

INTERNATIONAL COURT OF JUSTICE

**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)

**REPLY OF THE KINGDOM OF BAHRAIN,  
THE ARAB REPUBLIC OF EGYPT,  
THE KINGDOM OF SAUDI ARABIA,  
AND THE UNITED ARAB EMIRATES**

**Volume II of II**

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27 MAY 2019



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## **Annex 1**

United States-Union of Soviet Socialist Republics Civil Air Transport  
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U.S.-U.S.S.R. AIR TRANSPORT AGREEMENT\*  
 [Signed at Washington, November 4, 1966]

## United States and Soviet Union Sign Civil Air Transport Agreement

*Following is a statement made on November 4 by Llewellyn E. Thompson, Acting Deputy Under Secretary for Political Affairs, upon signing the U.S.-U.S.S.R. civil air transport agreement, together with a Department announcement and texts of the agreement and related documents.*

### STATEMENT BY AMBASSADOR THOMPSON

Press release 265 dated November 4

This is for the United States a welcome occasion. It was just 20 years ago that the United States signed the first of its modern civil air transport agreements. Since that time, through a series of other agreements, the countries of the world have evolved an air transport network serving essentially the entire globe. So far, one of the principal omissions in this network has been direct air service between the Soviet Union and the United States by airlines of these two coun-

tries. The agreement we have just signed corrects this omission by making possible direct air service between Moscow and New York.

The inauguration of service requires additional agreement on technical matters between the appropriate agencies of the two Governments. It also requires a mutually acceptable commercial agreement between the airlines involved. We feel confident that these matters can be worked out satisfactorily over the coming months and that by the next tourist season we will see Soviet and American airplanes serving our two countries.

We believe that it is good and desirable to facilitate the travel of citizens of the United States to the Soviet Union and of citizens of the Soviet Union to the United States. As a matter of fact, the exchange of visitors to the other country is one area in which we would be delighted to be overtaken and sur-

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\*[Reproduced from 55 Department of State Bulletin 791-800 (November 21, 1966).]

passed by the Soviet Union. We warmly welcome greater contacts among the citizens of our two countries.

We feel quite sure that direct air communication between the two countries, as contemplated in this agreement, is a desirable and necessary step toward better mutual understandings.

Thus we have good reasons to be pleased today with the signing of this air transport agreement between the United States and the Soviet Union.

May I add that, as the next U.S. Ambassador to the Soviet Union, I have a personal interest in the improvement in communications which direct air service will make possible and therefore personally welcome this step.

Press release 264 dated November 4

#### **DEPARTMENT ANNOUNCEMENT**

The United States and the Soviet Union on November 4 signed a civil air transport agreement providing for reciprocal air services between New York and Moscow by Pan American World Airways and the Soviet airline, Aeroflot.

The agreement was signed on behalf of the United States by Llewellyn E. Thompson, Acting Deputy Under Secretary of State for Political Affairs, and for the Soviet Union by E. F. Loginov, Minister of Civil Aviation of the U.S.S.R.

The signing ceremonies at the Department of State were attended by Charles S. Murphy, Chairman of the Civil Aeronautics Board, Charles O. Cary, Assistant Administrator for International Aviation Affairs of the Federal Aviation Agency, and Alan S. Boyd, Under Secretary of Commerce for Transportation, and Anatoliy F. Dobrynin, Ambassador of the U.S.S.R.

The agreement comprises these separate documents: The main civil air transport agreement; an agreement supplementary to the main agreement containing provisions to insure safe and effective operation of the airline services; and an exchange of diplomatic notes containing certain understandings of

terms and concepts used in the other agreements.

#### **AGREEMENT AND RELATED DOCUMENTS**

##### **Text of Agreement**

##### **CIVIL AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS**

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics, desiring to conclude an Agreement for the purpose of establishing air transport services, have appointed their plenipotentiaries, who have agreed as follows:

##### *Article 1*

Each Contracting Party grants the other Contracting Party the rights enumerated in this Agreement and the Annex hereto for the purpose of establishing and operating the air services (hereinafter called "agreed services") envisaged herein. The Annex to this Agreement shall be deemed an integral part of this Agreement, and all references to the Agreement shall refer also to the Annex.

##### *Article 2*

1. The flight routes of aircraft on the agreed services and the points for crossing national boundaries shall be established by each Contracting Party within its territory.

2. All technical and commercial questions not covered by this Agreement concerning the flights of aircraft and the transportation of passengers, baggage, cargo, and mail on the agreed services, as well as all such questions concerning commercial cooperation, in particular the establishment of schedules, frequency of flights, capacity (as set forth in Article 3 of this Agreement), fares and rates, servicing of aircraft on the ground, and methods of financial accounting, shall be resolved by agreement between the designated airlines.

3. The agreement between the designated airlines and amendments thereto shall be subject to approval by the appropriate authorities of the Contracting Parties. After the airline agreement has thus been approved and all other requirements with respect to the operation of the agreed services have been complied with, the Contracting Parties shall by an exchange of notes specify a date on which the agreed services may commence.

##### *Article 3*

1. The capacity to be provided by each designated airline on the agreed services shall be related pri-

marily to the requirements of the traffic having its initial origin or ultimate destination in the territory of the Contracting Party whose nationality the airline possesses. Such origin and destination is determined by the ticket or air waybill. Traffic which transits the territory of a Contracting Party, with or without stopover, shall not be considered to have its origin or destination in that territory.

2. The designated airline of each Contracting Party shall submit periodically to the other Contracting Party traffic statistics as shall be specified in the airline agreement.

3. There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate and promote the agreed services, and the airline agreement shall contain appropriate provisions to implement this principle.

#### *Article 4*

All fares and rates to be charged pursuant to the airline agreement for traffic which moves over the agreed services for all or part of its transportation by air shall be established at reasonable levels, due regard being paid to all relevant factors, such as costs of operation, reasonable profit, and the rates charged by any other carriers, as well as the characteristics of each service. Such fares and rates shall be filed with the appropriate authorities of the Contracting Parties.

#### *Article 5*

Each Contracting Party reserves the right to withhold, suspend, or revoke permission to operate the agreed services from the designated airline of the other Contracting Party in the event that it is not satisfied that substantial ownership and effective control of such airline are vested in nationals or agencies of the other Contracting Party. Such action may also be taken by either Contracting Party in case of the failure of the airline of the other Contracting Party to comply with the laws and regulations of the first Contracting Party referred to in Article 9 of this Agreement, or in case of failure of the airline or the other Contracting Party to perform its obligations under this Agreement or under the Supplementary Agreement referred to in Article 6 of this Agreement or to fulfill the conditions under which the rights are granted in accordance with this Agreement on the basis of reciprocity. Such action shall normally be taken only after prompt consultation between the appropriate authorities of the Contracting Parties, except in case of a failure to comply with laws and regulations referred to in Article 9, Paragraphs 1 and 2.

#### *Article 6*

The Contracting Parties shall take all necessary measures to ensure safe and effective operation of the agreed services. To this end, they shall con-

clude a Supplementary Agreement relating to such measures.

#### *Article 7*

1. Fees and other charges for the use by the Soviet airline of each airport, including its structure, technical and other facilities and services, as well as any charges for the use of airways and communications facilities and services, and charges for fuels and lubricants, in the territory of the United States of America shall be made at established levels.

2. Fees and other charges for the use by the United States airline of each airport, including its structure, technical and other facilities and services, as well as any charges for the use of airways and communications facilities and services, and charges for fuels and lubricants, in the territory of the Union of Soviet Socialist Republics shall not be higher than the fees and other charges which are levied upon the Soviet airline for similar facilities and services within the territory of the United States of America.

#### *Article 8*

1. Aviation fuel, lubricants, spare parts (assembled or unassembled) and other materials and equipment, delivered to or taken on board in the territory of one Contracting Party exclusively for the operational needs of the designated airline of the other Contracting Party, shall be exempt on a basis of reciprocity from customs duties, taxes, inspection fees and other national duties and charges.

2. Aircraft being operated on the agreed services, as well as spare parts (assembled or unassembled), provisions and other materials and equipment which are retained on board the aircraft of the designated airline of one Contracting Party, shall be exempt on the basis of reciprocity within the territory of the other Contracting Party from customs duties, taxes, inspection fees, and other national duties and charges, even in the event that these materials are used by such aircraft during flight over such territory, except in those cases where they are disposed of in the territory of the other Contracting Party.

3. Each Contracting Party shall ensure the provision at a reasonable price or facilitate the importation into its territory of an adequate quantity of aviation fuel of required grade, quality, and specifications for the airline of the other Contracting Party in accordance with the request of such airline.

#### *Article 9*

1. The laws and regulations of one Contracting Party governing the entry into and exit from its territory of civil aircraft in international flight

in accordance with the present Agreement or the operation and navigation of such aircraft while within the limits of its territory shall apply to the aircraft of the designated airline of the other Contracting Party.

2. The laws and regulations of one Contracting Party governing the arrival and sojourn in and departure from its territory of aircraft crews, passengers, baggage, cargo and mail carried on board aircraft, in particular regulations governing landing permits, passports, customs and immigration, currency, and quarantine formalities, shall apply to the crews, passengers, baggage, cargo and mail of the aircraft of the designated airline of the other Contracting Party during their arrival and sojourn in and departure from the territory of the first Contracting Party.

3. Visas for air crews and cabin crews of aircraft operating the agreed services shall be granted in advance, with a validity of at least six months, to a number of up to forty complete aircraft crews for each airline. These visas shall be valid for any number of flights into and out of the territory of the other Contracting Party during the period of their validity.

4. Crews employed on the agreed services may stay temporarily in New York or Moscow provided that they leave on the aircraft on which they arrived or on the next regularly scheduled flight of their airline, unless prevented by illness or crew rest requirements.

5. Each Contracting Party shall supply to the other copies of the relevant laws and regulations referred to in this Article.

#### Article 10

1. All aircraft of the designated airline of one Contracting Party during flights over the territory of the other Contracting Party must have the identification marks of their state established for international flights, and also the following documents:

Certificate of registration;  
Certificate of airworthiness;  
License for radio equipment;

Appropriate certificates for each member of the crews;

When carrying passengers, a list of passengers indicating the points of their embarkation and debarkation, unless transmitted by other means; and

When carrying cargo, documents describing the cargo.

2. All of the aforementioned documents issued or rendered valid by one Contracting Party shall be recognized as valid by the other Contracting Party, provided that the requirements under which the certificates or licenses were issued or rendered valid are not less stringent than mutually agreed standards generally accepted in international civil air transportation of passengers, cargo and mail.

