



International Court of Justice

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Dear Delegates,

We would like to warmly welcome you to the International Court of Justice and to the vibrant city of London. We highly recommend you take the time outside of committee sessions to explore this city that we believe is one of the capitals of the world from its museums, to its street food, to its night life. Equally, when you are in session, you should be proud to be a part of the greatest university-level MUN conference in Europe and you should use that to your full advantage, from interacting with people around the world and gaining a wide range of viewpoints. For most of you, this may be your first time to step into the ICJ while others may be seasoned veterans. Regardless, we will ensure that you will become experienced ICJ-ers by the end of the weekend while having a memorable, debate packed experience. Furthermore, remember that even though you will definitely disagree over this weekend, always carry the spirit of diplomacy with you and bear in mind that you will probably be friends by the time you announce our judgement. We hope that you enjoy this unique MUN experience and one day return to the LIMUN as a delegate again or even as a chair.

Yours Sincerely,

Your ICJ Directors

**Director - Joanna Veimou**

Hello Everyone!

My name is Joanna and I will be the Director of the International Court of Justice for LIMUN 2020. I am looking forward to meeting you all. I am a postgraduate student studying the Bar Professional Training Course with an LLM in Clinical Legal Expertise at City, University of London (long, I know). I am from Greece but I have been studying in the UK for four years. MUN has been a part of my life ever since high school, and this will be my fourth time in LIMUN. From delegate to assistant director and director this year, this conference has been one of my favourites each year. I was an ICJ advocate for the first time at Oxford, and I fell in love with it ever since. I have a passion for international law and want to specialise in the field of international security, arms control and defence consultancy.

Assistant Director - Tawfik Tawfik

Hey Justices and Advocates,

I am an Egyptian 4th year Biomedical Engineer at Imperial College London and had my first MUN conference back in 2012. Ever since, what started as an innocent interest has now grown into a possible but not probable career choice for me as I on the next episode of my life, post-graduation. When it comes to the ICJ, it is my go-to committee. It started off with me being an advocate in 2013, then a justice in OXIMUN 2018 then an advocate again in LIMUN 2019, so I told myself, why not chair it? In MUN, I am passionate about how it develops your character, having strong, thorough debate and good bants. Now, you're probably asking why is an engineer chairing a law committee? Well, I don't really know the answer to that, maybe lawyers have good banter, but I know that if I was chairing an engineering committee then I wouldn't learn much, so take this opportunity to learn as much as you can about the ICJ and I'll be here to support you.

When not in a committee, my natural habitats include (but are not limited to): a lab designing brain implants, a plane travelling or a dance floor dancing salsa/tango. I am also a semi-professional stand-up comedian and I really enjoy partying.

Yours Sincerely,

Tawfik

Introduction to the Committee

The International Court of Justice was founded in 1945 and it is the principal judicial organ of the United Nations. It is comprised of 15 judges which are elected by the United Nations General Assembly and the UN Security Council. Each judge is elected for a fixed term of nine years and must come from a different member state¹.



<https://images.app.goo.gl/K7FzegBXqwc6gk67>

The court can settle disputes based on contentious issues between states, but also issue advisory opinions on different matters. The opinions are in principle not legally binding but are considered advisory and can

¹ Article 9 ICJ Statute

carry a lot of merit in General Assembly and Security Council discussions, as well as policy decisions.

The Statute of the International Court of Justice, which is annexed to the UN Charter, provides for the rules of procedure, organisation and jurisdiction of the court.

All 193 Member States are automatically considered members of the court. However, that does not mean that they are under its jurisdiction. Generally, jurisdiction must be established by consent. Consent will be considered to be given when: a state initiates proceedings to the court by referring a case, is party to a treaty that provides for jurisdiction of the court or makes an "ad hoc declaration" of accepting jurisdiction. Article 36 also provides for tacit consent (*forum prorogatum*) which means that in the absence of clear jurisdiction under Article 36, jurisdiction is established if the respondent accepts ICJ jurisdiction explicitly or simply pleads on the merits. Because of these complicated conditions, jurisdiction is often a contentious matter in cases before the court.

