



INTERNATIONAL COURT OF JUSTICE  
REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING QUESTIONS OF  
INTERPRETATION AND APPLICATION OF  
THE 1971 MONTREAL CONVENTION ARISING  
FROM THE AERIAL INCIDENT  
AT LOCKERBIE

(LIBYAN ARAB JAMAHIRIYA v. UNITED STATES  
OF AMERICA)

REQUEST FOR THE INDICATION OF PROVISIONAL  
MEASURES

ORDER OF 14 APRIL 1992

**1992**

COUR INTERNATIONALE DE JUSTICE  
RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE RELATIVE À DES QUESTIONS  
D'INTERPRÉTATION ET D'APPLICATION  
DE LA CONVENTION DE MONTRÉAL DE 1971  
RÉSULTANT DE L'INCIDENT AÉRIEN  
DE LOCKERBIE

(JAMAHIRIYA ARABE LIBYENNE c. ÉTATS-UNIS  
D'AMÉRIQUE)

DEMANDE EN INDICATION DE MESURES  
CONSERVATOIRES

ORDONNANCE DU 14 AVRIL 1992

Official citation :

*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992, p. 114*

---

Mode officiel de citation :

*Questions d'interprétation et d'application de la convention de Montréal de 1971 résultant de l'incident aérien de Lockerbie (Jamahiriya arabe libyenne c. Etats-Unis d'Amérique), mesures conservatoires, ordonnance du 14 avril 1992, C.I.J. Recueil 1992, p. 114*

Sales number

N° de vente :

**608**

INTERNATIONAL COURT OF JUSTICE

YEAR 1992

14 April 1992

CASE CONCERNING QUESTIONS OF  
INTERPRETATION AND APPLICATION OF  
THE 1971 MONTREAL CONVENTION ARISING  
FROM THE AERIAL INCIDENT  
AT LOCKERBIE

(LIBYAN ARAB JAMAHIRIYA v. UNITED STATES  
OF AMERICA)

REQUEST FOR THE INDICATION  
OF PROVISIONAL MEASURES

ORDER

*Present: Vice-President ODA, Acting President; President Sir Robert JENNINGS; Judges LACHS, AGO, SCHWEBEL, BEDJAOUI, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDDEEN, AGUILAR MAWDSLEY, WEERAMANTRY, RANJEVA, AJIBOLA; Judge ad hoc EL-KOSHERI; Registrar VALENCIA-OSPINA.*

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court, and to Articles 73 and 74 of the Rules of Court,

Having regard to the Application by the Socialist People’s Libyan Arab Jamahiriya (hereinafter called “Libya”) filed in the Registry of the Court on 3 March 1992, instituting proceedings against the United States of America (hereinafter called “the United States”) in respect of “a dispute . . . between Libya and the United States over the interpretation or application of the Montreal Convention” of 23 September 1971, a dispute arising from acts resulting in the aerial incident that occurred over Lockerbie, Scotland, on 21 December 1988,

*Makes the following Order:*

1. Whereas by its above-mentioned Application Libya founds the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and Article 14, paragraph 1, of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation done at Montreal on 23 September 1971 (referred to hereinafter as the “Montreal Convention”), instruments to which Libya and the United States are both parties;

2. Whereas in its Application Libya refers to the destruction of Pan Am flight 103 on 21 December 1988 over Lockerbie, in Scotland; whereas in its Application Libya further states that

“On 14 November 1991, a Grand Jury of the United States District Court for the District of Columbia, United States of America, indicted two Libyan nationals (the ‘accused’) charging, *inter alia*, that they had caused a bomb to be placed aboard [that flight] . . . which bomb had exploded causing the aeroplane to crash”;

and whereas Libya also refers, in this connection, to Article 1 of the Montreal Convention, contending that the acts alleged by the indictment constitute an offence within the meaning of that provision;

