

**AN ASSESSMENT OF THE RUSSIAN JET
DOWNED BY TURKEY FROM THE PERSPECTIVE
OF INTERNATIONAL LAW**

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Abstract. Good relations between Russia and Turkey became strained when Russia's SU-24-M fighter jet was shot down by Turkey on 24 November 2015 in Syria. It was the first time a NATO country had shot down a Russian jet in over 63 years. Although a year after this incident, the relations were restored by the leaders of the two states, Erdogan and Putin, it is still important to investigate the jet incident more deeply and within the framework of international law in order to prevent future violations of this nature. As a matter of fact, Russia's invasion of Ukraine on 24 February 2022 reveals the necessity of this investigation. The aim of this study is to examine the downing of the Russian jet by Turkey within the realm of compliance with international law. In this regard, first of all, information will be provided about the status of the airspace. Then, compatibility of Turkey's downing of the Russian jet with international law is discussed.

Keywords: International law, downing of Russian jet, violation of airspace, rules of engagement, air law, Russia, Turkey.

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1. Introduction

The downing of the Russian SU-24-M fighter jet, violating the Turkish airspace, by the Turkish F-16 fighter jet on 24 November 2015 (Taking Stock 2020, Bishara

2015) not only created a major break in Turkish-Russian relations (Kubicek 2021: 217), but also set the agenda of the international public opinion. This incident severing the relations (Köstem 2021: 797) between the two states in the last 20 years occurred as a result of the fact that operations carried out by Russia in Syria have created discontent for Turkey (Taşcı 2015: 16).

In the new world order established with the Charter of the United Nations (UN) of 1945 after World War II, it was envisaged that the disputes between the states should be settled by peaceful means and therefore, the use of force was prohibited with some exceptions (UN Charter Art. 2/4). The aforementioned Charter recognized the sovereign equality of states and adopted respect for territorial integrity as the basic principle. The objective of this regulation brought by the UN Charter is undoubtedly to maintain international peace. The basis of these fundamental principles is the idea or the experience that war will not settle the disputes among states but is a method that will escalate these problems. Turkey's downing of Russian jet is based on the violation of air space which is a part of its own territory and sovereignty accordingly.

The aim of this study is to examine the downing of the Russian jet by Turkey within the realm of compliance with international law. In this regard, first of all, information will be provided about the status of the airspace, which is a part of the territory of the states, the jurisdictions that the states may exercise in case of violation of the airspace and the rules of engagement in this context. Then, compatibility of Turkey's downing of the Russian jet in accordance with international law is going to be discussed.

2. The legal status of the airspace, state's jurisdictions against airspace violation

2.1. Overall perspective

The 'state' is a supreme entity created by the nation that has dominated a certain territory. When analyzed within the framework of this definition, four elements of the state stand out. A state, according to the Montevideo Convention of 1933 is defined as having the following characteristics: *a permanent population, a defined territory, a government, and a capacity to enter into relations with other States* (Montevideo Convention). In this regard, the states in the international community are sovereign and equal, regardless of their size, according to the UN Charter. The sovereignty of states indicates their independence in the international community. In other words, while each state holds the highest power within itself, it is independent in the international arena. In this sense, international law has given the state jurisdictions that both protect its territory against possible attacks and ensure the safety of its citizens. The state is able use these jurisdictions at sea and air territories, especially in the land territory. It is the fundamental duty of a state to ensure the security of its territory in *land, sea and air spaces*, provided that it abides by the rules of international law.

2.2. National airspace and its status

Rules regarding aviation are 20th century products (Pazarcı 2018: 319). Since aviation law is a new concept compared to maritime law, it has been regulated by international conventions from the beginning (Aust 2005: 588). Apart from the various agreements signed until 1944, the first of them is the Paris Convention for the Regulation of Aerial Navigation (1919 Paris Convention) signed at the Paris Peace Conference on 13 October 1919, the relevant basic rules of the applied international law relating to aviation laid down by the Chicago Convention on International Civil Aviation signed on 7 December 1944 (1944 Chicago Convention). Airspace is divided into two as '*national airspace*' and '*international airspace*' according to the applied international law rules determined by the terms of the conventions summarized above. National airspace is defined as the airspace above the land territory of a state, including its territorial waters adjacent to it. International airspace, on the other hand, is the airspace outside of the national airspace (Pazarcı 2018: 321). In other words, the airspace that is not above a state's territory, including its territorial waters (Aust 2005: 347).

The status of international airspace is based on the principle of 'freedoms of the air' (Glahn and Taulbee 2017: 407). All states have the right to freely use international airspace, namely freedom of the flight. In contrast, the legal status of national airspace is based on the principle of the complete and exclusive sovereignty of a state. According to the 1944 Chicago Convention (Art. 1), every state has complete and exclusive sovereignty over the airspace above its territory and that the territory of a state is the land and territorial waters (but not the contiguous or exclusive economic zones) under the sovereignty (Air Law 2020: 1-2). Similarly, according to Article 1 of the 1919 Paris Convention, every state has complete and exclusive sovereignty over its own airspace. In this respect, no scheduled international air service may operate over or into the territory of a state without that state's previous consent (1944 Chicago Convention, Art. 6).

However, with the 1944 Chicago Convention, the vast majority of states have declared their consent for 'civil aircraft' to fly over their territories, depending on different forms and conditions. Accordingly, contracting states recognize the right of other contracting states to fly over their own territory without prior authorization (Pazarcı 2018: 321). It is possible for civil aircraft to enter a foreign country in accordance with the law, only with special permission except for the agreement conditions stated above (Shaw 2021: 404). Entries made without the consent of the state of the territory are described as 'trespassing' (Sar and Meray: 11).

