

**APPEAL RELATING TO THE JURISDICTION OF THE ICAO COUNCIL UNDER
ARTICLE 84 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION
(ISLAMIC REPUBLIC OF IRAN v. CANADA, THE KINGDOM OF SWEDEN,
UKRAINE AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND)**

APPLICATION INSTITUTING PROCEEDINGS

I. INTRODUCTION

1. The present Application constitutes an appeal against the decision rendered by the Council of the International Civil Aviation Organization (the “ICAO Council”) on 17 March 2025 and formally notified to Iran on 11 April 2025 (the “Decision”), in proceedings commenced jointly by Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland (the “United Kingdom”) against the Islamic Republic of Iran (“Iran”) on 8 January 2024 pursuant to Article 84 of the Convention on International Civil Aviation, Chicago, 7 December 1944 (the “Chicago Convention”).
2. The proceedings before the ICAO Council concern a disagreement relating to the interpretation and application of the Chicago Convention with respect to the erroneous shooting down of a civil aircraft in flight - Ukraine International Airlines Flight 752 (“Flight PS752”) by Iran’s military on 8 January 2020. Flight PS752 was shot down in error during a period of heightened military alert which was in place in Iran in anticipation of a possible attack by US military forces.
3. By the Decision, the ICAO Council rejected what it termed as Iran’s “preliminary objection” to its competence to consider the Application submitted to it in respect of the Chicago Convention. Iran had in fact raised two separate and distinct objections in its Preliminary Objections filed on 4 June 2024.

4. In accordance with Article 87 (2) of the Rules of Court, a copy of the Decision is annexed hereto.¹

II. STATEMENT OF FACTS

5. On 11 January 2020, the General Staff of the Armed Forces of the Islamic Republic of Iran publicly announced that on 8 January 2020 Iranian military forces had shot down Flight PS752 as a hostile target unintentionally and due to human error. The Iranian military had misidentified and targeted the flight by two missiles without obtaining authorisation, contrary to mandatory military regulations. The accident unfortunately resulted in the downing of the aircraft near Tehran and the tragic loss of all 176 passengers and crew members on board, most of whom were Iranian nationals. These findings were subsequently independently confirmed by the Aircraft Accident Investigation Board of the Islamic Republic of Iran (the “AAIB”), including in its Final Report dated 15 March 2021.
6. On 8 January 2024, the Applicants jointly filed an Application and Memorial with the ICAO Council for a settlement of a disagreement with Iran as Respondent “relating to the interpretation and application of the Chicago Convention resulting from the Respondent’s failure to refrain from resorting to the use of weapons against a civil aircraft in flight - Ukraine International Airlines Flight 752.” The Applicants claimed that Iran has “breached the obligation contained in Article 3bis of the Chicago Convention prohibiting the use of weapons against civil aircraft in flight.”
7. The Applicants alleged that Iran refused to engage in negotiations with them in relation to a disagreement concerning Article 3bis and maintained that all matters pertaining to the downing of Flight PS752 had been resolved. They also stated that Iran “refused to acknowledge that it bore any international legal responsibility for its failure to refrain from resorting to the use of weapons pursuant to the Chicago Convention.”
8. On 16 March 2024, the ICAO Council decided to grant Iran a time-limit of twelve weeks for the filing of its Counter-Memorial. Further to an application by Iran on 23 April 2024, the

¹ Letter from the Secretary General dated 11 April 2025 enclosing Decision of the Council of the International Civil Aviation Organization on the Preliminary Objection in the matter: Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland and the Islamic Republic of Iran (2024), Annex 1.

ICAO Council extended on 6 May 2024 the time-limit for the submission of the Counter-Memorial by an additional 3 weeks, until 7 June 2024.

9. On 4 June 2024, within the deadline for filing its Counter-Memorial as extended and in compliance with Article 5 of the ICAO Rules for Settlement of Differences (the “Rules”), Iran filed its Preliminary Objections.² Iran raised two separate and distinct preliminary objections:
 - a. The first objection was that the Council lacks jurisdiction over the claims in their entirety because the Applicants have failed to satisfy the requirement for negotiations under Article 84 of the Chicago Convention (the “First Objection”).
 - b. The second objection was that, absent proof that the United Kingdom’s nationals were onboard Flight PS752, the United Kingdom’s claims are inadmissible on the basis that it lacks standing (the “Second Objection”).

