

## LIST OF ANNEXES

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# **Annex 1**



International  
Civil Aviation  
Organization

Organisation  
de l'aviation civile  
internationale

Organización  
de Aviación Civil  
Internacional

Международная  
организация  
гражданской  
авиации

منظمة الطيران  
المدني الدولي

国际民用  
航空组织

THE SECRETARY GENERAL

Ref.: LE 6/10.CONF

11 April 2025

To: Agent for Canada  
Agent for the Kingdom of Sweden  
Agent for Ukraine  
Agent for the United Kingdom of Great Britain and Northern Ireland  
("Applicants")

and

Agent for the Islamic Republic of Iran  
("Respondent")

cc: President of the Council

From: Secretary General

I refer to the matter Settlement of Differences: *Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland and the Islamic Republic of Iran (2024)*, which is currently pending before the Council of the International Civil Aviation Organization.

Please find attached a certified copy of the Decision rendered by the Council on 17 March 2025 regarding the preliminary objection of the Respondent in the above-mentioned matter.

Kindly note that, as reflected in paragraph 2 of the referenced Decision, the Council extended the three (3) day time-balance remaining for the Respondent to file its Counter-memorial by three (3) weeks, and also decided that the new time-balance shall begin to run from the date of receipt by the Respondent of this Decision. Accordingly, the Respondent's Counter-memorial should be received by the Organization on or before 5 May 2025.

Yours sincerely,

Juan Carlos Salazar

**Enclosure**

**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)**

*THE COUNCIL,*

*ACTING* under Article 84 of the *Convention on International Civil Aviation* (the Chicago Convention) and the *Rules for the Settlement of Differences* (Doc 7782/2) (the Rules);

*COMPOSED* of the following Representatives entitled to vote: Mr. G.E. Bompadre (Argentina), Mr. R.E. Adams (Australia), Mr. C. Schleifer (Austria), Mr. C.A. Arispe Rosas (Bolivia), Mr. M. Arslanian Neto (Brazil), Ms. P. Uribe Raibaudi (Chile), Mr. X. Lyu (China), Mr. N.M.E. Mekky (Alt.) (Egypt), Ms. K.S. Martínez Paredes (El Salvador), Mr. E. Esono Anguesomo (Equatorial Guinea), Mrs. H.M. Deressa (Ethiopia), Ms. F. Cormon-Veyssière (France), Mr. H.G. Decker (Germany), Ms. A. Adjei-Nmashie (Ghana), Ms. V.Á. Aðalsteinsdóttir (Iceland), Mr. A. Rastogi (India), Mr. S. Martes (Italy), Ms. M. Coore Lobban (Jamaica), Mr. T. Onuma (Japan), Ms. F. Chin Lee Sa (Malaysia), Mr. D. Méndez Mayora (Mexico), Mr. M.S. B. Tukur (Nigeria), Mr. E. Al-Malki (Qatar), Mr. J.W. Lee (Republic of Korea), Ms. M.C.L. Ioniță (Romania), Mr. M.S.S. Habib (Saudi Arabia), Ms. E. Poh (Singapore), Mr. L. Gqeke (South Africa), Mr. Á.L. Arias (Spain), Mr. O.M. Al Raeesi (Alt.) (United Arab Emirates), Mr. A. Clare (Alt.) (United States), Mr. J. Villaverde (Venezuela (Bolivarian Republic of)) and Mr. M. Waniwa (Zimbabwe).

*THE PARTIES* being the Applicants: **Canada**, represented by Mr. Louis-Martin Aumais, Authorized Agent, assisted by Rebecca Netley, Kimberley Byers, Curtis Schmeichel, Leah Matthews, Janelle Deniset, Emilie De Haas, Katherine Speijer, Sohrab Farid, Rifah Khan, Sahar Mackawi, Andrew Regnerus, Tara Preston, John Velho and Adriana Gouvea; the **Kingdom of Sweden**, represented by Mr. Niklas Kebbon, Authorized Agent, assisted by Ola Engdahl, Fredrik Bergius, Martin Sjögren, Linda Helgeby, Mario Saric and Sara Bengston Urwitz; **Ukraine**, represented by Ms. Oksana Zolotaryova, Authorized Agent, assisted by Yuliya Kovaliv, Dmytro Kutsenko, Tetyana Girenko, Andrii Pasichnyk and Anastasiia Mochulska; and the **United Kingdom of Great Britain and Northern Ireland**, represented by Ms. Sally Langrish, Authorized Agent, assisted by Paul Berman, Chris Durham, Ella Cohen-Haddon, Joshua Crew, Natalie Marsden, Antony Henderson and Felicia Tidmarsh Cortes, on one hand; and the Respondent: the **Islamic Republic of Iran**, represented by Mr. Arash Khodaei, Authorized Agent, assisted by Mojtaba Asgharian, Masoud Ahsannejad Miandoab, Abbas Bagherpour Ardekani, Yousef Nouri Kia, Ahmad Reza Tohidi, Mohammad Saleh Attar, Sam Wordsworth, Sean Aughey and Robert Kolb, on the other hand;

*CONSIDERING* that the Council's jurisdiction is founded upon Article 84 of the Chicago Convention, which provides as follows: "[i]f any disagreement between two or more contracting States relating to the interpretation or application of the Chicago 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....";

*CONSIDERING* that an Application and Memorial by the Applicants under Article 84 of the Chicago Convention was filed on 8 January 2024; that a Statement of preliminary objection was filed by the Respondent on 4 June 2024; that a joint Reply to the Statement of preliminary objection was filed by the Applicants on 26 July 2024; and that a Rejoinder was filed by the Respondent on 29 August 2024;

*CONSIDERING* that in its Statement of preliminary objection filed on 4 June 2024 and in its Rejoinder filed on 29 August 2024, the Respondent requested the Council to:

1. Adjudge that each of the Applicants has failed to satisfy the negotiation requirement in Article 84 of the Chicago Convention and declare that the Council therefore lacks jurisdiction over the Applicants' claims in their entirety;
2. Exercise its discretion under Article 14(1) of the Rules to invite the Parties to engage in negotiations with a view to resolving the present disagreement since there is a reasonable probability that if the Applicants genuinely attempted to engage in meaningful discussions with the Respondent with a view to resolving the disagreement, this could lead to a settlement;
3. Declare that the United Kingdom's claims are inadmissible on the basis that it lacks standing to bring its claims to the ICAO Council and to participate in the proceedings since the United Kingdom has not shown that its own subjective rights have been infringed or that obligations *erga omnes partes* have been breached; further, that the United Kingdom has not shown that the aircraft involved in the accident was either registered under its flag or chartered according to its law, or that its nationals were onboard the aircraft.

*CONSIDERING* that, in their joint Reply to the preliminary objection filed on 26 July 2024, the Applicants provided arguments in response to each of the three arguments above presented by the Respondent and requested the Council to "dismiss the Islamic Republic of Iran's preliminary objection, and exercise its jurisdiction under Article 84 of the Chicago Convention to decide the disagreement set out in the Applicants' Application and Memorial filed 8 January 2024";

*HAVING HEARD* the Parties in the above matter on the preliminary objection and having held its deliberations at the Fifth Meeting of its 234th Session on 17 March 2025;

*CONSIDERING* that the question before the Council was whether to accept the preliminary objection presented by the Islamic Republic of Iran;

*BEARING IN MIND* Article 52 of the Chicago Convention which provides that decisions by the Council shall require approval by a majority of its Members and the consistent practice of the Council in applying this provision in previous cases arising under Article 84 of the Chicago Convention;

*DECIDES* as follows:

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.
  - 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.

The above Decision No. 1, on the question whether to accept the preliminary objection of the Respondent, was taken by a secret ballot with four (4) Members voting in favour, twenty-one (21) Members voting against, and eight (8) Members abstaining. A total of thirty-three (33) votes were cast by Council Members, with one (1) Member entitled to vote being absent and two (2) Members not entitled to vote because they are Parties to the dispute.

One Council Member requested to have its views recorded in a dissenting opinion which is attached to this Decision.

2. The time-balance of three (3) days remaining for the Respondent to file its Counter-memorial shall be extended by three (3) weeks and shall begin to run from the date of receipt by the Respondent of notification of this Decision of the Council.

3. Any appeal from this Decision pursuant to Article 84 of the Chicago Convention shall be notified to the Council within sixty (60) days from the date of receipt of notification of this Decision of the Council.

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.

Rendered on 17 March 2025 in Montréal.

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**DISSENTING OPINION**

**ON THE 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)**

Pursuant to Article 15(3) of the *Rules for the Settlement of Differences* (Doc 7782/2) (the Rules), the Representative of Brazil expressed the following dissenting opinion on the Decision of the Council:

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 the future, avoiding loss of life and suffering, and ensuring proper reparation and closure to victims and their families.

— END —

**Certified to be a true and complete copy**

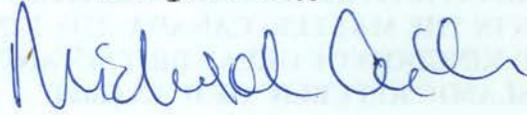
**Copie certifiée conforme**

**Es copia fiel y auténtica**

**Копия точная и полная**

**经认证的真实和完整的副本**

**صورة معتمدة طبق الأصل**



**Legal Affairs and External Relations Bureau**

**Direction des affaires juridiques et des relations extérieures**

**Dirección de Asuntos jurídicos y Relaciones exteriores**

**Управление по правовым вопросам и внешним сношениям**

**法律事务和对外关系局**

**إدارة الشؤون القانونية والعلاقات الخارجية**

**ICAO OACI ИКАО 国际民航组织 الايكاو**

## **Annex 2**



International  
Civil Aviation  
Organization

Organisation  
de l'aviation civile  
internationale

Organización  
de Aviación Civil  
Internacional

Международная  
организация  
гражданской  
авиации

منظمة الطيران  
المدني الدولي

国际民用  
航空组织

**CONFIDENTIAL**  
SG 2759/24  
Ref.: LE 6/10.CONF

10 June 2024

To: Representatives on the Council

cc: President of the Council  
Agent for Canada  
Agent for the Kingdom of Sweden  
Agent for Ukraine  
Agent for the United Kingdom of Great Britain and Northern Ireland  
(Jointly “Applicants”)  
  
Agent for the Islamic Republic of Iran  
 (“Respondent”)

From: Secretary General

Subject: **Settlement of Differences: Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland and the Islamic Republic of Iran (2024)**

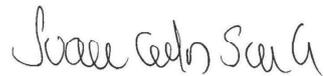
I refer to the above-captioned matter, which is pending before the Council of the International Civil Aviation Organization (ICAO).

I wish to inform you that by letter reference 110/1885, dated 4 June 2024 and presented to the Organization on the same date, the Representative of the Islamic Republic of Iran to ICAO transmitted to the Organization a Statement of preliminary objection (with Annexes) on behalf of the Respondent in the above-referenced matter. I am transmitting herewith a copy of the original English language version of the letter and the Statement of preliminary objection of the Islamic Republic of Iran as submitted. The other language versions will be circulated as soon as they become available. In accordance with the principle laid down in paragraph 6 c) of C-DEC 226/5, the Annexes to the Statement of preliminary objection will not be translated. Due to the large size of the said Annexes, they cannot be circulated via email and will therefore be made available for download by Council Members through the Secure Portal.

Pursuant to Article 5 (3) of the *Rules for the Settlement of Differences* (Doc 7782/2), (“the Rules”) upon a preliminary objection being filed, the proceedings on the merits shall be suspended and with respect to the time-limit fixed under Article 3 (1) (c), time shall cease to run from the moment the preliminary objection is filed until the objection is decided by the Council. Article 5 (4) of the Rules further provides that if a preliminary objection has been filed, the Council, after hearing the parties, shall decide the question as a preliminary issue before any further steps are taken under the Rules.

Although the Rules do not provide a specific procedure for the exchange of pleadings between the parties upon the filing of a preliminary objection, the practice of the Council in previous cases has been to permit the Applicant(s) to submit written comments in response to the Respondent's preliminary objection within a time-limit fixed by the Council under Article 28 of the Rules – normally 6 weeks.

The Council will be expected to fix the time-limit to be applied in the present matter and to decide on any procedural questions related to the proceedings on the preliminary objection during its current 232nd Session.

A handwritten signature in black ink, appearing to read "Juan Carlos Salazar".

Juan Carlos Salazar

**Enclosures**



جمهوری اسلامی ایران

**Islamic Republic of Iran**  
**The Permanent Mission of the Islamic Republic of Iran**  
**to the International Civil Aviation Organization**

Mr. Salvatore Sciacchitano  
President of the Council  
International Civil Aviation Organization  
999 Boulevard Robert-Bourassa  
Montreal QC

Ref: 110/1885

Date:04/Jun/2024

Dear Mr. President,

With reference to the matter Settlement of Differences: Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland and the Islamic Republic of Iran (2024), which is pending before the Council of the International Civil Aviation Organization, I hereby forward to you the letter from the Agent of the Islamic Republic of Iran Mr. Arash Khodaei dated 04/Jun/2024.

Please accept, Mr. President, the assurance of my highest consideration.

Sincerely yours,

  
Farhad Parvaresh  
Representative of the Islamic Republic of Iran to ICAO



Delegation of Iran  
(Islamic Republic)  
in ICAO

CC: Mr. Juan Carlos Salazar,  
Secretary General of ICAO

In the name of God

To: Mr. Salvatore Sciacchitano  
President of the ICAO Council

CC: Mr. Juan Carlos Salazar  
ICAO Secretary General

From: Agent for Islamic Republic of Iran

04 June 2024

**Subject: Settlement of Differences: Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland and the Islamic Republic of Iran (2024)**

Dear Mr. President,

With reference to the Secretary General's letter(Ref: LE6/10.CONF) dated 29 January 2024 by which Islamic Republic of Iran("Iran") was informed of the Application and Memorial of Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland("Applicants") and the Council's Decision dated 6 May 2024 which set 7 June 2024 as the time limit by which Iran needs to submit its Counter-memorial, I have the honour to appraise the Council that Iran in accordance with Article 5 of the Rules for Settlement of Differences, hereby submits its preliminary objections to the Application and Memorial of Applicants as attached to this letter.



Arash Khodaei  
Agent for Islamic Republic of Iran

**IN THE NAME OF GOD**

UKRAINE INTERNATIONAL AIRLINES FLIGHT PS752

*(CANADA, THE KINGDOM OF SWEDEN, UKRAINE AND THE UNITED KINGDOM OF  
GREAT BRITAIN AND NORTHERN IRELAND v. THE ISLAMIC REPUBLIC OF  
IRAN)*

**PRELIMINARY OBJECTIONS OF THE ISLAMIC REPUBLIC OF IRAN**

In the matter relating to the interpretation and application of the Convention on International  
Civil Aviation pursuant to Article 84

4 June 2024

## I. INTRODUCTION

1. In accordance with Article 5 of the Rules for the Settlement of Differences (the “**Rules**”), the Islamic Republic of Iran (“**Iran**”) hereby submits these Preliminary Objections to the Application and Memorial of Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland (collectively the “**Applicants**”).
2. On 8 January 2024, the Applicants jointly submitted the Application and Memorial for the settlement of a disagreement, naming Iran as Respondent. The Application was submitted under the terms of Article 84 of the Convention on International Civil Aviation (the “**Chicago Convention**”). It is stated to concern “*a disagreement 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 PS752 (‘Flight PS752’)*”.<sup>1</sup> The Applicants submit that, “*by using weapons against a civil aircraft – Flight PS752 – on 8 January 2020, the Respondent breached the obligation contained in Article 3bis of the Chicago Convention prohibiting the use of weapons against civil aircraft in flight*”.<sup>2</sup>
3. On 29 January 2024, the Secretary General notified Iran of the Application.
4. It is common ground that:
  - a. On 3 January 2020, a drone strike carried out by the United States at Baghdad airport assassinated Major General Qassem Soleimani, a high-ranking Iranian military official, and a number of his entourage.
  - b. On 8 January 2020, in the early morning hours (Tehran time), in response to the U.S. operation, a missile attack by the Islamic Republic of Iran was carried out on the Al Assad base in Iraq where U.S. forces were stationed.

