

INTERNATIONAL COURT OF JUSTICE

APPLICATION

INSTITUTING PROCEEDINGS

filed in the Registry of the Court on 3 March 1992

**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)

1992
General List
No. 89

**I. THE SECRETARY OF THE PEOPLE'S BUREAU OF THE GREAT SOCIALIST
PEOPLE'S LIBYAN ARAB JAMAHIRIYA TO THE KINGDOM OF THE
NETHERLANDS TO THE REGISTRAR OF THE INTERNATIONAL COURT OF
JUSTICE**

3 March 1992

On behalf of the Socialist People's Libyan Arab Jamahiriya, and in accordance with Article 40 (1) of the Statute of the Court, I have the honour to notify the Court that Libya is hereby presenting Applications instituting proceedings against the Governments of the United States of America and the United Kingdom [The two Applications thus filed have been published separately in the present form. [Note by the Registry]], respectively, concerning the application or interpretation of the provisions of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation signed at Montreal on 23 September 1971.

By separate request filed subsequently, Libya will also present requests for the Court to indicate provisional measures pursuant to Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court.

As indicated in the Applications, in accordance with Article 40 of the Rules of Court, the Government of Libya informs the Court that its Agent will be the undersigned and that the address for service to the Agent is: Al Faitouri Sh. Mohamed, Secretary of the People's Bureau of the Great Socialist People's Libyan Arab Jamahiriya, 28 Avenue Victoria, 1050 Brussels, Belgium.

Respectfully submitted,

(Signed) AL FAITOURI Sh. Mohamed,

Secretary of the People's Bureau

to the Netherlands.

II APPLICATION INSTITUTING PROCEEDINGS

3 March 1992

I have the honour to refer to Article 14 (1) of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation which was signed at Montreal on 23 September 1971 (the "Montreal Convention").

Under the jurisdiction thereby conferred upon the Court, I hereby submit on behalf of the Government of the Socialist People's Libyan Arab Jamahiriya ("Libya"), and in accordance with Article 40 (1) of the Statute of the Court and Article 38 of the Rules of Court, an Application instituting proceedings against the Government of the United States of America in the following case.

i. Statement of facts

On 21 December 1988, Pan Am flight 103 crashed at Lockerbie, Scotland.

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 Pan Am flight 103 on 21 December 1988 bound from London to New York which bomb had exploded causing the aeroplane to crash.

The allegations contained in the indictment constitute an offence within the meaning of Article I of the Montreal Convention which, in relevant part, provides: "Any person commits an offence if he unlawfully and intentionally:

(a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

(b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

(c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight."

The said indictment was communicated to Libya.

At the time the indictment was communicated to Libya, or shortly thereafter, the accused were present in the territory of Libya and have remained there since.

After being apprised of the indictment, Libya took such measures as were necessary to establish its jurisdiction over the offenses alleged therein. Libya also took measures to ensure the presence of the accused in Libya in order to enable criminal proceedings to be instituted and initiated a preliminary enquiry into the facts.

Libyan investigators sought information from the authorities in the United States, and expressed their willingness to travel to the United States or elsewhere to review the evidence or co-operate with the investigations in those countries. The Libyan Government also sent communications to the Attorney General of the United States and the foreman of the Grand Jury which issued the indictment requesting their co-operation in the Libyan judicial investigations. Libya received no response to any of these initiatives, and the United States together with its law enforcement officials have refused to co-operate in any respect with the Libyan investigations.

There is no extradition treaty in force between Libya and the United States. Consequently, Libya has not extradited the accused or either of them. Nor has Libya surrendered them, despite the efforts of the United States to pressure Libya to do so.

Libya has submitted the case to its competent authorities for the purpose of prosecution, which authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under Libyan law.

On 17 January 1992, Libya addressed a letter from Mr. Ibrahim Mohammed Elbushari, Secretary of the People's Committee for Foreign Liaison and International Co-operation, to Mr. James Baker, Secretary of State of the United States. In this letter, Mr. Elbushari referred to the fact that Libya had undertaken the necessary measures relating to the incident provided for in the Montreal Convention. Mr. Elbushari also indicated that, despite requests to the competent United States authorities to provide assistance to the Libyan judicial authorities, these requests had not met with any response, and he invited the United States to agree to arbitration in accordance with Article 14 (1) of the Montreal Convention.

The United States failed to respond formally to that letter. Nonetheless, after the letter was sent, the United States Ambassador to the United Nations stated that the situation was one "to which standard procedures are clearly inapplicable" (S/PV.3033, 21 January 1992, p. 78), that "the issue at hand is not some difference of opinion or approach that can be mediated or negotiated" (*ibid.*, p. 79), and that ". . . neither Libya nor indeed any other State can seek to hide support for international terrorism behind traditional principles of international law and State practice" (*ibid.*, p. 80).

Thus, despite the efforts of Libya to resolve the matter within the framework of international law, including the Montreal Convention, the United States has rejected this approach and continues to adopt a posture of pressuring Libya into surrendering the accused.

ii. Jurisdiction of the Court

Article 36 (1) of the Statute of the Court provides that the Court's jurisdiction "comprises . . . all matters specially provided for. . . in treaties and conventions in force". As Members of the United Nations, Libya and the United States are parties to the Statute, which forms an integral part of the Charter.