In response to these rights that states correspondingly give to each other's civil aircraft, 'state aircraft' can fly over a foreign state territory subject to permission. The first convention regulating this principle is the 1944 Chicago Convention. According to the convention, state aircraft cannot fly over any other state's territory, except under special agreements or in case of permission (1944 Chicago Convention, Art.3). The second convention on the subject is the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) (Glahn and Toulbe 2017: 420). According to the UNCLOS the sovereignty of a coastal State extends to the air space over the

land territory including its territorial waters adjacent to it (Art. 2). Under these two conventions, ‘*the right of a civil aircraft or state aircraft to fly in the airspace of a state is subject to the permission of the sovereign state.*’ (Bilsel 1948: 199, Glahn and Toulbe 2017: 408). Otherwise, when a state’s national airspace is violated by another state’s aircraft, the relevant state has the right to take the necessary action and intervene to prevent the violation.

2.3. Inspection of aircrafts entering the state’s airspace

States’ sovereignty over its airspace is the fundamental principle of international air law (Abeyratne 2012: 3). International law sets different rules for inspections over airspace against aircraft that violate the state’s sovereignty, depending on the type of aircraft. In this context, aircrafts are divided into two as ‘*civil aircraft*’ and ‘*state aircraft*’ (1944 Chicago Convention Art. 3/b).

This distinction is essential to determining the rules to which aircraft will be subject. In this context, civil aircrafts are subject to civil aviation regulations, 1944 Chicago Convention in particular. Accordingly, as stated above, states have already given their consent for civil aircraft to fly over their territory within the framework of the relevant conventions. For situations other than these provisions, they must definitely obtain permission from the state of the territory. Otherwise, it constitutes a violation of the airspace of the state. Flying over the territories of the state without permission may be ‘*unintentional*’ or ‘*intentional*’ depending on the compulsory circumstances.

The unauthorized entry of aircrafts into the airspace of foreign states began to be seen in the development years of aviation just before World War I, and these violations increased day by day with the development of aviation (Sar and Meray: 26). Over time, the states took various measures against these violations, and from time to time they even shot down many aircrafts, both military and civil, that entered the airspace of other states without permission (Ata 2012: 2, Kaya 2012: 2). As a result, airspace violations, sometimes accidentally, have led to the end of the lives of many innocent people.

Upon this, the International Civil Aviation Organization (ICAO) made a call in 1981 and recommended that the state, whose airspace was violated, should not use weapons against unauthorized aircraft. Later on, the rules to be applied in case a civil aircraft enters another state’s airspace without permission were added to the 1944 Chicago Convention as article 3bis with an amendment made in 1984, after the shooting down a Korean Airlines flight KAL007 on 1 September 1983 by the Soviet Union (Aust 2005: 352).

Accordingly, the states refrain from using weapons against civil aircraft and may request aircraft flying over their own territory to land at an airport they have determined. Considering the terminology used, it is understood that the prohibition is not absolute. After all, it is accepted in international practice that when a civil aircraft enters a foreign state’s air space due to its ‘*in distress*’ situation (Article 25 of the 1944 Chicago Convention) or within the scope of other ‘*unintentional*’ entries (bad weather, misdirection, technical reasons or aircraft hijacking), it is accepted

that they should be warned first. In this case, the state may ask the civil aircraft in question to land at a designated airport or to fly on a particular flight direction it deems appropriate. It is also foreseen that force may be used against civil aircraft that do not comply with these orders, in proportion to the danger it creates (Ata 2012: 3).

On the other hand, there is no regulation that determines what measures will be taken in case of a violation of the airspace by state aircraft or military aircraft. It can be thought that the reason for this is that states do not want to make an area in which they have complete and exclusive sovereignty the subject of international regulation. Moreover, in the state practice, there is no international law rule in this regard (Ata 2012: 22). However, when we examine state practices from the past to the present, the responses of the states for such airspace violations vary greatly according to relations between the two states during the incident and the type of vehicle. Sometimes nothing is done, then diplomatic protest is preferred.

On some occasions, interceptions are made in such a way that they can reach up to ‘*dogfighting*’, the aircraft is forced to follow a designated route, and leave the airspace or even land, or is fired and downed (Ata 2012: 22). However, it is generally accepted that if a state aircraft has entered another state’s airspace without permission and this entry has occurred in an ‘unintentional’ way, such as bad weather or a technical problem, the procedures applied to civil aircraft described above will also be applied to the state aircraft. However, if the state aircraft ‘intentionally’ made an unauthorized entry, it is necessary to first be informed that it violated the airspace, then be forced to leave the airspace or be invited to land on a runway. If there is still no positive response after all these are done or if there is a possibility of danger, state would be entitled to shoot down the state aircraft. However, if the hostile intent of the state aircraft is very clear and poses a serious threat, force can be used without warning (Ata 2012: 24).

3. Turkey’s airspace and measures to be taken by Turkey against violation: rules of engagement

3.1. Overall perspective

Turkey’s airspace was determined by Turkey’s domestic legislation in accordance with international law. According to the Turkish civil aviation act (Act numbered 2920) Turkish airspace covers land territory under the sovereignty of Turkey and the territorial waters adjacent to it (Art. 3/a). Turkish airspace is used by aircrafts within the framework of this act and other relevant legislation provisions (Art. 5). Flights of the foreign state aircrafts in Turkish airspace will have to comply with the Turkish rules and regulations. The provision of Article 3 of the Chicago Convention on state aircraft is reserved (Art. 3/d).

Turkey prevents violations against her own airspace, over which it has complete and exclusive jurisdiction, by taking measures in accordance with the above-mentioned international conventions and bilateral agreements based on this act and other relevant legislation.