3. Whereas, in its Application, Libya claims that the Montreal Convention is the only appropriate convention in force between the Parties dealing with such offences, and that the United States is bound by its legal obligations under the Montreal Convention, which require it to act in accordance with the Convention, and only in accordance with the Convention, with respect to the matter involving Pan Am flight 103 and the accused;

4. Whereas, in its Application, Libya submits that, while it has itself fully complied with all of its own obligations under the Montreal Convention, the United States has breached and is continuing to breach its obligations to Libya under Article 5, paragraph 2, Article 5, paragraph 3, Article 7, Article 8, paragraph 2, and Article 11 of the Convention which provide as follows:

“Article 5. . . .

.....

2. Each Contracting State shall likewise take such measures as

may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 (a), (b) and (c), and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.”

“Article 7. The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.”

“Article 8. ...

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. ...

4. ...”

“Article 11. 1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters”;

5. Whereas it is stated in the Application that at the time the charge was communicated to Libya, or shortly thereafter, the accused were present in the territory of Libya; that after being apprised of the charge, Libya took such measures as were necessary to establish its jurisdiction over the offences charged, pursuant to Article 5, paragraph 2, of the Montreal Convention; that Libya also took measures to ensure the presence of the accused in Libya in order to enable criminal proceedings to be instituted, that it initiated a preliminary enquiry into the facts and that it submitted the case to its competent authorities for the purpose of prosecution; that

Libya has not extradited the accused, there being no extradition treaty in force between it and the United States, and no basis for the extradition of the accused under Article 8, paragraph 2, of the Montreal Convention, since this provision subjects extradition to the law of the requested State and Libyan law prohibits the extradition of Libyan nationals; and that, pursuant to Article 11, paragraph 1, of the Montreal Convention, Libya has sought judicial assistance from the United States in connection with the criminal proceedings instituted by Libya, with the competent Libyan authorities offering to co-operate with the investigations in the United States or in other countries, but that the United States together with its law enforcement officials have refused to co-operate in any respect with the Libyan investigations;

6. Whereas it is further alleged in the Application of the Libyan Government that the United States has clearly shown that it is not interested in proceeding within the framework of the Montreal Convention but on the contrary is intent on compelling the surrender to it of the accused, in violation of the provisions of that Convention; that, more specifically, the United States, by its actions and threats against Libya, seeks, in violation of Article 5, paragraph 2, of the Montreal Convention, to prevent Libya from establishing its legitimate jurisdiction to deal with the matter; that, by its actions and threats, the United States seeks, in violation of the Montreal Convention, to prevent Libya from exercising the right conferred upon it by Article 5, paragraph 3, of that Convention, to exercise its criminal jurisdiction to deal with the matter in accordance with its national law; that by seeking to force Libya to surrender the accused, the United States is attempting, in violation of the Montreal Convention, to prevent Libya from fulfilling its obligations under Article 7 of the Convention to submit the case to its competent authorities for the purpose of prosecution, and that the efforts made by the United States to force Libya to surrender the accused also constitute a violation of Article 8, paragraph 2, of that Convention under which extradition is made subject to the laws of the State from which extradition is requested; and that by refusing to provide details of its investigation to the competent authorities in Libya or to co-operate with them, the United States has failed to fulfil the obligation to afford assistance in criminal matters to Libya, as provided in Article 11, paragraph 1, of the Montreal Convention, and has breached its obligations under that Convention;

7. Whereas Libya, in its Application, asks the Court to adjudge and declare:

- “(a) that Libya has fully complied with all of its obligations under the Montreal Convention;
- “(b) that the United States has breached, and is continuing to breach, its legal obligations to Libya under Articles 5 (2), 5 (3), 7, 8 (2) and 11 of the Montreal Convention; and

- (c) that the United States is under a legal obligation immediately to cease and desist from such breaches and from the use of any and all force or threats against Libya, including the threat of force against Libya, and from all violations of the sovereignty, territorial integrity, and the political independence of Libya”;

