



INTERNATIONAL COURT OF JUSTICE

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**Questions of Interpretation and Application of the 1971 Montreal Convention
arising from the Aerial Incident at Lockerbie
(Libyan Arab Jamahiriya v. United States of America)**

Preliminary Objections

The Court will proceed to consider the merits of the case

THE HAGUE, 27 February 1998. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, found today that it has jurisdiction to deal with the merits of the case brought by Libya against the United States of America concerning the aerial incident at Lockerbie. It also found that the Libyan claims are admissible.

Libya, which submitted the case to the Court on 3 March 1992, contends that the United States does not have the right to compel it to surrender two Libyan nationals suspected of having caused the destruction of Pan Am flight 103 over the town of Lockerbie, Scotland, on 21 December 1988, in which 270 people died (all 259 passengers and crew, as well as 11 people on the ground). Libya argues that the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal in 1971 authorizes it to try the suspects itself.

In June 1995, the United States raised three preliminary objections: the first to the jurisdiction of the Court, the second to the admissibility of the Libyan Application and the third alleging that the Libyan claims had become moot as having been rendered without object by resolutions taken by the United Nations Security Council. The United States contended moreover, in the alternative, that, should the Court nonetheless hold that it had jurisdiction, it could and should "resolve the case in substance now" by deciding that the relief sought by Libya is precluded.

Jurisdiction of the Court

The United States contested the jurisdiction of the Court by contending that there was no legal dispute with Libya on the Convention. They claimed that it was not a question of "bilateral differences" but one of "a threat to international peace and security resulting from State-sponsored terrorism".

In its Judgment, the Court however finds that the Parties differ on the question whether the destruction of the Pan Am aircraft over Lockerbie is governed by the Montreal Convention. A legal dispute of a general nature concerning the Convention thus exists between the Parties. The Court adds that specific disputes also exist concerning the interpretation and application of Article 7 of the Convention (relating to the place of prosecution) and Article 11 (relating to assistance in connection with criminal proceedings).

The United States also maintained that, even if the Montreal Convention did confer on Libya the rights it claims, they could not be exercised in this case because they were superseded by Security Council resolutions 748 (1992) and 883 (1993) which, by virtue of Articles 25 and 103 of the United Nations Charter, have priority over all rights and obligations arising out of the Montreal Convention.

The Court does not uphold this line of argument. Security Council resolutions 748 and 883 were in fact adopted after the filing of the Application on 3 March 1992. In accordance with its established jurisprudence, if the Court had jurisdiction on that date, it continues to do so.

The Court concludes by thirteen votes to two that it has jurisdiction to hear the disputes between Libya and the United States as to the interpretation or application of the Montreal Convention.

Admissibility of the Libyan Application

The United States contended that, by seising the Court, Libya was endeavouring to "undo the Council's actions" and that, even if Libya could make valid claims under the Montreal Convention, these are "superseded" by the relevant decisions of the Security Council.

The Court finds that it cannot uphold this conclusion. The date, 3 March 1992, on which Libya filed its Application, is in fact the only relevant date for determining the admissibility of the Application. Security Council resolutions 748 and 883 cannot be taken into consideration in this regard since they were adopted at a later date. As to the resolution 731 (1992), adopted before the filing of the Application, it could not form a legal impediment to the admissibility of the latter because it was a mere recommendation without binding effect, as was recognized moreover by the United States.

The Court concludes by twelve votes to three that Libya's Application is admissible.

Objection that the claims of Libya became moot because of the Security Council resolutions

Concerning the objection of the United States according to which Libya's claims have become moot because Security Council resolutions have rendered them without object, the Court finds that if it were to rule on that objection at this stage of the proceedings, it would inevitably be ruling on the merits and affecting Libya's rights. The Court, however, will be able to consider the objection when it reaches the merits of the case.

Argument in the alternative

Finally, the Court did not uphold the claim of the United States by which it requested the Court, in the alternative, "to resolve the case in substance now" in the event that it should declare that it has jurisdiction and deem Libya's Application admissible. The Court indicated that by raising preliminary objections, the United States had made a procedural choice the effect of which is to suspend the proceedings on the merits.

Further proceedings

Having established its jurisdiction and concluded that Libya's Application is admissible, the Court will now, after consultation with the Parties, fix time-limits for the further proceedings.

The proceedings consist of two parts: written and oral.

During the written phase, written pleadings are exchanged. The Applicant (Libya in this case) has already filed a Memorial on the merits and consequently, the Court will fix the time-limit for the filing of a Counter-Memorial by the Respondent (the United States). The Court may authorize a Reply by the Applicant and a Rejoinder by the Respondent.

Upon the closure of the written proceedings, public hearings are organized during which the Parties address the issues that still divide them. The Court hands down a Judgment on the merits only after the oral proceedings.

The Court was composed as follows in the case: Vice-President Weeramantry, Acting President President Schwebel; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri; Registrar Valencia-Ospina.

Judges Bedjaoui, Ranjeva and Koroma appended a joint declaration; Judges Guillaume and Fleischhauer appended a joint declaration; Judge Herczegh appended a declaration. Judges Kooijmans and Rezek appended separate opinions. President Schwebel and Judge Oda appended dissenting opinions.

A summary of the Judgment is given in Press Communiqué No 98/6bis. The text of the declarations and a brief summary of the opinions may be found in the Annex to that press communiqué.

The full text of the Judgment, the declarations and opinions, as well as the Press Communiqués, are already available on the Court's Website (<http://www.icj-cij.org>).

The printed text of the Judgment and of the declarations and opinions appended to it will become available in due course (orders and enquiries should be addressed to the Distribution and Sales Section, Office of the United Nations, 1211 Geneva 10; to the Sales Section, United Nations, New York, N.Y. 10017; or any appropriate specialized bookshop).

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