#### Article 11

1. In case of a forced landing, accident or other incident involving an aircraft of the designated airline of one Contracting Party within the territory of the other Contracting Party, the Contracting Party in whose territory the incident took place shall without delay and by the quickest means notify the other Contracting Party thereof, and of the available particulars and circumstances of the occurrence, take necessary measures for the investigation of the causes of the incident, and also undertake immediate steps to give such assistance as may be necessary to the crew and passengers, provide for the safety of the aircraft and the mail, baggage, and cargo of such aircraft in the condition in which they are after the incident, and provide for their rapid onward transportation.

2. (1) The Contracting Party whose registry the aircraft possesses shall have the right to appoint its observers, who shall be present and participate in the investigation of the incident.

(2) The preparation of the report, findings, and the determination of probable cause of such incident will be accomplished by the appropriate authorities of the Contracting Party in whose territory the incident occurred.

3. The Contracting Party conducting the investigation of the incident is required to:

(1) upon the request of the other Contracting Party, leave the aircraft and its contents undisturbed (so far as is reasonably practicable) pending their inspection by representatives of the appropriate authorities of such Contracting Party and of the airline whose aircraft is involved;

(2) grant immediate access to the aircraft to accredited representative of the other Contracting Party and to representatives of the airline whose aircraft is involved;

(3) ensure the protection of evidence;

(4) conduct an inquiry into the incident and furnish the other Contracting Party with a report of the facts, conditions, and circumstances thereof;

(5) on request of the other Contracting Party, release to any person or persons designated by it the aircraft, its contents or any part thereof, as soon as these are no longer necessary for the inquiry, and facilitate removal thereof to the territory of the other Contracting Party.

4. The crew of the aircraft involved in the incident and the representatives of the airline whose aircraft is involved shall comply with all accident investigation laws and regulations applicable within the territory where the incident took place.

5. Prior to commencement of the agreed services each Contracting Party shall establish air search and rescue procedures, activities and centers within its territory so as to promote efficient organization of search and rescue operations in connection with

flights conducted under this Agreement, including arrangements for mutual participation in such operations with the consent of the Contracting Party in whose territory the search and rescue activities are to be conducted. Information on search and rescue procedures will be exchanged on a current basis.

*Article 12*

To facilitate the conduct of the operation of the agreed services including the servicing of aircraft, each Contracting Party shall grant the airline of the other Contracting Party operating such services the right to have a representation with up to a total of eight employees stationed at the terminal point of the agreed routes within the territory of the first Contracting Party. Additionally, each Contracting Party grants the right of entry into its territory for short periods not exceeding thirty days to those personnel required by the airline of the other Contracting Party for the normal conduct of its activities.

*Article 13*

1. Flights of the airlines of both Contracting Parties on the agreed routes shall be suspended upon thirty days' notice given by one Contracting Party to the other if it finds that its designated airline is prevented from operating flights on the agreed services because of circumstances beyond the control of the first Contracting Party. Such flights may be suspended immediately by either Contracting Party if extraordinary circumstances arise which are beyond the control of the appropriate authorities of that Contracting Party.

2. Services so suspended can thereafter be reinstated through an exchange of notes between the Contracting Parties and shall be carried on in accordance with the terms of this Agreement, the Supplementary Agreement, and the airline agreement.

*Article 14*

1. All financial accounting and payments between the designated airlines of the Contracting Parties pursuant to the airline agreement shall be carried out, as agreed upon by the designated airlines, in United States dollars, or in rubles if such payments in rubles become legal under the currency regulations of the Union of Soviet Socialist Republics, through the transfer of sums due to the designated airline of the Union of Soviet Socialist Republics to its account in the Bank for Foreign Trade in Moscow and of sums due to the designated United States airline to its account in a bank of its choice in the United States of America. Particular payments may be made in third country currencies by agreement between the designated airlines.

2. The above-mentioned sums shall be transferred freely and such transfers shall be exempt from any taxation or any other restrictions.

3. Passengers intending to undertake a trip, regardless of their citizenship, shall be free to choose the airline or airlines. They shall be free, when paying for the air service, to pay for it in the currency of that country where the payment takes place if the tariffs of the carrier provide for payment in such currency.

4. The rate of conversion between the rubles and the United States dollars for all purposes pursuant to this Agreement including pricing of and payment for commodities and services and settlement of outstanding balances between the two designated airlines shall be the rate of exchange on the date of settlement of outstanding balances which is applied on that date for sales of transportation over both carriers and which is legal in the Union of Soviet Socialist Republics and not unlawful in the United States of America. If there should be a change in the rate of exchange applied for such sales of transportation, the designated airlines will make a special settlement at the old rate as of the date of such change.

5. The rates of exchange which shall be applicable to sales made in currencies of third countries of transportation performed by the designated airlines pursuant to this Agreement shall be provided for in the airline agreement.

6. The provisions of this Article shall be applicable to cargo as well as passenger transportation.

*Article 15*

1. Except as otherwise agreed upon by the designated airlines in the airline agreement with respect to their liability to each other, in the event the designated airline of one Contracting Party or its employees acting within the scope of their employment shall cause damage to persons or property, that airline shall accept financial responsibility for such damage in accordance with, and within the limits set by, the applicable national laws of the Contracting Party in whose territory the damage was caused or its international obligations under a multilateral convention.

2. The designated airline of each Contracting Party will authorize its representatives within the territory of the other Contracting Party to accept documents related to the activity of such airline including service of notice and other legal process.

*Article 16*

Either Contracting Party may at any time request consultations between the appropriate authorities of both Contracting Parties for the discussion, interpretation, application or amendment of this Agreement. Such consultation shall begin within sixty days after the receipt of the request by the Department of State of the United States of America or by the Ministry of Foreign Affairs of the Union of Soviet Socialist Republics, respectively. In the event that agreement is reached concerning the amendment of

this Agreement, these amendments shall come into force upon confirmation by an exchange of diplomatic notes.

*Article 17*

This Agreement shall come into force on the date on which it is signed and shall remain in force until six months after the receipt by one Contracting Party from the other Contracting Party of a notice of its intention to denounce this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present agreement.

DONE in duplicate, each in the English and Russian languages, both equally authentic, at Washington this fourth day of November, one thousand nine hundred and sixty-six.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

LLEWELLYN E. THOMPSON

FOR THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS:

E. F. LOGINOV

**ANNEX**

1. The Government of the Union of Soviet Socialist Republics entrusts the Ministry of Civil Aviation of the U.S.S.R. with responsibility for the operation of the agreed services on the routes specified in Table I of this Annex, which in turn designates for this purpose the Transport Authority of the International Airlines of Civil Aviation (Aeroflot).

2. The Government of the United States of America designates Pan American World Airways, Inc., to operate the agreed services on the routes specified in Table II of this Annex.

3. The designated airline of the Union of Soviet Socialist Republics shall have in the territory of the United States of America at the terminal point of the agreed route the right to land for technical and commercial purposes as well as to use alternate airports and flight facilities for these purposes. Such airline shall have within the territory of the United States of America the right:

(1) To discharge passengers, baggage, cargo and mail coming from the Union of Soviet Socialist Republics or points beyond the Union of Soviet Socialist Republics in third countries and destined for the United States of America or points beyond the United States of America in third countries; and

(2) To pick up passengers, baggage, cargo, and mail coming from the United States of America or points beyond the United States of America in third countries and destined for the Union of Soviet Socialist Republics or points beyond the Union of Soviet Socialist Republics in third countries.

4. The designated airline of the United States of America shall have in the territory of the Union of Soviet Socialist Republics at the terminal point of the agreed route the right to land for technical and commercial purposes as well as to use alternate airports and flight facilities for these purposes. Such airline shall have within the territory of the Union of Soviet Socialist Republics the right:

(1) To discharge passengers, baggage, cargo and mail coming from the United States of America or points beyond the United States of America in third countries and destined for the Union of Soviet Socialist Republics or points beyond the Union of Soviet Socialist Republics in third countries; and

(2) To pick up passengers, baggage, cargo and mail coming from the Union of Soviet Socialist Republics or points beyond the Union of Soviet Socialist Republics in third countries and destined for the United States of America or points beyond the United States of America in third countries.

**AGREED SERVICES**

**Table I**

For the Union of Soviet Socialist Republics:  
Moscow–New York and return, nonstop in both directions, except for agreed technical stops.

**Table II**

For the United States of America:  
New York–Moscow and return, nonstop in both directions, except for agreed technical stops.

**Text of Supplementary Agreement**

AGREEMENT SUPPLEMENTARY TO THE CIVIL AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics, having on this date signed a Civil Air Transport Agreement and desiring to conclude, in accordance with Article 6 thereof, a Supplementary Agreement providing for measures to ensure safe and effective operation of the agreed services, have agreed as follows:

*Article I*

The following provisions shall be applied by the appropriate authorities of the Contracting Parties in the operation of the agreed services:

1. The appropriate authorities of the Contracting Parties shall take all necessary measures to ensure safe and effective operation of the agreed services. For this purpose each of them shall provide within

its territory for the use of the designated airline of the other Contracting Party appropriate airports (regular and alternate), routes, radio communications and navigational aids, airport lighting aids, instrument landing aids, airport safety facilities, including fire and crash equipment, search and rescue facilities, meteorological and air traffic control services, Notices to Airmen (NOTAMS), and other services necessary to operate the agreed services.

2. Air routes and assigned airports:

(A) (1) Aircraft of the designated airline of the United States shall conduct flight operations into Moscow and return along any of the following air routes, considering one to be regular and the other alternate:

- (a) Ventspils - Moscow (regular route)
- (b) Alitus - Moscow (alternate route)

(2) Flights in the Union of Soviet Socialist Republics will be on designated airways/routes and within control areas, as directed by air traffic control.

(3) Regular and alternate airports are assigned as follows:

- (a) Regular - Sheremetyevo International Airport
- (b) Alternates:
  - (i) Vnukovo<sup>1</sup>
  - (ii) Ryazan - Dyagilevo
  - (iii) In the Riga area, or in another suitable location mutually agreed by the appropriate authorities of the Contracting Parties.

(B) (1) Aircraft of the designated airline of the Union of Soviet Socialist Republics shall conduct flights into New York and return along any of the following air routes, considering one to be regular and the other alternate:

- (a) Nantucket, Massachusetts - New York (regular route)
- (b) Boston, Massachusetts - New York (alternate route)

(2) Flights in the United States will be on designated airways/routes and within control areas, as directed by air traffic control.