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<sup>1</sup> Application, para 3.

<sup>2</sup> Applicants’ Memorial, p 6, para i.

- c. Anticipating a possible counter-attack by the U.S. military forces in the region, the relevant defensive units of the Islamic Republic of Iran, including the air defence sector, were placed on a higher level of alertness.
- d. Flight PS752 was a civil aircraft on a routine flight service between Tehran, Iran and Kyiv, Ukraine.
- e. Military and civil authorities issued the clearance to the pilots of Flight PS752 for engine start-up and gave permission to depart Imam Khomeini International Airport (“**IKA**”) on the morning of 8 January 2020.
- f. Less than four minutes after take-off, Flight PS752 was mistakenly targeted by two surface-to-air missiles fired by Iranian air defences following a misidentification. There was only a short interval between the firing of the two missiles.
- g. These missiles exploded in close proximity to the aircraft, which subsequently crashed to the ground, resulting in the tragic loss of the lives of all passengers and crew on board, most of whom were Iranian nationals.
- h. On the same day (8 January 2020), the Aircraft Accident Investigation Board of the Islamic Republic of Iran (the “**AAIB**”) immediately initiated an investigation into the incident.
- i. On 11 January 2020, the General Staff of the Armed Forces announced publicly that Iran’s air defence forces had fired missiles at Flight PS752 due to human error, resulting in the tragic incident.
- j. On 11 January 2020, pursuant to the applicable laws, the head of Iran’s Judiciary assigned to the Armed Forces Judicial Organisation the task of instituting judicial proceedings into the incident.
- k. On 15 March 2021, the AAIB published its Final Report on the incident.

5. The findings of the AAIB’s Final Report included the following:

- a. Following a relocation of an air defence unit and the operator’s failure to realign the system direction properly, the aircraft was misidentified as a hostile target approaching Tehran from the southwest by the air defence unit which, without successfully establishing communication with the command centre and without obtaining authorisation, fired two missiles at the aircraft.<sup>3</sup>
  - b. Within the airspace management, an information-based risk assessment had been conducted and various mitigations had been devised to provide civil aviation safety for the threats caused by potentially hazardous military activities.<sup>4</sup>
  - c. Civil-Military coordination was done according to the planned program and the considered mitigation measures for reducing the risk of misidentification and mistargeting of civil aircraft was implemented in both civil and military sectors.<sup>5</sup>
  - d. The risk management and mitigating measures were not effective due to the occurrence of a human error, which had not been previously predicted.<sup>6</sup>
6. As to the events between 8 January and the announcement of 11 January 2020:
- a. Upon notification of the crash by Iran’s air traffic control system, the airport rescue and fire fighting brigade promptly reached the scene, while in contact with IKA control tower. The main crash site was located within a populated park including sports fields and playgrounds.
  - b. As the AAIB reported:<sup>7</sup>

“Due to the vast area of the accident site, it is presumed that the locals accessed it during the minutes after the accident until the arrival of Law Enforcement officers there. With the arrival of the investigation

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<sup>3</sup> The relevant information was provided to the AAIB by the military authorities. See also The Aircraft Accident Investigation Board of the Islamic Republic of Iran, Flight PS752 Accident Investigation: Final Report, 15 March 2021 (“**AAIB Final Report**”) (Iran’s Annex 49), p. 75 stating: “*The investigation team was able to see evidence that confirmed it*”.

<sup>4</sup> AAIB Final Report (Iran’s Annex 49), p. 134.

<sup>5</sup> AAIB Final Report (Iran’s Annex 49), p. 135.

<sup>6</sup> AAIB Final Report (Iran’s Annex 49), p. 135. See also p. 119.

<sup>7</sup> AAIB Final Report (Iran’s Annex 49), pp. 37-38.

team, the necessary coordination with the district local authorities was done to preserve the accident site for locating the aircraft parts, to perform general analysis and sampling. By the end of the search operation for bodies, the arrangements were made for the ambulances. Due to the vast area of the crash site, filled with aircraft parts, and the impossibility of long-term protection, the wreckage parts were collected and transferred to a safe place at IKA, where they were separated and laid out by the relevant experts”.

- c. Based on the initial examination, the authorities considered that the crash was likely the result of an explosion.
  - d. In the evening of 10 January, the AAIB was informed that Iran’s air defence forces had fired missiles at the aircraft.<sup>8</sup>
7. Also on 11 January 2020, after initial judicial investigations, Iran arrested the commander of the TOR-M1 defence system who misidentified Flight PS752 as a hostile aircraft and mistakenly fired the two missiles on that basis.
8. The following States were immediately invited to and did participate in the investigation by appointing representatives:<sup>9</sup>
  - a. Ukraine (as the State of Registry and State of the Operator);
  - b. the USA (as the State of Design and State of Manufacture of the aircraft); and
  - c. France (as the State of Design and State of Manufacture of the aircraft engines as well as the State providing information and assistance for readout of flight recorders).
9. Additionally, each of the Applicants were invited to and did appoint experts pursuant to Annex 13 to the Convention. The ICAO was also invited to appoint a team of advisers to observe and lend support.
10. On 18 March 2021, the Military Court of Tehran issued an indictment and arrest warrants for a number of additional individuals.<sup>10</sup>

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<sup>8</sup> See AAIB Final Report (Iran’s Annex 49), p. 13.

<sup>9</sup> See AAIB Final Report (Iran’s Annex 49), p. 14.

<sup>10</sup> See Information Note concerning the Incident of Ukraine International Airlines Flight No. PS752 (April 2024), para 50 (Iran’s Annex 6).

11. In April 2023, the Military Court of Tehran found that:<sup>11</sup>
  - a. according to the operational order in effect, the air defence system was required to be set to limited fire mode and firing without obtaining authorisation from the command post was prohibited.
  - b. the command post had also issued a warning to all air defence system sites stating that no unit had the right to take action without coordinating with the command post; and
  - c. there was no red alert in place in the region and the status did not permit fire at will.
  
12. As to the nature of the human errors leading to the firing of the missiles, the Military Court of Tehran held that there had been:<sup>12</sup>
  - a. continuous relocation of the defence system during the night without the necessary coordination with the command post;
  - b. a lack of sufficient knowledge of the related defence instructions;
  - c. a lack of navigation adjustment or north finding in the system after its relocation and shutdown;
  - d. a declaration of the operational readiness of the system without providing stable communication layers; and
  - e. a lack of effective efforts to communicate with the command post to identify the detected target before firing the first and second missiles.
  
13. In these Preliminary Objections Iran objects that the Applicants have failed to satisfy the requirement for negotiations under Article 84 of the Convention. Iran also considers that, despite repeated requests by Iran, the UK has not shown that UK

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<sup>11</sup> See also Information Note concerning the Incident of Ukraine International Airlines Flight No. PS752 (April 2024), paras 59-61 (Iran's Annex 6).

<sup>12</sup> See also Information Note concerning the Incident of Ukraine International Airlines Flight No. PS752 (April 2024), paras 59-61 (Iran's Annex 6); AAIB Final Report (Iran's Annex 49), pp. 75-76.

nationals were onboard Flight PS752 and that, absent such proof, the UK lacks standing and its claims should therefore be declared inadmissible.<sup>13</sup>

14. Prior to developing its objection Iran makes six initial observations.
15. First, following initial investigation, since 11 January 2020 Iran has accepted that Iran's air defence forces shot down Flight PS752 in error and has repeatedly expressed regret for the resulting tragic loss of life and its sincere condolences to the families of the victims.
16. Second, Iran published the necessary reports. In a letter dated 6 August 2020, the ICAO Secretary General stated that "*the institution and conduct of the investigation [...] have to date been done in compliance with Annex 13*".<sup>14</sup> In this connection, it is recalled that the AIIB published the following reports:
  - a. a Preliminary Report dated 8 January 2020 containing initial information;<sup>15</sup>
  - b. a Second Preliminary Report dated 21 January 2020 containing supplementary information such as the recorded radio communication and radar data;<sup>16</sup>
  - c. a factual report dated July 2020, setting out the details on the missile launch by the air defence unit;<sup>17</sup>
  - d. a report dated August 2020 on the read-out from the flight recorders;<sup>18</sup>
  - e. an Interim Statement dated January 2021, upon the first anniversary of the incident;<sup>19</sup> and
  - f. a Final Report dated 15 March 2021.<sup>20</sup>

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<sup>13</sup> Iran reserves the right to submit its other objections to the jurisdiction of Council if the case proceeded to the merits.

<sup>14</sup> Letter from the ICAO Secretary General to Iran dated 6 August 2020 (Iran's Annex 1).

<sup>15</sup> AAIB, Preliminary Report (8 January 2020) (Iran's Annex 7).

<sup>16</sup> AAIB, Second Preliminary Report (20 January 2020) (Iran's Annex 8).

<sup>17</sup> AAIB, *Flight PS752 Accident Investigation, Factual Report (July 2020)* (Iran's Annex 50).

<sup>18</sup> AAIB, *Flight PS752 Accident, Flight Recorder Read-Out Report (August 2020)* (Iran's Annex 51).

<sup>19</sup> AAIB, *Flight PS752 Accident Investigation Team Statement on the Anniversary of the Accident* (6 January 2021) (Iran's Annex 52).

17. Third, with respect to the matter of payment to the families of victims:
- a. On 5 January 2021, the Cabinet of Ministers of the Islamic Republic of Iran issued a directive to the relevant institutions to pay the amount of \$150,000.00 *ex gratia* to the heirs of each person who lost his/her life in this accident without prejudice to the criminal proceedings against those responsible.<sup>21</sup> With the aim of implementing this directive, a bureau was formed in the Ministry of Roads and Urban Development of the Islamic Republic of Iran which has taken the necessary measures to carry out the payment process.
  - b. As regards the victims who were foreign nationals, between May and June 2021, Iran separately informed each of the Applicants that it was ready to make the same *ex gratia* payment to the families and requested that the families be informed so that the necessary arrangements could be made.<sup>22</sup>
  - c. To date, 101 payments totalling around USD 5 million have been made to the heirs of 45 victims from different countries. The total amount of *ex gratia* payment to heirs of victims is ready to be withdrawn by victims' families.
18. Fourth, insofar as they could be identified, Iran has returned the belongings of victims to their families. Iran still possesses certain belongings of victims but either their owners could not be identified or the families of victims have not yet contacted Iran to receive them despite Iran's repeated invitations. Sufficient funds have been allocated to cover the price of any unidentified or destroyed belongings.

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<sup>20</sup> AAIB Final Report (Iran's Annex 49). The AAIB Final Report was provided to Ukraine, the USA, France and the UK for their comments: see AAIB, *Flight PS752 Accident Investigation – Appendix B* (15 March 2021) (Iran's Annex 53).

<sup>21</sup> See Information Note concerning the Incident of Ukraine International Airlines Flight No. PS752 (April 2024), para 88 (Iran's Annex 6).

<sup>22</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 11 May 2021 (Iran's Annex 16); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 11 May 2021 (Iran's Annex 18); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to Global Affairs Canada, 26 June 2021 (Iran's Annex 19). See also Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 17 November 2021 (Iran's Annex 20); Letter from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary General, 31 January 2022 (Iran's Annex 47); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development Canada, 15 March 2022 (Iran's Annex 48).

19. Fifth, as stated in the Final Report of the AAIB, and in the implementation of the AAIB's recommendations to States managing the airspace, the following safety actions have been taken by Iran:<sup>23</sup>
- a. The NOTAM procedure was revised by Iran Airports & Air Navigation Company (ANSP) to promptly issue NOTAM about any change in Tehran FIR airspace management that results from the outcome of a conducted security risk assessment or military instructions.
  - b. In order to provide even further access for the users outside of the aviation communication networks, the "*Airspace Safety and Security Warning*" section was created on the Iran Aeronautical information Management (AIM) website as a repository to announce security NOTAMs regarding airspace. This website was launched on 3 December 2020, and notified to users via AIC 2-20 and ICAO in a separate letter.
  - c. The concept of transient risks was added to the risk assessment procedures of civil and military organisations responsible for the safety and security of Tehran FIR. In the amended procedures, an additional risk and 'adaption risk' has been added to available risks for each change in levels of threats to civil aviation. The specification of the nature and duration of related safety measures shall be defined during each risk assessment task. For each change in existing situation, an adaption period has been considered, where 'adaption risk' and related safety layers shall be applicable during that period.
  - d. CAO.IRI ATM/ANS safety oversight manual was amended to include oversight activities of the risk management of potentially hazardous military activities. The ANSP is mandated to perform periodic airspace security management exercises.
  - e. Iran Military authorities informed AAIB that based on their investigation results, adequate corrective actions have been implemented for prevention of events which caused the misidentification of Flight PS752.

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<sup>23</sup> AAIB Final Report (Iran's Annex 49), p. 137. See also Letter from the General Director of Aviation Operations Supervision Office to the General Director of the AAIB dated 27 September 2022 (Iran's Annex 2).

20. Sixth, following thorough criminal investigations and a trial involving twenty court hearings (which representatives of the Applicants and the heirs of victims had repeatedly been invited to attend), on 16 April 2023, the Military Court of Tehran convicted and sentenced ten defendants to terms of imprisonment, as follows:<sup>24</sup>
- a. The commander of the TOR-M1 defence system who fired the two missiles at Flight PS752 (Defendant 1): 13 years in prison .
  - b. Two personnel of the TOR-M1 defence system (Defendants 2 and 3): one year in prison.
  - c. The desk operator for the TOR-M1 defence system (Defendant 4): three years in prison.
  - d. The command post supervisor for the TOR-M1 defence system (Defendant 5): three years in prison.
  - e. The then commander of Tehran's fifth air defence system (Defendant 6): two years in prison.
  - f. The shift supervisor of the military control centre for Tehran's regional operations (Defendant 7): two years in prison.
  - g. The then commander of the military control centre for Tehran's regional operations (Defendant 8): one and a half years in prison.
  - h. The then commander of Tehran's air defence system (Defendant 9): one year in prison.
  - i. The then commander of the air defence system of the Islamic Republic Guard Corps Aerospace Force (Defendant 10): one year in prison.

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<sup>24</sup> See Information Note concerning the Incident of Ukraine International Airlines Flight No. PS752 (April 2024), paras 62-72 (Iran's Annex 6).