8. Whereas, later on 3 March 1992, the day on which the Application was filed, the Libyan Government also filed an “urgent request that the Court indicate provisional measures which ought to be taken promptly to preserve the rights of Libya”, referring to Article 41 of the Statute of the Court and to Articles 73, 74 and 75 of the Rules of Court; and whereas in that request Libya, referring to Article 74, paragraph 4, of the Rules of Court, also requested the President, pending the meeting of the Court, to exercise the power conferred on him by that provision to call upon the Parties to act in such a way as to enable any Order the Court might make on Libya’s request for provisional measures to have its appropriate effects;

9. Whereas in its request for the indication of provisional measures, Libya, referring to the statement of facts in its Application, alleged that the United States was actively seeking to bypass the provisions of the Montreal Convention by threatening various actions against Libya in order to compel Libya, in violation of the Convention, to surrender its two accused nationals; whereas Libya affirmed in the request that the United States had indicated that it might seek or impose economic, air and other sanctions against Libya if Libya did not comply with the demands of the United States, and that the latter had refused to rule out the use of armed force against Libya; and that Libya considered that such actions would clearly be illegal and inappropriate under the applicable provisions of the Montreal Convention, particularly when Libya was itself complying in full with that Convention;

10. Whereas in its request for the indication of provisional measures Libya further submitted that inasmuch as the dispute involved the interpretation or application of the Montreal Convention, it was for the Court alone to rule on the validity of the actions of Libya and the United States under that Convention; that only by granting provisional measures enjoining the United States from taking such actions against Libya was it possible to prevent Libya’s rights from being irreparably prejudiced either in fact or in law; and that provisional measures were also urgently required in order to cause the United States to abstain from any action capable of having a prejudicial effect on the Court’s decision in the case and to refrain from taking any step that might aggravate or extend the dispute, as would surely happen if sanctions were imposed against Libya or force were employed;

11. Whereas Libya, considering that the Court's jurisdiction in the case was *prima facie* established under the Montreal Convention, submitted that there were no impediments to indicating provisional measures and accordingly requested the Court to indicate forthwith provisional measures:

“(a) to enjoin the United States from taking any action against Libya calculated to coerce or compel Libya to surrender the accused individuals to any jurisdiction outside of Libya; and

(b) to ensure that no steps are taken that would prejudice in any way the rights of Libya with respect to the legal proceedings that are the subject of Libya's Application”;

12. Whereas on 3 March 1992, the date on which the Application and the request for the indication of provisional measures were filed in the Registry, the Registrar transmitted by facsimile to the Government of the United States a certified copy of the Application, in accordance with Article 40, paragraph 2, of the Statute and Article 38, paragraph 4, of the Rules of Court, and a certified copy of the request for the indication of provisional measures, in accordance with Article 73, paragraph 2, of the Rules of Court;

13. Whereas, in accordance with Article 40, paragraph 3, of the Statute of the Court and Article 42 of the Rules of Court, copies of the Application were transmitted to the Members of the United Nations through the Secretary-General of the United Nations, and to the other States entitled to appear before the Court;

14. Whereas, by a letter of 6 March 1992, a copy of which was transmitted to Libya by the Registrar, the Legal Adviser of the United States Department of State, referring to the specific request made by Libya under Article 74, paragraph 4, of the Rules of Court, in its request for the indication of provisional measures, stated *inter alia* that

“taking into account both the absence of any concrete showing of urgency relating to the request and developments in the ongoing action by the Security Council and the Secretary-General in this matter ... the action requested by Libya ... is unnecessary and could be misconstrued”;

15. Whereas, on 12 March 1992, the Registrar, in accordance with Article 69, paragraph 3, of the Rules of Court, sent the International Civil Aviation Organization the notification provided for in Article 34, paragraph 3, of the Statute of the Court; and whereas on 25 March 1992, the Registrar, in accordance with Article 43 of the Rules of Court, sent the notification provided for in Article 63 of the Statute to the States, other than the Parties to the dispute, which, on the basis of information supplied by the depositary Governments, appeared to be parties to the Montreal Convention of 23 September 1971;