Article 38 of the Statute provides for three main sources on which the judges should base their decisions; (I) conventions, whether general or particular, establishing rules expressly recognised by the contesting states", (II) international custom, as evidence of a general practice accepted as law; (III) the general principles of law recognized by civilized nations; (IV) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law . It follows naturally from the above that the court is not bound by its previous decisions in similar matters.

The ICJ in LIMUN 2020 will be comprised of judges and advocates. The advocates, which will represent Bahrain, Egypt, Saudi Arabia and United Arab Emirates (the Applicant) and Qatar (the Respondent) respectively, will have to deliver their oral arguments during the first stage of the proceedings. They can present evidence and examine witnesses in



order to establish their case. It is important to note that only the arguments presented by the advocates will be considered by the judges when deliberating, and therefore nothing should be considered as a “given”, aside from the undisputed facts. They can also refer to specific documents such as the Statute or the UN Charter (and anything else they find fit). During the second stage of the proceedings, the judges will have to deliberate and come up with a final decision in writing. Judges are obliged to perform their duties “honourably, faithfully, impartially and contentiously” according to Article 4 of the Statute. The deliberations are secret and private, and therefore the advocates may not be present during those. The decision will be read to the advocates at the end of the conference.



<https://www.thehindu.com/news/international/how-are-judges-elected-to-the-international-court-of-justice/article20619816.ece>

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)



<https://aawsat.com/english/home/article/1323596/arab-quartet-asks-top-un-court-rule-icao%E2%80%99s-qatar-decision>



Introduction

In 2017, Bahrain, Egypt, Saudi Arabia and UAE closed their airspace down to Qatari planes in response to Qatar breaching its obligation to stop funding terrorism under the Riyadh agreements. In response, Qatar brought proceedings to the ICAO Council by invoking Article 84 of the Convention on International Civil Aviation (also known as the Chicago Convention). The ICAO ruled in Qatar's favour, ordering the other member states to allow access to Qatari planes.

Now Bahrain, Egypt, Saudi Arabia and the UAE are applicants in the proceedings against Qatar in the ICJ, where the ICJ is in this case a court of appeal, and demand that the ICJ rule that the ICAO's decision was invalid on the grounds that the ICAO did not take into account their preliminary objections. The ICJ has jurisdiction over this issue as the ICAO is a specialised council of the UN which administers disputes over the Chicago convention and Article 84 of the Chicago Convention alongside Articles 36(1) and 37 of the ICJ Statute permit the ICJ to act as a court of appeal. This case does have some merits as it will enable justices and advocates to dig deep in Bahrain, Egypt, Saudi Arabia and the UAE's preliminary objections. However, it also has the potential to expand beyond just a possible violation on aviation treaties by considering other questions surrounding the issue such as whether Qatar indeed funded terrorism and violated other treaties.



Definitions

Applicant: The party bringing the proceedings in court, in this case this is a joint application from Bahrain, Egypt, the United Arab Emirates and Saudi Arabia.

Respondent: The party “responding” to the application, in this case Qatar.

Jurisdiction: The power of a court to hear and decide a case or make a certain order.

ICAO: The International Civil Aviation Organisation, which is an official organ of the United Nations.

“Chicago Convention”: Convention on International Civil Aviation, signed in 1944 and came into force in April 1947.

Preliminary Objections: objections made before the trial of the actual case. We will examine the particular objections made by the Applicant countries in the “discussion” part below.

Timeline of Events

2013 – 2014: During this period, the First Riyadh Agreement (RA) along with two supplemental agreements were signed by member states of the Gulf Cooperation Council including Qatar. The RA, along with several other international treaties such as the UN Charter, the International Convention for the Suppression of the financing of Terrorism and relevant binding UNSC resolutions, committed Qatar to cease the financing or harbouring of people or groups that present a threat to the national security of the applicant states, especially terrorists.