## II. THE APPLICANTS HAVE FAILED TO SATISFY THE REQUIREMENT FOR NEGOTIATIONS

### A. The requirement for negotiations

21. Under Article 84 of the Chicago Convention, a disagreement may be referred to the Council only if it “cannot be settled by negotiation”. The International Court of Justice (“ICJ”) has confirmed that this establishes a procedural “precondition of negotiation that must be met in order to establish the ICAO Council’s jurisdiction”.<sup>25</sup>
22. Prior to filing an application under Article 84, a contracting State “must make a genuine attempt to negotiate with the other concerned State or States”.<sup>26</sup> The ICJ has clarified that “negotiations are distinct from mere protests or disputations and require a genuine attempt by one of the parties to engage in discussions with the other party, with a view to resolving the dispute.”<sup>27</sup> The subject matter of the negotiations must relate to the subject matter of the dispute which, in turn, must concern the substantive obligations contained in the Chicago Convention.<sup>28</sup>
23. Thus, what is required (at the very least) is a genuine good faith attempt by disputing party A to engage in discussions with the disputing party B, with a view to resolving the disagreement relating to the interpretation and application of the Chicago Convention.
24. Where negotiations have been attempted or have commenced, “the precondition of negotiations is only met when the attempt to negotiate has been unsuccessful or where negotiations have failed, or become futile or deadlocked”.<sup>29</sup> In other words, the Applicants must have pursued any negotiations “as far as possible”<sup>30</sup> such that “no

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<sup>25</sup> *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 81, para 89.

<sup>26</sup> *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 81, para 89.

<sup>27</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirate)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, p. 406, para. 36.

<sup>28</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirate)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, p. 406, para. 36.

<sup>29</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirate)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, p. 406, para. 36.

*reasonable probability exists that further negotiations would lead to a settlement*".<sup>31</sup>

The sufficiency of negotiations is a question of fact to be assessed in the individual circumstances of each case. The question is one of substance, not form.

25. The ICJ has previously held that negotiations under Article 84 of the Chicago Convention had failed or reached the point of futility or deadlock "*when the parties' basic positions ha[d] not subsequently evolved' after several exchanges of diplomatic correspondence and/or meetings*".<sup>32</sup>

**B. The requirement for negotiations is not satisfied**

26. The Applicants never genuinely attempted to engage in meaningful discussions with Iran, with a view to resolving the present disagreement relating to the interpretation and application of Article 3*bis*. As explained in greater detail below:
- a. The applicability of the Chicago Convention was raised late and without reference to Article 84 of the Chicago Convention, (together with the alleged applicability of other treaties), and it cannot be said that the present disagreement, as distinct from a dispute under other sources of international law, has been duly negotiated; and
  - b. The Applicants were unwilling to renounce a series of rigid pre-conditions for negotiations – including the acknowledgment of the existence of a breach of the Montreal Convention (and the Chicago Convention). They sought to stigmatize Iran and treat breach of international law as a *fait accompli*, rather than to seek a practical solution (e.g. payments for the families of victims, to which Iran could agree and had announced that it would agree).<sup>33</sup>

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<sup>30</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirate), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, p. 406, para. 36.*

<sup>31</sup> See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirate), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018, p. 406, para. 93.* See also *Advisory Opinion on Railway Traffic between Lithuania and Poland, 1931, PCIJ, Series A/B, No. 42, p. 116* referring to an obligation "*not only to enter into negotiations but also to pursue them as far as possible with a view to concluding agreements*".

<sup>32</sup> *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Judgment, I.C.J. Reports 2020, p. 111, para. 93.* See also *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), Provisional Measures, Order of 16 November 2023, para. 41.*

27. In any event, any negotiations in relation to the present disagreement concerning the interpretation and application of Article 3*bis* had not been pursued in good faith, let alone reached a point of futility or deadlock.

The applicability of the Chicago Convention was raised late together with other treaties

28. Between January 2020 and June 2021, Iran and Ukraine engaged in bilateral negotiations, exchanging numerous notes verbales<sup>34</sup> and holding three rounds of meetings: on 29-30 July 2020 in Kyiv, on 19-20 October 2020 in Tehran, and on 2-3 June 2021 in Kyiv. Further to those negotiations, Iran provided Ukraine with copies of the documents requested, including a report prepared by Iran's military authorities,<sup>35</sup> and confirmed its readiness to make payments to the families.<sup>36</sup>

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<sup>33</sup> See also eg Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development Canada, 24 January 2022 (Iran's Annex 28): "*Unfortunately, measures that seek to achieve political goals and the exploitation of the feelings of survivors of the victims by the Government of Canada have hindered the direction and resolution of issues related to the tragedy*".

<sup>34</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 11 January 2020 (Applicants' Annex 47, Note 1); Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 31 March 2020 (Applicants' Annex 47, Note 3); Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 2 June 2020 (Applicants' Annex 47, Note 4); Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 12 June 2020 (Applicants' Annex 47, Note 5); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 8 July 2020 (Iran's Annex 9); Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 19 July 2020 (Applicants' Annex 47, Note 7); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 22 July 2020 (Iran's Annex 10); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 22 July 2020 (Iran's Annex 11); Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2020 (Applicants' Annex 47, Note 10); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 18 October 2020 (Iran's Annex 12); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 4 January 2021 (Iran's Annex 13); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 12 January 2021 (Iran's Annex 14); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 February 2021 (Iran's Annex 15); Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 26 February 2021 (Applicants' Annex 47, Note 15); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 11 May 2021 (Iran's Annex 16); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 11 May 2021 (Iran's Annex 17).

<sup>35</sup> See Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 12 January 2021 (Iran's Annex 14); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 February 2021 (Iran's Annex 15).

<sup>36</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 11 May 2021 (Iran's Annex 16).

29. In the same period, none of the other Applicants requested that Iran enter into bilateral negotiations. Between May and June 2021, Iran informed those Applicants that it was ready to make payments to the families and requested that the families be informed.<sup>37</sup> In December 2021, Iran informed each of the Applicants that Iran “*has always been ready to continue discussions and bilateral cooperation ... through mutual embassies or through meetings and interactions between the officials of both countries based on an agreed agenda*”.<sup>38</sup> Iran repeated its willingness to enter into bilateral negotiations with each of the Applicants in January, March and September 2022 and in January 2023.<sup>39</sup>

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<sup>37</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 12 May 2021 (Iran’s Annex 18); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to Global Affairs Canada, 26 June 2021 (Iran’s Annex 19).

<sup>38</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, 26 December 2021 (Iran’s Annex 21); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development Canada, 27 December 2021 (Iran’s Annex 22); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development Canada, Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 27 December 2021 (Iran’s Annex 23); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Kingdom of Sweden, 27 December 2021 (Iran’s Annex 24).

<sup>39</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 24 January 2022 (Iran’s Annex 25); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the United Kingdom of Great Britain and Northern Ireland, 24 January 2022 (Iran’s Annex 26); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 24 January 2022 (Iran’s Annex 27); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development Canada, 24 January 2022 (Iran’s Annex 28); Letter from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General, 31 January 2022 (Iran’s Annex 47); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade, and Development Canada, 15 March 2022 (Iran’s Annex 48); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade, and Development of Canada, 21 September 2022 (Iran’s Annex 29); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Ukraine, 21 September 2022 (Iran’s Annex 30); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the United Kingdom of Great Britain and Northern Ireland, 21 September 2022 (Iran’s Annex 31); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 22 September 2022 (Iran’s Annex 32); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic to the Ukrainian Embassy in Tehran, 29 January 2023 (Iran’s Annex 33); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden, 29 January 2023 (Iran’s Annex 34); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, 29 January 2023 (Iran’s Annex 35); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development of Canada, 30 January 2022 (Iran’s Annex 36); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 30 January 2023 (Iran’s Annex 37).

30. The Applicants contend that they had raised the present disagreement as early as January 2020,<sup>40</sup> and particularised the disagreement in their so-called “notice of claim” of 2 June 2021.<sup>41</sup> This is incorrect on both counts.
- a. The informal discussion in January 2020 between Iran and the members of the “*International Coordination and Response Group for the Victims of Flight PS752*” (the Applicants plus Afghanistan, also referred to by the Applicants as the so-called “Coordination Group”) – which took place on the sidelines of the bilateral negotiations between Ukraine and Iran – did not include any discussion of the present disagreement.
  - b. In their so-called “notice of claim”, the Applicants did not mention Article 3*bis*.<sup>42</sup> Nor, more generally, did they refer to the existence of a “*dispute*” or “*disagreement*” between the Applicants and Iran as to the interpretation or application of the Chicago Convention.
31. The first time the Applicants invoked Article 3*bis* (either expressly or by reference to the substance of the obligation contained therein) was in a Note Verbale dated 20 December 2021.<sup>43</sup> Moreover, the Applicants first stated that there exists a “*disagreement with the [Applicants’] positions with respect to the interpretation and application of the Convention on International Civil Aviation*” on 11 January 2022.<sup>44</sup>
32. Between the so-called “notice of claim” dated 2 June 2021 and July 2023, the Applicants requested collective negotiations in relation to the issue of Iran’s alleged

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<sup>40</sup> Applicants’ Memorial, para 101.

<sup>41</sup> Applicants’ Memorial, para 112.

<sup>42</sup> Notice of Claim – From the Ministry of Foreign Affairs of Ukraine, Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 2 June 2021 (Applicants’ Annex 47, Note 19).

<sup>43</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 20 December 2021 (Applicants’ Annex 47, Note 25). Note that the Applicants’ position is that the earlier bilateral negotiations between Iran and Ukraine are irrelevant: see Applicants’ Memorial, para. 115; Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2020 (Applicants’ Annex 47, Note 10); and Applicants’ Annex 47, Note 25.

<sup>44</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern, 11 January 2022 (Applicants’ Annex 47, Note 30).

obligation to make reparations specifically and only. This cannot be considered to have been a genuine attempt even to enter into negotiation in relation to the present disagreement because:

- a. The Applicants proposed only negotiations which proceeded on the assumed or agreed basis that the accident constituted an internationally wrongful act by Iran by virtue of breach, *inter alia*, of the Chicago Convention (and the Montreal Convention). Thus, the proposed agenda included “*acknowledgement*” of Iran’s (alleged) breaches.
- b. Where (but only where) a breach of treaty is established, the question of reparations arises as a subsequent, consequential question of state responsibility under customary international law.<sup>45</sup> In circumstances where no liability under the Chicago Convention (or the Montreal Convention) was accepted by Iran, it could not be appropriate to condition entering into negotiations on treating liability as a *fait accompli*, as opposed to the subject of negotiations in which Iran could put forward its entirely good faith position that it had not breached these treaties.

33. Thus, even if (*quod non*) Iran had agreed to collective negotiations related to the specific issue of reparations for the families of victims, this would not amount to agreement to collective negotiations related to the present dispute concerning the interpretation and application of article 3*bis* of the Chicago Convention.

34. On 29 January 2023, Iran communicated to Ukraine that, to show its goodwill, Iran was willing to agree that representatives of each of the Applicants could attend future negotiations for the purpose of clarifying any ambiguities.<sup>46</sup>

The Applicants were unwilling to renounce a series of rigid pre-conditions for negotiations, including Iran’s acknowledgement of breaches of the Montreal Convention and the Chicago Convention

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<sup>45</sup> See International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts annexed to General Assembly resolution 56/83, 12 December 2001, Articles 31, 34-39.

<sup>46</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic to the Ukrainian Embassy in Tehran, 29 January 2023 (Iran’s Annex 33).

35. In September 2023, the Applicants appeared to indicate a willingness to enter into a discussion of Iran’s alleged breaches. In reality, however, the Applicants did not make a genuine attempt to enter into good faith discussions on this issue. They provided no elaboration of their previously asserted position that Article 3*bis* applies and continued to insist that the agenda for negotiations must include an acknowledgement by Iran that it has breached international obligations.<sup>47</sup> Iran’s position was that, while it was willing to discuss the question of applicable international law (including the present disagreement), the agenda for negotiations must not prejudge issues, meaning that all information in support of the allegation that the incident was intentional or unlawful should be provided.<sup>48</sup> The Parties maintained these positions at a meeting held on 2-3 October 2023, with Iran’s position later being reiterated in a Note Verbale dated 13 December 2023.<sup>49</sup>
36. Instead, following the meeting held on 2-3 October 2023, the Applicants unilaterally terminated the collective negotiations on the ground that “*Iran refused to acknowledge that the treaties invoked by the four Countries apply in the circumstances*” and stated that it would “*never accept international legal responsibility for the downing*”.<sup>50</sup> Iran’s true position, however, as stated in its Note Verbale dated 13 December 2023, was that it was willing to enter into good faith negotiations on these issues but it would not accept an agenda which treated as already conceded that the treaties invoked applied and/or that the incident was unlawful.<sup>51</sup>

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<sup>47</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 14 July 2023 (Applicants’ Annex 47, Note 63); Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 11 September 2023 (Applicants’ Annex 47, Note 65).

<sup>48</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 19 September 2023 (Iran’s Annex 46).

<sup>49</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 December 2023 (Iran’s Annex 3).

<sup>50</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 9 November 2023 (Applicants’ Annex 47, Note 69).

37. Thus, the Applicants did not make a genuine attempt to enter into good faith discussions in relation to the present disagreement concerning the interpretation and application of Article 3*bis*.

Any negotiations had not reached the point of deadlock or futility

38. In any event, even if the Council considers that negotiations in relation to the present disagreement had commenced (which is denied), any such negotiations had not reached the point of deadlock or futility, as is evident from the evolution in Iran’s position from January 2023 in its willingness to hold negotiations with all of the Applicants present and from the reiteration in Iran’s Note Verbale of 13 December 2023 that: “*in furtherance to the good faith position of the Islamic Republic of Iran, if the opposing sides are willing to conduct meaningful and constructive negotiations, without any political aims, [the] Islamic Republic of Iran welcomes such intention.*”<sup>52</sup>

**C. The way forward in light of the absence of a cooperative approach to date**

39. Iran considers that there is a reasonable probability that, if the Applicants genuinely attempted to engage in meaningful discussions with Iran with a view to resolving the disagreement, this could lead to a settlement. In this connection, Iran confirms its continued willingness to negotiate with the Applicants bilaterally or collectively.

40. Iran also recalls the terms of Article 14(1) of the Rules, which states:

“The Council may, at any time during the proceedings and prior to the meeting at which the decision is rendered as provided in Article 15(4), invite the parties to the dispute to engage in direct negotiations, if the Council deems that the possibilities of settling the dispute or narrowing the issues through negotiations have not been exhausted.”

41. Article 14(1) states that the Council may make such an invitation “*at any time during the proceedings*”, i.e. at any time following the filing of the Application (it is not understood as dependent on first establishing jurisdiction).

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<sup>51</sup> See Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 December 2023 (Iran’s Annex 3).

<sup>52</sup> See Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 December 2023 (Iran’s Annex 3).

42. In order to facilitate genuine negotiations between the Parties, Iran hereby respectfully requests that the Council exercise its discretion under Article 14(1) of the Rules to invite the Parties to engage in negotiations with a view to resolving the present disagreement. Iran also considers that, as a further means of facilitating a genuine attempt to settle the present disagreement, the negotiations should be conducted under the auspices of a committee established by the Council.