In this context, the President of Turkey may prohibit / restrict the use of the whole or a part of Turkish airspace or flying over certain regions, either for public order and security reasons or as a temporary or permanent measure for military reasons (Art. 7). In addition, when life and property, public order or homeland security require, foreign aircraft entering Turkish airspace must land at the designated airport to be notified (Art. 94). Turkey, within the framework of the authority given to it by international law put into effect the relevant regulations determining the measures to be taken against state aircraft violating the airspace including foreign military aircraft to visit air bases and airports. Among these, the ‘*National Engagement Rules Directive (MY228-3 (A))*’, which determines the course of action of the Turkish Armed Forces (TAF) in case of a violation of Turkish airspace by another state aircraft, is important for our topic.

Even though the use of force is prohibited by international law (UN Charter, Art. 2/4), states determine the details such as the *size*, *time* and *place* of the force to be used as a domestic law regulation in accordance with international law in cases of exceptions to this prohibition or in situations of use of force / armed conflict that arise in a different framework.¹ The purpose of this domestic law regulation, called *Rules of Engagement (ROE)*, which will help the successful completion of the mission, is to ensure that the military authorities use force under the political control. ROE are the primary tools for regulating the use of force, making them a cornerstone of the operational law discipline (Barnsby et al. 2011: 73). They are restrictive directives issued by the competent military authorities that determine how a state’s armed forces will come into conflict with the forces that the state faces on its territory and how it will conduct armed conflict. In other words, ROE are directives issued by competent military authority that delineate the circumstances and limitations under which armed forces will initiate and/or continue combat engagement with other forces encountered (Cooper 2014: 6).

The concept of ROE had taken its place in international law as it entered the literature of the USA first, then NATO and the UN. In the US military literature, the word ‘engagement’ first appeared with the heading ‘*Intercept and Engagement Instructions*’ published by the US General Staff for the US Navy and Air Force and was named as ‘*Rules of Engagement*’ by members of the armed forces (Law of War: 2). The introduction of the concept of ‘Rules of Engagement’ into the literature of the USA caused it to enter the UN and NATO doctrine and therefore into international law.

According to the definition in the NATO Legal Deskbook, the NATO Rules of Engagement are included as ‘directives that determine the boundary of the operation and direct the operation during the joint and combined operation of NATO Rules of Engagement, published as an unclassified document, was updated in 2003 (MC 362/1 NATO ROE).

¹ The UN Charter provides two bases for a state’s choice to resort to the use of force: Chapter VII enforcement actions under the auspices of the UN Security Council, and self-defense pursuant to Article 51 (which governs acts of both individual and collective self-defense) (Crawford 2019: 976).

The UN ROE are included in the United Nations Peacekeeping Operations Handbook and are defined as follows: ‘*It is the jurisdictions that determine the force levels that can be used in various situations, give instructions on how each force level should be used, and that should be taken by the commanders.*’ They are the rules that clarify the different levels of force that can be used in various circumstances, how each level of force should be used, and any authorizations that must be obtained by commanders” (United Nations Peacekeeping Operations)

The concept of ROE is essential to international operations, especially in *peacekeeping* and *peacemaking operations*. From this point of view, *Sanremo International Humanitarian Law Institute* has published the *Sanremo Rules of Engagement Handbook (Sanremo Handbook)* at the end of its studies on the subject. In the *Sanremo Handbook*, the ROE are defined as ‘*an instrument issued by competent authorities and assist in the delineation of the circumstances and limitations within which military forces may be employed to achieve their objectives*’ (Rules of Engagement Handbook 2009: 1). The *Sanremo Handbook* predicts that if states find themselves in the face of an attack or a threat of war, they can take non-aggressive measures and change their military strategies to ensure their own security and prevent possible attacks. ROE are consistent with the relevant law and reflect the political mandates and the national policies of nations.

Considering the *Sanremo Handbook* and the UN definitions, it is understood that the setting of the ROE is under the complete and absolute sovereignty of the state and is left to the discretion of the competent authorities of the states. Similar to other states, Turkey has prepared its own ROA in a way that will not be contrary to international law and applies it by updating it over time as needed.

3.2 Rules of engagement of Turkey

After the downing of the RF-4E Phantom Turkish reconnaissance aircraft by Syrian forces on 22 June 2012 (Syrian military says), ROE entered the country’s agenda with the most authoritative statement that ‘ROE have been changed’ aroused curiosity in terms of its meaning and applications (Turkey changes).

The rules of engagement in Turkey have been issued as a domestic and confidential legal document under the name of ‘*Turkish Armed Forces Directive on the Rules of Engagement (MY 228-3(A))*’ (Akgül et al.) and is updated when needed. In order to understand the nature of this document, it would be useful to analyze some of the provisions of the ROE that Turkey has implemented against Syria and that has been reflected in the press.

Accordingly, in accordance with the *MY 228-3 (A) Directive on the ROE*, if Turkish airspace is violated by an aircraft of a foreign state, the element of TAF tasked with preventing this violation warns to leave the airspace by contacting the vehicle that committed the violation and at the same time high commands are informed. In order to remove the aircraft that do not heed this warning in the airspace, the aircrafts in the air or waiting on the ground are directed to the targets, and even if this was not successful, the aircraft could be shot down (Akkutay 2017: 332). Following the downing of a Turkish reconnaissance aircraft by Syrian forces on 22 June 2012, some

changes has been made in the *MY 228-3 (A) Directive on the ROE* with the *Prime Ministry Circular* dated in March 2013, which determines the general framework of the intervention to foreign military aircraft violating Turkish airspace (Turkey says). Accordingly, the principle of assessing every military element approaching Turkey from the Syrian border as a ‘threat’ and treating them as ‘military targets’ was accepted (Turkey changes). In other words, it was envisaged that these targets would be shot down without any prior warning. In fact, it is understood from the statements (Turkey PM Erdogan) the authority to implement the ROE has been transferred to the lower levels without officially declaring any alarm level against Syria (Karataş 2016:59). Within the framework of the ROE shaped by the ‘zero tolerance’ policy, the Syrian *MI-17* military helicopter (Fahim and Arsu 2015) on 16 September 2013, the Syrian *Mig-23* fighter plane on 23 March 2014 (Turkey downs), and an unidentified unmanned aerial vehicle on 16 October 2015 (Melvin 2015) has been detected to violate Turkish airspace despite warnings, and Turkey shot down these aircrafts (Bilsel: 88). The entry into force of the revised ROE clearly reveals that Turkey has adopted a strict policy in this regard.