(3) Regular and alternate airports are assigned as follows:

- (a) Regular - John F. Kennedy International Airport
- (b) Alternates:
  - (i) Philadelphia International Airport<sup>2</sup>
  - (ii) Boston - Logan International Airport

<sup>1</sup> May be used as the regular airport during the time Sheremetyevo is closed. [Footnote in original.]

<sup>2</sup> May be used as the regular airport during the time John F. Kennedy International is closed. [Footnote in original.]

(iii) In the New York area, or in another suitable location mutually agreed by the appropriate authorities of the Contracting Parties.

(C) Any changes in the selection of the regular or alternate air routes referred to in subparagraphs (A) and (B) above shall be agreed between the designated airlines. Flights, as a general rule, shall be carried out on the regular route. Use of the alternate air route, however, shall be permitted on any particular flight, subject to clearances by air traffic control authorities for air traffic purposes.

(D) The alternate airports mentioned in subparagraphs (A) (3) (b) (iii) and (B) (3) (b) (iii) above will be mutually agreed by the appropriate authorities of the Contracting Parties prior to the commencement of service.

3. The information and assistance provided in accordance with the terms of the Civil Air Transport Agreement and of this Supplementary Agreement shall be sufficient to meet the reasonable requirements of the designated airline of the other Contracting Party.

4. The information to be provided by the appropriate authorities of each Contracting Party shall include detailed particulars of the regular and alternate airports assigned for operating the agreed services, the flight routes within its territory, radio and other available navigational aids, and other facilities and procedures of the air traffic control services. Such information shall conform to mutually agreed standards generally accepted in international civil air transportation.

5. (A) The appropriate authorities of the Contracting Parties shall provide a continuous service of information in accordance with paragraph 4 of this Article, so that such information will be operational for the day in question and that any changes will be transmitted immediately.

(B) Notice of changes shall be given by means of NOTAM service transmitted either by teleprinter or by other established rapid aeronautical communication facilities, with subsequent written confirmation when necessary, or in writing only, provided that the addressee receives sufficient advance notice. NOTAMS transmitted by teleprinter shall be transmitted in a NOTAM code which is in accordance with mutually agreed standards generally accepted in international civil air transportation. Written NOTAMS shall be supplied in English or in English and Russian.

(C) The exchange of information by NOTAMS shall commence as soon as possible and, in any case, at least two months before the starting date of regular flights on the agreed services.

6. (A) The crews of aircraft operated on the agreed services by the designated airlines shall be fully acquainted with the flight rules and procedures



of the air traffic control services which are used by the appropriate authorities of the other Contracting Party, and shall comply with these rules and procedures.

(B) All flight operations conducted on the agreed services, while over the high seas, shall comply with the applicable rules, regulations, instructions, and procedures of the country or countries providing air traffic control services in the airspace over the high seas in which the aircraft is operating.

7. The appropriate authorities of each Contracting Party shall provide the designated airline of the other Party with current information on the conditions prevailing along the air route. Such information shall include data on the conditions at airports and aids to navigation necessary for the execution of the flight.

8. (A) All flight operations shall be conducted on an instrument flight rule flight plan. Before each flight, the commander of the aircraft shall submit a flight plan to the air traffic control authorities in the country from which the flight is starting. Prior to departure, an air traffic control clearance shall be issued for each flight. Additionally, air traffic clearance is specifically required for: (1) takeoff, (2) approach, and (3) landing.

(B) Compliance with air traffic control instructions and clearance shall be mandatory as originally received and as may be subsequently amended, whether or not amendments are at the request of the commander of the aircraft. However, the commander of the aircraft shall have the authority to deviate therefrom in case of an emergency requiring immediate action to safeguard the aircraft and the passengers, but only to the extent necessary therefore, and provided that he shall advise the appropriate air traffic control authorities as soon as possible of the action taken.

(C) Routings to alternate airports shall be in accordance with air traffic control clearances and instructions.

9. The commander of the aircraft shall ensure the maintenance of a continuous watch on the air traffic control radio frequencies, as designated by the appropriate air traffic control authority, and shall ensure immediate transmission of replies on those frequencies.

10. Communications between the aircraft and the air traffic control authorities shall be carried out by radio telephone in English, preferably by using two-way radio circuits directly connecting the aircraft to the air traffic control authorities.

11. (A) The appropriate authorities of each Contracting Party shall ensure that the aircraft used on the agreed services by the designated airlines are equipped with appropriate radio transmitters, receivers, and beacon transponders, as well as with navigation and approach aid equipment, which meet

mutually agreed standards generally accepted in international civil air transportation.

(B) Navigation and approach aid equipment of the aircraft shall be adapted to at least one of the navigation and approach aid systems employed within the territory of the other Contracting Party.

(C) All such communication, navigation, and approach aid equipment shall be in normal operating order at the beginning of each flight. Such equipment shall be so arranged, in accordance with provisions mutually agreed upon between the appropriate authorities of the Contracting Parties, that the failure of a component will not preclude receiving the communications and navigation aid signals necessary for safety of flight.

(D) The navigation aid system referred to in subparagraph (A) above shall mean, in the case of the Union of Soviet Socialist Republics, NDB and, in the case of the United States, VOR/DME. The approach aid systems referred to in that subparagraph shall be, in the case of the Union of Soviet Socialist Republics, NDB, SP, and, at airports Shermetyevo and Vnukovo, the additional system ILS and, in the case of the United States, ILS. Both the navigation aid systems and the approach aid systems shall comply with mutually agreed standards generally accepted in international civil air transportation.

12. (A) All aircraft operations conducted in the agreed service shall comply:

(1) While within the Union of Soviet Socialist Republics, with the applicable rules, regulations, and procedures of the Union of Soviet Socialist Republics; and

(2) While within the United States, with the applicable rules, regulations, and procedures of the United States.

(B) In addition, the appropriate authorities of each Contracting Party may require aircraft of its airline to comply with its regulations while operating within the territory of the other Contracting Party to the extent that these regulations are not in conflict with the regulations of the appropriate authorities of that other Contracting Party.

13. (A) The aircraft to be used on the agreed services by the designated airline of the Union of Soviet Socialist Republics shall meet the airworthiness and performance requirements specified by the United States. For purposes of this paragraph, these requirements shall be the applicable airworthiness and performance standards, recommended practices, and technical annexes established by the International Civil Aviation Organization.

(B) The aircraft to be used on the agreed services by the designated airline of the United States shall meet the airworthiness and performance requirements specified by the Union of Soviet Socialist Republics. These requirements shall not be more

stringent than those specified by the United States.

(C) The provisions of subparagraphs (A) and (B) of this paragraph shall not be considered as precluding such particular deviations from the specified requirements as may be agreed between the appropriate authorities of the Contracting Parties.

14. The standards, recommended practices, technical annexes, and codes established by the International Civil Aviation Organization (and where appropriate by the World Meteorological Organization) shall be applied in principle to the matters covered in paragraph 2 of Article 10 of the Civil Air Transport Agreement and in the Supplementary Agreement.

15. For the purpose of exchanging information essential for executing the flights on the agreed services, including the transmission of NOTAMS, as well as for air traffic control liaison purposes, the appropriate authorities of each Contracting Party shall establish two-way communication between New York and Moscow. This circuit may also be used for operational, commercial, meteorological, and administrative telegrams within and between the designated airlines with a view to ensuring the regular and normal operation of the agreed services. Transmission on the said two-way circuit shall be effected either in full or using a code mutually agreed between the appropriate authorities of the Contracting Parties.

16. (A) The appropriate authorities of each Contracting Party shall supply or make available, meteorological information required for servicing flights over the agreed routes, in accordance with the provisions of Chapter 12 of the Technical Regulations of the World Meteorological Organization and in accordance with such additional arrangements as have been or may be mutually agreed between the Main Administration of Hydrometeorological Service of the Union of Soviet Socialist Republics and the Environmental Science Services Administration (formerly Weather Bureau) of the United States.

(B) In order to facilitate exchange of experience and to familiarize meteorological personnel with the typical weather conditions along the route, the appropriate authorities of each Contracting Party may arrange transportation for its meteorological personnel on aircraft of its designated airline. In connection with these arrangements, the appropriate authorities of each Contracting Party shall provide for consultation in its own meteorological centers between its meteorological personnel and those of the other Contracting Party who have arrived for the exchange of experience and familiarization.

17. (A) The designated airlines shall have the right to make such technical flights as may be agreed upon between the appropriate authorities of the Contracting Parties. Such flights shall be made prior to the beginning of regular flights.

(B) Later, the designated airlines shall have the right to make additional technical flights over the agreed routes when instituting an additional route or a new type of aircraft.

(C) Furthermore, the designated airlines shall have the right to make test flights in areas established by the appropriate authorities of each Contracting Party whenever necessary after technical servicing, repair, and refitting of aircraft.

(D) The carrying of paying passengers on such flights shall be forbidden.

18. A designated airline of one Contracting Party shall, at the request of the appropriate authorities of the other Contracting Party, adopt all measures necessary to reduce noise of aircraft to an acceptable level. In this connection, the necessary requirements shall not be more rigid than those required of civil aircraft of other countries making similar international flights within the boundaries of the territory of the Contracting Party making such requests.

19. (A) For the purpose of assuring compliance with safety requirements, inspectors of the appropriate authorities of each Contracting Party shall be granted access to:

(1) Its aircraft while on the ground or in flight within the territory of the other Party,

(2) Airports and airport, telecommunication, navigation, meteorological, and aircraft maintenance facilities used by its designated airline within the territory of the other Party, and

(3) Aircraft of the other Party on the ground or in flight while such aircraft are within its territory.

(B) The frequency of such inspections in (2) and (3) of subparagraph (A) above shall be mutually agreed between the appropriate authorities of the Contracting Parties.

20. The appropriate authorities of each Contracting Party undertake to adopt measures to ensure that appropriate disciplinary or administrative action is taken against any member of the crew of its aircraft for violation of any of its obligations which relate to the flight of aircraft and, upon request, shall forward complete information on any such disciplinary or administrative action to the appropriate authorities of the other Contracting Party.

21. No arms, explosives or munitions, except for signal pistols or pyrotechnic flares normally used for emergency purposes, shall be carried on board aircraft used in the agreed services.

#### *Article II*

The technical stops provided for in Tables I and II of the Annex to the Civil Air Transport Agreement shall be Stockholm, Oslo, Shannon, and Gander. Technical stops may be made at other locations with the mutual consent of the Contracting Parties.

*Article III*

1. The appropriate authorities of the Contracting Parties shall make such arrangements as are necessary to implement Article I of this Supplementary Agreement.