**D. The course of the negotiations in greater detail**

43. The Applicants' contention that the present disagreement relating to the interpretation and application of Article *3bis* of the Chicago Convention cannot be settled by negotiation rests upon several incorrect assertions, including that:
- a. the Applicants invoked Article *3bis* of the Chicago Convention as early as January 2020;
  - b. Iran entered into collective negotiations with the Applicants from 30 July 2020;
  - c. on 30 July 2020 Iran agreed to further collective negotiations relating to responsibility under international law and the issue of reparation;
  - d. the Applicants' so-called "notice of claim" dated 2 June 2021 expressly alleged that Iran was in breach of Article *3bis* of the Chicago Convention;
  - e. the Notes Verbales sent on behalf of the Applicants on 27 September 2021 set out the present disagreement and attempted to enter into negotiations in relation to that disagreement;
  - f. the Note Verbale sent on behalf of the Applicants on 20 December 2021 merely provided further details of the present disagreement;
  - g. Iran's earlier reluctance to enter into collective negotiations with the Applicants supports the contention that Iran was unwilling to negotiate in good faith; and

- h. the Applicants responded constructively to Iran’s proposal for collective negotiations and were open to a discussion of whether the incident gave rise to state responsibility on the part of Iran.

44. In the sections below, Iran addresses each of these incorrect statements in turn.

The Applicants wrongly state that they invoked Article 3bis in January 2020

45. The Applicants state that: “*It has been clear from the Applicants’ very first communication with Iran in January 2020 that they consider that Iran is responsible under, inter alia, Article 3bis of the Chicago Convention for the downing of Flight PS752 and that it is required to make reparation for its internationally wrongful act, in accordance with international law*”.<sup>53</sup> This is incorrect.

46. In January 2020, Iran communicated not with the Applicants but with the “*International Coordination and Response Group for the Victims of Flight PS752*” (also referred to by the Applicants as the so-called “*Coordination Group*”), which had been formed by the representatives of five States (Afghanistan, Canada, Sweden, Ukraine and the United Kingdom).<sup>54</sup> Since the Applicants do not include Afghanistan, the so-called “*Coordination Group*” does not refer to the Applicants. Implicitly recognising this, the Applicants previously referred to themselves collectively by the different name of the “*Group of Countries*” (between the 2 June 2021 “*notice of claim*” and December 2022)<sup>55</sup> or the “*Four Countries*” (from April 2023 onwards).<sup>56</sup>

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<sup>53</sup> Applicants’ Memorial, para 101.

<sup>54</sup> See Applicants’ Memorial, para 105 referring to Statement, International Coordination and Response Group for the victims of Flight PS752 – Framework for Cooperation with Iran, 16 January 2020, online: <[canada.ca/en/global-affairs/news/2020/01/internationalcoordination-and-response-group-for-the-victims-of-flight-ps752--framework-for-cooperation-with-iran.html](https://canada.ca/en/global-affairs/news/2020/01/internationalcoordination-and-response-group-for-the-victims-of-flight-ps752--framework-for-cooperation-with-iran.html)>.

<sup>55</sup> See eg Notice of Claim – From the Ministry of Foreign Affairs of Ukraine, Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 2 June 2021 (Applicants’ Annex 47, Note 19); Note Verbale from the Ministry of Foreign Affairs of Ukraine on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2021 (Applicants’ Annex 47, Note 21); Note Verbale from the Ministry of Foreign Affairs of Ukraine on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 12 November 2021 (Applicants’ Annex 47, Note 23); Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the

47. In any event, on the Applicants' evidence, there is nothing to show that the so-called Coordination Group invoked Article 3*bis* of the Chicago Convention (either expressly or by reference to the substance of the obligation contained therein) in any communication, or requested that Iran enter into negotiations in relation to the question of whether the accident constituted a breach of this or any other international obligation under the Chicago Convention or any other treaty.
48. Rather, the so-called Coordination Group chose to adopt the approach of assuming that the accident constituted an "*internationally wrongful act*" which triggered a duty to make "*reparations*", and specifically calling on Iran to fulfil that alleged duty by

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Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 20 December 2021 (Applicants' Annex 47, Note 25); Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 11 January 2022 (Applicants' Annex 47, Note 30); Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 24 May 2022 (Applicants' Annex 47, Note 39); Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 22 December 2022 (Applicants' Annex 47, Note 44).

<sup>56</sup> See eg Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 17 April 2023 (Applicants' Annex 47, Note 50); Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 21 June 2023 (Applicants' Annex 47, Note 59); Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 14 July 2023 (Applicants' Annex 47, Note 63); Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 11 September 2023 (Applicants' Annex 47, Note 65); Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 26 September 2023 (Applicants' Annex 47, Note 67); Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 9 November 2023 (Applicants' Annex 47, Note 69).

making reparations.<sup>57</sup> The so-called Coordination Group made no request that Iran enter into negotiations in relation to the question of whether there had been a breach of international obligations, including under the Chicago Convention.<sup>58</sup>

49. In the context of the request for bilateral negotiations with Iran, Ukraine called on Iran to “*provide Ukraine with full reparation*”.<sup>59</sup> By contrast, the “*International Coordination and Response Group for the Victims of Flight PS752*” was focussed on attempts to negotiate “*reparations*” for the families of victims of Flight PS752. It was not focussed on the distinct questions of obtaining reparations for the Applicant States and Afghanistan.
- a. Unlike the Applicants’ Submissions in the present case, the statement of the so-called Coordination Group dated 16 January 2020 does not refer to making “*reparation to the Applicants*” but to the relatives of the victims.<sup>60</sup>
  - b. On 30 July 2020, the so-called Coordination Group published a statement that, on the same date “*the five members ... held their first meeting with Iranian officials regarding negotiations on reparations for the families of the victims of Flight PS752*”.<sup>61</sup>

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<sup>57</sup> See eg Letter from the Deputy Foreign Minister for Political Affairs and Acting Minister for Foreign Affairs for the Islamic Republic of Afghanistan, the Minister of Foreign Affairs of Canada, the Minister of Foreign Affairs of Ukraine, the Minister of State, Foreign and Commonwealth Office and Department for International Development of the United Kingdom of Great Britain and Northern Ireland and the Minister of Foreign Affairs of Sweden to His Excellency Mohammad Javad Zarif, Minister of Foreign Affairs of the Islamic Republic of Iran, 15 February 2020 (Applicants’ Annex 47, Note 2).

<sup>58</sup> Cf Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 14 July 2023 (Applicants’ Annex 47, Note 63) referring to both “*breaches of [...] obligations under [...] the [Chicago Convention]*” and the “*obligation to make full reparation*”.

<sup>59</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 11 January 2020 (Applicants’ Annex 47, Note 1). See also Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 2 June 2010 (Applicants’ Annex 47, Note 4): “*provide full reparation for the damages caused by this internationally wrongful act, including in the form of adequate compensation*”.

<sup>60</sup> Statement, International Coordination and Response Group for the victims of Flight PS752 – Framework for Cooperation with Iran, 16 January 2020, online: <[canada.ca/en/global-affairs/news/2020/01/internationalcoordination-and-response-group-for-the-victims-of-flight-ps752--framework-for-cooperation-with-iran.html](https://canada.ca/en/global-affairs/news/2020/01/internationalcoordination-and-response-group-for-the-victims-of-flight-ps752--framework-for-cooperation-with-iran.html)>. Cf Applicants’ Memorial, para 190(1).

<sup>61</sup> Global Affairs Canada, ‘Readout: First meeting of the International Coordination and Response Group and Iran regarding negotiations on reparations relating to the downing of Flight PS752’, 30 July 2020 (Annex C to Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland

- c. Consistent with this, Iran notes that Ukraine’s account of the discussion on 30 July 2020 (which has not been agreed with Iran or accepted by it as accurate) refers to the so-called Coordination Group as having called on Iran:

“to conduct complete, transparent and independent investigation according to international standards including ensuring the calling the guilty to account and establishing justice for families affected by this terrible tragedy, and also implementation of complete compensation for the shooting down of flight PS752 to the relatives”.<sup>62</sup>

The Applicants wrongly state that Iran entered into collective negotiations from 30 July 2020

50. The Applicants state that Iran entered into collective negotiations with them from 30 July 2020.<sup>63</sup> This is incorrect. The discussion on 30 July 2020 between Iran and the so-called Coordination Group took place during in the following circumstances:

- a. In a Note Verbale dated 19 July 2020, Ukraine proposed a first round of negotiations on 28-30 July 2020 and an agenda which included: “*Principles and modalities of compensation from Iran for the downing of Flight PS752 with the participation of representatives from the International Coordination and Response Group for the victims of Flight PS752, whose participants are Ukraine, Canada, Sweden, Afghanistan and the [UK]*”.<sup>64</sup> Ukraine proposed “*reserving the first day to hold bilateral negotiations and the second one for negotiations in a multilateral format with the participation of representatives of the Coordination Group via video conference*”.<sup>65</sup>

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to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 22 December 2022 (Applicants’ Annex 47, Note 44)). Earlier, on 15 February 2020, the members of the so-called Coordination Group had called for Iran to: “*Make reparations, including in the form of timely and equitable compensation to the families*”: see Letter from The International Coordination and Response Group for the Victims of Flight PS752 to Minister of Foreign Affairs of the Islamic Republic of Iran, 15 February 2020 (Annex B to Applicants’ Annex 47, Note 44).

<sup>62</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 24 September 2020 (Applicants’ Annex 47, Note 10), p. 7 (fifth agenda item), emphasis added.

<sup>63</sup> Applicants’ Memorial, paras 107-108.

<sup>64</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 19 July 2020 (Applicants’ Annex 47, Note 7).

<sup>65</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 19 July 2020 (Applicants’ Annex 47, Note 7).

- b. Iran replied, by Note Verbale dated 22 July 2020, agreeing to hold “*bilateral talks*” with Ukraine and proposing that the agenda proposed by Ukraine be discussed at the “*first meeting of bilateral negotiations*”. Iran did not mention the proposal for “*multilateral*” or collective negotiations with the so-called Coordination Group and nor did Ukraine raise this again prior to the meeting held on 29-30 July 2020.<sup>66</sup>
- c. During the bilateral negotiations held on 30 July 2020, representatives of the so-called Coordination Group attended by video conference. As Iran later explained in notes verbales to Ukraine: “*The meeting, initiated by the Ukrainian side, was held on the sidelines of the bilateral negotiations, and its purpose was only to express goodwill and sympathy, as well as to convey the fundamental positions of our country. Furthermore, it served as an opportunity to announce our readiness to conduct bilateral negotiations*” with the other members of the so-called Coordination Group.<sup>67</sup>

The Applicants wrongly state that on 30 July 2020 Iran agreed to further collective negotiations relating to the present disagreement

51. The Applicants also claim that on 30 July 2020 Iran agreed to “*further ... multilateral negotiations*” “*relating to responsibility under international law and the issue of reparation, which concerned all Applicants*”.<sup>68</sup> This is incorrect; Iran did not at this stage agree to multilateral negotiations in relation to the present dispute. The Applicants appear to rely on the following statement in Ukraine’s summary account of the meeting held on 30 July 2020:<sup>69</sup>

“The Sides agreed to conduct multilateral consultations (the Coordination group – Islamic Republic of Iran) – at the end of November of the year 2020 in the city of Kyiv or in a video conference format. The Sides will coordinate the actual dates of their conduction through diplomatic channels.”<sup>70</sup>

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<sup>66</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 22 July 2020 (Iran’s Annex 10)

<sup>67</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 24 January 2022 (Iran’s Annex 27).

<sup>68</sup> Applicants’ Memorial, paras 107-109.

<sup>69</sup> See Applicants’ Memorial, para 109 referring to Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2020 (Applicants’ Annex 47, Note 10), p. 7.

<sup>70</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2020 (Applicants’ Annex 47, Note 10), p. 8.

52. As to this:

- a. Ukraine's account has not been agreed. As Iran pointed out in a Note Verbale to Ukraine dated 18 October 2020, Iran and Ukraine had agreed that there would be no minutes or reports of the bilateral negotiations held on 30 July 2020.<sup>71</sup> It is noted that Ukraine did not reply to express disagreement with Iran's understanding.
- b. Notwithstanding, it is notable that Ukraine's own account of the discussion between Iran and the so-called Coordination Group does not state that Iran agreed to enter into negotiations in relation to the question of state responsibility for the incident. Moreover, Ukraine's note of the collective part of the discussion contains no reference to article 3*bis* of the Chicago Convention (either expressly or by reference to the substance of the obligation contained therein) or, more generally, to negotiations relating to an alleged breach or a disagreement concerning the interpretation or application of the Chicago Convention.<sup>72</sup> Rather, Ukraine's account states that:

“The Iranian Side, in response to statements and comments of the members of the Coordination group, noted the following:

- the Iranian Side is ready to fulfil [sic] obligations under international agreements, and also ensure the transparency of this process and inform about the results of the technical and criminal investigations;
- the consent of the Iranian Side to participate in the negotiations with the Coordination group does not condition its automatic agreement with their possible results;
- the Iranian Side called on the members of the Coordination group do not politicize the issue of the shooting down of the plane and noted that it would resist any influence on the conduct of mentioned investigations that Iran would consider as an interference in its domestic affairs;
- payment of the compensation to certain affected state would be considered by the Iranian Side as a final regulation of all possible claims on the part of its citizens, and the amount of the compensation

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<sup>71</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 18 October 2020 (Iran's Annex 12).

<sup>72</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2020 (Applicants' Annex 47, Note 10), pp. 7-8 (fifth agenda item).

would be calculated on the basis of existing precedents and the international law norms.”<sup>73</sup>

- c. In any event, whereas the Applicants state that “*no progress*” was made, there is nothing in Annex 47 to the Memorial to show that, prior to the “notice of claim” dated 2 June 2021, the Applicants proposed dates or an agenda for any collective negotiations. This notwithstanding the Applicants’ (much later) contention that “several modalities” had been agreed with Iran on 30 July 2020, including that the negotiations were to be held in English.<sup>74</sup>
- d. By contrast, bilateral negotiations between Iran and Ukraine did continue, with an exchange of further notes verbales and a second round of negotiations being held on 19-20 October in Tehran and a third round on 2-3 June 2021 in Kyiv.
- e. Even if Iran had agreed to collective negotiations related to the issue of reparations for the families of victims, this would not amount to agreement to collective negotiations related to the present dispute concerning the interpretation and application of article 3*bis* of the Chicago Convention. The first time the Applicants invoked Article 3*bis* (either expressly or by reference to the substance of the obligation contained therein) was in a Note Verbale dated 20 December 2021, i.e. some months after the sending of a “notice of claim” dated 2 June 2021.<sup>75</sup> Yet, the Applicants chose not to invoke Article 84 of the Chicago Convention in December 2021 or (indeed) at any time thereafter.

The Applicants wrongly state that the “notice of claim” dated 2 June 2021 expressly alleged a breach of Article 3*bis*

<sup>73</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2020 (Applicants’ Annex 47, Note 10), pp. 7-8 (fifth agenda item).

<sup>74</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 17 April 2023 (Applicants’ Annex 47, Note 50).