Apart from these violations, when Russian fighter aircraft violated Turkish airspace twice on the Syrian border on 3 and 4 October 2015, the Russian Ambassador to Ankara was summoned to the Ministry of Foreign Affairs and strongly protested about these violations (Press Release 269/2015) In its statement, the Russian Federation stated that the violation was not intentional but was caused by bad weather and inexperience (Güçlüten 2018: 68, Isachenko 2018).

4. Downing of Russian jet by Turkish warplane

4.1. Overall perspective

Downing of a Russian *Sukhoi Su-24* military jet by the Turkish Air Force on 24 November 2015 increased the tensions between the states involved in the Syrian crisis. On that day a Russian bomber was undertaking an operation in the northwest of Syria, in a region controlled by opposition forces, near the Turkish border region of Yayladağı. The bomber was intercepted and downed by an air-to-air missile fired from a Turkish F-16 fighter jet and crashed on Syrian territory near the border. It is disputed whether the Russian plane entered Turkish airspace.

After a teenager burned himself in Tunisia on 17 December 2010 due to the oppressive regime, the chaos that started in the Middle East and North African countries under the name of Arab Spring spread to Syria, and a civil war broke out in the country in 2011.

Syrian regime, which was weakened with the start of the civil war, could not prevent the emergence of terrorist organizations as well as opposition groups, and the region faced various terrorist organizations. In this regard, the different views of the global and regional powers in the region regarding both the violence of the Syrian government against the opposition groups and the joint struggle of the international community against ISIL (Islamic State of Iraq and the Levant) (The

Islamic State ...), which controls most of Syria (Downed Russian Warplane ...), has led to the emergence of disputes among them. During the combat in Syria, Iran and the Russian-backed regime forces versus armed rebel groups occasionally violated the Turkish borders. As a matter of fact, when the dates refer to 24 November 2015, the region faced a brand-new crisis. Russian SU-24-M fighter jet located in Syria to support Syrian regime forces violated Turkish airspace during the bombardments towards Bayırbucak Turkmens to whom Turkey is eager to protect them and in response, the Russian jet was shot down by Turkish fighter jets in the framework of ROE. The parties differ on the precise circumstances leading to the attack.

4.2. Turkish argument

Gradual increase of the combat in the civil war that broke out in Syria in 2011 caused the people to migrate massively, and this situation had a great impact on Turkey (Syrians Under Temporary Protection 2020). Turkey has become the focus of mass migration due to its location and terrorist acts and activities have posed a threat to Turkey.

Following these developments in Syria, Turkey, which has a land border of approximately 900 kilometers with that country, increased its defense measures on the border line in order to ensure border security. However, despite the measures taken by Turkey, the attacks against Turkey by both the regime forces and rebel groups indicated that the measures taken were not sufficient. Therefore, Turkey have changed the ROE first, then has begun to respond to these attacks in accordance with international law based on the new ROE (Turkey's downing 2015, Galeotti 2015). In this context, downing of the Russian SU-24-M fighter jet by the Turkish F-16 fighter jet on 24 November 2015 due to violation of Turkish airspace within the framework of the ROE constitutes the last link of the responses given within this framework. According to explanation made by Turkish General Staff after the incident that two Turkish F-16s shot down a plane with 'unknown nationality' on 24 November at around 9:20 a.m. within the ROE after it failed to heed the warnings (Turkey shoots).

The central contested fact is, of course, whether the aircraft had crossed over the border into the Turkish airspace. Both states tried to prove that they were right in this case. According to the statement made by the Turkish General Staff, the two Russian warplanes, which violated the border between Turkey and Syria, remaining in Turkish airspace for five minutes despite being warned 10 times via 'emergency' channel and asked to change their headings south immediately (Mačák 2015). Disregarding these warnings, Russian aircrafts continued their violation, and one of the planes was shot down by the Turkish aircraft F-16, which was on patrol in the region, in accordance with the ROE (Karadeniz and Kiselyova 2015, Press Release [No:BA-97/15], Turkey downs).

The Russian aircraft which violated the airspace was a military aircraft. According to the Turkish argument, the civil war in Syria and Turkey's perception of the threat arising from it, the fact that airspace violations (Turkish army) had taken place in the same region before, and violations of the Turkish ROE forced Turkey to shoot down the plane. There are details indicated that the Russian plane had violated the Turkish

airspace over Yayladağı before it crashed on Turkmen Mountain and was shot down by Turkish warplanes (Mankoff 2015). The moment of the event and its aftermath were broadcast live on televisions. Then, a sound recording showing that Russian planes were warned ten times was published (Turkey shoots). It is understood from these records that the Russian pilots were warned to change their headings south as well.

After this incident, Prime Minister Recep Tayyip Erdogan made a speech explaining that an intervention has been made due to airspace violation in the context of ROE and everyone should respect the right of Turkey to protect its borders. According to Erdogan, Syrian government and its allies attacked to the Bayırbucak Turkmen, who were trying to protect their own territory in Syria, misusing ISIL as an excuse to keep the Assad regime alive (Karataş 2016: 51).

