the Gulf. He also pointed out the common interest all Members expressed in sending the ICAO Report to the ANC for its comments. Kotaite suggested that he draft a resolution to reflect those sentiments and forward it, along with the ICAO Report, to the ANC for further study. Ultimately, this is what happened, but not before a lengthy debate, and a last-minute proposal by the Soviets and backed by Czechoslovakia and Cuba that called for the addition of controversial language, naming and condemning the US in Kotaite's resolution (Stohr 8 Dec 1988).

From the start, it was evident that the Soviet proposal was not going to help move the Council towards a consensus. Dr. Kotaite assured the Soviets that their proposal could be considered at the 15 March Council if they would drop the proposal for the time being and support the proposed resolution that reiterated the 13 - 14 July Council position and called for sending the ICAO Report to the UNA. The Soviets put

together a strong professional case for Iran, and then compromised at when Dr. Kotaite assure the Soviets that the proposal would be reconsidered when the Council convened on 15 March (Stohr 8 Dec 1988).

When the ICAO Report was received by the ANC, it was clear from the outset that two of the major issues at stake were the legality of the NOTAM that the US had issued for the Gulf region and the location of the *USS Vincennes* when it shot down IR 655. The Commissioner from the USSR made a motion to defer ANC's consideration of the ICAO Report until they were given permission to consider the issues of the NOTAM and the territorial waters dispute. This motion was denied by the ANC President and supported by other Commissioners, on the grounds that the ANC had been given specific instructions by the Council which were to be followed (Stohr 6 Feb 1989).

While it was clear that the NOTAM and territorial waters issues were not going to be discussed in the ANC, it was also apparent that these issues were not going to go away. In anticipation of a rough fight to avoid a condemnation, the State Department decided that it would be in the US's best interest to clear up these issues as best it could before the March meeting of the Council. In regard to the NOTAM issue, the State Department in conjunction with the FAA and the DOD worked to withdraw the NOTAM and reissue it through the proper ICAO channels (Section V, Ref. II). The State Department completed this process on 1 March, and helped to quell some of the tensions that arose over this issue in the Council (Armacost 22 Feb 1989).

The territorial waters dispute was not resolved as easily. The ICAO report

specifically states that the *USS Vincennes* was in Iranian territorial waters when it shot down IR 655 in Iranian airspace. The unclassified version of the Fogarty Report makes no mention of the *USS Vincennes*' position at the time of the downing. The discrepancy between the two reports had potential to be a source of contention at the Council. Four years later, this discrepancy would come to be one of the foundations for Newsweek's article and an alleged coverup conspiracy by the US Navy (Barry and Charles 9-17).

On 2 March, the US Delegation to ICAO received instructions to provide the information about the *Vincennes* being in Iranian waters, "only if a response is necessary. The mission should not volunteer this statement" (Stohr 2 March 1989). As fortune would have it, the US Delegation was never asked this question, and accordingly never openly acknowledged that the *Vincennes* was in Iranian waters. The failure to disclose this information was considered by Newsweek to be a cover-up. However, the response of the Navy and State Department to this allegation was that the press failed to ask the question, and given the situation at the Council, disclosing this information would not have helped the US's position.

The DOD's motivation for excluding the fact that the *USS Vincennes* was in Iranian territorial waters was because it felt that it would give away too much information on what the US Navy's rules of engagement were in the Gulf (Newsweek articles). The fact that the *Vincennes* was in Iranian territorial waters was defensible on the grounds that the *Vincennes* had been attacked by Iranian gunboats and legally had the right to engage and pursue its attackers (Stohr 2 March 1989).

The ANC finished its review of the ICAO report on 2 March. As the US Delegation had expected, the ANC restricted its review to the material covered in the instructions provided by the Council. The ANC agreed with the conclusions that the ICAO Report had made and the review affirmed the nine safety measures that were developed at the 3 August meeting with ICAO and the US Government. In reviewing the ANC's report, the US Delegation concluded that while the ANC did not deal with the circumstances surrounding the NOTAM issued by the US, it was probably in the US's best interest to avoid opening the door to other issues on which the US was more vulnerable, including the ineffective warnings the *USS Vincennes* had issued to IR 655, and the territorial waters issue (Stohr 6 March 1989).

The full Council was scheduled to review the ANC's findings and to wrap up business on IR 655 on 13 March. The US Delegation had eleven days to solidify its strategy and to line up support from other ICAO Members. As early as 3 February, the State Department had shifted the emphasis of its game plan from trying to fix some of the blame on Iran to trying to focus the efforts of the Council on ways to avoid similar accidents from happening in the future. The US Delegation maintained its willingness to compensate the families of the victims, and it stressed the differences between IR 655 and the Soviet downing of KAL 007. The US Delegation sought to characterize the downing of IR 655 as accidental while the Soviet downing of KAL 007 was clearly intentional (Stohr 6 March 1989).