2. The appropriate authorities of either Contracting Party may at any time request consultations for the discussion, interpretation or amendment of Article I of this Supplementary Agreement. Such consultations shall begin within sixty days after the receipt of the request therefore by the appropriate authorities of the other Contracting Party.

3. Amendments of Article I of this Supplementary Agreement which are consistent with the Civil Air Transport Agreement shall be brought into force by agreement between the appropriate authorities of the Contracting Parties.

*Article IV*

The "appropriate authorities", as used in this Supplementary Agreement, shall mean, in the case of the Union of Soviet Socialist Republics, the Ministry of Civil Aviation of the USSR or such authority as shall be specified by the Government of the Union of Soviet Socialist Republics, and, in the case of the United States, the Federal Aviation Agency or such agency or Department as shall be specified by the Government of the United States.

*Article V*

The present Supplementary Agreement shall come into force simultaneously with the Civil Air Transport Agreement and shall remain in force for the same period of time as that Agreement remains in force.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Supplementary Agreement.

DONE in duplicate, each in the English and Russian languages, both equally authentic, at Washington this fourth day of November, one thousand nine hundred and sixty-six.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

LLEWELLYN E. THOMPSON

FOR THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS:

E. F. LOGINOV

**Exchange of Notes****UNITED STATES NOTE**

NOVEMBER 4, 1966

EXCELLENCY: I have the honor to refer to the Civil Air Transport Agreement and a Supplementary Agreement thereto concluded today between our two Governments and to set forth the following

understandings of my Government with regard to certain terms and concepts used therein:

1. The term "civil" as used in these Agreements means that the provisions thereof refer solely to aircraft used on the agreed services and the Agreements do not apply to state aircraft used for non-commercial flights such as for military, customs, police or diplomatic purposes.

2. The words "damage to persons" appearing in Article 15 of the Civil Air Transport Agreement include injury or death.

3. Nothing contained in the Agreements requires either Government to make available to the other, by sale or otherwise, any equipment of any kind.

4. Paragraph 1 of Article 8 of the Civil Air Transport Agreement should not be understood to prevent in the territory of one Contracting Party the customs free transfer of aircraft equipment and spare parts between a designated airline of the other Contracting Party and any airline of a third country when such equipment or spare parts are necessary in the maintenance of the aircraft of the airline to which the equipment or parts are to be transferred for the purpose of permitting the safe continuation of its flight, provided that the transfer between the airlines involved is permitted by the appropriate authorities of the Contracting Party in whose territory the transfer is to take place.

I would appreciate receiving your confirmation that the Government of the Union of Soviet Socialist Republics shares the foregoing understandings.

Accept, Excellency, the assurances of my highest consideration.

LLEWELLYN E. THOMPSON

His Excellency  
E. F. LOGINOV,  
*Minister of Civil Aviation  
of the Union of Soviet Socialist Republics.*

**SOVIET NOTE OF REPLY**

NOVEMBER 4, 1966

EXCELLENCY: I have the honor to refer to your note of today's date concerning the Civil Air Transport Agreement and a Supplementary Agreement thereto, which reads as follows:

(Text of United States note)

I have the honor to confirm herewith that the Government of the Union of Soviet Socialist Republics shares the understandings of certain terms and concepts set forth in your note.

Accept, Excellency, the assurances of my highest consideration.

E. F. LOGINOV

His Excellency  
LLEWELLYN E. THOMPSON,  
*Acting Deputy Under Secretary for Political Affairs,  
Department of State.*



## **Annex 2**

Amendment to United States-Union of Soviet Socialist Republics  
Civil Air Transport Agreement, signed at Moscow on 6 May 1968

(1968) 7 *International Legal Materials* 571

AMENDMENT TO U.S.-U.S.S.R. CIVIL AIR TRANSPORT AGREEMENT\*  
 [Done at Moscow, May 6, 1968]

The US-USSR Civil Air Transport Agreement was amended today to permit Pan American World Airways and the Soviet airline, Aeroflot, each to make an intermediate stop on their services between New York and Moscow. The amendment was concluded through an exchange of diplomatic notes between the U. S. Embassy at Moscow and the Soviet Ministry of Foreign Affairs.

The route amendment will permit each airline to stop at either Montreal, London, Copenhagen or Stockholm, but without the right to carry traffic between the point selected and the terminal point in the other country. However, each airline may carry traffic between its home country and the intermediate point selected, as well as through traffic which stops over at the intermediate point. These rights are commonly referred to as blind sector rights with a stopover privilege. Either airline may change its intermediate stop selection at the beginning of each winter and summer traffic season.

The intermediate stop agreement will give the airlines access to additional traffic and thus serve to enhance the commercial viability of the air services.

The text of the note exchange follows:

May 6. 1968

NOTE FROM THE U. S. EMBASSY IN MOSCOW TO THE  
 MINISTRY OF FOREIGN AFFAIRS OF THE USSR

The Embassy of the United States of America refers to the Civil Air Transport Agreement and the Supplementary Agreement thereto between the United States of America and the Union of Soviet Socialist Republics, signed at Washington on November 4, 1966, and has the honor to propose on behalf of its Government that these agreements be amended as follows:

1. The Annex to the Civil Air Transport Agreement to be replaced by the text appearing in the enclosure to this note.
2. London, Copenhagen, and Montreal to be added to the list of agreed technical stops in Article II of the Supplementary Agreement.

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\*[Reproduced from U.S. Department of State Press Release No. 94 of May 6, 1968.

[The text of the Civil Air Transport Agreement of November 4, 1966, appears at 6 International Legal Materials 82 (1967).]

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If these proposals are acceptable to the Government of the Union of Soviet Socialist Republics, the Embassy has the honor to propose that this note and the Ministry's reply thereto constitute an agreement between the two Parties concerning the amendment of the Civil Air Transport Agreement and the Supplementary Agreement of November 4, 1966, which will enter into force on the date of the Ministry's reply.

Enclosure: Annex

#### ANNEX

1. The Government of the Union of Soviet Socialist Republics entrusts the Ministry of Civil Aviation of the U.S.S.R. with responsibility for the operation of the agreed services on the routes specified in Table I of this Annex, which in turn designates for this purpose the Transport Authority of the International Airlines of Civil Aviation (Aeroflot).

2. The Government of the United States of America designates Pan American World Airways, Inc., to operate the agreed services on the routes specified in Table II of this Annex.

3. Each designated airline shall have the following rights in the operation of the agreed services on the respective routes specified in Tables I and II of this Annex:

(1) The right to land for technical and commercial purposes at the terminal point of the agreed route in the territory of the other Contracting Party, as well as to use alternate airports and flight facilities in that territory for these purposes;

(2) The right to discharge passengers, baggage, cargo and mail in the territory of the other Contracting Party, but without the right to discharge passengers, baggage, cargo and mail coming from an intermediate point in a third country on the given route, except for passengers and their accompanied baggage which have been disembarked at that intermediate point by the designated airline and subsequently re-embarked during the validity of the ticket (but in no event later than one year from the date of disembarkation) and which are moving under a passenger ticket and baggage check providing for transportation on scheduled flights on each segment of the route between the two Contracting Parties; and

(3) The right to pick up passengers, baggage, cargo and mail in the territory of the other Contracting Party, but without the right to pick up passengers, baggage, cargo and mail destined for an intermediate point in a third country on the given route, except for passengers and their accompanied baggage which are to be disembarked at that intermediate point and subsequently re-embarked by the designated airline during the validity of the ticket (but in no event later than one year from the date of disembarkation) and which are moving under a passenger

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ticket and baggage check providing for transportation on scheduled flights on each segment of the route between the two Contracting Parties.

(4) The intermediate points referred to in Tables I and II of this Annex shall be Montreal, Stockholm, Copenhagen or London. At the beginning of each summer and winter traffic season, each designated airline may change from one to another of these intermediate points for that season. The intermediate point may, at the option of each designated airline, be omitted on any or all flights. Additional intermediate points may be added to Tables I and II of this Annex by agreement between the appropriate authorities of each Government.

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AGREED SERVICES

Table I

For the Union of Soviet Socialist Republics:

Moscow to New York and return, via one of the intermediate points listed in paragraph 4 of the Annex. Technical stops will be limited to those listed in Article II of the Supplementary Agreement.

Table II

For the United States of America:

New York to Moscow and return, via one of the intermediate points listed in paragraph 4 of the Annex. Technical stops will be limited to those listed in Article II of the Supplementary Agreement.

\*\*\*\*

NOTE IN REPLY FROM THE MINISTRY OF FOREIGN AFFAIRS OF THE U.S.S.R.

May 6, 1968

The Ministry of Foreign Affairs of the U.S.S.R. refers to the note with enclosure thereto of the Embassy of the United States of America of May 6, 1968, which reads:

"(Full text of U. S. Embassy note and enclosure.)"

The Ministry of Foreign Affairs of the U.S.S.R., upon instructions from its Government, communicates that the Soviet side agrees to consider the Embassy note with enclosure thereto set forth above and the Ministry's reply thereto as constituting an agreement between the Parties concerning the amendment of the Civil Air Transport Agreement and the Supplementary Agreement thereto of November 4, 1966, which enters into force on this date.



### **Annex 3**

United States-Polish People's Republic Air Transport Agreement,  
signed at Warsaw on 19 July 1972

(1972) 23 *United States Treaties* 4269

## POLISH PEOPLE'S REPUBLIC

### Air Transport Services

*Agreement, with exchange of notes, signed at Warsaw July 19, 1972;*

*Entered into force provisionally July 19, 1972, and definitively December 8, 1972.*

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#### AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC

The Government of the United States of America and the Government of the Polish People's Republic,

Recognizing the increasing importance of international air travel between the two countries and desiring to conclude an agreement which will assure its continued development in the common welfare, and

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944, [<sup>1</sup>]

Have agreed as follows:

#### ARTICLE 1

For the purpose of the present Agreement:

A. "Agreement" shall mean this Agreement, the Schedule attached thereto, and any amendments thereto.

B. "The Convention" shall mean the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December 1944 and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have been adopted by both Contracting Parties.

C. "Aeronautical authorities" shall mean, in the case of the United States of America, the Federal Aviation Administration with respect to the technical permission, safety standards, and requirements re-

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<sup>1</sup> TIAS 1591, 3756; 61 Stat. 1180; 8 UST 179. [Footnote added by the Department of State.]

ferred to in Articles 3 and 6 (B) respectively, otherwise the Civil Aeronautics Board, and in the case of the Polish People's Republic, the Ministry of Transport, or, in both cases, any person or agency authorized to perform the functions exercised at present by those authorities.