As stated by the Turkish authorities, Turkey shot down the Russian aircraft only because of the violation of ‘complete sovereignty of the state over its territory’ (Abeyratne 2012: 1-2), which is a core principle in international law. On the other hand, according to the agreement between Turkey and Syria signed in 1971 (Agreement Regulating The Positions of Air Vehicles in Terms of Border Security), aircrafts of both parties shall not be approaching to the border less than 5 kms unless they get official permission (Keser and Meral 2016: 37). Despite this rule, it is also said that the purpose of these activities of Russia in the region is a test to actually stretch Turkey’s ROE (Karabat 2015). It is also stated by the authorities that the Russian warplane approached less than 5 kms to the Turkish airspace. In addition, it was stated that the Russian warplane not only approached the Turkish border less than 5 km, but also violated the Turkish airspace many times. For this reason, Turkey shot down the plane within the framework of the international law and Turkish ROE determined in accordance with its sovereign right.

4.3. Russian argument

On the contrary to Turkey’s ‘conciliatory’ statements, Russia preferred to act with an ‘aggressive’ attitude in the face of these incidents. In his statement after the SU-24 crisis, Russian President Vladimir Putin interpreted this action as ‘stab in the back’ (Turkey Downing 2015).

The Russian defense ministry insisted that the aircraft remained within Syria’s territory throughout its mission, and did not violate Turkish airspace and received no warnings (Turkey’s downing). It published a video showing the SU-24’s flight path (Youtube 2015).

When seen the radar images (Russian Defense Ministry), it was claimed that the Turkish aircraft F-16 took off from Diyarbakir airport at 08:40 am and Russian aircraft SU-24 that was on patrol between the hours 9:11–10:26 am was shot down off 5 kms to Turkish borders. Russia stated that Russian fighter jet exercising its preventive strikes in fulfilling its regulatory tasks over the mountainous region near the Turkish-Syrian border where Russian origin terrorists are heavily deployed who could return to Russia at any time was shot down. In addition, Russia said that there was a sign on the planes indicating her nationality, therefore Turkey’s argument

relating to lack of knowledge of the aircraft was ‘nonsense’ (Taşçı 2015: 19).

In addition, it was also stated that, in accordance with the Deconfliction Protocol made with the US (Vasiliev 2018: 495), the latter was informed in advance when and where Russian planes would fly before the operation. Russia also stated that as a member of the coalition, Turkey was not likely to remain unaware; and they believed that this incident was a pre-planned attack triggering provocation, and they are not on the brink of war with Turkey, but they will review their relationship. They added that they considered the downing of their plane as an act of terrorism; they are legitimately in Syria, and they will give full support to the Syrian army in order to save its territory from international terrorism (Turkey’s downing).

While statements about Turkey’s shooting down of the Russian warplane were made one after the other, Russia increased the level of criticism even more and tried to accuse Turkey of supporting terrorist organizations.

As can be understood from these Russian statements, Russia claims that the Russian plane did not cause any violation and they did not take any action that could be considered against the rules of international law, and that the Russian warplane was unfairly shot down.

In the face of these allegations, according to Beyazıt Karataş’s assessment, although the black box of the downed Russian plane was damaged, a cross-examination of the incident could have been made with other possibilities and capabilities other than the black box (Karataş 2016: 27). One of these examinations was the investigation of the Turkish aircraft F-16. This claim was considered as an argument that will strengthen the Russian thesis, but such an investigation has not so far been carried out. After the Fethullah Gülen Terrorist Organization (FETO) attempted a coup in Turkey on 15 July 2016, a new allegation was made by Russia regarding the downing of the Russian plane. Accordingly, it was stated that the pilots of the Turkish F-16 fighter jet, who shot down the Russian plane, were members of the FETO that carried out a coup against Erdoğan, and they may have shot down the plane without Erdoğan’s knowledge in order to initiate a Turkish-Russian war. This news was somewhat confirmed when the Minister of Justice Bekir Bozdağ announced that the two military pilots who shot down the Russian warplane were arrested for their involvement in the coup. Again, Ankara Metropolitan Municipality Mayor Melih Gökçek said that the person who shot down the Russian plane was one of the putschists. In addition, in an interview President R.T. Erdoğan gave to Al-Jazeera television, he emphasized that the pilots in question had a relation with FETO. Based on this information, Russia claims that the Russian plane was shot down for a provocation rather than a violation of Turkish airspace. However, these claims have not yet been confirmed.

4.4. UN and NATO arguments

Ambassador Yaşar Halit Çevik, Permanent Representative of the Republic of Turkey to the UN, sent a letter to the UN Security Council in order to prove Turkey’s right in the plane crash (Letter, Turkey tells). In this letter, Yaşar Halit Çevik stated that Turkey, which has total and exclusive sovereignty over its territory,

is determined to protect its internal and external security and borders, and that the downed aircraft was repeatedly warned to avoid violations within the framework of the ROE determined by Turkey. In order to prove its claims, Turkey also presented the evidence that the Russian plane had been warned 10 times in a five-minute period before it was shot down and that the Russian plane was shot down since it did not respond to these warnings. (The General Staff). In addition, diplomats from the member states of the UN Security Council were informed by Turkey.

On the other hand, UN Information Service Director Ahmed Fevzi stated that the downing of the Russian plane could create new obstacles for the global fight against ISIL. UN Secretary-General Spokesperson Stephane Dujarric stated that UN Secretary-General Ban Ki-Moon was concerned about the downing of the Russian plane that violated Turkish airspace and called both parties for calm and de-escalation (Russian-Turkish Crisis 2015). In addition to these statements, UN Special Envoy for Syria Staffan de Mistura stated that Turkey's downing of a Russian jet near the Syrian border risks harming the Syrian peace process (UN Syria envoy).

On the other hand, Colonel Stew Warren, the spokesperson of the US-led coalition against ISIL, confirmed that the Russian aircraft had been warned ten times before engaging and that the Russians did not respond (Karataş 2016: 43), and NATO announced that the data in their possession indicate that the Russian aircraft violated Turkish airspace (Statement by the NATO).