<sup>75</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 20 December 2021 (Applicants’ Annex 47, Note 25).

53. The Applicants state that the “notice of claim” communicated by Note Verbale dated 2 June 2021 “*expressly alleged that the actions and omissions of Iran constituted a breach of, inter alia, Article 3bis of the Chicago Convention*”.<sup>76</sup> This is incorrect.
54. The “*notice of claim*” contained no express allegation of breach of article 3bis. This provision was invoked neither expressly nor by reference to the substance of the obligation. Rather, in general terms, the Applicants alleged that:

“[T]he downing of flight PS752 by the armed forces of the Islamic Republic of Iran constitutes an internationally wrongful act under international law attributable to the Islamic Republic of Iran. Its actions and omissions amount to breaches of its obligations under international law, including, but not limited to ... the Chicago Convention, ... the 1971 Montreal Convention ... and the International Covenant on Civil and Political Rights.”<sup>77</sup>

55. It is also to be noted that in the “*notice of claim*”:<sup>78</sup>
- a. By contrast with the earlier statements of the so-called Coordination Group which were focussed on reparations for the families, the Applicants called for Iran to “*fulfil its legal responsibility to make full reparations to the Group of Countries*”, *inter alia*, by “*provid[ing] equitable compensation to the affected States for the material and moral damages suffered by victims and their families*”.
  - b. The Applicants made no reference to either the so-called “*Coordination Group*”, to any previous “*negotiations*” between Iran and the so-called Coordination Group (including in relation to the notified claim) or the discussion which took place on 30 July 2020.
  - c. The Applicants stated that:

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<sup>76</sup> Applicants’ Memorial, para 112.

<sup>77</sup> Notice of Claim – From the Ministry of Foreign Affairs of Ukraine, Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 2 June 2021 (Applicants’ Annex 47, Note 19).

<sup>78</sup> Notice of Claim – From the Ministry of Foreign Affairs of Ukraine, Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 2 June 2021 (Applicants’ Annex 47, Note 19), emphasis added unless otherwise indicated.

“The Group of Countries is prepared to discuss *how and through which appropriate methods the Islamic Republic of Iran may fulfill [sic] its obligations to make full reparations to its satisfaction.* Ukraine, as the Group’s Spokesperson, has been mandated to make best efforts to engage in negotiations on behalf of the Group of Countries at your earliest convenience.”<sup>79</sup>

- d. This request for negotiations was limited to “*how and through which appropriate methods ... Iran may fulfil its obligations to make reparations to [the Applicants’] satisfaction*”. The Applicants’ proposal (like the earlier approach of the so-called Coordination Group<sup>80</sup>) was that the negotiations should proceed on the assumed or agreed basis that the incident amounted to an internationally wrongful act, including an (unparticularised) breach of the Chicago Convention.
- e. The Applicants did not propose negotiations in relation to whether Iran had committed a breach of its international obligations, including its (unparticularised) obligations under the Chicago Convention. Nor did the Applicants propose negotiations in relation to (the present or, indeed, any other) disagreement concerning the interpretation or application of the Chicago Convention. Consistent with this, the Applicants did not refer to the existence of a “*dispute*” or “*disagreement*” between the Applicants and Iran as to the interpretation or application of the Chicago Convention.
- f. Rather, the Applicants’ proposal was limited to negotiations related to the distinct question of the obligation to make reparation. Questions of reparation concern matters of state responsibility under customary international law, not the interpretation or application of the provisions of the Chicago Convention.<sup>81</sup>

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<sup>79</sup> Notice of Claim – From the Ministry of Foreign Affairs of Ukraine, Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 2 June 2021 (Applicants’ Annex 47, Note 19), emphasis added.

<sup>80</sup> See para 48 above.

<sup>81</sup> See International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts annexed to General Assembly resolution 56/83, 12 December 2001, Articles 31, 34-39.

The Applicants wrongly state that the Notes Verbales sent on behalf of the Applicants on 27 September 2021 set out the present disagreement and attempted to enter into negotiations in relation to that disagreement

56. The Applicants state that, following the “notice of claim”, a Note Verbale dated 27 September 2021 “*set out their claims for reparations*” and “*attempt[ed] to engage in negotiations to resolve the disagreement*” now referred to the Council.<sup>82</sup> This is incorrect.
57. In the Note Verbale, the Applicants reiterated their position as set out in the “notice of claim” and the request for “*Iran to fulfil its legal responsibility to make full reparations in accordance with international law*”.<sup>83</sup> As before, the Applicants made the following statement without requesting that Iran enter into negotiations in relation to this matter: “*the group of countries recognizes that the downing of Flight PS752 ... constitutes an internationally wrongful act attributable to the Islamic Republic of Iran.*”<sup>84</sup> As in the “notice of claim”, the Applicants did not expressly invoke Article 3bis of the Chicago Convention or refer to a disagreement regarding the interpretation or application of this provision.
58. In a Note Verbale to Ukraine dated 17 November 2021, Iran noted that three rounds of bilateral negotiations between Ukraine and Iran had been held between 2020 and 2021, during which “*all the technical, military, legal, criminal, and compensatory aspects of the case were discussed at length and in details, based on, and even*

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<sup>82</sup> Applicants’ Memorial, para 113.

<sup>83</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2021 (Applicants’ Annex 47, Note 21), emphasis added.

<sup>84</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2021 (Applicants’ Annex 47, Note 21). In a further Note Verbale dated 12 November 2021, after recalling the 2 June so-called “notice of claim” and the Note Verbal dated 27 September 2021, the Applicants proposed an agenda for collective negotiations which included “*discussion on applicability of international law to downing of PS752*” and “*discussion of the consequences of downing of PS752 including on compensation and other forms of reparation*”: see Note Verbale from the Ministry of Foreign Affairs of Ukraine on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 12 November 2021 (Applicants’ Annex 47, Note 23).

*beyond, the international obligations*".<sup>85</sup> Taking into consideration the three rounds of negotiation, as well as other communications, and the proposal (as communicated to each of the Applicants) for the payment to the families, Iran noted that "*there is no particular issue that would require another round of negotiations*". Iran also stated:

"Nonetheless, the Islamic Republic of Iran is always prepared to continue bilateral interactions through the respective embassies or through meetings or interactions between the authorities of both countries."<sup>86</sup>

The Applicants wrongly state that the Note Verbale sent on behalf of the Applicants on 20 December 2021 merely provided further details of the present disagreement

59. The Applicants seek to characterise the Note Verbale from Ukraine dated 20 December 2021 as merely providing "*further details of the Applicants' claims*".<sup>87</sup> This is incorrect. This Note Verbale was the first time that the Applicants alleged that "*by fir[ing] ... weapons ... at Flight PS 752, a civil aircraft in flight*", Iran was "*in direct violation of the legal obligation found in Article 3bis of the Chicago Convention*" and requested that Iran "*enter into good faith negotiations*" with the Applicants specifically in relation to this question.<sup>88</sup>
60. On 11 January 2022 the Applicants informed Iran for the first time that:<sup>89</sup>
- a. Since Iran had not accepted that the incident constitutes an internationally wrongful act, "*there is a clear dispute*" between the Applicants and Iran on this question.

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<sup>85</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 17 November 2021 (Iran's Annex 20).

<sup>86</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 17 November 2021 (Iran's Annex 20).

<sup>87</sup> Applicants' Memorial, para 116.

<sup>88</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 20 December 2021 (Applicants' Annex 47, Note 25).

<sup>89</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 11 January 2022 (Applicants' Annex 47, Note 30).

b. There is a “*disagreement with the [Applicants’] positions with respect to the interpretation and application of the Convention on International Civil Aviation*”.

61. At the same time as notifying Iran of the existence of this dispute, the Applicants declared that “*further attempts to negotiate this matter with [Iran] are futile at this time*” because Iran had not accepted that the incident constituted an internationally wrongful act and Iran had refused to enter into collective negotiations in relation to the question of reparations. In their Memorial, the Applicants confirm that this Note Verbale is to be understood as meaning that “*they considered further attempts to engage in negotiations on reparation to be futile*”.<sup>90</sup>
62. On 12 January 2022, the applicants jointly wrote to the United Nations Secretary-General stating that they had repeatedly called upon Iran to “*make full reparations*”, Iran was “*rejecting any further negotiations ... related to our collective demand for reparations*”, “*reparations ... must be discussed collectively*” and “*further attempts to negotiate with Iran on reparations ... are futile*”.<sup>91</sup> The letter did not refer to the existence of a disagreement regarding the interpretation or application of the Chicago Convention or to Article 3*bis* (either expressly or by reference to the substance of that obligation), or attempts to negotiate in relation to such a disagreement.

The Applicants wrongly seek to characterise Iran’s earlier reluctance to enter into collective negotiations as evidence that Iran was not willing to negotiate in good faith

63. The Applicants seek to criticise Iran’s earlier reluctance to enter into collective negotiations with the Applicants as evidence that Iran was not willing to negotiate in good faith.<sup>92</sup> That is not a fair characterisation.
64. Between December 2021 and January 2023, Iran had repeatedly informed each of the Applicants of its willingness to enter into (or, in the case of Ukraine, continue) bilateral negotiations.<sup>93</sup> Iran’s offer of bilateral negotiations was not limited in scope;

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<sup>90</sup> Applicants’ Memorial, para 118, emphasis added.

<sup>91</sup> Letter from the representatives of Canada, Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General, 12 January 2022 (Applicants’ Annex 47, Note 31), emphasis added.

<sup>92</sup> Applicants’ Memorial, paras 110-111.

it encompasses the various “*different facets*” of the incident.<sup>94</sup> As Iran later reiterated, bilateral negotiations were considered appropriate because Iran did not recognise the “Group of Countries” as having any separate legal status,<sup>95</sup> and did not consider that each of the Applicants was in an identical position.<sup>96</sup>

65. The Applicants’ insistence on collective negotiations from 2 June 2021 came as a surprise given that there had already been three rounds of bilateral negotiations between Ukraine and Iran.<sup>97</sup> It was in this context that Iran stated that, in December 2021, it saw no reason to enter into collective negotiations.<sup>98</sup>

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<sup>93</sup> See Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, 26 December 2021 (Iran’s Annex 21); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development Canada, 27 December 2021 (Iran’s Annex 22); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 27 December 2021 (Iran’s Annex 23); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Kingdom of Sweden, 27 December 2021 (Iran’s Annex 24); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 24 January 2022 (Iran’s Annex 25); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the United Kingdom of Great Britain and Northern Ireland, 24 January 2022 (Iran’s Annex 26); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 24 January 2022 (Iran’s Annex 27); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development Canada, 24 January 2022 (Iran’s Annex 28); Letter from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General, 31 January 2022 (Iran’s Annex 47); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade, and Development Canada, 15 March 2022 (Iran’s Annex 48); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade, and Development of Canada, 21 September 2022 (Iran’s Annex 29); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Ukraine, 21 September 2022 (Iran’s Annex 30); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the United Kingdom of Great Britain and Northern Ireland, 21 September 2022 (Iran’s Annex 31); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 21 September 2022 (Iran’s Annex 32); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic to the Ukrainian Embassy in Tehran, 29 January 2023 (Iran’s Annex 33); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden, 29 January 2023 (Iran’s Annex 34); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, 29 January 2023 (Iran’s Annex 35); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development of Canada, 30 January 2022 (Iran’s Annex 36); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 30 January 2023 (Iran’s Annex 37).

<sup>94</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 24 January 2022 (Iran’s Annex 25). See also Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the United Kingdom of Great Britain and Northern Ireland, 24 January 2022 (Iran’s Annex 26) referring to “*issues relating to the aforementioned incident*”.

<sup>95</sup> See eg Letter from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary General, 31 January 2022 (Iran’s Annex 47) referring to statements made by Iran during the third round of bilateral negotiations between Ukraine and Iran held in Kyiv in June 2021.

<sup>96</sup> See eg Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 19 September 2023 (Iran’s Annex 46).

<sup>97</sup> See further para 73 below.

66. Against this background, Iran was concerned to make it clear that any agreement between the Applicants that negotiations could only be entered into on a collective basis could not create legally binding obligations for Iran without its consent. This was a legitimate concern and the Applicants do not disagree with the substance of Iran's position.<sup>99</sup>
67. On the basis of the evidence put forward by the Applicants, it was not until a Note Verbale dated 11 January 2022 that they explained that:
- a. there is a “*disagreement with the [Applicants’] positions with respect to the interpretation and application of the Convention on International Civil Aviation*”; and
  - b. the request for collective negotiations on reparations was consistent with treating all victims equally.<sup>100</sup>
68. In the Memorial, the Applicants state that they insisted on collective negotiations, *inter alia*, for reasons of pragmatism, efficiency, transparency and in order to avoid the risk of incompatible outcomes.<sup>101</sup> The Applicants cite only a Note Verbale dated 22 December 2022.<sup>102</sup>
69. Shortly after that explanation was provided, on 29 January 2023, Iran communicated to Ukraine that, to show its goodwill, Iran was willing to agree that representatives of

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<sup>98</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, 26 December 2021 (Iran's Annex 21).

<sup>99</sup> Memorial, para 110: “*it has never been suggested that the Applicants, as the Coordination Group, had any separate identity that was capable of imposing obligations or duties on Iran without its consent*”.

<sup>100</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 11 January 2022 (Applicants' Annex 47, Note 30).

<sup>101</sup> Applicants' Memorial, para 110.

<sup>102</sup> Applicants' Memorial, para 110 referring to Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 22 December 2022 (Applicants' Annex 47, Note 44).

each of the Applicants could attend future negotiations for the purpose of clarifying any ambiguities.<sup>103</sup>

70. Further, on 30 May 2023, Iran notified the Applicants that it was “*ready to negotiate ... in a collective discussion to investigate all the dimensions*” of the incident based on an agenda to be agreed.<sup>104</sup> Iran’s offer to discuss “*all dimensions*” would of course include negotiations in relation to any disagreement concerning whether Iran was in breach of its international obligations under the Chicago Convention, including negotiations regarding the present disagreement concerning the interpretation and application of Article 3*bis*.<sup>105</sup> The following month, Iran proposed that such collective negotiations be held in Muscat on 11-12 or 18-19 July 2023.<sup>106</sup>

The Applicants wrongly state that they responded constructively to Iran’s proposal for collective negotiations

71. The Applicants state that they “*responded constructively*” to Iran’s proposals for collective negotiations on “*all dimensions*” of the incident and that they were open to “*a discussion on the matter of Iran’s State responsibility for the downing of Flight PS752*”, asking for this to be placed on the agenda.<sup>107</sup> This is incorrect.
72. Any good faith attempt to enter into negotiations on “*all dimensions*” of the incident (as proposed by Iran) would have to include a genuine attempt, with a view to

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<sup>103</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic to the Ukrainian Embassy in Tehran, 29 January 2023 (Iran’s Annex 33).

<sup>104</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to His Majesty’s Ambassador of the United Kingdom to Tehran, 30 May 2023 (Iran’s Annex 38); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 30 May 2023 (Iran’s Annex 39); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 30 May 2023 (Iran’s Annex 40); Note Verbale from the Ministry of Foreign Affairs of Islamic Republic of Iran to the Ministry of Foreign Affairs, Trade and Development Canada, 30 May 2023 (Iran’s Annex 41).