2014 – 4th June 2017: The applicant states accuse Qatar of not honouring the commitments it had made in the RA and other international agreements regarding the financing of terrorism and warn Qatar of retaliation.

5th June 2017: According to the applicants, in order to force Qatar to abide by the agreements set in the RA, the applicants adopted a series of measures including restricting their airspace from Qatari aircrafts. This formed the basis of Qatar's application to the ICAO. The applicants believe that this is a proportionate, legitimate response to Qatar's alleged breach of international law and are permissible under international law.

8th June 2017: Qatar invokes article 54 of the Chicago convention and calls for a meeting of the ICAO to discuss the applicants' decision to close their airspace to Qatari registered aircrafts.

31st July 2017: ICAO convenes to discuss Qatar's concerns and during that meeting it was noted that the ICAO's main objective was the safety and security of international civil aviation and that there would be

appropriate forms where the “overarching political issues are to be addressed”.

30th October 2017: Qatar submits to the ICAO its memorial along with Application A and Application B. Application A is what this current court case is based upon. There is another ICJ court case concerning Qatar’s Application B. Application A and its accompanying memorial established Qatar as an applicant, and the applicants of this current ICJ case as respondents, in the ICAO case. Application A invokes article 84 of the Chicago convention and as well as article 1, paragraph (a) of the Rules of the Settlement of Differences which are also known as the “ICAO rules”. In this application Qatar alleged various violations of the Chicago convention due to the applicants’ airspace restrictions. Precisely, Qatar’s accusation was: “On 5 June 2017, the Government of the [Applicants] announced, with immediate effect and without any previous negotiation or warning, that Qatar-registered aircraft are not permitted to fly to or from the airports within their territories and would be banned not only from their respective national air spaces, but also from their Flight Information Regions (FIRs) extending beyond their national airspace even over the high seas.”

20th November 2017: The applicants receive a letter that sets a 12-week deadline from the date of receipt for the applicants to produce their counter-memorials regarding both Applications A and B.

9th February 2018: The ICAO extends the time limit for counter memorials for both applications by an extra six weeks, according to article 28 of the

² Decision of the Council of the International Civil Aviation on the Preliminary Objection in the Matter: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates (2017)- Application (A) 29 June 2018



ICAO rules, after an application by the applicants. The new deadline is now 26th March 2018.

19th March 2018: The applicants file their preliminary objections against each of Qatar's applications within the time limit posed by the ICAO, in accordance with article 5 of the ICAO rules. One of their preliminary objections is questioning the jurisdiction of the ICAO to preside over the applications presented by Qatar. The underlying reason behind this stems from the applicants' belief that in order to rule on the legality of the airspace restrictions, the ICAO would have to rule on Qatar's compliance to international law such as the RA which is unrelated to civil aviation or the Chicago convention. The second preliminary objection by the applicants is their belief that, according to article 84 of the Chicago convention, a prerequisite to the ICAO's jurisdiction is if Qatar first attempted to solve the airspace restriction disagreement by negotiations with the applicants before resorting to the ICAO.

30th April 2018: According to article 28 of the ICAO rules, this date was set as a deadline for Qatar to file its observations in response to the preliminary objections, as this date is six weeks from when the ICAO received the applicants' preliminary objections. Qatar successfully submits its observations.

13th June 2018: The ICAO sets a half-day session on the 26th June 2018, starting at 2:30pm, to hear preliminary objections.

26th June 2018: Both sides present their arguments and the preliminary objections are heard in a session lasting less than 90 minutes. According to the applicants, no points of information or deliberations occurred after the oral submissions and the committee moved directly to vote by secret ballot on the preliminary objections. The preliminary objections were



rejected by 23 votes to 4 with 6 abstentions. The decision was adopted on the 29th June 2016. The applicants believe that the ICAO did not give any reason on why it rejected the preliminary objections and object to the fact that the ICAO votes on the objections as a whole instead of on each of its objections.