16. Whereas, the Court not including upon the Bench a judge of Libyan nationality, the Libyan Government availed itself of the provisions of Article 31, paragraph 2, of the Statute of the Court to choose Mr. Ahmed Sadek El-Kosheri to sit as Judge *ad hoc* in the case;

17. Whereas, having regard to the wishes expressed by the Parties, the Vice-President of the Court, exercising the functions of the presidency in the case, fixed 26 March 1992 as the date for the opening of the oral proceedings on the request for the indication of provisional measures, in accordance with Article 74, paragraph 3, of the Rules of Court, and the Parties were informed of this decision on 6 March 1992;

18. Whereas on 26 March 1992, at the opening of the hearings on the request for the indication of provisional measures, the Vice-President of the Court, exercising the functions of the presidency in the case, referred, *inter alia*, to the request made by Libya under Article 74, paragraph 4, of the Rules of Court and stated that after the most careful consideration of all the circumstances then known to him he had come to the conclusion that it would not be appropriate for him to exercise the discretionary power conferred on the President by that provision;

19. Whereas oral observations of the Parties on the request for the indication of provisional measures were presented, at public hearings held pursuant to Article 74, paragraph 3, of the Rules of Court, on 26, 27 and 28 March 1992, by the following representatives:

*on behalf of Libya:*

H.E. Mr. Al Faitouri Sh. Mohamed, *Agent*,  
Mr. Ian Brownlie, Q.C.,  
Mr. Jean Salmon,  
Mr. Eric Suy;

*on behalf of the United States:*

The Hon. Edwin D. Williamson, *Agent*,  
Mr. Alan J. Kreczko, *Deputy Agent*,  
Mr. Bruce C. Rashkow,  
Mr. Charles N. Brower,  
Mr. Jonathan B. Schwartz;

and whereas during the hearings questions were put by Judges, to which the Parties subsequently replied in writing, within the time-limit fixed pursuant to Article 61, paragraph 4, of the Rules of Court;

20. Whereas at the hearing held on 28 March 1992 (morning), Libya presented the following submissions:

“Libya hereby confirms that it is requesting the Court to indicate the following provisional measures:

(a) to enjoin . . . the United States . . . from taking against Libya measures calculated to exert coercion on it or compel it to sur-

render the accused individuals to any jurisdiction outside of Libya;  
and

- (b) to ensure that no steps are taken that could prejudice in any way the rights of Libya with respect to the proceedings instituted by Libya's Applications";

21. Whereas at the hearing held on 28 March 1992 (afternoon), the United States presented the following submission:

*"May it please the Court,*

On behalf of the United States of America, to reject the request of the Government of the Great Socialist People's Libyan Arab Jamahiriya for the indication of provisional measures of protection, and not to indicate any such measures";

\* \* \*

22. Whereas Article 14, paragraph 1, of the Montreal Convention, relied on by Libya as basis of jurisdiction in the case, reads as follows:

"Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months of the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court";

23. Whereas, in its Application, Libya states that a dispute exists between Libya and the United States as to the interpretation or application of the Montreal Convention; that it has not been possible to settle this dispute by negotiation; that a request by Libya to the United States for arbitration of the dispute has been rejected by the United States, and that the Parties have been unable to agree on the organization of such an arbitration; and that in the light of the urgency of rectifying the continuing violations by the United States of the Montreal Convention and the United States refusal to enter into arbitration, the Court has jurisdiction to hear Libya's claims arising under the Montreal Convention; whereas, in its request for the indication of provisional measures, Libya submitted that the Court's jurisdiction in the case was prima facie established under the Montreal Convention; and whereas in the course of the oral proceedings, Libya confirmed those views and further contended that the various conditions laid down by Article 14, paragraph 1, of the Montreal Convention had been fulfilled, including the requirement related to the six-month period;