In the big picture of US-USSR relations, on 5 March, Secretary of State, James Baker flew to Vienna, Austria for the opening talks on the reduction of conventional

forces in Europe (Baker 63). In Vienna, Baker had his first conversations with Eduard Shevardnadze. In the course of their conversations, both Shevardnadze and Baker made it clear that they were interested in, "seriously considering how to develop relations further"(Baker 65). Shevardnadze discussed "perestroika" and the revolutionary influence it would have on the USSR and the other Eastern European nations. Shevardnadze emphasized that these changes had the potential to, "turn the Soviet Union into a reliable partner for the West" (Baker 65).

Baker and Shevardnadze also discussed the status of USSR-Iranian relations. Both men expressed their concerns over the Ayatollah's recent issuance of a death warrant for Salman Rushdie, and then Shevardnadze stated, "it is true that Iran has extremist and genuine fanatics, but Iran also has rational politicians" (Baker 66). Shevardnadze felt, because of a 2,500- kilometer common border with Iran, that it was important to have good relations with the "rational politicians" in Iran (Baker 66). Having good relations with both, Iran and the US, would prove to be a difficult situation to balance for the Soviet Delegation at the ICAO Council.

In an effort to head off some of the criticism that the US expected in regard to the shoot down of IR 655, Commander John Morgan of the US Joint Chiefs of Staff, arrived on 8 March to brief Members of the Council as to the circumstances and accidental nature of the incident. He offered a general briefing session to which he invited all the Council Members. When some of the Members failed to attend, Morgan made appointments to brief them individually. By the time the Council was ready to convene, Morgan had met with all the Members who were attending the

Council with the exception of the representative from France, and in his case, Morgan made arrangements to brief one of the French representative's staff members.

Ultimately, it seems that these efforts paid off because not one of the Council Members spoke of IR 655 as being anything other than, "accidental, unpremeditated or the result of an error" (Stohr 20 March 1989).

On 9 March, the Western Group (hereafter referred to as WEOG), met in the United Kingdom's ICAO office. Here the US Delegation discussed the probable outcomes of the Council. The specific accomplishment of the WEOG meeting was the development of resolutions using language that was acceptable to the US. All the Members in attendance made it clear that they would not support any resolution that made use of the word "condemn". In anticipation of the fact that the Soviets would probably not be willing to accept the first resolution that WEOG put forward, WEOG also came up with stronger language that could be substituted, if the situation required changes to bring about a consensus (Stohr 10 March 1989).

When the Council opened on 13 March, Iran pushed for a resolution condemning the downing of IR 655. Iran also voiced the need for the US to pay compensation to the family members of the victims. In addition to doing this, Iran also mentioned in no uncertain terms that IR 655 was in Iranian airspace and in its prescribed flight path when it was downed by the *USS Vincennes* from Iranian territorial waters (Stohr 20 March 1989).

The US delegate responded by restating the "profound regret" that the US Government felt for the accident. The US delegate also reaffirmed the willingness of

the US Government to pay compensation to the families of the victims. He also framed the shoot down as having occurred in a war zone when IR 655 was accidentally shot down because it was thought to be a military plane attacking. The US delegate concluded by focusing on the positive steps the US had taken to make civilian air travel safer in the Gulf (Stohr 20 March 1989).

Debate followed in which every Member of the Council spoke. Most of the Members classified the downing of IR 655 in terms of it being an accident. The Soviets, Cubans, Czechoslovakians and Iranians all called for the downing to be condemned. The Iranians even went as far as to say that, "the Council would not be carrying out its duty to protect the safety of civil aviation if it did not condemn the destruction of a civil aircraft in flight"(Stohr 20 March 1989).

After hearing the debate, Dr. Kotaite set out to see if a consensus could be attained on a resolution for the Council. From the start there were two basic camps: the Soviet/Iranian and the US. The former backed a resolution "condemning" in some form the downing of IR 655. The US camp wanted to adopt a resolution that would acknowledge US responsibility for the incident, pay compensation, focus on positives steps to avoid similar incidents, and do it with as soft as language a possible (Stohr 20 March 1989).

In the end, the US delegation and the Soviet delegation ended reaching a compromise on the language used in the resolution. The Soviets originally proposed a statement that began, "condemns the use of armed force against civil aircraft. . . ." (Section VI. Ref I). The proposed US statement began with the words "deeply regrets"

in place of the Soviet language condemning the action. On 16 March, it became apparent that negotiations were not going anywhere with the present language. The US attempted to bridge the dissent by offering to accept a resolution that used the stronger word "deplores" instead of the words "deeply regrets". However, this was not acceptable to the Soviets (Stohr 20 March 1989).

On 17 March, the Soviets put their proposal to a vote before the Council. The Soviet proposal only obtained 6 of a possible 33 votes. In order for the resolution to have been accepted, it needed to gain at least 17 votes in favor. Accordingly, the Soviet proposal failed. In an effort to bring about consensus, the Member from the United Kingdom consulted with the other Members of the WEOG. All the Members of the Council, with perhaps the exception of the Iranians, wanted to conclude the deliberations of the IR 655 incident. If the Council failed to reach a consensus at this session of the Council, the incident would be taken up before the General Assembly in September, and the whole situation would have been compounded. Wanting to avoid this situation, the WEOG decided to make some compromises on the language in its proposal and the Soviets met them halfway. The statement that the WEOG put forward upgraded the term "deplores" to the stronger term "deeply deplores". Ultimately, this is the language that was used in the resolution (Stohr 20 March 1989).

