INTERNATIONAL COURT OF JUSTICE

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The Kingdom of Bahrain, the Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates submit to the International Court of Justice a joint Application constituting an appeal against a decision rendered by the ICAO Council

THE HAGUE, 5 July 2018. The Kingdom of Bahrain, the Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates yesterday submitted to the International Court of Justice (ICJ), the principal judicial organ of the United Nations, a joint Application constituting an appeal against the decision rendered by the Council of the International Civil Aviation Organization (the "ICAO Council") on 29 June 2018, in proceedings initiated by the State of Qatar against these four States on 30 October 2017, pursuant to Article 84 of the Convention on International Civil Aviation (the "Chicago Convention").

On the same day, the Kingdom of Bahrain, the Arab Republic of Egypt and the United Arab Emirates submitted to the Court another joint Application constituting an appeal against the decision rendered by the ICAO Council in proceedings initiated by Qatar against these three States on 30 October 2017, pursuant to Article II, Section 2, of the International Air Services Transit Agreement (IASTA) (see Press Release No. 2018/33).

The Application submitted by Bahrain, Egypt, Saudi Arabia and the United Arab Emirates asserts that, in 2013 and 2014, following years of diplomatic activities, the Member States of the Gulf Cooperation Council adopted a series of instruments and undertakings referred to collectively as the Riyadh Agreements, under which Qatar "committed to cease supporting, financing or harbouring persons or groups presenting a danger to national security, in particular terrorist groups". It is further stated in the Application that, on 5 June 2017, after Qatar allegedly failed to abide by its commitments, the above-mentioned States adopted a range of counter-measures "with the aim of inducing compliance by Qatar". These measures included airspace restrictions to aircraft registered in Qatar. On 30 October 2017 Qatar submitted to the ICAO, pursuant to Article 84 of the Chicago Convention, an Application against the above States ("Application (A)") which "alleged various violations of the Chicago Convention as the result of [the said] airspace restrictions".

Bahrain, Egypt, Saudi Arabia and the United Arab Emirates further point out that, on 19 March 2018, they raised two preliminary objections to Qatar's Application (A), contending that the ICAO Council lacked jurisdiction to adjudicate the claims submitted by Qatar, or, in the alternative, that the claims were inadmissible. In their first preliminary objection, they argued that the dispute would require the ICAO Council "to determine issues that f[e]ll outside its jurisdiction [, since] to rule on the lawfulness of the countermeasures adopted by the Applicants, including certain airspace restrictions, the Council would be required" and "to rule on Qatar's compliance with critical obligations under international law entirely unrelated to . . . the Chicago Convention". In their second preliminary objection, they contended, inter alia, that "Qatar had not complied with

the necessary precondition to the existence of jurisdiction of the Council, contained in Article 84 of the Chicago Convention, of first attempting to resolve the disagreement . . . through negotiations prior to submitting its claims to the Council".

The ICAO Council rendered its decision on 29 June 2018, rejecting these preliminary objections.

The Applicants contend that the decision was issued "immediately following the close of oral submissions, and without asking any questions or undertaking any deliberations". In their view, despite their oral intervention "to clarify that there were in fact two separate preliminary objections", the ICAO Council decision "refer[red] to a singular 'preliminary objection' only" and "did not state any reasons for the rejection of the preliminary objections".

The Applicants advance three grounds of appeal. Under the first ground of appeal, they contest the decision of the ICAO Council as "manifestly flawed and in violation of fundamental principles of due process and the right to be heard". Under the second and third grounds of appeal, they claim that "the ICAO Council erred in fact and in law" in rejecting, respectively, the first and the second preliminary objections to its jurisdiction over Qatar's application.

Consequently, Bahrain, Egypt, Saudi Arabia and the United Arab Emirates request the Court to adjudge and declare:

> "(1) [t]hat the Decision of the ICAO Council dated 29 June 2018 reflects a manifest failure to act judicially on the part of the ICAO Council, and a manifest lack of due process in the procedure adopted by the ICAO Council; and
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> (2) [t]hat the ICAO Council is not competent to adjudicate upon the disagreement between the State of Qatar and the Applicants submitted by Qatar to the ICAO Council by Qatar's Application (A) dated 30 October 2017; and
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> (3) [t]hat the Decision of the ICAO Council dated 29 June 2018 in respect of Application (A) is null and void and without effect."

As basis for the Court's jurisdiction over the appeal, the Applicants invoke Article 84 of the Chicago Convention, in conjunction with Articles 36 (1) and 37 of the Statute of the Court.

The full text of the joint Application of 4 July 2018 will be available shortly on the Court's website.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the "World Court", it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Court (ICC, the only permanent international criminal court, which was established by treaty and does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), the Mechanism for International Criminal Tribunals (MICT, mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Tribunal for Rwanda), the Kosovo Specialist Chambers and Specialist Prosecutor's Office (an ad hoc judicial institution which has its seat in The Hague), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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