D. "Designated airline" shall mean an airline that one Contracting Party has notified the other Contracting Party to be an airline which will operate a specific route or routes listed in the Schedule to this Agreement. Such notification shall be communicated in writing through diplomatic channels.

E. "Territory" has the meaning assigned to it in Article 2 of the Convention and the terms "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention.

#### ARTICLE 2

Each Contracting Party grants to the other Contracting Party rights for the conduct of air services by the designated airline or airlines, as follows:

(1) To fly across the territory of the other Contracting Party without landing;

(2) To land in the territory of the other Contracting Party for non-traffic purposes; and

(3) To make stops at the points in the territory of the other Contracting Party named on each of the routes specified in the appropriate paragraph of the Schedule of this Agreement for the purpose of taking on and discharging international traffic in passengers, cargo, and mail, separately or in combination.

#### ARTICLE 3

Air service on a route specified in the Schedule to this Agreement may be inaugurated by an airline or airlines of one Contracting Party at any time after that Contracting Party has designated such airline or airlines for that route and the other Contracting Party has granted the appropriate operating and technical permission. Such other Contracting Party shall, subject to Articles 4 and 6, grant this permission without undue procedural delay, provided that the designated airline or airlines may be required to qualify before the competent aeronautical authorities of that Contracting Party, under the laws and regulations normally applied by those authorities, before being permitted to engage in the operations contemplated in this Agreement.

#### ARTICLE 4

A. Each Contracting Party reserves the right to withhold, suspend, or revoke the operating permission referred to in Article 3 of this Agreement with respect to an airline designated by the other Con-

tracting Party, or to impose conditions on such permission, in the event that:

(1) Such airline fails to qualify under the laws and regulations normally applied by the aeronautical authorities of that Contracting Party;

(2) Such airline fails to comply with the laws and regulations referred to in Article 5 of this Agreement; or

(3) That Contracting Party is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party.

B. Unless immediate action is essential to prevent infringement of the laws and regulations referred to in Article 5 of this Agreement, the right to suspend or revoke such permission shall be exercised only after consultation with the other Contracting Party.

#### ARTICLE 5

A. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the airline or airlines designated by the other Contracting Party and shall be complied with by such aircraft upon entrance into or departure from and while within the territory of the first Contracting Party.

B. The laws and regulations of one Contracting Party relating to the admission to or departure from its territory of passengers, crew, cargo or mail of aircraft, including regulations relating to entry, clearance, immigration, passports, customs, and quarantine, shall be complied with by or on behalf of such passengers, crew, cargo or mail of the airlines of the other Contracting Party upon entrance into or departure from and while within the territory of the first Contracting Party.

#### ARTICLE 6

A. Certificates of airworthiness, certificates of competency, and licenses issued or rendered valid by one Contracting Party, and still in force, shall be recognized as valid by the other Contracting Party for the purpose of operating the routes and services provided for in this Agreement, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention. Each Contracting Party reserves the right, however, to refuse to recognize, for the purpose of flights above its own territory, certificates of competency and licenses granted to its own nationals by the other Contracting Party.

B. The competent aeronautical authorities of each Contracting Party may request consultations concerning the safety standards and requirements relating to aeronautical facilities, airmen, aircraft, and the operation of the designated airlines which are maintained and administered by the other Contracting Party. If, following such consultations, the competent aeronautical authorities of either Contracting Party find that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that are equal to or above the minimum standards which may be established pursuant to the Convention, they will notify the other Contracting Party of such findings and the steps considered necessary to bring the safety standards and requirements of the other Contracting Party to standards at least equal to the minimum standards which may be established pursuant to said Convention, and the other Contracting Party will take appropriate corrective action. Each Contracting Party reserves the right to withhold, suspend or revoke the technical permission referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event the other Contracting Party does not take such appropriate action within a reasonable time.

#### ARTICLE 7

Each Contracting Party may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control, provided that such charges shall not be higher than the charges imposed for the use of such airports and facilities by its national aircraft engaged in similar international services.

#### ARTICLE 8

A. Each Contracting Party shall exempt the designated airline or airlines of the other Contracting Party on the basis of reciprocity and to the fullest extent possible under its national law from import restrictions, customs duties, excise taxes, inspection fees, and other national duties and charges on fuel, lubricants, consumable technical supplies, spare parts including engines, regular equipment, ground equipment, stores (including food, beverages and tobacco), and other items intended for use solely in connection with the operation or servicing of aircraft of the airlines of such other Contracting Party engaged in international air service. The exemptions provided under this paragraph shall apply to items:

- (1) Introduced into the territory of one Contracting Party by or on behalf of the designated airlines of the other Contracting Party;
- (2) Retained on aircraft of the designated airlines of one Contracting Party upon arriving in or leaving the territory of the other Contracting Party; or

(3) Taken on board aircraft of the designated airlines of one Contracting Party in the territory of the other and intended for use in international air service;

whether or not such items are used or consumed wholly within the territory of the Contracting Party granting the exemption.

B. If the national laws or regulations of either Contracting Party so require, materials referred to in paragraph A may be required to be kept under customs supervision or control of said Contracting Party.

C. The exemptions provided for by this Article shall also be available in situations where the designated airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph A, provided such other airline or airlines similarly enjoy such exemptions from such other Contracting Party.

D. The regular airborne equipment, as well as the materials and supplies retained on board the aircraft operated by a designated airline of either Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the customs authorities of such territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of with the consent of the same authorities.

#### ARTICLE 9

A. There shall be a fair and equal opportunity for the airlines of each Contracting Party to operate on any route covered by this Agreement.

B. In the operation by the airlines of either Contracting Party of the air services described in this Agreement, the interest of the airlines of the other Contracting Party shall be taken into consideration so as not to affect unduly the services which the latter provide on all or part of the same routes.

C. The air services made available to the public by the airlines operating under this Agreement shall bear a close relationship to the requirements of the public for such services.

D. Services provided by a designated airline under this Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the countries of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be applied in accordance with the general principles of orderly development to which both Contracting Parties subscribe and shall be subject to the general principle that capacity should be related to:

- (1) traffic requirements between the country of origin and the countries of ultimate destination of the traffic;
- (2) the requirements of through airline operations; and,
- (3) the traffic requirements of the area through which the airline passes, after taking account of local and regional services.

E. Without prejudice to the right of each Contracting Party to impose such uniform conditions on the use of airports and airport facilities as are consistent with Article 15 of the Convention, neither Contracting Party shall unilaterally restrict the airline or airlines of the other Contracting Party with respect to capacity, frequency, scheduling or type of aircraft employed in connection with services over any of the routes specified in the Schedule to this Agreement. In the event that one of the Contracting Parties believes that the operations conducted by an airline of the other Contracting Party have been inconsistent with the standards and principles set forth in this Article, it may request consultations pursuant to Article 12 of this Agreement for the purpose of reviewing the operations in question to determine whether they are in conformity with said standards and principles.

#### ARTICLE 10

A. All rates to be charged by an airline of one Contracting Party for carriage to or from the territory of the other Contracting Party shall be established at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other airlines, as well as the characteristics of each service. Such rates shall be subject to the approval of the aeronautical authorities of the Contracting Parties, who shall act in accordance with their obligations under this Agreement, within the limits of their legal competence.

B. Any rate proposed to be charged by an airline of either Contracting Party for carriage to or from the territory of the other Contracting Party shall, if so required, be filed by such airline with the aeronautical authorities of the other Contracting Party at least thirty (30) days before the proposed date of introduction unless the Contracting Party with whom the filing is to be made permits filing on shorter notice. The aeronautical authorities of each Contracting Party shall use their best efforts to insure that the rates charged and collected conform to the rates filed with either Contracting Party, and that no airline rebates any portion of such rates by any means, directly or indirectly, including the payment of excessive sales commissions to agents.

C. It is recognized by both Contracting Parties that, during any period for which either Contracting Party has approved the traffic conference procedures of the International Air Transport Association, or other association of international air carriers, any rate agreements concluded through these procedures and involving an airline or air-

lines of that Contracting Party will be subject to the approval of the aeronautical authorities of that Contracting Party.

D. If the aeronautical authorities of a Contracting Party, on receipt of the notification referred to in paragraph B above, are dissatisfied with the rate proposed, the other Contracting Party shall be so informed at least fifteen (15) days prior to the date that such rate would otherwise become effective, and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

E. If the aeronautical authorities of a Contracting Party, upon review of an existing rate charged for carriage to or from the territory of that Party by an airline or airlines of the other Contracting Party are dissatisfied with that rate, the other Contracting Party shall be so informed and the Contracting Parties shall endeavor to reach agreement on the appropriate rate.

F. In the event that an agreement is reached pursuant to the provisions of paragraph D or E, each Contracting Party will exercise its best efforts to put such rate into effect.

G. If:

(1) under the circumstances set forth in paragraph D, no agreement can be reached prior to the date that such rate would otherwise become effective; or

(2) under the circumstances set forth in paragraph E, no agreement can be reached prior to the expiration of sixty (60) days from the date of notification,

then the aeronautical authorities of the Contracting Party raising the objection to the rate may take such steps as may be considered necessary to prevent the inauguration or the continuation of the service in question at the rate complained of; provided, however, that the aeronautical authorities of the Contracting Party raising the objection shall not require the charging of a rate higher than the lowest rate charged by its own airline or airlines for comparable service between the same points.

H. When in any case under paragraph D and E the Contracting Parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by either of them, the terms of Article 13 of this Agreement shall apply. In rendering its decision or award, the arbitral tribunal shall be guided by the principles laid down in this Article.

I. Any rate specified in terms of the national currency of one of the Contracting Parties shall be established in an amount which reflects the effective exchange rate (including all exchange fees or other charges) at which the airlines of both Parties can convert and remit the revenues from their transport operations into the national currency of the other Party.



## ARTICLE 11

A. Each designated airline shall have the right to establish and maintain representatives in the territory of the other Contracting Party for management, promotional, informational, and operational activities.

B. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, in its discretion, through its agents. Such airline shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in the currency of that territory or in freely convertible currencies of other countries.

C. Each designated airline shall have the right to convert and remit to its country local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly and without restrictions at the prevailing rate of exchange in effect for the sale of transportation at the time such revenues are presented for conversion and remittance and shall be exempted from taxation on the basis of reciprocity and to the fullest extent permitted by national law. If a Contracting Party does not have a convertible currency and requires the submission of applications for conversion and remittance, the designated airline or airlines of the other Contracting Party shall be permitted to file such applications as often as weekly free of burdensome or discriminatory documentary requirements.