The final text of the resolution reads:

The Council of the International Civil Aviation Organization Recalling its decision of the 14 July and 7 December 1988 Concerning the shooting down, on 3 July 1988, of Iran Air Airbus 300 on Flight IR 655 by a warship of the United States; Having considered the report of the fact-finding investigation instituted by the Secretary General pursuant to the decision of the Council of 14 July 1988 and the subsequent study

by the Air Navigation Commission of the safety recommendation presented in that report; Expressing appreciation for the Full Cooperation extended to the fact-finding mission by the authorities of all states concerned Recalling that the 25th session (Extraordinary) of the Assembly in 1984 unanimously recognized the duty of states to refrain from the use of weapons against civil aircraft in flight; Reaffirming its policy to condemn the use of weapons against civil aircraft in flight without prejudice to the provisions of the Charter of the United Nations; Deeply deplores the tragic incident which occurred as consequence of events and errors in identification of the aircraft which resulted in the accidental destruction of an Iran Air Airliner and the loss of 290 lives; Expresses again its profound sympathy and condolences to the government of the Islamic Republic of Iran and to the bereaved families; Appeals again urgently to all contracting states which have not yet done so to ratify, as soon as possible, the protocol introducing article 3 bis into the Convention on International Civil Aviation; Notes the report of the fact-finding investigation instituted by the Secretary General and endorses the conclusions of the Air navigation Commission on the safety recommendations contained there in; Urges States to take all necessary measures to safeguard the safety of air navigation, particularly by assuring effective co-ordination of civil and military activities and the proper identification of civil aircraft (Stohr 20 March 1989).

In response to the resolution that the Council adopted, Iran stated, “the resolution was not a proper response to the shoot-down of an innocent civilian airliner and that the Council had failed to carry out its responsibility” (Section VI, Ref I). To which the US replied, “the Council had once again demonstrated its collective wisdom and ability to sort through complex situations to arrive at appropriate conclusions” (Stohr 20 March 1989).

For all intents and purposes, in the eyes of the ICAO Council, and in the eyes of the world, the US Government successfully avoided condemnation for the downing of IR 655. For over seven years following ICAO’s decision, it seemed that the US had, along with avoiding condemnation, also avoided having to pay compensation. On 5

July 1988, President Reagan promised to compensate the families of those who perished on IR 655. At the time, the US Government refused to compensate the families of the Iranian victims because the Iranian Government insisted on distributing the funds. Given the situation in the Gulf at the time and Iran's practice of supporting terrorist organizations, the US Government doubted that the money would ever get to the families of the victims if the Iranian Government was charged with distributing the money.

So, the US Government held out for a settlement whereby a neutral third party would be charged with making sure that the families of the victims were actually compensated. The Iranians finally agreed to the US Government's formula on 22 February 1996. Under a settlement through the International Court of Justice, the US Government agreed to pay US \$61,800,000 to the legal heirs of the 248 Iranians who were killed in IR 655. Under the same settlement, the US Government also agreed to pay another US \$70,000,000 to Iran for assets that had been frozen in 1981 in reaction to Iran's alleged violations of the Algiers Declarations.

The Swiss Embassy in Iran, in conjunction with a Swiss bank in Zurich, was given the tasks of coordinating the payments to the heirs of the victims and ensuring that the money ended up in the heirs' bank accounts. The compensation plan broke down its the settlements into two categories, wage-earners and non-wage-earners. Under the settlement, the heirs of a wage-earning victim received \$300,000 and the heirs of a non-wage earning victim received \$150,000 (Int. Court of Justice 22 Feb 1996 No. 79).

In conclusion, it seems that the Iranian delegate was partially correct when he said, at the 15 July 1988 meeting of the UN Security Council, that "he doubts the Security Council will deal objectively with the US aggressive acts" (Section 1 Reference 15 July cable). It was inevitable that politics would also come into the ICAO Council. As this was at least partially the case, Iran was bound to suffer on account of the fact that, in the eyes of the world, and the nations of influence, Iran was definitely not in very good standing politically. So they were forced to sleep in the bed they made.

There were several positive things that came out of this tragic accident. The ties between the Soviet Union and the United States continued to grow stronger. The IR 655 incident was managed professionally by the Soviet (and American) diplomats, and was not allowed to become anything more than a superficial issue in our relations. The US realized the Soviets were going to be professional and play hard, but also were not going to be cajoled by Iran into taking uncompromising positions that had the potential to become insurmountable obstacles in the big picture for productive USSR-US relations.

Specifically in the Gulf Region, due to increased pressure from the UN Security Council, Iran and Iraq accepted UN Resolution 598, and the war between Iran and Iraq came to a close. In regard to the advances that occurred on the level of ICAO, new regulations were approved that helped make civil air travel safer in the Gulf and in the world at large.

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