Discussion of the Problem

Background of the case

Following the airspace restrictions imposed by the applicant countries on Qatar due to alleged violations of the UN Charter, the International Convention Suppressing the Financing of Terrorism and various Security Council resolutions, Qatar made applied to the ICAO. More specifically, Qatar issued two Applications and Memorials, one pursuant to Article 84 of the Chicago Convention (Application (A)), and one pursuant to Article II, Section 2, of the International Air Services Transit Agreement (IASTA) (Application (B)). The present proceedings are only subject to the first application. Article 84 of the 'Chicago Convention' provides that if a dispute between two or more parties cannot be resolved through negotiation, either of those parties can apply to a tribunal of their choice.

Qatar's case on the ICAO

Qatar's case on the ICAO was that "On 5 June 2017, the Government of the [Applicants] announced, with immediate effect and without any previous negotiation or warning, that Qatar- registered aircraft are not permitted to fly to or from the airports within their territories and would be banned not only from their respective national air spaces, but also from

their Flight Information Regions (FIRs) extending beyond their national airspace even over the high seas.³”

Bahrain, Egypt, United Arab Emirates and Saudi Arabia’s-Preliminary Objections

A) ‘First preliminary objection’; The respondents (in the ICAO) case, claim that the ICAO had no jurisdiction to decide the matters in dispute. Their main argument was that the international law obligations Qatar had allegedly violated and lead to the subsequent airspace restrictions, were ‘completely irrelevant’ to the ICAO’s covenant and the ‘Chicago Convention’.

B) ‘Second preliminary objection’; Qatar had not complied with the Article 84 condition as well as Article 2 (g) ICAO Rules of establishing to attempt to resolve the issue through negotiation [1].

The council rejected the preliminary objections on the 29th of June 2018, with 23 votes in favour, 4 against and six objections [2].

The applicant countries claim that the ICAO did not pay the attention required by law to their preliminary objections. They specifically claim that the ICAO

(i) manifestly violated fundamental rules of due process and the right to be heard, in a manner so extreme as to render the proceedings devoid of any judicial character;

(ii) wrongly rejected the Applicants’ preliminary objections to the competence of the ICAO Council to hear and adjudicate upon the

³ Decision of the Council of the International Civil Aviation on the Preliminary Objection in the Matter: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates (2017)- Application (A) 29 June 2018

disagreement submitted to it by Qatar relating to alleged violation of the Chicago Convention; and

(iii) consequently, wrongly affirmed that it was competent to rule upon the merits of that disagreement [3].

ISSUES

The court will need to determine;

- (i) Whether the ICAO erred in its decision to disregard the applicants' preliminary objections
- (ii) Whether the ICAO had jurisdiction over the case in the first place
- (iii) Whether the ICAO's decision is still valid or whether it should be determined null and void

JURISDICTION

The International Civil Aviation Organisation has jurisdiction only over cases that concern the alleged violation of the Chicago Convention.

Bloc Positions

Applicants

The applicants challenge the validity and correctness of the ICAO's decision on the 29th June 2018 relating to Qatar's Application A. They are appealing against the ICAO's decision on the basis that its judgement lacked any judicial character as it violated the rules of due process and the right to be heard. They also believe that their preliminary objections, especially regarding how competent the ICAO is to hear the applicants' alleged violation of the Chicago convention, were wrongly rejected. Therefore, they believe that the ICAO wrongly believed that it had the judicial mandate to rule on the case. According to the applicants, apart from the question of

the ICAO's competence to rule on the case, some of the grounds for appeal include:

- Insufficient time was given to the applicants to present their case, especially since the four applicant countries combined were given the same time to present their case as Qatar even though they were separate respondents.
- The applicants requested a roll call vote, but the vote was done by a secret ballot.
- Article 52 of the Chicago convention states that a simple majority is needed to uphold the preliminary objections while the ICAO believed that 19 out of 33 votes were needed instead.
- The ICAO voted on both preliminary objections combined instead of voting on each objection separately
- Article 15 of the ICAO rules state that a reason must be given for the ICAO's decision, but none was mentioned.
- There was no discussion of the preliminary objections and the ICAO moved directly into voting procedure after the oral arguments.