## ARTICLE 12

Either Contracting Party may at any time request consultations on the interpretation, application or amendment of this Agreement. Such consultations shall begin within a period of sixty (60) days from the date the other Contracting Party receives the request.

## ARTICLE 13

A. Any dispute with respect to matters covered by this Agreement not satisfactorily adjusted through consultation shall, upon request of either Contracting Party, be submitted to arbitration in accordance with the procedures set forth herein.

B. Arbitration shall be by a tribunal of three arbitrators constituted as follows:

(1) One arbitrator shall be named by each Contracting Party within sixty (60) days of the date of delivery by either Contracting Party to the other of a request for arbitration. Within thirty (30) days after such period of sixty (60) days, the two arbitrators so designated shall by agreement designate a third arbitrator, who shall not be a national of either Contracting Party.

(2) If either Contracting Party fails to name an arbitrator, or if the third arbitrator is not agreed upon in accordance with paragraph (1), either Contracting Party may request the President of the Council of the International Civil Aviation Organization to designate the necessary arbitrator or arbitrators.

C. Each Contracting Party shall use its best efforts consistent with its national law to put into effect any decision or award of the arbitral tribunal.

D. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Contracting Parties.

#### ARTICLE 14

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

#### ARTICLE 15

Either Contracting Party may at any time notify the other of its intention to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate one year from the last day of the month in which the notice of termination is received by the other Contracting Party, unless withdrawn before the end of this period by agreement between the Contracting Parties.

#### ARTICLE 16

This Agreement will enter into force provisionally on the day it is signed and will enter into force definitively upon the date of written notification from the Government of the Polish People's Republic to the Government of the United States of America that the Agreement has been approved by the Council of Ministers of the Polish People's Republic.<sup>1</sup> The exercise of rights accorded by this Agreement shall be subject to the supplementary understandings contained in the exchange of notes attached to this Agreement.

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<sup>1</sup> Dec. 8, 1972.

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IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the present Agreement.

DONE in duplicate at Warsaw, in the English and Polish languages, both texts being equally authentic, this 19th day of July, 1972.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA :

*Walter J. Stoessel, Jr.*

[1]

FOR THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC:

*Mieczyslaw Zajfryd*

[2]

### Schedule

A. An airline or airlines designated by the Government of the United States shall be entitled to operate air services on each of the specified routes, in both directions, and to make scheduled landings in Poland at the points specified in this paragraph :

1. From the United States via points in Iceland, Ireland, the United Kingdom, Belgium, the Netherlands, the Federal Republic of Germany, Norway, Denmark, and Sweden to Warsaw and beyond to points in Finland and the Union of Soviet Socialist Republics and beyond.

<sup>1</sup> Walter J. Stoessel, Jr.

<sup>2</sup> Mieczyslaw Zajfryd

B. An airline or airlines designated by the Government of the Polish People's Republic shall be entitled to operate air services on each of the specified routes, in both directions, and to make scheduled landings in the United States at the points specified in this paragraph :

1. From Poland via points in Denmark, the Netherlands, Belgium, France [<sup>1</sup>] or the United Kingdom, [<sup>1</sup>] and Montreal [<sup>2</sup>] to New York.

C. Points on any of the specified routes may at the option of the designated airlines be omitted on any or all flights.

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<sup>1</sup> Before the exercise of these rights, the Government of Poland will select either France or the United Kingdom and notify the Government of the United States of this selection. The other point will then be deemed to be deleted from the route.

<sup>2</sup> Montreal may be served either as an intermediate point to New York or as a point beyond New York.

UMOWA

między Rządem Stanów Zjednoczonych Ameryki  
a Rządem Polskiej Rzeczypospolitej Ludowej  
o komunikacji lotniczej

Rząd Stanów Zjednoczonych Ameryki i Rząd Polskiej Rzeczypospolitej Ludowej,

uznając wzrastające znaczenie międzynarodowych podróży lotniczych między obu krajami i pragnąc zawrzeć umowę, która zapewni ich stały rozwój dla wspólnego dobra, oraz

będąc stronami Konwencji o międzynarodowym lotnictwie cywilnym, otwartej do podpisu w Chicago dnia siódmego grudnia 1944 roku,

zgodziły się na następujące postanowienia:

## Artykuł 1

Dla celów niniejszej Umowy:

A. „Umowa” oznacza niniejszą Umowę, Załącznik do niej i wszelkie ich zmiany.

B. „Konwencja” oznacza Konwencję o międzynarodowym lotnictwie cywilnym, otwartą do podpisu w Chicago dnia siódmego grudnia 1944 roku i obejmuje każdy załącznik przyjęty zgodnie z artykułem 90 tej Konwencji oraz każdą zmianę załączników lub Konwencji zgodnie z jej artykułami 90 i 94, jeżeli Załączniki te i zmiany zostały przyjęte przez obie Umawiające się Strony.

C. „Władze lotnicze” oznaczają w przypadku Stanów Zjednoczonych Ameryki Federalny Zarząd Lotnictwa, gdy chodzi o zezwolenie techniczne, normy bezpieczeństwa i wymogi przewidziane odpowiednio w artykułach 3 i 6B, a w innych sprawach Urząd Cywilnej Żeglugi

Powietrznej, a w przypadku Polskiej Rzeczypospolitej Ludowej Ministerstwo Komunikacji, albo w obu przypadkach każdą osobę lub instytucję upoważnioną do pełnienia funkcji aktualnie wykonywanych przez te władze.

D. „Wyznaczone przedsiębiorstwo” oznacza przedsiębiorstwo lotnicze, które jedna z Umawiających się Stron wyznaczyła w drodze zawiadomienia skierowanego do drugiej Umawiającej się Strony jako przedsiębiorstwo mające eksploatować określoną trasę lub trasy wymienione w Załączniku do niniejszej Umowy. Zawiadomienie to będzie przekazywane pisemnie w drodze dyplomatycznej.

E. „Terytorium” posiada znaczenie określone w artykule 2 Konwencji, a „linia lotnicza”, „międzynarodowa linia lotnicza”, „przedsiębiorstwo lotnicze” i „ładowanie w celach niehandlowych” posiadają znaczenie określone odpowiednio w artykule 96 Konwencji.

#### Artykuł 2

Każda Umawiająca się Strona przyznaje drugiej Umawiającej się Stronie następujące prawa dla eksploatacji linii lotniczych przez wyznaczone przedsiębiorstwo lub przedsiębiorstwa:

- 1/ przelotu przez terytorium drugiej Umawiającej się Strony bez lądowania,
- 2/ lądowania na terytorium drugiej Umawiającej się Strony w celach niehandlowych, lub
- 3/ lądowania na terytorium drugiej Umawiającej się Strony w punktach wyznaczonych na każdej z tras określonych w odpowiednim ustępie Załącznika do niniejszej Umowy w celu zabierania i pozostawiania w ruchu międzynarodowym pasażerów, towarów i poczty, oddzielnie lub łącznie.

#### Artykuł 3

Eksplatacja linii lotniczej na trasie określonej w Załączniku

do niniejszej Umowy może zostać rozpoczęta przez przedsiębiorstwo lub przedsiębiorstwa lotnicze jednej Umawiającej się Strony w każdym czasie po wyznaczeniu przez tę Umawiającą się Stronę takiego przedsiębiorstwa lub przedsiębiorstw na tę trasę i przyznaniu przez drugą Umawiającą się Stronę odpowiedniego zezwolenia eksploatacyjnego i technicznego. Ta druga Umawiająca się Strona udzieli bez nieuzasadnionej zwłoki proceduralnej, z zastrzeżeniem artykułów 4 i 6, takiego zezwolenia z tym, że można zażądać od wyznaczonego przedsiębiorstwa lub przedsiębiorstw wykazania kwalifikacji przed właściwymi władzami lotniczymi tej Umawiającej się Strony zgodnie z ustawami i przepisami zazwyczaj stosowanymi przez te władze przed udzieleniem zezwolenia na wykonywanie przewozów objętych niniejszą Umową.

#### Artykuł 4

A. Każda Umawiająca się Strona zastrzega sobie prawo niedzielenia, zawieszenia lub cofnięcia zezwolenia eksploatacyjnego, o którym mowa w artykule 3 niniejszej Umowy, w stosunku do wyznaczonego przedsiębiorstwa drugiej Umawiającej się Strony, lub też nałożenia warunków na takie zezwolenie, w przypadku gdy:

- 1/ przedsiębiorstwo to nie wykaże się kwalifikacjami według ustaw i przepisów stosowanych zwykle przez władze lotnicze tej Umawiającej się Strony,
- 2/ przedsiębiorstwo to nie przestrzega ustaw i przepisów, o których mowa w artykule 5 niniejszej Umowy, albo
- 3/ wymieniona Umawiająca się Strona nie jest przekonana, że przeważająca część własności i rzeczywista kontrola tego przedsiębiorstwa należy do Umawiającej się Strony, która wyznaczyła przedsiębiorstwo, lub do osób posiadających przynależność państwową tej Umawiającej się Strony.

B. Prawo zawieszenia lub cofnięcia zezwolenia będzie mogło być wykonane dopiero po przeprowadzeniu konsultacji z drugą Umawiającą się Stroną, chyba że niezwłoczne działanie jest niezbędne dla zapobieżenia naruszeniom ustaw i przepisów, o których mowa w artykułe 5 niniejszej Umowy.

#### Artykuł 5

A. Ustawy i przepisy jednej Umawiającej się Strony odnoszące się do dopuszczenia na jej terytorium lub opuszczenia jej terytorium przez statki powietrzne używane w międzynarodowej żegludze powietrznej, albo do eksploatacji i żeglugi takich statków powietrznych w czasie, gdy znajdują się one na jej terytorium, będą stosowane do statków powietrznych przedsiębiorstwa lub przedsiębiorstw wyznaczonych przez drugą Umawiającą się Stronę i będą przestrzegane przez te statki powietrzne przy wejściu lub opuszczeniu oraz w czasie pobytu na terytorium pierwszej Umawiającej się Strony.

B. Ustawy i przepisy jednej Umawiającej się Strony, odnoszące się do dopuszczenia na jej terytorium i opuszczenia jej terytorium przez pasażerów, załogi, towar lub pocztę lotniczą, włącznie z przepisami dotyczącymi wejścia, odprawy ruchu podróźnych, paszportów, ceł i kwarantanny, będą przestrzegane przez lub na rzecz pasażerów, załóg, towaru lub poczty przedsiębiorstw lotniczych drugiej Umawiającej się Strony przy wejściu lub opuszczeniu, albo w czasie pobytu na terytorium pierwszej Umawiającej się Strony.