Although the statements made by the UN representatives are against Turkey, this does not abolish Turkey's right to intervene if a Russian aircraft violates its airspace, as determined by the UN Charter. According to the UN Charter, states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state (UN Charter Art.2/4). As the International Court of Justice has underlined in many of its decisions, this prohibition is in the nature of a *jus cogens* (*peremptory norm*)², which is core principle of international law. However, Article 51 of the UN Charter explicitly authorizes the state that has been subjected to an armed attack to use its right of self-defense.

According to the UN Treaty, it is clear that Turkey was right to shoot down the Russian warplane. According to international law, simple border violations are not considered as an armed attack, but after the various border violations summarized above, there is no doubt that the violation on 24 November 2015 has already exceeded this right (Kaya 2012: 7). In such cases, all parties should refrain from escalating conflicts. It is known that similar situations have occurred in the recent past and upon this, Turkey has seriously warned its interlocutors both through official channels and open channels. In this respect, there is no doubt that an intervention to an aircraft that violates the airspace is a right granted to Turkey by international law. The exercise of this right is, of course, first left to the relevant state. In this context, since Turkey perceives this violation as a threat, its intervention in the Russian warplane does not violate international law (Kaya 2012: 7). The most important regulation supporting this interpretation is Article 2/4 and Article 51 of the UN Charter. These articles also explicitly reveal the UN opinion.

² *Jus cogens* norms which are nonderogable and peremptory, enjoy the highest status within customary international law, are binding on all nations, and cannot be preempted by treaty (Shaw 2017: 715).

5. Conclusion

When the opinions of Turkey, Russia, the UN and NATO regarding the above-mentioned incident are examined, it is clear that the Russian aircraft violated the Turkish airspace. In the face of this situation, it is understood that Turkey warned the Russian aircraft first, based on the provisions of both international law and the ROE, and shot down the plane when the violation continued despite the warnings. When the legal dimension of the incident in question is evaluated, it is understood that there is no contradiction to the rules of international law. Interfering with the infringing aircraft is undoubtedly a right recognized by international law. The decision regarding the exercise of this right is left to the relevant state.

However, downing a plane also has a political and economic dimension, perhaps more important than its legal dimension. In this respect, states are very careful when exercising the authority given to them by international law and the ROE in such a situation, and they do not prefer to shoot down the aircraft even if there is a clear violation. As a matter of fact, no NATO member state had shot down a Russian warplane since the 1950s, including the Cold War period (Turkey's downing). Turkey's downing of a Russian aircraft is a first in this regard (What's the). Considering that even the US, which has faced similar incidents in thousands of flights, has not shot down a Russian aircraft so far, it is understood that although Turkey did not violate the rules of international law in shooting down the Russian aircraft, it acted hastily and failed to foresee the political and economic outcome of the event.

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References

- Abeyratne, Ruwantissa (2012) *Air navigation law*. Heidelberg: Springer.
- Act numbered 2920 and dated 14/10/1983. Available online at <<http://web.shgm.gov.tr/doc2/law2920.pdf>>. Accessed on 17 March 2020.
- Air law: theoretical knowledge manual* (2020) Oxford Aviation Training & Jeppesen.
- Akgül, S. K., B. Pazarbaşı, and G. Yıldız (2016) “As a tool social networks twitter for political communication in foreign policy on the effect of decision-making process: the analysis of tweet messages of Turkish and Russian political news actors on making Su 24 Russian plane crashed”. *Journal of Information Technology* 7, 25, 37–70.
- Akkutay, Berat Lale (2017) *Uluslararası hukukta sivil ve devlet hava aracı ayrımı*. TAAD (Ankara), 8, 31, 315–348.
- Aust, Anthony (2005) *Handbok of international law*. Cambridge: Cambridge University Press.
- Barnsby et al. (2011) “Rules of engagement”. In S. Condron, ed. *Operational law handbook*. International and Operational Law Department, The Judge Advocate General’s Legal Center and School, Virginia.
- Bishara, Azmi (2015) “Russian intervention in Syria: geostrategy is paramount”. *Arab Center for Research & Policy Studies*, 1–21. Available online at <<http://www.jstor.com/stable/resrep12697>>. Accessed on 25 February 2022.
- Convention on international civil aviation. Available online at <https://www.icao.int/publications/Documents/7300_cons.pdf>. Accessed on 6 January 2022.
- Convention relating to the regulation of aerial navigation signed at Paris (13 October 1919) (Paris Convention). Available online at <http://library.arcticportal.org/1580/1/1919_Paris_convention.pdf>. Accessed on 6 January 2022.
- Cooper, Camilla Guldahl (2014) “Rules of engagement demystified: a study of the history, development and use of ROEs”. *Military Law and the Law of War Review* 53, 1, 1–54.
- Crawford, James (2019) *Brownlie’s principles of public international law*, 9th ed. Oxford.
- Fahim, K. and S. Arsu (2013) “Turkey says it shot down Syrian military helicopter flying in its airspace”. *The New York Times*, 16 September. Available online at <<https://www.nytimes.com/2013/09/17/world/europe/turkey-syria.html>>. Accessed on 10 April 2022.
- Glahn, Gerhard von and James Larry Taulbee (2017) *Law among nations: an introduction to public international law*. 11th ed. New York.
- Güçlüten, Çağrı (2018) *Rules of engagement at international law: Turkey’s downing a Russian warplane*. Mersin.
- “Hava sahası ve FIR nedir?”. *HavaLiman*. Available online at <<https://www.havaliman.com/hava-sahasi-ve-fir-nedir/>>. Accessed on 5 January 2022.
- Isachenko, Vladimir (2018) “Putin seeks to defuse downing of Russian plane off Syria”. *AP News*. Available online at <<https://apnews.com/article/moscow-syria-ap-top-news-international-news-air-force-49ff908bba924ee1a43b5a6db3917bcd>>. Accessed on 10 April 2022.
- Karabat, Ayşe “Rusya ne yapmaya çalışıyor?”. [What is Russia trying to do?] (2015) *Aljazeera*. Available online at <<http://aljazeera.com.tr/al-jazeera-ozel/rusya-ne-yapmaya-calisiyor>>. Accessed on 09 June 2022.
- Karadeniz, T. and M. Kiselyova (2015) “Turkey downs Russian warplane near Syria border, Putin warns of ‘serious consequences’”. *Reuters*. Available online at <<https://www.reuters.com/article/us>>