10. As regards the First Objection, Iran explained that:
 - a. The Applicants never genuinely attempted to engage in meaningful and good faith discussions with Iran with a view to resolving the disagreement relating to the interpretation and application of Article 3*bis* of the Chicago Convention.³ Relying on the underlying evidence, Iran explained to the Council that the Applicants had been unwilling to renounce a series of rigid pre-conditions for negotiations, in particular the acknowledgment by Iran of the existence of a breach of the Montreal Convention and the Chicago Convention.⁴ Indeed, they sought to stigmatize Iran and treat breach of international law as a *fait accompli*, rather than to seek a practical solution. In circumstances where no liability under the Chicago Convention (or other rules of international law) was accepted by Iran, it could not be appropriate for the Applicants to propose only negotiations that treated liability as a *fait accompli*, as opposed to

² Iran’s Preliminary Objections, Annex 2

³ Iran’s Preliminary Objections, para. 26.

⁴ Iran’s Preliminary Objections, paras. 26, 35-37.

liability being the subject of negotiations in which Iran could put forward its entirely good faith position that it had not breached these treaties.⁵

- b. In any event, any negotiations in relation to the disagreement concerning interpretation and application of Article 3*bis* had not been pursued in good faith, let alone reached a point of futility or deadlock.⁶ Iran confirmed its “continued willingness to negotiate with the Applicants bilaterally or collectively” and “requested that the Council exercise its discretion under Article 14(1) of the ICAO Rules to invite the Parties to engage in negotiations with a view to resolving the present disagreement”.⁷

11. As to the Second Objection, Iran explained that the United Kingdom:

“[M]ust show that it has a legally protected interest, i.e. that its own subjective rights have been infringed (or that obligations *erga omnes [partes]* have been breached, an aspect not relevant in the present case). ... Since the UK seems to rely on the presence of some its nationals onboard the aircraft to justify the claims it presents, the UK also bears the burden of proving the presence of these persons in the flight and their British nationality. It has not discharged this duty. Absent such proof, the UK lacks standing to bring its claims to the ICAO Council (and to participate in these proceedings) and its claims should therefore be declared inadmissible.”⁸

12. Following the filing of Iran’s Preliminary Objections, the President of ICAO informed the Parties by his letter of 10 June 2024 that in accordance with Article 5 (3) of the ICAO Rules for the Settlement of Differences, the proceedings on the merits were suspended pending the decision of the ICAO Council on the preliminary objections filed.

13. On 14 June 2024, the ICAO Council decided to grant the Applicants a time-limit of six weeks from receipt by the Applicants of Iran’s Preliminary Objections for submission of a Reply,

⁵ Iran’s Preliminary Objections, paras. 26, 32, .

⁶ Iran’s Preliminary Objections, paras. 26-27.

⁷ Iran’s Preliminary Objections, paras. 41-42. See also para. 97(c). It is to be emphasised that the exercise of this discretion is not dependent on the Council having jurisdiction under Article 84 of the Chicago Convention.

⁸ Iran’s Preliminary Objections, paras. 91, 94-95.

and also decided that Iran may file a Rejoinder within four weeks from receipt of the Reply (i.e., by 29 August 2024).

14. On 26 July 2024, within the deadline so fixed, the Applicants filed their joint Reply to Iran's Preliminary Objections.
15. On 29 August 2024, within the time-limit set by the ICAO Council, Iran filed its Rejoinder on Preliminary Objections. Iran recalled and repeated the Submissions at paragraph 97 of its Preliminary Objections,⁹ as well as repeating its request for the ICAO Council to invite the Parties to engage in negotiations in accordance with Article 14 of the Chicago Convention with a view to resolving the present disagreement.¹⁰
16. By his letter of 21 January 2025, the President of ICAO informed the Parties that the consideration of Iran's Preliminary Objection would take place on 17 March 2025 and invited the Parties to said meeting in accordance with Article 27 (3) of ICAO Rules for Settlement of Differences.
17. Thereafter, the President of the ICAO Council informed the Parties that, in accordance with Article 27 of the ICAO Rules, the ICAO Council had allocated 30 minutes for each Party's presentation and 5 minutes for rebuttal.
18. The ICAO Council heard the oral arguments of the Parties at the fifth meeting of its 234th Session on 17 March 2025. Following close of the oral submissions, and without asking any questions or undertaking any deliberations, the Council then proceeded immediately to a vote by way of secret ballot on what it characterised as Iran's preliminary objection (singular). By a vote upon a single motion, the ICAO Council rejected – by 21 votes to 4, with 8 abstentions – Iran's first and second preliminary objections, treating them incorrectly as one single objection despite the repeated concerns of at least one Council Member (Brazil).