<sup>105</sup> The Applicants appear to suggest that Iran’s willingness to enter into collective negotiations is attributable to developments in the separate proceedings pursuant to Article 14 of the Montreal Convention: Applicants’ Memorial, para 119. This is irrelevant, since it is (correctly) not suggested by the Applicants that Iran’s proposal for collective negotiations was limited to the dispute under the Montreal Convention.

<sup>106</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, 26 June 2023 (Iran’s Annex 42); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development of Canada via the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, 26 June 2023 (Iran’s Annex 43); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 26 June 2023 (Iran’s Annex 44).

<sup>107</sup> Applicants’ Memorial, para 119.

resolving the dispute, to engage in discussions regarding whether Iran was in breach of its international obligations under the Chicago Convention, including a genuine attempt to discuss the present disagreement relating to the interpretation and application of Article 3*bis*.

73. In this connection, while it agrees with the Applicants that the bilateral negotiations between Ukraine and Iran were not negotiations in relation to the present disagreement for the purpose of Article 84 of the Convention,<sup>108</sup> Iran recalls its earlier willingness to enter into good faith bilateral negotiations with Ukraine in relation to the question of its responsibility and the interpretation of Article 3*bis* of the Convention.

- a. As the Applicants acknowledge, on 11 January 2020, Ukraine sent a Note Verbale to Iran alleging that Iran had “*breached several obligations under international law*”, committing an “*internationally wrongful act*” for which Iran “*bears responsibility*” to, inter alia, “*provide Ukraine with full reparation for the damages caused by this internationally wrongful act*”, and requested that Iran “*enter into negotiations in relation to the aforementioned breach of international law*”.<sup>109</sup>
- b. In July 2020, Ukraine proposed bilateral negotiations relating to, inter alia: “*The question of the applicability of international law regarding the downing of flight PS752*”.<sup>110</sup> In response, Iran agreed to holding bilateral negotiations and communicated its willingness to discuss the agenda proposed by Ukraine.<sup>111</sup> During the first round of bilateral negotiations held on 29-30 July

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<sup>108</sup> See Applicants’ Memorial, para 115. See also Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 20 December 2021 (Applicants’ Annex 47, Note 25) stating that the bilateral negotiations were “*not pertinent to, and have no bearing on*” and “*do not overlap with*” the disagreement regarding the interpretation and application of article 3*bis* of the Chicago Convention.

<sup>109</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 11 January 2020 (Applicants’ Annex 47, Note 1) referred to at Applicants’ Memorial, para 102. See also Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 2 June 2020 (Applicants’ Annex 47, Note 4) similarly referring to an alleged “*internationally wrongful act*” and requesting “*negotiations in relation to the said breach of international law*”.

<sup>110</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 19 July 2020 (Applicants’ Annex 47, Note 7).

2020, Iran demonstrated its willingness to enter into a good faith discussion regarding the question of an alleged breach of its obligations under the Chicago Convention, including Article 3*bis*.

- c. According to Ukraine's account of the meeting, Iran agreed to further bilateral negotiations regarding, inter alia, the "interpretation and application of the Chicago [... Convention".<sup>112</sup> During the meeting Iran stated its position that Article 3*bis* requires a showing of intention and that it had been established that there was no intention to shoot down a civil aircraft.

74. The Applicants' position, however, as communicated to Iran in a Note Verbale dated 14 July 2023, was that the topics that "*must be addressed as part of any agenda*" for negotiations included:<sup>113</sup>

"Acknowledgement of ... Iran's breaches of its obligations under international treaties including, but not limited to the [Chicago Convention], and including its obligation to make full reparation to the Four Countries".

75. This echoed the Applicants' earlier "*demand*", when proposing collective negotiations specifically in relation to "*the methods and modalities by which ... Iran may fulfil its obligation to make reparations to the [Applicants'] satisfaction*", that Iran must: "*Acknowledge the internationally wrongful acts and omissions alleged*".<sup>114</sup>
76. Iran responded by Note Verbale dated 13 August 2023, observing that the agenda for negotiations should be set without any bias.<sup>115</sup>

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<sup>111</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 22 July 2020 (Iran's Annex 10).

<sup>112</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2020 (Applicants' Annex 47, Note 10), emphasis added.

<sup>113</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 14 July 2023 (Applicants' Annex 47, Note 63)

<sup>114</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 20 December 2021 (Applicants' Annex 47, Note 25).

<sup>115</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 August 2023 (Iran's Annex 45).

77. Yet, the Applicants persisted in proposing an agenda in which the issue of breach had been pre-determined. On 11 September 2023 they insisted that the agenda must include “*discussion of [Iran’s] breaches of its obligations under international treaties including, but not limited to the [Chicago Convention], and including its obligation to make full reparation*”.<sup>116</sup> Consistent with assuming the question of breach, the Applicants also insisted that the discussion must include: “*Assurances and guarantees of non-repetition*”. Moreover, having referred to the claim under the Montreal Convention pending before the ICJ, the Applicants stated:<sup>117</sup>

“Any discussion regarding the conclusion of a written agreement or settlement of this dispute will not be contemplated by the four Countries until such time as [Iran] acknowledges responsibility for its internationally wrongful acts and omissions that led to the downing of Flight PS752 and takes responsibility for the legal consequences that flow from these internationally wrongful acts including, but not limited to, ceasing to intimidate and harass the families of the victims both in Iran and in other jurisdictions and providing sufficient evidence to satisfy the four Countries that there has been transparency, justice and accountability for this tragic event.”

78. On 19 September 2023, Iran repeated that the agenda for good faith negotiations must not pre-judge issues. As the issues raised in the Applicants’ proposed agenda, Iran stated:<sup>118</sup>

“It must be mentioned that the proposals made by the governments of Ukraine, Canada, Sweden, and Britain for inclusion in the agenda, which were pointed out in Note No. 72 / 22-620-107977, dated 11/09/2023, can also be discussed towards reaching an agreement that is satisfactory to all parties. They can then be included in the agenda if required and if they accord with the principles and regulations of the international law.”

79. On 2-3 October 2023, the Parties met in Geneva. Iran repeated that the agenda for negotiations must not be biased and also stated that, prior to making any allegation that the incident was intentional or unlawful, all relevant information in support of such allegation should be provided.<sup>119</sup>

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<sup>116</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 11 September 2023 (Applicants’ Annex 47, Note 65).

<sup>117</sup> *Ibid.*

<sup>118</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 19 September 2023 (Iran’s Annex 46).

80. By Note Verbale dated 9 November 2023, the Applicants stated that:<sup>120</sup>
- a. *“Iran refused to agree to any agenda that included an item on Iran’s State responsibility for the downing of Flight PS752”.*
  - b. *“The four Countries explained that the breaches of international legal obligations that are attributable to Iran include, but are not limited to, failing to refrain from resorting to the use of weapons against civil aircraft in flight as required by Article 3bis of the Chicago Convention”*
  - c. Iran stated that it would never accept international legal responsibility for the incident.
  - d. Iran refused to acknowledge that the treaties invoked by the four Countries apply in the circumstances.
  - e. It was, therefore, accepted by the Parties that a fundamental disagreement continues to exist between Iran and the Four Countries with respect to the interpretation and application of the relevant treaties.
81. The Applicants did not make a genuine attempt to enter into good faith discussions in relation to the present disagreement concerning the interpretation and application of Article 3bis. Instead, the Applicants unilaterally terminated the collective negotiations on the basis that *“Iran refused to acknowledge that the treaties invoked by the four Countries apply in the circumstances”*.<sup>121</sup>
82. By Note Verbale dated 13 December 2023, Iran informed Ukraine that during the meeting in Geneva:<sup>122</sup>

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<sup>119</sup> See Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 December 2023 (Iran’s Annex 3).

<sup>120</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 9 November 2023 (Applicants’ Annex 47, Note 69).

<sup>121</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 9 November 2023 (Applicants’ Annex 47, Note 69), emphasis added.

- a. The Iranian delegation included representatives from all parts of the government including the judiciary, military, legal, aviation experts and political representatives.
- b. Iran had “*rejected*” the Applicants’ position that it has “*accepted the wrongfulness of the firing of the missile towards the plane*”.
- c. Iran had not refused to discuss the present disagreement. Rather it had maintained that the Applicants should “*provide all relevant and reliable information*” in support of the allegation that the firing of the missile was internationally wrongful. Thus, Iran’s position was that the agenda for negotiations should include information and evidence related to “*international law applicable*” to the incident.

83. Iran concluded as follows, reiterating its continued willingness to enter into good faith negotiations on the basis of an agreed agenda which was not biased in assuming (or requiring an acknowledgment) that Iran’s conduct was internationally wrongful:<sup>123</sup>

“Unfortunately, despite the constructive role of the Islamic Republic of Iran in this issue, the opposing sides are yet to hold any meaningful negotiations with good faith to show their true intention. Despite that, it is stipulated that in furtherance to the good faith position of the Islamic Republic of Iran, if the opposing sides are willing to conduct meaningful and constructive negotiations, without any political aims, the Islamic Republic of Iran welcomes such intention. [...]”

At the end, it is noted that the position of the opposing sides is based on a complete prejudice, and lack of any flexibility of including the sensible recommendations by the Islamic Republic of Iran in the Draft Agenda of the talks in Geneva is an exercise of bad faith. It is for this reason that in those negotiations, participants did not come to a conclusion, and did not enter the merits of the issue, and no negotiation as to any Convention was concluded. Hence, it cannot be concluded that a legal dispute exists or not”

84. As follows from the above, unlike Iran, the Applicants did not make a genuine attempt to enter into good faith discussions in relation to the present disagreement.

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<sup>122</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 December 2023 (Iran’s Annex 3).

<sup>123</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 December 2023 (Iran’s Annex 3).



### III. THE STANDING OF THE UK

85. The Applicants’ Memorial – in particular Chapters III and IV (Merits and Request for relief, respectively) – adopts exclusively an inter-State perspective to the question of the alleged violation of Article 3*bis* of the Chicago Convention.<sup>124</sup>
86. The question of the legal interest of each Applicant before the ICAO Council under Article 84 of the Chicago Convention (CC) must be considered, keeping in mind that the existence of a dispute and the existence of a legal interest are two distinct questions.<sup>125</sup>
87. The ICJ has held that its function:
- “Is to state the law, but it may pronounce judgment only in connection with concrete cases where there exists at the time of the adjudication an actual controversy involving a conflict of legal interests between the parties. The Court’s judgment must have some practical consequence in the sense that it can affect existing legal rights or obligations of the parties, thus removing uncertainty from their legal relations.”<sup>126</sup>
88. Iran considers that the same applies to the ICAO Council as a quasi-judicial organ.
89. It is undisputed that Ukraine was the national (flag) State of the aircraft and that there were 176 victims. Based on the information available to Iran, amongst the victims there were 11 Ukrainian nationals (including 9 members of the crew), 4 Swedish nationals and 5 Canadian nationals.<sup>127</sup> According to the Applicants’ Memorial, the aircraft was carrying nine Ukrainian members of the crew as well as an unspecified number of “*nationals or residents*” of Ukraine, Canada, Sweden and the United Kingdom.<sup>128</sup>
90. The standing of the UK has never been established, and even less accepted by Iran.

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<sup>124</sup> Applicants’ Memorial. The memorial mirrors on all main legal points – with the exception of self-defence – the Memorial submitted by Iran in *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America): Iran in Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States)*, Memorial of Iran, 24 July 1990, pp 239-246.

<sup>125</sup> See eg J Crawford, *Brownlie’s Principles of International Law*, 9<sup>th</sup> ed. (Oxford, 2019), p. 671.

<sup>126</sup> *Case concerning the Northern Cameroons (Cameroon v. United Kingdom)*, Preliminary Objections, Judgment of 2 December 1963, *I.C.J. Reports 1963*, p. 15, pp. 33-34.

<sup>127</sup> Iran, *Preliminary Report*, 9 January 2020.

<sup>128</sup> Applicants’ Memorial, p. 4.

91. As for all public international law litigation,<sup>129</sup> the UK must 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).<sup>130</sup> Since the aircraft was neither registered under the flag of the UK nor chartered according to UK law, the only relevant connection could only be the presence of UK nationals onboard the aircraft having sustained some harm.
92. The UK, however, has not proved that there were UK nationals onboard the relevant aircraft. Iran has repeatedly emphasised this fact in its diplomatic correspondence with the UK. Thus, in a note sent from the Iranian Foreign Ministry to the UK embassy in Tehran, it is stated that: “*The Islamic Republic of Iran’s laws and regulations stipulate that there was no British casualty on this flight*”.<sup>131</sup> This was repeated in a further note to the same embassy.<sup>132</sup>
93. Without prejudice to its position, and as a gesture of goodwill, the UK was invited to participate in the AAIB’s investigation pursuant to Annex 13 to the Convention and Iran also provisionally accepted that it would enter into bilateral negotiations with each of the States seeking to present claims, including the UK. The main fact is and remains that Iran has made clear its position that no UK nationals were harmed on the relevant flight of the Ukrainian aircraft.
94. The burden of proof lies on the State claiming the existence of a fact (*probatio incumbit actori*).<sup>133</sup> Since the UK seems to rely on the presence of some of its nationals onboard the aircraft to justify the claims it presents, the UK also bears the

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<sup>129</sup> See K, Mbaye, « L’intérêt pour agir devant la Cour internationale de Justice », *RCADI*, vol. 209, 1988, pp. 223ff.

<sup>130</sup> The ICJ has considered the issue of *locus standi* in several cases, e.g. the *South-West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, *Preliminary Objections, Judgment of 21 December 1962*, *ICJ Reports 1962*, p. 319 at pp. 342-343 and 1966, p. 17ff; *Barcelona Traction, Light and Power Company, Limited, Judgment*, *ICJ Reports 1970*, p. 3 at 30ff; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, *Judgment*, *ICJ Reports 2012*, p. 442 at pp. 448-450; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, *Preliminary Objections, Judgment*, *ICJ Reports 2022*, p. 477 at paras 93ff.

<sup>131</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of the United Kingdom of Great Britain and Northern Ireland, 1 February 2023 (Iran’s Annex 4).

<sup>132</sup> Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of the United Kingdom of Great Britain and Northern Ireland, 6 February 2023 (Iran’s Annex 5).

<sup>133</sup> See e.g. *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all forms of Racial Discrimination (Ukraine v. Russia)*, ICJ, Judgment of 31 January 2024, para 168.

burden of proving the presence of these persons in the flight and their British nationality. It has not discharged this duty.

95. 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.
96. Iran reserves its right to further develop its argument on lack of legal standing should the UK seek to advance the required proof.

### **SUBMISSIONS**

97. For the reasons referred to above, Iran respectfully requests that the Council:
  - (a) exercise its discretion under Article 14(1) of the Rules to invite the Parties to engage in negotiations with a view to resolving the present disagreement;
  - (b) adjudge that each of the Applicants have failed to satisfy the negotiation requirement in Article 84 of the Convention and declare that the Council therefore lacks jurisdiction over the claims in their entirety; and
  - (c) declare that the UK's claims are inadmissible on the basis that it lacks standing.