24. Whereas, in the course of the oral proceedings Libya also submitted that the rights for which it sought protection were established; that these rights were the subject of the principal Application; that the circumstances disclosed a risk of imminent irreparable damage to these rights; and that the exercise by the Court and the Security Council of their respective powers did not in any way conflict;

25. Whereas in the course of the oral proceedings the United States contended that the requested provisional measures should not be indicated because Libya had not presented a prima facie case that the provisions of the Montreal Convention provide a possible basis for jurisdiction inasmuch as the six-month period prescribed by Article 14, paragraph 1, of the Convention had not yet expired when Libya's Application was filed; and that Libya had not established that the United States had refused to arbitrate;

26. Whereas the United States also contended that Libya had not demonstrated that provisional measures were necessary to protect rights at imminent risk of irreparable injury; that there was no proof that "the United States was threatening Libya with economic sanctions and other actions, including the probability of recourse to the use of armed force", as alleged by Libya;

27. Whereas the United States also argued that the requested measures did not relate to the rights claimed in the Application; that Libya had failed to establish the possible existence of the rights it claimed under the Montreal Convention; and that the requested measures would not preserve the rights of the United States;

28. Whereas the United States also contended that the Security Council was actively seised of the situation which was the subject of the Application and that therefore the Court should not indicate provisional measures;

29. Whereas the United States further contended that the requested provisional measures were improperly directed to restraining action in the Security Council, including participation by Member States;

30. Whereas, following on the charges brought by a Grand Jury of the United States District Court for the District of Columbia against the two Libyan nationals in connection with the destruction of Pan Am flight 103, the United States and the United Kingdom issued on 27 November 1991 the following joint declaration:

"The British and American Governments today declare that the Government of Libya must:

- surrender for trial all those charged with the crime; and accept responsibility for the actions of Libyan officials;

- disclose all it knows of this crime, including the names of all those responsible, and allow full access to all witnesses, documents and other material evidence, including all the remaining timers;
  - pay appropriate compensation.
- We expect Libya to comply promptly and in full”;

31. Whereas the subject of that declaration was subsequently considered by the United Nations Security Council, which on 21 January 1992 adopted resolution 731 (1992), of which the paragraphs here material read as follows :

*“The Security Council,*

*Deeply disturbed* by the world-wide persistence of acts of international terrorism in all its forms, including those in which States are directly or indirectly involved, which endanger or take innocent lives, have a deleterious effect on international relations and jeopardize the security of States,

*Deeply concerned* by all illegal activities directed against international civil aviation, and affirming the right of all States, in accordance with the Charter of the United Nations and relevant principles of international law, to protect their nationals from acts of international terrorism that constitute threats to international peace and security,

*Deeply concerned* over the results of investigations, which implicate officials of the Libyan Government and which are contained in Security Council documents that include the requests addressed to the Libyan authorities by France<sup>1,2</sup>, the United Kingdom of Great Britain and Northern Ireland<sup>2,3</sup> and the United States of America<sup>2,4,5</sup> in connection with the legal procedures related to the attacks carried out against Pan American flight 103 and Union de transports aériens flight 772;

2. *Strongly deplores* the fact that the Libyan Government has not yet responded effectively to the above requests to cooperate fully in establishing responsibility for the terrorist acts referred to above against Pan American flight 103 and Union de transports aériens flight 772;

3. *Urges* the Libyan Government immediately to provide a full and effective response to those requests so as to contribute to the elimination of international terrorism;

<sup>1</sup> S/23306; <sup>2</sup> S/23309; <sup>3</sup> S/23307; <sup>4</sup> S/23308; <sup>5</sup> S/23317”;