#### Artykuł 6

A. Świadectwa zdatości do lotu, świadectwa uzdolnienia i licencje wydane lub uznane za ważne przez jedną Umawiającą się Stronę i nadal pozostające w mocy, będą uznane za ważne przez drugą Umawiającą się Stronę w celu eksploatacji tras i linii przewidzianych



w niniejszej Umowie pod warunkiem, że wymagania, zgodnie z którymi takie świadectwa lub licencje były wydane lub uznane za ważne, są równe lub wyższe od wymogów minimalnych, jakie mogą być ustanowione według Konwencji. Każda Umawiająca się Strona zastrzega sobie jednakże prawo odmowy uznania, przy przelotach nad jej własnym terytorium, świadectw uzdolnienia i licencji wydanych jej własnym obywatelom przez drugą Umawiającą się Stronę.

B. Właściwe władze lotnicze każdej Umawiającej się Strony mogą zażądać konsultacji dotyczących wymogów bezpieczeństwa oraz wymagań dotyczących urządzeń lotniczych, pilotów, statków powietrznych oraz działalności wyznaczonych przedsiębiorstw, które są stosowane przez drugą Umawiającą się Stronę. Jeżeli po takich konsultacjach właściwe władze lotnicze jednej z Umawiających się Stron stwierdzą, że druga Umawiająca się Strona nie stosuje skutecznie wymogów bezpieczeństwa i wymagań w wymienionych dziedzinach, równych lub wyższych od minimalnych wymogów, które mogą być ustanowione zgodnie z Konwencją, zawiadomią one drugą Umawiającą się Stronę o takich stwierdzeniach oraz o krokach uważanych za konieczne dla doprowadzenia wymogów bezpieczeństwa i wymagań drugiej Umawiającej się Strony do poziomów co najmniej równych minimalnym wymogom, które mogą być ustanowione zgodnie z Konwencją, a druga Umawiająca się Strona podejmie odpowiednie działanie korygujące. Każda Umawiająca się Strona zastrzega sobie prawo niedzielenia, zawieszenia lub cofnięcia zezwolenia technicznego, o którym mowa w artykule 3 niniejszej Umowy, w stosunku do przedsiębiorstwa wyznaczonego przez drugą Umawiającą się Stronę, lub nałożenia warunków na takie zezwolenie, w przypadku gdy druga Umawiająca się Strona nie podejmie takiego odpowiedniego działania w rozsądnym czasie.

#### Artykuł 7

Każda Umawiająca się Strona może nałożyć lub pozwolić na nało-

zenie służnych i rozsądnych opłat za korzystanie z publicznych portów lotniczych i z innych urządzeń pod jej kontrolą pod warunkiem, że opłaty takie nie będą wyższe od opłat za korzystanie z takich portów lotniczych i urządzeń przez jej krajowe statki powietrzne używane do eksploatacji podobnych służb międzynarodowych.

#### Artykuł 8

A. Każda Umawiająca się Strona zwolni wyznaczone przedsiębiorstwo lub przedsiębiorstwa lotnicze drugiej Umawiającej się Strony na zasadzie wzajemności i w najszerszym zakresie dopuszczalnym według jej prawa krajowego od ograniczeń importowych, opłat celnych i akcyzy, opłat inspekcyjnych oraz innych krajowych podatków i opłat od paliwa, smarów, materiałów technicznych ulegających zużyciu, części zamiennych łącznie z silnikami, normalnego wyposażenia, wyposażenia naziemnego, zapasów / w tym artykułów żywnościowych, napojów i tytoniu/ oraz innych artykułów przeznaczonych wyłącznie do użytku w związku z eksploatacją lub obsługą statków powietrznych przedsiębiorstw lotniczych tej drugiej Umawiającej się Strony, używanych w międzynarodowej służbie lotniczej. Zwolnienia przewidziane w niniejszym ustępie będą stosowane do przedmiotów:

- 1/ wprowadzonych na terytorium jednej Umawiającej się Strony przez lub w imieniu wyznaczonych przedsiębiorstw drugiej Umawiającej się Strony;
- 2/ pozostających na pokładzie statków powietrznych wyznaczonych przedsiębiorstw jednej Umawiającej się Strony podczas przybycia lub opuszczenia terytorium drugiej Umawiającej się Strony, albo
- 3/ wziętych na pokład statków powietrznych wyznaczonych przedsiębiorstw jednej Umawiającej się Strony na terytorium drugiej i przeznaczonych do użytku w międzynarodowej służbie lotniczej,

bez względu na to, czy przedmioty takie są wykorzystane lub całko-

wicie zużyte na terytorium Umawiającej się Strony udzielającej zwolnienia.

B. Jeżeli ustawy lub przepisy wewnętrzne każdej Umawiającej się Strony tego wymagają, przedmioty wymienione w ustępie A niniejszego artykułu mogą być poddane nadzorowi lub kontroli władz celnych tej Umawiającej się Strony.

C. Zwolnienia przewidziane w niniejszym artykule będą również dopuszczone w sytuacjach, gdy wyznaczone przedsiębiorstwo lub przedsiębiorstwa jednej Umawiającej się Strony dokonały uzgodnień z innym przedsiębiorstwem lub przedsiębiorstwami lotniczymi, dotyczących użyczenia lub przekazania przedmiotów wymienionych w ustępie A, pod warunkiem, że to inne przedsiębiorstwo lub przedsiębiorstwa lotnicze korzystają w podobny sposób z takich zwolnień udzielonych przez tę drugą Umawiającą się Stronę.

D. Normalne wyposażenie pokładowe, jak również produkty i zaopatrzenie znajdujące się na pokładzie statków powietrznych, używanych przez wyznaczone przedsiębiorstwo jednej Umawiającej się Strony będą mogły być wyladowane na terytorium drugiej Umawiającej się Strony tylko za zgodą władz celnych tego terytorium. W takim przypadku będą one mogły być poddane nadzorowi tych władz aż do chwili, gdy zostaną wywiezione lub otrzymają inne przeznaczenie za zgodą tych władz.

#### Artykuł 9

A. Wyznaczone przedsiębiorstwa każdej z Umawiających się Stron będą miały słuszną i jednakową możliwość eksploatacji linii lotniczych na każdej trasie objętej niniejszą Umową.

B. Przy eksploatacji przez przedsiębiorstwa lotnicze każdej z Umawiających się Stron linii lotniczych określonych w niniejszej Umowie będą uwzględniane interesy przedsiębiorstw lotniczych drugiej Umawia-

jącej się Strony tak, aby nie oddziaływać niewłaściwie na linie, które te ostatnie przedsiębiorstwa eksploatują na całości lub części tych samych tras.

C. Linie lotnicze udostępnione dla publiczności przez przedsiębiorstwa lotnicze działające zgodnie z niniejszą Umową będą pozostawały w ścisłej współzależności z potrzebami publicznymi w zakresie takich linii.

D. Głównym celem linii eksploatowanych przez wyznaczone przedsiębiorstwo zgodnie z niniejszą Umową pozostaje zapewnienie zdolności przewozowej odpowiadającej zapotrzebowaniu na przewóz między krajem, którego przynależność państwową posiada to przedsiębiorstwo i krajami końcowego przeznaczenia przewozów. Prawo podejmowania i kończenia na takich liniach przewozów międzynarodowych przeznaczonych do lub rozpoczynających się w krajach trzecich w punkcie lub w punktach położonych na trasach określonych w niniejszej Umowie będzie wykonywane zgodnie z ogólnymi zasadami planowego rozwoju, które przyjmują Umawiające się Strony i będzie podlegało ogólnej zasadzie, że zdolność przewozowa powinna odpowiadać:

- 1/ zapotrzebowaniu na przewozy między terytorium kraju rozpoczęcia i krajami końcowego przeznaczenia przewozów,
- 2/ wymogom eksploatacji tranzytowych linii lotniczych,
- 3/ zapotrzebowaniu na przewozy istniejącemu na obszarach, przez które przebiega linia lotnicza po uwzględnieniu linii lokalnych i regionalnych.

E. Bez naruszenia prawa każdej Umawiającej się Strony do nałożenia takich jednolitych warunków na korzystanie z portów lotniczych i urządzeń w portach lotniczych, jakie są zgodne z artykułem 15 Konwencji, żadna z Umawiających się Stron nie zastosuje jednostronnie ograniczeń w stosunku do przedsiębiorstwa lub przedsię-

biorstw lotniczych drugiej Umawiającej się Strony w odniesieniu do zdolności przewozowej, częstotliwości, rozkładu lub typu statków powietrznych używanych w związku z przewozami na jakiegokolwiek z tras ustalonych w Załączniku do niniejszej Umowy. W przypadku, gdy jedna z Umawiających się Stron jest przekonana, że przewozy wykonywane przez przedsiębiorstwo drugiej Umawiającej się Strony są niezgodne z wymogami i zasadami ustalonymi w niniejszym artykule, może ona zażądać konsultacji zgodnie z artykułem 12 niniejszej Umowy w celu ponownego zbadania przedmiotowych przewozów w celu ustalenia, czy są one zgodne z wymienionymi wymogami i zasadami.

#### Artykuł 10

A. Wszelkie taryfy, które mają być stosowane przez przedsiębiorstwo lotnicze jednej Umawiającej się Strony do przewozu do terytorium lub z terytorium drugiej Umawiającej się Strony, będą ustalone w rozsądnych wysokościach, z należyтым uwzględnieniem wszystkich odpowiednich czynników, takich jak koszt eksploatacji, rozsądny zysk oraz taryfy stosowane przez inne przedsiębiorstwa lotnicze, jak również charakterystyki każdego przewozu. Taryfy takie będą podlegały zatwierdzeniu przez władze lotnicze Umawiających się Stron, które będą działały zgodnie z ich zobowiązaniami wynikającymi z niniejszej Umowy, w granicach ich uprawnień.

B. Każda taryfa proponowana do stosowania przez przedsiębiorstwo lotnicze Umawiającej się Strony, do przewozu do lub z terytorium drugiej Umawiającej się Strony będzie przedkładana przez takie przedsiębiorstwo, jeżeli jest to wymagane, władzom lotniczym drugiej Umawiającej się Strony co najmniej na trzydzieści /30/ dni przed proponowaną datą wprowadzenia, chyba że Umawiająca się Strona, do której ma nastąpić przedłożenie, zezwoli na ich przedłożenie w terminie krótszym. Władze lotnicze każdej Umawiającej się

Strony dołożą wszelkich starań dla zapewnienia, ażeby stosowane i pobierane taryfy były zgodne z taryfami przedkładanymi każdej z Umawiających się Stron i żeby żadne z przedsiębiorstw lotniczych nie stosowało w jakikolwiek sposób żadnych bonifikat w stosunku do ustalonych taryf, pośrednio lub bezpośrednio, włączając w to płacenie agentom zawyżonych stawek prowizyjnych.