Arash Khodaei  
Agent for Islamic Republic of Iran

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Annex 33	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic to the Ukrainian Embassy in Tehran, 29 January 2023
Annex 34	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden, 29 January 2023
Annex 35	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, 29 January 2023
Annex 36	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development of Canada, 30 January 2022
Annex 37	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 30 January 2023
Annex 38	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to His Majesty's Ambassador of the United Kingdom to Tehran, 30 May 2023
Annex 39	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Embassy of Sweden in Tehran, 30 May 2023

Annex 40	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 30 May 2023
Annex 41	Note Verbale from the Ministry of Foreign Affairs of Islamic Republic of Iran to the Ministry of Foreign Affairs, Trade and Development Canada, 30 May 2023
Annex 42	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, 26 June 2023
Annex 43	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade and Development of Canada via the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, 26 June 2023
Annex 44	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 26 June 2023
Annex 45	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 August 2023
Annex 46	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 19 September 2023
Annex 47	Letter from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General, 31 January 2022
Annex 48	Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Department of Foreign Affairs, Trade, and Development Canada, 15 March 2022
Annex 49	AAIB Final Report, 15 March 2021
Annex 50	Flight PS752 Accident Investigation, Factual Report, July 2020
Annex 51	Flight PS752 Accident Flight Recorder Read-out Report, August 2020
Annex 52	Flight PS752 Accident Investigation Team Statement on the Anniversary of the Accident, January 2020
Annex 53	Flight PS752 Accident Appendix B of the AAIB Final Report, March 2021

## **Annex 3**



International  
Civil Aviation  
Organization

Organisation  
de l'aviation civile  
internationale

Organización  
de Aviación Civil  
Internacional

Международная  
организация  
гражданской  
авиации

منظمة الطيران  
المدني الدولي

国际民用  
航空组织

THE SECRETARY GENERAL

Ref.: LE 6/10.CONF

16 September 2024

To: Agent for Canada  
Agent for the Kingdom of Sweden  
Agent for Ukraine  
Agent for the United Kingdom of Great Britain and Northern Ireland  
(Jointly “Applicants”)

cc: President of the Council  
  
Agent for the Islamic Republic of Iran  
 (“Respondent”)

From: Secretary General

I refer to the matter Settlement of Differences: *Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland and the Islamic Republic of Iran (2024)*, which is currently pending before the Council of the International Civil Aviation Organization (ICAO).

This is to inform you that the Organization is in receipt on 29 August 2024 of a letter of the same date, reference 110/1913, from the Representative of the Islamic Republic of Iran to ICAO, transmitting to the Organization, on behalf of the Respondent, a Rejoinder to the Reply to the Statement of preliminary objection filed by the Applicants in the above-mentioned matter.

Enclosed herewith is a copy of the above-referenced letter together with the Respondent’s Rejoinder.

Yours sincerely,

Juan Carlos Salazar

**Enclosure**



جمهوری اسلامی ایران

**Islamic Republic of Iran**

**The Permanent Mission of the Islamic Republic of Iran  
to the International Civil Aviation Organization**

Mr. Salvatore Sciacchitano  
President of the Council  
International Civil Aviation Organization  
999 Boulevard Robert-Bourassa  
Montreal QC

Ref: 110/1913

Date:29/Aug/2024

Dear Mr. President,

With reference to the Secretary General's letter (Ref.: LE 6/10 CONF) dated 1 August 2024 in the matter Settlement of Differences: Canada, the Kingdom of Sweden, Ukraine, and the United Kingdom of Great Britain and Northern Ireland and the Islamic Republic of Iran (2024), by which Islamic Republic of Iran was informed of the filing of the Applicants' reply to its statement of preliminary objection together with the Council's Decision taken at the fifth meeting of 232nd Session dated 14 Jun 2024 upon which the Council agreed to grant a Four-Week time-Limit to Iran to submit its Rejoinder and in accordance with Article 7(1) of the Rules for Settlement of Differences (Doc 7782/2) I have the honour to file Iran's Rejoinder in the above-mentioned matter signed by the Agent for the Islamic Republic of Iran.

Sincerely yours,



*Delegation of Iran  
(Islamic Republic)  
in ICAO*

*F. Parvaresh*  
Farhad Parvaresh  
Representative of the Islamic Republic of Iran to ICAO

CC: Mr. Juan Carlos Salazar  
Secretary General of ICAO

IN THE NAME OF GOD

UKRAINE INTERNATIONAL AIRLINES FLIGHT PS752

*(CANADA, THE KINGDOM OF SWEDEN, UKRAINE AND THE UNITED KINGDOM OF  
GREAT BRITAIN AND NORTHERN IRELAND v. THE ISLAMIC REPUBLIC OF  
IRAN)*

**REJOINDER ON PRELIMINARY OBJECTIONS OF THE ISLAMIC REPUBLIC OF  
IRAN**

In the matter relating to the interpretation and application of the Convention on International  
Civil Aviation pursuant to Article 84

28 August 2024

## I. INTRODUCTION

1. This Rejoinder on Preliminary Objections is submitted by the Islamic Republic of Iran (“**Iran**”) in accordance with the time limit set by the Council to respond to the Reply of Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland (collectively the “**Applicants**”) to Iran’s Preliminary Objections, filed on 26 July 2024 (the “**Reply**”).
2. In its Preliminary Objections, Iran explained that the Applicants have failed to satisfy the requirement for negotiations under Article 84 of the Convention because (a) the Applicants never genuinely attempted to engage in meaningful discussions with Iran, with a view to resolving the present disagreement relating to the interpretation and application of Article 3*bis*, and (b) in any event, any negotiations has not been pursued in good faith, let alone reached the point of futility or deadlock, as was evident for example from the evolution of Iran’s position in accepting that it would engage in collective negotiations with the Applicants.
3. Contrary to the Applicants’ contention, they made no genuine attempt to negotiate on the critical question of whether Iran was in breach of Article 3*bis* of the Chicago Convention. Rather, as Iran has explained, the question of breach was assumed by the Applicants and presented by them as a precondition for entering into negotiations with Iran.
4. In its Preliminary Objections, Iran also explained that the United Kingdom (“**UK**”) “*must 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)*”.<sup>1</sup> The Applicants appear to accept this.<sup>2</sup> Iran explained that, based on the information available to Iran, the standing of the UK has not been established.<sup>3</sup> In their Reply, the Applicants advance two arguments, neither of which materially assists so far as concerns the information available to Iran (and to the Council):

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<sup>1</sup> Iran’s Preliminary Objections, para. 91.

<sup>2</sup> Applicants’ Reply, paras. 41-42.

<sup>3</sup> See Iran’ Preliminary Objections, paras. 85-96.

- a. First, the Applicants refer to four UK passport numbers (without even exhibiting copies of the passports referred to or other documents evidencing the alleged nationality of the four passengers).<sup>4</sup> This is plainly insufficient to address Iran’s position, which is that the UK bears the burden of proving nationality, and the effectiveness of such nationality, within the meaning of international law.
  - b. Second, the Applicants seek to rely on Iran’s previous willingness to treat the UK as having a special interest for the specific purpose of Article 13 of the Convention.<sup>5</sup> This, however, could not be in any way determinative. That decision was made in the very different context of an investigation in connection with which Iran was demonstrating its openness. At that stage, Iran was neither engaged in an adversarial legal proceeding nor purporting to apply the legal test for nationality which must be met in the present context, as indeed the parties appear to agree. Notably the Applicants have not even attempted to show that the requirements in international law for some sort of issue estoppel have been met.
5. In these circumstances, Iran maintains its position and reiterates its request to Council to declare the UK’s claims inadmissible on the basis that it lacks standing. Iran also reserves its right to develop its argument on legal standing should the UK seek to advance the required proof.
  6. Further, in their Memorial, the Applicants stated in general terms that “*many*” of the passengers were their nationals or residents.<sup>6</sup> In its Preliminary Objections, Iran stated its understanding that the victims included 5 Canadian nationals and 4 Swedish nationals.<sup>7</sup> The Applicants now dispute this, stating that there were 55 nationals and 30 residents of Canada and 7 nationals and residents of Sweden on board.<sup>8</sup> The Applicants however have put forward no passports or other documents evidencing the claimed nationality or its effectiveness under international law. In these circumstances, Iran does

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<sup>4</sup> See Applicants’ Reply, para. 46 and footnote 54.

<sup>5</sup> Cf Applicants’ Reply, paras. 47-50.

<sup>6</sup> Applicants’ Memorial, para. ii.

<sup>7</sup> Iran’s Preliminary Objections, para. 89.

<sup>8</sup> Applicants’ Reply, para. ix, footnote 5.

not accept the Applicants' allegation with respect to the number of nationals of Canada and Sweden or the effectiveness of their claimed nationality and reserves its right to respond after those States advance the required proof.

7. Iran now responds further on the point that the Applicants have failed to satisfy the requirement for negotiations under Article 84 of the Convention.

## **II. THE APPLICANTS HAVE FAILED TO SATISFY THE REQUIREMENT FOR NEGOTIATIONS**

### **A. Events between January 2020 and December 2021**

8. The Applicants assert that: "*Based on the record, even on Iran's own case, the Applicants raised the subject-matter of the disagreement as early as July 2020 during their videoconference meeting, then again in their Notice of Claim in June 2021*".<sup>9</sup> This is wrong on both counts.
9. First, as to the events of July 2020, Iran noted in its Preliminary Objections the Applicants' consistent position (most recently, expressly repeated in their Memorial) that the earlier bilateral negotiations between Iran and Ukraine which took place January 2020 and June 2021 are irrelevant.<sup>10</sup> In direct contradiction, the Applicants now seek to rely on Iran's (alleged) comments during the bilateral negotiations with Ukraine in January 2020, (incorrectly) asserting that "*the Applicants and Iran engaged in discussions on the matter of Iran's responsibility for the downing of Flight PS752 from the early stages of the negotiations and that the applicability of Article 3bis was raised*".<sup>11</sup> This is not only inconsistent; it is also disproved by the record:

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<sup>9</sup> Applicants' Reply, para. 16.

<sup>10</sup> See Applicants' Memorial, para. 115; Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 27 September 2020 (Applicants' Memorial 47, Note 10); and Applicants' Memorial Annex 47, Note 25 stating that the bilateral negotiations were "*not pertinent to, and have no bearing on*" and "*do not overlap with*" the disagreement regarding the interpretation and application of article 3bis of the Chicago Convention because "*Ukraine was not acting on behalf of the Group during these meetings, as explained by the Ukrainian representatives at the time*".

<sup>11</sup> Applicants' Reply, para. 13.

- a. As Iran explained in its Preliminary Objections, and recorded in Ukraine’s own Note Verbale dated 24 September 2020, Iran’s statements were made specifically in the context of good faith bilateral negotiations with Ukraine.<sup>12</sup>
  - b. In the same Note Verbale, Ukraine itself distinguished between this agenda item and the separate agenda item of the videoconference conducted with representatives of the so-called “Coordination Group” with the separate “*purpose to discuss principles and modalities of conducting negotiations regarding reparations*”.<sup>13</sup>
  - c. There is also nothing in Ukraine’s Note Verbale dated 24 September 2020 to support the Applicants’ new contention that “*during this meeting the Applicants raised Iran’s legal responsibility*”, as opposed to issues of compensation specifically.<sup>14</sup>
10. Second, in its Preliminary Objections, Iran also explained that in their so-called “*notice of claim*” dated 2 June 2021, the Applicants did not mention Article 3*bis* (or refer to the existence of a “*dispute*” or a “*disagreement*” between the Applicants and Iran as to the interpretation or application of the Chicago Convention).<sup>15</sup> Nor did the Applicants propose negotiations in relation to whether Iran had committed a breach of its international obligations, including its (unparticularised) obligations under the Chicago Convention, or in relation to the present (or, indeed, any other) disagreement concerning the interpretation or application of the Convention.<sup>16</sup>
11. While not disputing this, the Applicants now contend that it is sufficient that in their so-called “*notice of claim*” dated 2 June 2021 they referred in wholly general terms to

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<sup>12</sup> Iran’s Preliminary Objections, paras. 30(a) and 73.

<sup>13</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 24 September 2020 (Applicants’ Memorial Annex 47, Note 10). See further Iran’s Preliminary Objections, para. 50(a). For completeness, Iran notes that the Applicants’ Reply, at paragraph 10, states: “*On 22 June, the Foreign Minister of Iran and the Foreign Minister of Canada spoke, and Iran agreed to enter into negotiations on reparations*”. For the avoidance of doubt, the nature and limit of the agreement referred to and reached at that time was that Iran would enter into negotiations with the members of the so-called “Coordination Group” in relation to reparations specifically.

<sup>14</sup> Cf Applicants’ Reply, para. 13.

<sup>15</sup> Iran’s Preliminary Objections, paras. 30b and 53-54.

<sup>16</sup> Iran’s Preliminary Objections, para. 55.

responsibility under the Chicago Convention and called for reparations.<sup>17</sup> Contrary to the Applicants' contention, they made no proposal to engage in negotiations with respect to the subject-matter of the present disagreement concerning the interpretation and application of a single specific provision of the Convention that was neither mentioned nor referred to by subject-matter in the "*notice of claim*". The Applicants do not engage with Iran's explanation that their proposal was limited to the distinct question of the obligation to make reparation – i.e., a question of state responsibility under customary international law that presupposes (indeed, prejudices) the existence of breach.<sup>18</sup>

12. The Applicants are also wrong to characterise Iran's Note Verbale dated 17 November 2021 as containing a "*rejection of further negotiations*".<sup>19</sup> The Reply quotes selectively from this document, omitting the following words, which Iran highlighted in its Preliminary Objections:<sup>20</sup>

“Nonetheless, the Islamic Republic of Iran is always prepared to continue bilateral interactions through the respective embassies or through meetings or interactions between the authorities of both countries.”

## **B. Events from December 2021**

13. In its Preliminary Objections, Iran explained that:
  - a. As the documents record, the Applicants were unwilling to renounce a series of rigid pre-conditions for negotiations – including a requirement that Iran acknowledge or accept that the accident constituted an internationally wrongful act by Iran by virtue of breach of, *inter alia*, the Chicago Convention.<sup>21</sup>

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<sup>17</sup> Applicants' Reply, para. 14.

<sup>18</sup> See Iran's Preliminary Objections, para. 55f.

<sup>19</sup> Applicants' Reply, para. 21.

<sup>20</sup> See Iran's Preliminary Objections, para. 58 referring to Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 17 November 2021 (Iran's Memorial Annex 20).

<sup>21</sup> See Iran's Preliminary Objections, para. 36.