32. Whereas in the course of the oral proceedings reference was made by both sides to the possibility of sanctions being imminently imposed by the Security Council on Libya in order to require it, *inter alia*, to surrender the accused to the United States or the United Kingdom;

33. Whereas Libya contended that provisional measures were urgently required in order to cause the United States to abstain from any action capable of having a prejudicial effect on the Court’s decision in the case, and more specifically to refrain from taking any initiative within the Security Council for the purpose of impairing that right to exercise jurisdiction, which Libya asks the Court to recognize;

34. Whereas on 31 March 1992 (three days after the close of the hearings) the Security Council adopted resolution 748 (1992) stating *inter alia* that the Security Council:

“ . . . . .  
*Deeply concerned* that the Libyan Government has still not provided a full and effective response to the requests in its resolution 731 (1992) of 21 January 1992,

*Convinced* that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is essential for the maintenance of international peace and security,

. . . . .  
*Determining*, in this context, that the failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992) constitute a threat to international peace and security,

. . . . .  
*Acting* under Chapter VII of the Charter,

1. *Decides* that the Libyan Government must now comply without any further delay with paragraph 3 of resolution 731 (1992) regarding the requests contained in documents S/23306, S/23308 and S/23309;

2. *Decides also* that the Libyan Government must commit itself definitively to cease all forms of terrorist action and all assistance to terrorist groups and that it must promptly, by concrete actions, demonstrate its renunciation of terrorism;

3. *Decides* that, on 15 April 1992 all States shall adopt the measures set out below, which shall apply until the Security Council decides that the Libyan Government has complied with paragraphs 1 and 2 above;

. . . . .

7. *Calls upon* all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to 15 April 1992”;

35. Whereas, by a letter of 2 April 1992, a copy of which was transmitted to Libya by the Registrar, the Agent of the United States drew the Court’s attention to the adoption of Security Council resolution 748 (1992) the text of which he enclosed; and whereas, in that letter, the Agent stated:

“That resolution, adopted pursuant to Chapter VII of the United Nations Charter, ‘decides that the Libyan Government must now comply without any further delay with paragraph 3 of resolution 731 (1992) of 21 January 1992 regarding the requests contained in documents S/23306, S/23308 and S/23309’. It will be recalled that the referenced requests include the request that Libya surrender the two Libyan suspects in the bombing of Pan Am flight 103 to the United States or to the United Kingdom. For this additional reason, the United States maintains its submission of 28 March 1992 that the request of the Government of the Great Socialist People’s Libyan Arab Jamahiriya for the indication of provisional measures of protection should be denied, and that no such measures should be indicated”;

36. Whereas document S/23308, to which reference was made in resolution 748 (1992), included the demands set out in paragraph 30 above;

37. Whereas the Registrar, on the instructions of the Court, informed the Parties, on 4 April 1992, that, in accordance with Article 62 of the Rules of Court, the Court was willing to receive, no later than 7 April 1992, any observations the Parties might wish to transmit to it on the possible implications of Security Council resolution 748 (1992) for the proceedings before the Court;

38. Whereas in its observations on Security Council resolution 748 (1992) presented in response to the Court’s invitation, Libya contends as follows: first, that that resolution does not prejudice the rights of Libya to request the Court to indicate provisional measures, inasmuch as by deciding, in effect, that Libya must surrender its nationals to the United States and the United Kingdom, the Security Council infringes, or threatens to infringe, the enjoyment and the exercise of the rights conferred on Libya by the Montreal Convention and its economic, commercial and diplomatic rights; whereas Libya therefore claims that the United States and the United Kingdom should so act as not to infringe Libya’s rights, for example by seeking a suspension of the relevant part of resolution 748 (1992);

39. Whereas Libya in its observations contends, secondly, that the risk of contradiction between the resolution and the provisional measures requested of the Court by Libya does not render the Libyan request inadmissible, since there is in law no competition or hierarchy between the Court and the Security Council, each exercising its own competence; whereas Libya recalls in this connection that it regards the decision of the Security Council as contrary to international law, and considers that the Council has employed its power to characterize the situation for purposes of Chapter VII simply as a pretext to avoid applying the Montreal Convention.

