



American Model United Nations
ICJ Justice

**IN THE
INTERNATIONAL COURT OF JUSTICE
OF THE
AMERICAN MODEL UNITED NATIONS**

LIBYAN ARAB JAMAHIRIYA vs. UNITED STATES OF AMERICA

ARGUED: 19 November 2006
DECIDED: 19 November 2006-11-19

PRESIDENT *Lopez-Ayala*, VICE PRESIDENT *Smith, Rose, Gender, Block, Grove, Sutcliffe, Fisher, Rawlings, Bosscher, Miamen*

THE COURT,
composed as above,
after deliberation,
delivers the following judgment:

The Court's jurisdiction in the matter of *Libyan Arab Jamahiriya v. United States of America* is granted by the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, hereafter referred to as the *Montreal Convention*, Article 14 (1) stating: "Any dispute...concerning interpretation or application of this Convention which cannot be settled through negotiation...Parties may refer the dispute to the International Court of Justice." The Court, in deciding this case, acts within its authority under Article 26 (2 a-c) of the *Statute of the Court*.

Before deciding on the merits of the case, the Court must first address the preliminary question of jurisdiction in light of Security Council Resolutions 731 and 748. As pertaining to SCR 731, the Court finds no weight in arguments that the requests made of Libya by the resolution supersede Libya's obligations to the *Montreal Convention*. It is the opinion of this Court that Articles 25 and 103 of the *Charter of the United Nations* do not apply with regards to SCR 731, because the operative clauses were not legally binding. The Court subsequently finds that SCR 748 speaks to the merits of the case, but not to the Court's jurisdiction or competence to hear it, given the Applicant's date of filing. As a result, the Court will include SCR 748 in its consideration of application of the *Montreal Convention*, but the Court will not consider SCR 748 when evaluating the substantive issues of compliance with the *Montreal Convention*.

The Court finds that the Libyan government was under no obligation to extradite any of its nationals under the *Montreal Convention*. Article 2 (1 and 2) of the *Charter* establishes the right to sovereignty for every nation. Sovereignty lays the foundation for

an equality among nations; the assertion that one State has authority to demand the surrender of another State's nationals runs counter to this goal of the United Nations as envisioned by the *Charter*. The *Montreal Convention*, as such, did not require any State to submit to extradition requests.

The Court further finds with the Applicant that, given the non-binding nature of SCR 731, the provisions of the *Montreal Convention* for the settlement of disputes among Contracting States are applicable and the legal obligations therein prescribed are subject to questions of applicability.

The United States has argued that the circumstances surrounding the case have changed dramatically with the passage of SCR 748. Though the Court does not deny that SCR 748 altered the political structures in which the Respondent and Applicant operate, such considerations hold little weight with the Court. The Court's obligation is to justice and to the Court, and not to any other organ of the United Nations. The Court's concerns, therefore, lie not with future decisions of the Security Council on this matter, but instead, with the legal adjudication of this dispute. The Court's docket is not subject to review by any State nor by the Security Council and the consideration of an issue by the Security Council does not prevent the Court from fulfilling its obligations to hear the case.

Finding on behalf of the United States, the Court acknowledges that with the passage of SCR 748, the obligation defining mechanism to be used for settlement of this dispute changed from the *Montreal Convention* to the legally binding decisions of the Security Council. The Court finds it necessary to iterate that resolutions passed by the Security Council are authoritative but not definite. Council decisions are not binding indefinitely, nor do these decisions necessarily define international law. In this vein, the Court's interpretation of international law is not beholden to decisions of the Council.

Article 103 establishes the legal supremacy of *Charter* obligations over conflicting obligations under other international agreements. This, coupled with Article 25 which states that members of the United Nations agree to carry out and accept the decisions of the Security Council, compels the Court to find in favor of the United States' contention that, in the case of conflicting obligations under SCR 748 (as an extension and implementation of *Charter* obligations) and the *Montreal Convention*, obligations under the former prevail.

The Court subsequently finds that the United States' vote on SCR 731 did not constitute a violation of Article 27 (3) of the *Charter*. Moreover, since SCR 731 was not an investigation into the dispute, the United States was not obligated to withhold its vote. Furthermore, the resolution merely made requests of the Applicant, and as such, was not a legally binding resolution. Thus, the Court finds the argument put forth by Libya against the validity of SCR 731.

It is also the opinion of this Court that SCR 748 is a valid, binding resolution. Under Chapter 7 of the *Charter*, the United States acted within its right to vote, despite being a party to the dispute in question, because the resolution frames the issue as a matter of international peace and security. Because this is a legally binding resolution, the jurisdiction of the matter was transferred from the *Montreal Convention* to decisions of

the Security Council. The Court feels compelled to note that during the voting process, the United States was not completely devoid of obligation to Article 27 (3) of the *Charter*. The Security Council's reframing of the issue, although altering jurisdiction, did not alter the issue's resonance with Chapter 6. The Court finds with the United States, confirming that the US vote on SCR 748 did not violate Article 27 (3), seeing that the dispute is not governed by Article 52 (3) of the *Charter*.

Although the application of the *Montreal Convention* to the specifics of this case is dependent on SCR 748, the Court's decisions related to the compliance or lack thereof of both Parties do not.

The primary argument presented to the court was whether Libya Arab Jamahiriya heeded its obligations to the *Montreal Convention* within the context of the 1988 bombing of Pan American Flight 103 over Lockerbie, Scotland. The court finds that the government of Libya fully complied its obligations under the *Montreal Convention*.

In regards to the United States of America and its commitment to the *Montreal Convention*, the International Court of Justice is dissatisfied with the compliance to its obligations within the convention. Specifically, Article 11 (1) which states that the parties to the treaty "shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences." The Court finds that the United States in no way fulfilled its legal obligation to Libya in regards to assisting Libya with the domestic legal proceedings, or providing Libya with specific documents pertaining to the investigation against the accused individuals. When requested, the United States refused to provide any legal assistance or significant financial aid to Libya. Although the US claimed in oral arguments to be striving for justice, it failed to contribute to the pursuit of justice in the domestic courts of the Libya, which indicates a lack of confidence in the sovereign right of the domestic justice system of Libya. In addition, the United States failed to respond to requests for arbitration from the Libyan Arab Jamahiriya, as specified under Article 14 (1) of the *Montreal Convention*. The court is disappointed in the lack of acquiescence that the United States displayed in violating the provisions of the Montreal Convention.

Therefore, the Court orders the following:

First, the prescriptions of SCR 748 take precedence over those of the *Montreal Convention* and Libya is required under international law to comply with said prescriptions.

Second, the government of the United States of America failed to uphold its obligations under the *Montreal Convention* during the period prior to the passage of SCR 748.