- b. In circumstances where no liability under the Chicago Convention (or other rules of international law) was accepted by Iran, it could not be appropriate to condition entering into negotiations on treating liability as a *fait accompli*, as opposed to the subject of negotiations in which Iran could put forward its entirely good faith position that it had not breached these treaties.<sup>22</sup>
14. It is common ground that “*the subject matter of the negotiations must relate to the subject matter of the dispute which, in turn, must concern the substantive obligations contained in the treaty in question*”.<sup>23</sup> In the present context, the subject matter of the negotiations must relate to the subject matter of the present disagreement concerning the interpretation and application of Article 3bis. A proposal for negotiations conditional upon treating the existence of a breach of Article 3bis as a *fait accompli* is not a proposal to negotiate the subject matter of the present disagreement.
15. Consistent with this, in their Reply, the Applicants appear to agree that the imposition of such rigid preconditions would not have satisfied the requirement of a genuine attempt to negotiate the present disagreement. Indeed, with specific reference to Ukraine’s Note Verbale dated 12 November 2021, the Applicants argue that their proposal for negotiations was “*reasonable and flexible*” because it was not subject to rigid preconditions but rather “*proposed to discuss the applicability of international law in general terms*”.<sup>24</sup>
16. The Applicants dispute as “*not credible*” Iran’s characterisation of their position as imposing such “*rigid preconditions*” for negotiations.<sup>25</sup> They now seek to recharacterize their position as merely that “*it was necessary for Iran’s legal responsibility to be on the agenda*” as a question for negotiation.<sup>26</sup> The Applicants are, however, forced to accept that their proposed agenda for negotiations in July 2023 (like their earlier proposals) included, not discussion of the parties’ good faith positions but, rather, “*an acknowledgement of Iran’s breaches of its obligations under the applicable*

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<sup>22</sup> See Iran’s Preliminary Objections, para. 32.

<sup>23</sup> Applicants’ Reply, para. 6(b).

<sup>24</sup> Applicants’ Reply, paras. 18-19.

<sup>25</sup> Applicants’ Reply, para. 33.

<sup>26</sup> Applicants’ Reply, para. 31.

*treaties including the Chicago Convention*".<sup>27</sup> Moreover, the Applicants do not (and cannot) even repeat their earlier assertion that this approach is "*reasonable*".<sup>28</sup>

17. The Applicants also rely on their apparent indication, in September 2023, of willingness to enter into a discussion of Iran's alleged breaches of its obligations under treaties, including the Chicago Convention.<sup>29</sup> As explained in Iran's Preliminary Objections, however, the Applicants did not in fact make a genuine attempt to enter into good faith discussions in relation to this matter. To the contrary, they continued to insist that the agenda for negotiations must include an acknowledgement by Iran that it has breached international obligations. Although the Applicants recognise Iran's position that their proposed agenda was "*biased*", they do not engage with this key point.<sup>30</sup>
18. The Applicants assert that they had "*every right to make such a basic and obvious request that is central to the disagreement between the parties*" because Iran "*undeniably used weapons against a civil aircraft in flight*".<sup>31</sup> This is, however, once again, merely to present the contested question of the interpretation and application of Article 3bis as a foregone conclusion in the Applicants' favour. In a continuation of the same approach, the Applicants now assert that "*the parties are in agreement that Iran's IRGC used weapons against Flight PS752, a civil aircraft in flight*".<sup>32</sup> It is plainly wrong to suggest that there is agreement that Iran used weapons against a civil aircraft in flight within the meaning of Article 3bis of the Chicago Convention. Iran had previously expressly "*rejected*" the Applicants' position that it has "*accepted the wrongfulness of the firing of the missile towards the plane*".<sup>33</sup>
19. Following the meeting held on 2-3 October 2023, the Applicants unilaterally terminated the collective negotiations on the ground that "*Iran refused to acknowledge that the treaties invoked by the four Countries apply in the circumstances*" and stated that it

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<sup>27</sup> Applicants' Reply, para. 32 referring to Note Verbale from the Applicants to the Ministry of Foreign Affairs of the Islamic Republic of Iran dated 14 July 2023, No. 72/22-620-82336 (Applicants' Memorial Annex 47, Note 63). See also Preliminary Objections, paras. 74-75.

<sup>28</sup> Cf Applicants' Reply, para. 19.

<sup>29</sup> Applicants' Reply, para. 35.

<sup>30</sup> Applicants' Reply, para. 34.

<sup>31</sup> Applicants' Reply, Introduction, para. iv.

<sup>32</sup> Applicants' Reply, Introduction, para. ix.

<sup>33</sup> See Preliminary Objections, para. 82 referring to Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 December 2023 (Iran's Annex 3).

would “*never accept international legal responsibility for the downing*”.<sup>34</sup> Iran’s true position, as stated in its Note Verbale dated 13 December 2023, was that it was willing to enter into good faith negotiations in relation to the question of its alleged legal responsibility (including as regards the present disagreement) but it would not accept an agenda which treated as already conceded that the treaties invoked applied and/or that the incident was unlawful.<sup>35</sup>

20. Rather than engaging with this basic point, the Applicants instead repeatedly argue that Iran did not propose a new agenda for negotiations related to the subject matter of the present dispute.<sup>36</sup> This is, however, no answer. Iran had repeatedly made plain its position that the agenda for negotiations should be set without any bias.<sup>37</sup> The Applicants could have put forward a non-biased agenda, including by inviting discussion of Iran’s good faith position as to Article 3*bis*, but they chose not to do so and therefore did not make a genuine attempt to enter into good faith negotiations.
21. In light of the above, the Applicants evidently feel compelled to resort to misstatements of Iran’s objections, responding to arguments which Iran has not advanced.
  - a. It is not Iran’s position that the obligation to negotiate “*imposes an obligation on the Applicants to accept Iran’s position and its own determinations regarding the downing*”.<sup>38</sup>
  - b. Nor is it Iran’s position that “*the Applicants should not have insisted on including [the question of] Iran’s [alleged] responsibility under the Chicago Convention on the agenda*” for good faith negotiations.<sup>39</sup>

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<sup>34</sup> Note Verbale from the Ministry of Foreign Affairs of Ukraine, on behalf of the Department of Foreign Affairs, Trade and Development of Canada, the Ministry for Foreign Affairs of the Kingdom of Sweden, and the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland to the Ministry of Foreign Affairs of the Islamic Republic of Iran, 9 November 2023 (Applicants’ Memorial Annex 47, Note 69).

<sup>35</sup> See Preliminary Objections, para. 36 referring to Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 December 2023 (Iran’s Annex 3).

<sup>36</sup> See Reply, paras. 22 and 27.

<sup>37</sup> See eg Preliminary Objections, paras. 76 and 79 Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 August 2023 (Iran’s Annex 45); Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 December 2023 (Iran’s Annex 3).

<sup>38</sup> Applicants’ Reply, para. 38.

<sup>39</sup> Applicants’ Reply, Introduction, para. iv.

22. The Applicants also resort to purely prejudicial assertions that Iran was seeking to avoid accountability with respect to the present disagreement and to “endlessly prolong” negotiations.<sup>40</sup> This is false.

a. On 11 January 2020, Iran publicly announced that its air defence forces had fired missiles at Flight PS752 due to human error, resulting in the tragic incident.<sup>41</sup> If (as Iran considers to be the case) Article 3*bis* is inapplicable, no question of “accountability” with respect to the present disagreement arises.

b. As Iran explained in its Preliminary Objections, Iran’s good faith position with respect to negotiations evolved such that from January 2023 it was willing to meet with all of the Applicants present. In its Note Verbale dated 13 December 2023, Iran also reiterated that: “*in furtherance to the good faith position of the Islamic Republic of Iran, if the opposing sides are willing to conduct meaningful and constructive negotiations, without any political aims, [the] Islamic Republic of Iran welcomes such intention.*”<sup>42</sup>

### **C. The way forward in light of the absence of a cooperative approach to date**

23. In its Preliminary Objections, Iran stated that there is a reasonable probability that, if the Applicants genuinely attempted to engage in meaningful discussions with Iran with a view to resolving the disagreement, this could lead to a settlement and, in order to facilitate genuine negotiations, respectfully requested that the Council exercise its discretion under Article 14(1) of the Rules to invite the Parties to engage in negotiations with a view to resolving the present disagreement.<sup>43</sup> The Applicants state that Iran’s request for the Council to exercise its discretion under Article 14(1) of the Rules to invite the parties to negotiate “*is not a matter to be considered as part of these*

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<sup>40</sup> Applicants’ Reply, para. 38.

<sup>41</sup> See Preliminary Objections, para. 4. Although the Applicants dispute that this is “*common ground*”, it does not appear to be seriously disputed: see Applicants’ Reply, Introduction, para. ix.

<sup>42</sup> See Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine, 13 December 2023 (Iran’s Annex 3).

<sup>43</sup> See Iran’s Preliminary Objections, paras. 40-42.

*Preliminary Objection proceedings*".<sup>44</sup> Notably, however, they do not appear to disagree that such an invitation by the Council would represent an appropriate way forward.

## **SUBMISSIONS**

24. Iran recalls and repeats the Submissions at paragraph 97 of its Preliminary Objections.



- Arash Khodaei

Agent for Islamic Republic of Iran

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<sup>44</sup> Applicants' Reply, Introduction, para. vii.

## **Annex 4**

## APPENDIX A

### 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)

*THE COUNCIL,*

*ACTING* under Article 84 of the *Convention on International Civil Aviation* (the Chicago Convention) and the *Rules for the Settlement of Differences* (Doc 7782/2) (the Rules);

*COMPOSED* of the following Representatives entitled to vote: Mr. G.E. Bompadre (Argentina), Mr. C. Schleifer (Austria), Mr. C.A. Arispe Rosas (Bolivia), Mr. M. Arslanian Neto (Brazil), Ms. P. Uribe Raibaudi (Chile), Mr. X. Lyu (China), Mr. N.M.E. Mekky (Alt.) (Egypt), Ms. K.S. Martínez Paredes (El Salvador), Mr. E. Esono Anguesomo (Equatorial Guinea), Mrs. H.M. Deressa (Ethiopia), Ms. F. Cormon-Veyssière (France), Mr. H.G. Decker (Germany), Ms. A. Adjei-Nmashie (Ghana), Ms. V.Á. Adalsteinsdóttir (Iceland), Mr. A. Rastogi (India), Mr. S. Martes (Italy), Ms. M. Coore Lobban (Jamaica), Mr. T. Onuma (Japan), Ms. F. Chin Lee Sa (Malaysia), Mr. D. Méndez Mayora (Mexico), Mr. M.S. B. Tukur (Nigeria), Mr. E. Al-Malki (Qatar), Mr. J.W. Lee (Republic of Korea), Ms. M.C.L. Ioniță (Romania), Mr. M.S.S. Habib (Saudi Arabia), Ms. E. Poh (Singapore), Mr. L. Gqeke (South Africa), Mr. Á.L. Arias (Spain), Mr. O.M. Al Raeesi (Alt.) (United Arab Emirates), Mr. A. Clare (Alt.) (United States), Mr. J. Villaverde (Venezuela (Bolivarian Republic of)) and Mr. M. Waniwa (Zimbabwe).

*THE PARTIES* being the Applicants: **Canada**, represented by Mr. Louis-Martin Aumais, Authorized Agent, assisted by Rebecca Netley, Kimberley Byers, Curtis Schmeichel, Leah Matthews, Janelle Deniset, Emilie De Haas, Katherine Speijer, Sohrab Farid, Rifah Khan, Sahar Mackawi, Andrew Regnerus, Tara Preston, John Velho and Adriana Gouvea; the **Kingdom of Sweden**, represented by Mr. Niklas Kebbon, Authorized Agent, assisted by Ola Engdahl, Fredrik Bergius, Martin Sjögren, Linda Helgeby, Mario Saric and Sara Bengston Urwitz; **Ukraine**, represented by Ms. Oksana Zolotaryova, Authorized Agent, assisted by Yuliya Kovaliv, Dmytro Kutsenko, Tetyana Girenko, Andrii Pasichnyk and Anastasiia Mochulska; and the **United Kingdom of Great Britain and Northern Ireland**, represented by Ms. Sally Langrish, Authorized Agent, assisted by Paul Berman, Chris Durham, Ella Cohen-Haddon, Joshua Crew, Natalie Marsden, Antony Henderson and Felicia Tidmarsh Cortes, on one hand; and the Respondent: the **Islamic Republic of Iran**, represented by Mr. Arash Khodaei, Authorized Agent, assisted by Mojtaba Asgharian, Masoud Ahsannejad Miandoab, Abbas Bagherpour Ardekani, Yousef Nouri Kia, Ahmad Reza Tohidi, Mohammad Saleh Attar, Sam Wordsworth, Sean Aughey and Robert Kolb, on the other hand;

*CONSIDERING* that the Council's jurisdiction is founded upon Article 84 of the Chicago Convention, which provides as follows: "[i]f any disagreement between two or more contracting States relating to the interpretation or application of the Chicago 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....";

*CONSIDERING* that an Application and Memorial by the Applicants under Article 84 of the Chicago Convention was filed on 8 January 2024; that a Statement of preliminary objection was filed by the Respondent on 4 June 2024; that a joint Reply to the Statement of preliminary objection was filed by the Applicants on 26 July 2024; and that a Rejoinder was filed by the Respondent on 29 August 2024;

*CONSIDERING* that in its Statement of preliminary objection filed on 4 June 2024 and in its Rejoinder filed on 29 August 2024, the Respondent requested the Council to:

1. Adjudge that each of the Applicants have failed to satisfy the negotiation requirement in Article 84 of the Chicago Convention and declare that the Council therefore lacks jurisdiction over the Applicants' claims in their entirety;
2. Exercise its discretion under Article 14(1) of the Rules to invite the Parties to engage in negotiations with a view to resolving the present disagreement since there is a reasonable probability that if the Applicants genuinely attempted to engage in meaningful discussions with the Respondent with a view to resolving the disagreement, this could lead to a settlement;
3. Declare that the United Kingdom's claims are inadmissible on the basis that it lacks standing to bring its claims to the ICAO Council and to participate in the proceedings since the United Kingdom has not shown that its own subjective rights have been infringed or that obligations *erga omnes partes* have been breached; further, that the United Kingdom has not shown that the aircraft involved in the accident was either registered under its flag or chartered according to its law, or that its nationals were onboard the aircraft.

*CONSIDERING* that, in their joint Reply to the preliminary objection filed on 26 July 2024, the Applicants provided arguments in response to each of the three arguments above presented by the Respondent and requested the Council to "dismiss the Islamic Republic of Iran's preliminary objection, and exercise its jurisdiction under Article 84 of the Chicago Convention to decide the disagreement set out in the Applicants' Application and Memorial filed 8 January 2024";

*HAVING HEARD* the Parties in the above matter on the preliminary objection and having held its deliberations at the Fifth Meeting of its 234th Session on 17 March 2025;

*CONSIDERING* that the question before the Council was whether to accept the preliminary objection of the Respondent;

*BEARING IN MIND* Article 52 of the Chicago Convention which provides that decisions by the Council shall require approval by a majority of its Members and the consistent practice of the Council in applying this provision in previous cases arising under Article 84 of the Chicago Convention;

*DECIDES* as follows:

1. 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.

The above Decision No. 1, on the question whether to accept the preliminary objection of the Respondent, was taken by a secret ballot with four (4) Members voting in favour, twenty-one (21) Members voting against, and eighth (8) Members abstaining.

2. The time-balance of three (3) days remaining for the Respondent to file its Counter-memorial shall be extended by three (3) weeks and shall begin to run from the date of receipt by the Respondent of notification of this Decision of the Council.

3. Any appeal from this Decision pursuant to Article 84 of the Chicago Convention shall be notified to the Council within sixty (60) days from the date of receipt of notification of this Decision of the Council.

Rendered on 17 March 2025 in Montréal.

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