- mid-east-crisis-syria-turkey-idUSKBN0TD0IR2015 1124>. Accessed on 11 May 2022.
- Karataş, Beyazıt (2016) *Bir Rus savaş uçağı düşürmenin anatomisi*. İstanbul: Alibi Press.
- Kaya, İbrahim (2012) “Türk jetinin düşürülmesi ve uluslararası hukuk”, *Tuic Akademi*. Available online at <<http://www.tuicakademi.org/turk-jetinin-dusurulmesi-ve-uluslararası-hukuk/>>. Accessed on 6 January 2021.
- Keser, A. and Ö. E. Meral (2016) “Türk hava sahasını ihlal eden Rus uçağının düşürülmesi: uluslararası anlaşmalar ve hukuk çerçevesinde bir inceleme”. *Türk Sosyal Bilimler Araştırma Dergisi* (Hasan Kalyoncu Üniversitesi) 1, 1, 27–42.
- Keskin Ata, Funda (2012) “Uluslararası hukuk açısından türk askeri uçağının suriye tarafından düşürülmesinin bir değerlendirmesi”. *Ortadoğu Analiz* 4, 44, 16–29.
- Köstem, Seçkin (2021) “Russian-Turkish cooperation in Syria: geopolitical alignment with limits”. *Cambridge Review of International Affairs* 34, 6, 798–817.
- Letter of Yaşar Halit Çevik to UN (2015). Available online at <<https://www.zerohedge.com/news/2015-11-24/17-seconds-changed-world-leaked-letter-exposes-turkeys-hair-trigger-reality>>. Accessed on 9 February 2022.
- M. C. Bilsel (1958) *Milletlerarası hava hukuku*. (İstanbul Üniversitesi Yayınları, 3, 1.) İstanbul.
- M. Galeotti (2015) “Why did it take Turkey just 17 seconds to shoot down Russian jet?”. *The Guardian*, 26 November. Available online at <<https://www.theguardian.com/world/2015/nov/26/russia-turkey-jet-mark-galeotti>>. Accessed on 30 August 2022.
- Mačák, Kubo (2015) “Was the downing of the Russian jet by Turkey illegal?”. *Blog of the European Journal of International Law*. Available online at <<https://www.ejiltalk.org/was-the-downing-of-the-russian-jet-by-turkey-illegal/>>. Accessed on 11 August 2022.
- Mankoff, J. (2015) “Turkish downing of a Russian jet”. *CSIS*. Available online at <<https://www.csis.org/analysis/turkeys-downing-russian-jet>>. Accessed on 15 April 2022.
- MC 362/1 NATO Rules of Engagement.
- Melvin, Don (2015) “Turkish air force reports it shot down unidentified drone”, *CNN*. Available online at <<https://edition.cnn.com/2015/10/16/middleeast/turkey-drone-shot-down/index.html>>. Accessed on 10 July 2022.
- Montevideo convention on the rights and duties of states, signed at Montevideo (26 December 1933). Available online at <<https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf>>. Accessed on 6 March 2021.
- NATO&OTAN (2016) “Statement by the NATO secretary general on Russian air space violation”. Available online at <https://www.nato.int/cps/en/natohq/news_127562.htm>. Accessed on 13 May 2022.
- ORSAM: Center of Middle Eastern Studies (2015) “Downed Russian warplane, rules of engagement and international law”. Available online at <<https://orsam.org.tr/en/downed-russian-warplane-rules-of-engagement-and-international-law/>>. Accessed on 5 August 2022.
- P. Kubicek (2021) “Strictly pragmatism? Prospects for a Russian-Turkish partnership”. *Journal of Balkan and Near Eastern Studies* 23, 2, 233–250.
- Pazarıcı, Hüseyin (2018) *Uluslararası hukuk*. (Turhan Kitabevi, 17B.) Ankara.
- Press release regarding the violation of Turkish airspace by a Russian federation aircraft, No: 269 (2015) *Republic of Turkey Ministry of Foreign Affairs*, 5 October. Available online at <http://www.mfa.gov.tr/no_-269-05-october-2015-press-release-regarding-the-violation-of-turkish-airspace-by-a-russian-federation-aircraft.en.mfa>. Accessed on 10 June 2022.