⁹ Iran's Rejoinder, para. 24, Annex 3.

¹⁰ Iran's Rejoinder, para. 23.

19. At the time of voting, the ICAO Council considered and adopted the following text as its Decision on Iran’s Preliminary Objections:

“That the preliminary objection of the Respondent is not accepted in its entirety for the following reasons:

a) The negotiation condition established by Article 84 of the Chicago Convention has been met in this case because negotiations regarding the subject-matter of the disagreement did take place and yet the positions of the parties were and continue to be irreconcilable; further, despite the numerous exchanges and genuine attempts made to settle this dispute by negotiation, there was no reasonable prospect of these attempts succeeding.

b) The Respondent’s request concerning Article 14(1) of the Rules does not constitute a preliminary objection and has no bearing on whether the Council has jurisdiction to decide the disagreement between the parties.

c) The claims of the United Kingdom are admissible because, as a Contracting State to the Chicago Convention, the United Kingdom is a State concerned in a disagreement relating to the interpretation or application of the Convention in connection with the accident involving Flight PS752; therefore, the United Kingdom clearly has standing to present the disagreement to the Council for decision pursuant to Article 84 of the Chicago Convention; further, that the question of whether the subjective rights of the United Kingdom have been infringed or that obligations *erga omnes partes* have been breached can only be addressed at the merits stage.”¹¹

20. However, following the vote, the ICAO Council materially amended paragraph (c) of the text adopted on 17 March 2025 and the Secretary General subsequently provided Iran with a certified copy of the Decision on 11 April 2025, stating:

“1. The entirety of the preliminary objection of the Respondent is not accepted for the following reasons:

a) The negotiation condition established by Article 84 of the Chicago Convention has been met in this case because negotiations regarding the subject-matter of the disagreement did take place and yet were and continue to be futile or deadlocked; further, despite the numerous exchanges and genuine attempts made to settle this dispute by negotiation, there was no reasonable prospect of these attempts succeeding.

¹¹ See: “Decision of the Council of the International Civil Aviation Organization on the Preliminary Objection in the matter: Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland and the Islamic Republic of Iran (2024)”, 2nd & 3rd pages, Annex 4.

b) The Respondent's request concerning Article 14(1) of the Rules does not constitute a preliminary objection and has no bearing on whether the Council has jurisdiction to decide the disagreement between the parties.

c) The United Kingdom has standing because it is specially affected in this case, distinct from the general interest of other Contracting States to the Chicago Convention.”

21. Despite dismissing the First Objection, in the amended text of the Decision the Council invites the Parties to engage in negotiations with a view to resolving the present disagreement:

“4. The Parties to the dispute are invited to renew efforts to seek a settlement of the matter in dispute through direct negotiations, and for this purpose, the President of the Council is invited to be available to provide his good offices for consultations between the Parties.”.

22. Despite the concerns raised prior to the voting by the representative for Brazil, and despite an oral intervention by Iran during the 17 March 2025 meeting to clarify and protest that there were in fact two separate and distinct preliminary objections, the Decision refers to a singular “preliminary objection” only.

23. The representative of Brazil expressed the following dissenting opinion on the Decision notified on 11 April 2025:

“The Delegation of Brazil stressed that full compliance with the negotiation stage is essential before the Council admits a dispute under Article 84 of the Chicago Convention. The Delegation understands that requiring admission of responsibility as a precondition for negotiation does not seem compatible with the principles of genuine negotiation.

The Delegation of Brazil emphasized the Council's vital role in upholding the integrity of the dispute resolution process under Article 84, which is crucial for preventing similar accidents in future, avoiding loss of life and suffering, and ensuring proper reparation and closure to victims and their families.”