Libya and the United States are also parties to the Montreal Convention which has been in force with respect to both Parties throughout the period relevant to this case.

Article 14 (1) of the Montreal Convention provides:

" 1. 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 from 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."

In the light of the facts described above, and as will be more fully developed in subsequent submissions, it is clear that a dispute exists between Libya and the United States over the interpretation or application of the Montreal Convention. Whereas Libya has repeatedly indicated that it is fulfilling its obligations under the Convention, the United States has made it clear that it is not interested in proceeding within the framework established by the Convention, but is rather intent on compelling the surrender of the accused in violation of the provisions of the Convention. Moreover, by refusing to furnish the details of its investigation to the competent authorities in Libya or to co-operate with them, the United States has also failed to afford the proper measure of assistance to Libya required by Article 11 (1) of the Montreal Convention. Consequently, a dispute as to the Convention's interpretation or application exists.

It is equally apparent that this dispute cannot be settled by negotiation. Through various diplomatic overtures before the United Nations Security Council and elsewhere, Libya has made it clear that it is willing to settle the dispute by means of a neutral, international arbitration. The United States has persistently rejected this approach and has insisted, in violation of the Montreal Convention, that only its courts, or those of the United Kingdom, are competent to hear the matter. The failure of the United States to respond positively to Libya's letter of 17 January 1992 evidences its lack of interest in arriving at a negotiated settlement. Accordingly, it has not been possible to settle this dispute by negotiation, a conclusion reinforced by the fact that Libya and the United States do not have diplomatic relations.

By the same token, and in view of the total lack of any positive response by the United States to Libya's proposal to arbitrate, the Parties have also been unable to agree on the organization of an arbitration to hear the matter. In the light of the urgency of rectifying the ongoing violations by the United States of the Montreal Convention and the United States' refusal to enter into arbitration, it is submitted that the Court has jurisdiction to hear Libya's claims against the United States arising under the Montreal Convention.

iii. The claims of Libya

In submitting this dispute to the Court, Libya claims as follows:

(a) The Montreal Convention is the only appropriate convention in force between the Parties dealing with the offences listed in Article 1 referred to above. Consequently, the United States is bound to adhere to the provisions of the Montreal Convention relating to the incident.

(b) Pursuant to Article 5 (2) of the Montreal Convention, Libya is entitled to take such measures as may be necessary to establish its jurisdiction over the offenses listed above in cases where, as is the situation here, the alleged offender is present in its territory and is not extradited pursuant to Article 8 of the Convention. By its actions and threats against Libya, the United States, in violation of Article 5 (2) of the Convention, is attempting to preclude Libya from establishing its legitimate jurisdiction over the matter.

(c) Pursuant to Article 5 (3) of the Convention, Libya is entitled to exercise criminal jurisdiction over the master in accordance with its national law. By its actions and threats, the United States is attempting to preclude Libya from exercising that right in violation of the Convention.

(d) Under Article 7 of the Convention, Libya is obliged to submit the case to its competent authorities for the purpose of prosecution — a step that Libya has taken. By its efforts to force Libya to surrender the accused, the United States is attempting to prevent Libya from fulfilling its obligations in this respect in violation of the Convention.

(e) Under Article 8 (2) of the Convention, extradition is made subject to the laws of the State from which extradition is requested. Under Article 493 (A) of the Libyan Code of Criminal Procedures, Libyan law prohibits the extradition of its nationals. It follows therefore, that there is no basis in either Libyan law or under the Montreal Convention for the extradition of the accused from the territory of Libya, and the United States' efforts to the contrary constitute a violation of this provision of the Montreal Convention.

f) Under Article 11 (1) of the Convention, the United States is under an obligation to afford Libya, as a Contracting State, with the greatest measure of assistance in connection with criminal proceedings brought by Libya in respect of the offences listed in Article 1. By failing to provide such assistance, the United States has breached its obligations under the Montreal Convention.

(g) The United States is bound by its legal obligations under the Montreal Convention, which obligations require it to act in accordance with the Convention, and only in accordance with the Convention, with respect to the master involving flight PA 103 and the accused. Whereas Libya submits that it has fully complied with its own obligations under the Convention, the United States has breached, and is continuing to breach, those obligations.

iv. Judgment requested

Accordingly, while reserving the right to supplement and amend this submission as appropriate in the course of further proceedings, Libya requests the Court to adjudge and declare as follows:

(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.

Libya will further request the Court in a separate document to indicate, as a master of urgency, interim measures of protection.

Libya has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to: Al Faitouri Sh. Mohamed, Secretary of the People's Bureau of the Great Socialist People's Libyan Arab Jamahiriya, 28 Avenue Victoria, 1050 Brussels, Belgium.

Respectfully submitted,

(Signed) AL FAITOURI Sh. Mohamed,

Agent of the Socialist People's

Libyan Arab Jamahiriya.