- Rules of engagement handbook* (2009) International Institute of Humanitarian Law, Sanremo.
- “Russian defense ministry video proves Su-24 never entered Turkish airspace” (2015) *Sputnik International*, 24 October. Available online at <<https://sputniknews.com/20151124/mod-su-24-flight-path-1030695406.html>>. Accessed on 11 July 2022.
- “Russian-Turkish crisis” (2015) *Sputnik Türkiye*. Available online at <<https://tr.sputniknews.com/columnists/201512021019413911-Rusya-Turkiye-krizi-uchak-olayi/>>. Accessed on 24 November 2020.
- Sar, Cem and Seha L. Meray (1972) “İzinsiz giren yabancı uçakların uluslararası hukuk açısından yarattığı sorunlar”. *Ankara Üniversitesi SBF Dergisi* 27, 3, 20–30.
- Shaw, Malcolm N. (2017) *International law*. 8th ed. Cambridge.
- “Syrian military says it downed Turkish fighter jet” (2012). *BBC News*. Available online at <<https://www.bbc.com/news/world-middle-east-18561219>>. Accessed on 15 April 2022.
- “Syrians under temporary protection” (2022). *R.o.Tr. Ministry of Interior Presidency of Migration Management*. Available online at <<https://en.goc.gov.tr/temporary-protection27>>. Accessed on 30 August 2022.
- “Taking stock: five years of Russia’s intervention in Syria” (2020) *Carnegie Europe*, 30 November. Available online at <<https://carnegieeurope.eu/2020/11/30/taking-stock-five-years-of-russia-s-intervention-in-syria-event-7492>>. Accessed on 25 February 2022.
- Taşçı, Tekin Ayhan (2015) “Türk-Rus ilişkilerinde yeni bir başlangıç: Rus uçağının düşürülmesi”, *Erciyes Üniversitesi Stratejik Araştırmalar Merkezi*, 15–38.
- “The general staff has released the audio recording of the warnings to the Russian plane” (2015) *AA*. Available online at <<https://web.archive.org/web/20151126133202/http://www.aa.com.tr/tr/turkiye/genelkurmay-russian-aircraft-made-warnings-audio-recorded-published/481350>>. Accessed on 24 September 2022.
- The international institute of humanitarian law*. Available online at <<https://iihl.org/the-institute/>>. Accessed on 18 August 2022.
- “The Islamic state (terrorist organization)” (2022) *RAND Corporation*. Available online at <<https://www.rand.org/topics/the-islamic-state-terrorist-organization.html>>. Accessed on 11 August 2022.
- “Turkey changes rules of engagement after F-4 downed by Syria” (2012) *Air force technology*. Available online at <<http://www.airforce-technology.com/news/newsturkey-syria-f-4-shot-down>>. Accessed on 05 January 2022.
- “Turkey downing of Russia jet ‘stab in the back’ – Putin” (2015) *BBC*. Available online at <<http://www.bbc.com/news/world-middle-east-34913173>>. Accessed on 11 April 2022.
- “Turkey downs Russian fighter jet near Syrian border after violation of airspace” (2015) *Daily Sabah*, 24 November. Available online at <<https://www.dailysabah.com/turkey/2015/11/24/turkey-downs-russian-fighter-jet-near-syrian-border-after-violation-of-airspace>>. Accessed on 11 July 2022.
- “Turkey downs Syria military jet ‘in airspace violation’” (2014) *BBC News*. Available online at <<https://www.bbc.com/news/world-middle-east-26706417>>. Accessed on 11 April 2022.
- “Turkey PM Erdogan calls Syria an ‘open threat’” (2012) *BBC News*. Available online at <<http://www.bbc.com/news/av/world-middle-east-18595559>>. Accessed on 10 August 2022.
- “Turkey says Russian jet violated its airspace again, warns of consequences” (2016) *Reuters*. Available online at <<https://www.reuters.com/article/us-turkey-russia-airspace-idUSKCN0V80NM>>. Accessed on 30 August 2022.

- “Turkey shoots down Russian fighter jet” (2015) *Youtube*. Available online at <<https://www.youtube.com/watch?v=OWoPSQwfEeg>>. Accessed on 15 March 2022.
- “Turkey shoots down Russian jet for airspace violation near Syrian border” (2015) *Hürriyet Daily News*, 24 November. Available online at <<https://www.hurriyetdailynews.com/turkey-shoots-down-russian-jet-for-airspace-violation-near-syrian-border-91580>>. Accessed on 12 June 2022.
- “Turkey tells U.N. it shot down plane, defends right to do so” (2015). *Reuters*. Available online at <<https://web.archive.org/web/20151125032620/http://www.reuters.com/article/2015/11/24/us-mideast-crisis-syria-un-idUSKBN0TD25H20151124?mod=related&channelName=Aerospace>>. Accessed on 24 November 2020.
- “Turkey’s downing of Russian warplane – what we know” (2015) *BBC News*. Available online at <<https://www.bbc.com/news/world-middle-east-34912581>>. Accessed on 30 August 2022.
- Turkish armed forces general staff. *Press Release (No:BA-97/15)*. Available online at <https://web.archive.org/web/20151124152949/http://www.tsk.tr/3_basin_yayin_faaliyetleri/3_1_basin_aciklamalari/2015/ba_97.html>. Accessed on 11 April 2022).
- “Turkish army to respond to any Syrian violation: Erdogan” (2012) *Reuters*. Available online at <<https://www.reuters.com/article/us-syria-crisis-turkey-idUKBRE85P0C920120626>>. Accessed on 21 April 2022.
- “U.N. Syria envoy says downing of Russian jet ‘did not help’ peace process” (2015) *Reuters*. Available online at <<https://www.reuters.com/article/us-mideast-crisis-un-idUSKBN0TG1IX20151127>>. Accessed on 24 July 2022.
- United Nations Convention on the law of the sea. Available online at <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>. Accessed on 6 March 2022.
- United Nations peacekeeping operations: principles and guidelines* (2008). Available online at <https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf>. Accessed on 18 August 2022.
- United States Marine Corps*. The Basic School Marine Corps Training Command Camp Barrett. “Law of war/ introduction to rules of engagement B130936 student handout”, 2134–5019, Virginia.
- “U.S. says Turkish shoot down of Russian jet was ‘at the border’” (2015) *Reuters*. Available online at <<https://www.reuters.com/article/uk-mideast-crisis-syria-turkey-coalition-idUKKBN0TD1Z720151124>>. Accessed on 2 April 2022.
- Vasiliev, Alexey (2018) *Russia’s middle east policy: from Lenin to Putin*. London: Routledge.
- “What’s the reaction in Moscow?” (2015) *CNN*. Available online at <<https://edition.cnn.com/2015/11/24/middleeast/russia-turkey-jet-downed-syria/index.html>>. Accessed on 11 August 2022.