III. GROUNDS FOR APPEAL AGAINST THE DECISION

24. The subject matter of the dispute referred to the Court is Iran's appeal against the validity and correctness of the Decision of the ICAO Council rendered on 17 March 2025 in relation to the preliminary objections of Iran.
25. Pursuant to Article 84 of the Chicago Convention, Iran appeals against the Decision on the grounds that:
 - a. The ICAO Council erred in fact and in law in rejecting the First Objection to the competence of the ICAO Council to hear and adjudicate upon the merits of the disagreement submitted to it relating to an alleged violation of the Chicago Convention. For the reasons outlined in paragraph 8 above (and endorsed in the dissenting opinion of Brazil), the Applicants had not shown that the disagreement could not be satisfied by negotiations as they had not been willing to enter into good faith negotiations. Moreover, Iran considers that its position that negotiations were not futile and deadlocked is supported by the Council's subsequent exercise of its discretion in its Decision to invite further negotiations.
 - b. The ICAO Council erred in fact and in law in rejecting the Second Objection to the standing of the United Kingdom to bring its claims and to participate in the proceedings before the ICAO Council. The question of standing was correctly identified by Iran as a matter for preliminary objections, and the Council was wrong (at the critical time of voting) to consider that standing followed from merely being "concerned in a disagreement" and that issues concerning the existence of rights and the nature of obligations under the Convention (*erga omnes* or otherwise) could be deferred to the merits phase. As to the Decision served on 11 April 2025, the United Kingdom had not established that it has a legally protected interest and there was no basis for the new conclusion (and none given) that the United Kingdom was "specially affected". Moreover, it is not understood how the Council could vote and decide on the Second Objection on the basis of the reasons stated at the time, and then later issue its Decision invoking a different and seemingly contradictory reason. As a result, what

was voted on and decided by Council on 17 March 2025 is something other than what was served on the Parties on 11 April 2025 as the Council’s Decision.

- c. The voting procedure adopted by the ICAO Council prejudiced in a fundamental way the requirements of a just and fair procedure because it wrongly treated the two separate and distinct objections as if there was only a single “preliminary objection” to be voted on.

IV. JURISDICTION OF THE COURT

26. The Court has jurisdiction over the present appeal by virtue of Article 84 of the Chicago Convention, in conjunction with Articles 36 (1) and 37 of the Statute of the Court.
27. Article 84 of the Chicago Convention provides:

“Settlement of disputes

If any disagreement between two or more contracting States relating to the interpretation or application of this Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council. No member of the Council shall vote in the consideration by the Council of any dispute to which it is a party. Any contracting State may subject to Article 85, appeal from the decision of the Council to an ad hoc arbitral tribunal agreed upon with the other parties to the dispute or to the Permanent Court of International Justice. Any such appeal shall be notified to the Council within sixty days of receipt of notification of the decision of the Council.”

28. In exercising the functions specified in Article 84 of the Chicago Convention, the ICAO Council is required to act in a judicial capacity, with all necessary requirements that are attendant upon that capacity.
29. It is well-established that the appellate jurisdiction of the Court under Article 84 extends to the ICAO Council in respect of its competence.¹²

¹² See *Appeal Relating To The Jurisdiction Of The ICAO Council Under Article II, Section 2, Of The 1944 International Air Services Transit Agreement (Bahrain, Egypt And United Arab Emirates v. Qatar) Judgment Of 14 July 2020*, para. 30; *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan), Judgment, I.C.J. Reports 1972*, p. 46.

V. RELIEF REQUESTED

30. For the reasons referred to above, Iran respectfully requests that the Court adjudge and declare that:
- a. by reason of the First Objection, the ICAO Council lacks jurisdiction to adjudicate upon the disagreement between Iran and the States of Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland as submitted by those States' Application to the ICAO Council dated 8 January 2024;
 - b. by reason of the Second Objection, the United Kingdom lacks standing to bring its claims and to participate in the proceedings before the ICAO Council; and
 - c. the voting procedure adopted by the ICAO Council, and the material amendment to paragraph (c) of the Decision after the vote, prejudiced in a fundamental way the requirements of a fair and just procedure because it wrongly treated Iran's two separate and distinct objections as if there was only a single "preliminary objection" to be voted on; and
 - d. the Decision of the ICAO Council is null and void and without effect.

VI. APPOINTMENT OF A JUDGE *AD HOC*

31. In accordance with Article 35 (1) of the Rules of the Court, Iran hereby gives notice of its intention to appoint a judge *ad hoc* pursuant to Article 31 (3) of the Statute of the Court.

VII. RESERVATION OF RIGHTS

32. Iran reserves the right to supplement and/or amend this Appeal, including as regards the legal grounds invoked and the relief requested.

17.04.2025

Respectfully submitted,



Tavakol Habibzadeh
Agent of the Government of
the Islamic Republic of Iran

LIST OF ANNEXES

- Annex 1:** Letter from the Secretary General dated 11 April 2025 enclosing Decision of the Council of the International Civil Aviation Organization on the Preliminary Objection in the matter: Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland and the Islamic Republic of Iran (2024)
- Annex 2:** Iran’s Preliminary Objections
- Annex 3:** Iran’s Rejoinder
- Annex 4:** “Decision of the Council of the International Civil Aviation Organization on the Preliminary Objection in the matter: Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland and the Islamic Republic of Iran (2024)”