40. Whereas in its observations on Security Council resolution 748 (1992), presented in response to the Court's invitation, the United States observes that that resolution was adopted under Chapter VII rather than Chapter VI of the Charter and was framed as a "decision" and contended that, given that binding decision, no object would be served by provisional measures; that, irrespective of the right claimed by Libya under the Montreal Convention, Libya has a Charter-based duty to accept and carry out the decisions in the resolution, and other States have a Charter-based duty to seek Libya's compliance; that any indication of provisional measures would run a serious risk of conflicting with the work of the Security Council; that the Council had rejected (*inter alia*) Libya's contention that the matter should be addressed on the basis of the right claimed by Libya under the Montreal Convention, which Libya asks the Court to protect through provisional measures; and that the Court should therefore decline the request;

41. Whereas the Court, in the context of the present proceedings on a request for provisional measures, has in accordance with Article 41 of the Statute, to consider the circumstances drawn to its attention as requiring the indication of such measures, but cannot make definitive findings either of fact or of law on the issues relating to the merits, and the right of the Parties to contest such issues at the stage of the merits must remain unaffected by the Court's decision;

42. Whereas both Libya and the United States, as Members of the United Nations, are obliged to accept and carry out the decisions of the Security Council in accordance with Article 25 of the Charter; whereas the Court, which is at the stage of proceedings on provisional measures, considers that *prima facie* this obligation extends to the decision contained in resolution 748 (1992); and whereas, in accordance with Article 103 of the Charter, the obligations of the Parties in that respect prevail over their obligations under any other international agreement, including the Montreal Convention;

43. Whereas the Court, while thus not at this stage called upon to determine definitively the legal effect of Security Council resolution 748 (1992), considers that, whatever the situation previous to the adoption of that resolution, the rights claimed by Libya under the Montreal Conven-

tion cannot now be regarded as appropriate for protection by the indication of provisional measures;

44. Whereas, furthermore, an indication of the measures requested by Libya would be likely to impair the rights which appear *prima facie* to be enjoyed by the United States by virtue of Security Council resolution 748 (1992);

45. Whereas, in order to pronounce on the present request for provisional measures, the Court is not called upon to determine any of the other questions which have been raised before it in the present proceedings, including the question of its jurisdiction to entertain the merits of the case; and whereas the decision given in these proceedings in no way prejudices any such question, and leaves unaffected the rights of the Government of Libya and the Government of the United States to submit arguments in respect of any of these questions;

46. For these reasons,

THE COURT,

By eleven votes to five,

*Finds* that the circumstances of the case are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

IN FAVOUR: *Vice-President* Oda, *Acting President*; *President* Sir Robert Jennings; *Judges* Lachs, Ago, Schwebel, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley;

AGAINST: *Judges* Bedjaoui, Weeramantry, Ranjeva, Ajibola; *Judge ad hoc* El-Koshi.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fourteenth day of April, one thousand nine hundred and ninety-two, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Libyan Arab Jamahiriya and the Government of the United States of America, respectively.

(Signed) Shigeru ODA,  
Vice-President.

(Signed) Eduardo VALENCIA-OSPINA,  
Registrar.

Vice-President ODA, Acting President, and Judge NI append declarations to the Order of the Court; Judges EVENSEN, TARASSOV, GUILLAUME

and AGUILAR MAWDSLEY append a joint declaration to the Order of the Court.

Judges LACHS and SHAHABUDEEN append separate opinions to the Order of the Court.

Judges BEDJAOU, WEERAMANTRY, RANJEVA, AJIBOLA and Judge *ad hoc* EL-KOSHERI append dissenting opinions to the Order of the Court.

*(Initialed)* S.O.

*(Initialed)* E.V.O.

---