Respondents

The respondents would like to see the ICJ uphold the decision of the ICAO. It would be also of great political gain to Qatar if the ICJ was to release a judgment that not only upholds but also deems the applicants' airspace restrictions as a violation of international law and therefore establishes possible relief for Qatar. But perhaps most importantly, Qatar would not want the ICJ to debate the possibility of it violating the RA or any other counter-terror treaty. This is because the political blow to Qatar should the ICJ deem it to have possibly sponsored terrorism is much greater than the political blow that would come from declaring the ICAO erred procedurally for example.

Conclusion

It is important to stress that the main issue of this case is the legality of the ICAO's decision, not the merits of it. Advocates and judges are required to look into the conditions and the procedure that took place before the council reached its decision to disregard the preliminary objections, and not the decision about whether or not it was legal for the applicant countries to restrict the airspace. To make things simpler, advocates representing the applicants should submit arguments supporting why the ICAO's decision was out of order and without jurisdiction, while advocates representing the respondent should submit arguments about why the decision WAS legal and why the council had jurisdiction. It is also important to note the difference between the ICAO case and the ICJ case. In the former the applicant is Qatar and the Respondents are Bahrain, Egypt, UAE and Saudi Arabia, whereas in the latter the situation is reverse.

Questions a judgement should answer

These questions are only a guide, and do not all necessarily need to be answered in a good judgement. Equally, these questions are not exhaustive, and justices may answer other questions. These questions are as follows and they are in no particular order of importance:

- Did the ICAO err procedurally?
 - Was enough time given to the applicants to present their case?
 - Should the ICAO have complied with the applicants' request for a roll call vote? Is a secret ballot necessary? Can this cause a miscarriage of justice?
 - What are the voting procedures that need to be followed in the ICAO?

- Should all the preliminary objections be voted on together, or should each objection be voted on separately?
- Should the ICAO give a reason for its rejection of the preliminary objections?
- Should there have been a discussion on the preliminary objections before the ICAO moved into voting procedure?
- Does the ICAO have the jurisdiction to hear and rule on the matter?
 - Is it in the mandate of the ICAO to consider political matters?
 - Should have Qatar tried to solve the problem first through negotiation with the applicants before reaching out to the ICAO?
- Did Qatar violate its international obligations and the RA, specifically in funding or harbouring threats to the national security of the applicant states?
- Should the ICAO's decision be declared null and void?

Further Reading

- Convention on International Civil Aviation-
https://www.icao.int/publications/Documents/7300_orig.pdf
- Decision of the Council of the International Civil Aviation Organization on the Preliminary Objection in the Matter: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Saudi Arabia and the United Arab Emirates (2017) — Application (A), 29 June 2018.-<https://www.icj-cij.org/files/case-related/173/173-20180704-APP-01-00-EN.pdf> annexed on the Joint Application to institute proceedings
- Appeal Relating to the jurisdiction of the ICAO council-India v Pakistan decision 1972



- Pending Case at ICJ: Review of ICAO Decision.
<http://www.ialpg.com/pending-case-at-icj-review-of-icao-decision/>
- Sanctioning Qatar Continued: The United Arab Emirates is brought before the ICJ. <https://www.ejiltalk.org/sanctioning-qatar-continued-the-united-arab-emirates-is-brought-before-the-icj/>
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- Overview of the case-<https://www.icj-cij.org/en/case/173>
- Overview of the ICAO, its objectives and its foundation:
<https://www.icao.int/about-icao/Pages/default.aspx>
- Why Qatar is the focus of terrorism claims.
<https://www.bbc.co.uk/news/world-middle-east-40246734>. This BBC article provides a good level of analysis.

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