C. Umawiające się Strony uznają, że w jakimkolwiek okresie, na który Umawiająca się Strona zatwierdziła tryb postępowania konferencji handlowych Międzynarodowego Zrzeszenia Przewoźników Powietrznych lub innego stowarzyszenia międzynarodowego przewoźników powietrznych, wszelkie porozumienia taryfowe dokonane w tym trybie i dotyczące przedsiębiorstwa lub przedsiębiorstw lotniczych tej Umawiającej się Strony będą podlegały zatwierdzeniu przez władze lotnicze tej Umawiającej się Strony.

D. Jeżeli władze lotnicze Umawiającej się Strony, po otrzymaniu zawiadomienia, o którym mowa powyżej w ustępie B, nie zgadzają się na proponowaną taryfę, druga Umawiająca się Strona będzie o tym poinformowana co najmniej na piętnaście /15/ dni przed terminem zamierzonego wprowadzenia tej taryfy. Umawiające się Strony będą starały się osiągnąć porozumienie co do właściwej taryfy.

E. Jeżeli władze lotnicze Umawiającej się Strony po zbadaniu istniejącej taryfy, stosowanej do przewozu do lub z terytorium tej Umawiającej się Strony przez przedsiębiorstwo lub przedsiębiorstwa lotnicze drugiej Umawiającej się Strony, uważają tę taryfę za niewłaściwą, druga Umawiająca się Strona będzie o tym poinformowana i Umawiające się Strony będą dążyły do osiągnięcia porozumienia co do właściwej taryfy.

F. W przypadku osiągnięcia porozumienia zgodnie z postanowieniami ustępów D lub E każda Umawiająca się Strona dołoży wszelkich starań dla wprowadzenia tej taryfy w życie.

**G. Jeżeli:**

- 1/ w warunkach przewidzianych w ustępie D nie zostanie osiągnięte porozumienie przed terminem zamierzonego wprowadzenia taryfy, lub
- 2/ w warunkach przewidzianych w ustępie E nie zostanie osiągnięte porozumienie przed upływem sześćdziesięciu /60/ dni od daty zawiadomienia,

wówczas władze lotnicze Umawiającej się Strony, która wniosła zastrzeżenie do taryfy, mogą podjąć takie kroki, jakie mogą być uważane za konieczne dla zapobieżenia rozpoczęciu lub kontynuowaniu eksploatacji danej linii przy stosowaniu taryfy, której dotyczy zastrzeżenie; jednakże władze lotnicze Umawiającej się Strony, która wniosła zastrzeżenie, nie będą wymagać stosowania taryfy wyższej od najniższej taryfy stosowanej przez własne przedsiębiorstwo lub przedsiębiorstwa lotnicze dla porównywalnych usług między tymi samymi punktami.

H. Jeżeli w żadnym przypadku według ustępów D i E Umawiające się Strony nie mogą osiągnąć porozumienia co do właściwej taryfy w rozsądnym czasie po konsultacji zainicjowanej przez jedną z nich, zastosowane będą postanowienia artykułu 13 niniejszej Umowy. Wydając decyzję lub orzeczenie trybunał arbitrażowy będzie kierował się zasadami podanymi w niniejszym artykule.

1. Każda taryfa wyrażona w walucie krajowej jednej z Umawiających się Stron będzie ustalana w wysokości odpowiadającej rzeczywistemu kursowi wymiany /włącznie z wszelkimi opłatami za wymianę lub innymi należnościami/, według którego przedsiębiorstwa lotnicze obu stron mogą wymieniać i przekazywać wpływy za ich usługi przewozowe w walucie krajowej drugiej strony.

**Artykuł 11**

A. Każde wyznaczone przedsiębiorstwo będzie miało prawo usta-

nawiać i utrzymywać na terytorium drugiej Umawiającej się Strony swoich przedstawicieli w celu zarządzania i prowadzenia działalności akwizycyjnej, informacyjnej i eksploatacyjnej.

B. Każde wyznaczone przedsiębiorstwo będzie miało prawo sprzedaży lotniczych usług przewozowych na terytorium drugiej Umawiającej się Strony bezpośrednio i - według swego uznania - za pośrednictwem swoich agentów. Przedsiębiorstwo takie będzie miało prawo sprzedaży tych usług przewozowych, a każda osoba będzie mogła je nabyć w walucie wymienionego terytorium lub w walutach wołnowymienialnych innych krajów.

C. Każde wyznaczone przedsiębiorstwo będzie miało prawo wymieniać i przekazywać do swego kraju nadwyżki lokalnych wpływów nad wydatkami. Wymiana i przekazywanie będą dopuszczane szybko i bez ograniczeń według powszechnie stosowanego kursu wymiany obowiązującego dla sprzedaży usług przewozowych w chwili przedstawienia takich nadwyżek do wymiany i przekazania oraz będą zwolnione od opodatkowania na zasadzie wzajemności i w możliwie najszerszym zakresie dopuszczalnym według prawa krajowego. Jeżeli Umawiająca się Strona nie ma waluty wymienialnej i wymaga składania podań o wymianę i przekazanie, wyznaczone przedsiębiorstwo lub przedsiębiorstwa drugiej Umawiającej się Strony będą mogły składać takie wnioski nie częściej niż raz w tygodniu bez stosowania uciążliwych lub dyskryminacyjnych wymogów dokumentacyjnych.

#### Artykuł 12

Każda Umawiająca się Strona może w każdej chwili zażądać konsultacji w sprawie interpretacji, stosowania lub zmiany niniejszej Umowy. Konsultacje takie rozpoczną się w okresie sześćdziesięciu /60/ dni od dnia, w którym druga Umawiająca się Strona otrzyma takie żądanie.



## Artykuł 13

A. Każdy spór dotyczący spraw objętych niniejszą Umową, który nie zostanie zadawalająco uregulowany w drodze konsultacji, będzie na żądanie jednej z Umawiających się Stron poddany arbitrażowi zgodnie z niżej podanymi postanowieniami.

B. Arbitraż dokonywany będzie przez trybunał, w składzie trzech arbitrów, utworzony w następujący sposób:

1/ Każda Umawiająca się Strona wyznaczy po jednym arbitrze w ciągu sześćdziesięciu /60/ dni od daty przekazania przez jedną z Umawiających się Stron drugiej Umawiającej się Stronie żądania arbitrażu. W ciągu trzydziestu /30/ dni obydwaj wyznaczeni w powyższy sposób arbitrzy wyznaczą w drodze uzgodnienia trzeciego arbitra, który nie może być obywatelem żadnej z Umawiających się Stron.

2/ Jeżeli jedna z Umawiających się Stron nie wyznaczy arbitra lub jeżeli nie zostanie uzgodniony zgodnie z punktem 1 trzeci arbiter, każda z Umawiających się Stron może zwrócić się do Przewodniczącego Rady Międzynarodowej Organizacji Lotnictwa Cywilnego, aby wyznaczył on potrzebnego arbitra lub arbitrów.

C. Każda Umawiająca się Strona dołoży wszelkich starań zgodnie ze swoim prawem krajowym w celu wykonania decyzji lub orzeczenia trybunału arbitrażowego.

D. Wydatki trybunału arbitrażowego, łącznie z należnościami i wydatkami arbitrów, będą ponoszone przez Umawiające się Strony w równych częściach.

## Artykuł 14

Umowa niniejsza wraz z wszystkimi uzupełnieniami będzie rejestrowana w Międzynarodowej Organizacji Lotnictwa Cywilnego.

## Artykuł 15

Każda Umawiająca się Strona może w każdym czasie zawiadomić w drodze notyfikacji drugą Umawiającą się Stronę o zamiarze wypowiedzenia niniejszej Umowy. Zawiadomienie takie będzie równocześnie przesłane do wiadomości Międzynarodowej Organizacji Lotnictwa Cywilnego. Niniejsza Umowa wygaśnie po upływie jednego roku od ostatniego dnia miesiąca, w którym druga Umawiająca się Strona otrzymała zawiadomienie o wypowiedzeniu, jeżeli nie zostało ono cofnięte przed końcem tego okresu w drodze porozumienia między Umawiającymi się Stronami.

## Artykuł 16

Niniejsza Umowa wejdzie prowizorycznie w życie w dniu jej podpisania, a wejdzie w życie definitywnie w dniu pisemnego zawiadomienia przez Rząd Polskiej Rzeczypospolitej Ludowej Rządu Stanów Zjednoczonych Ameryki, że została ona zatwierdzona przez Radę Ministrów Polskiej Rzeczypospolitej Ludowej.

Wykonanie praw przyznanych w drodze niniejszej Umowy będzie podlegało uzupełniającemu porozumieniu zawartemu w wymienionych notach załączonych do niniejszej Umowy.

Na dowód czego niżej podpisani, należycie upoważnieni przez swoje Rządy, podpisali niniejszą Umowę.

Sporządzono w Warszawie dnia 19 lipca 1972 roku, w dwóch egzemplarzach, każdy w językach angielskim i polskim, przy czym obydwa teksty posiadają jednakową moc.

Z upoważnienia

Rządu Stanów Zjednoczonych  
Ameryki

Z upoważnienia

Rządu Polskiej Rzeczypospolitej  
Ludowej

## ZAŁĄCZNIK

A. Przedsiębiorstwo lub przedsiębiorstwa lotnicze wyznaczone przez Rząd Stanów Zjednoczonych będą uprawnione do eksploatacji linii lotniczych na każdej z określonych tras, w obydwu kierunkach, i wykonywania regularnych lądowań w Polsce w punktach wyszczególnionych w niniejszym ustępie:

1. Ze Stanów Zjednoczonych przez punkty w Islandii, Irlandii, Zjednoczonym Królestwie, Belgii, Holandii, Niemieckiej Republice Federalnej, Norwegii, Danii i Szwecji do Warszawy i dalej do punktów w Finlandii i Związku Socjalistycznych Republik Radzieckich oraz punktów położonych dalej.

B. Przedsiębiorstwo lub przedsiębiorstwa lotnicze wyznaczone przez Rząd Polskiej Rzeczypospolitej Ludowej będą uprawnione do eksploatacji linii lotniczych na każdej z określonych tras, w obydwu kierunkach, i wykonywania regularnych lądowań w Stanach Zjednoczonych w punktach wyszczególnionych w niniejszym ustępie:

1. Z Polski przez punkty w Danii, Holandii, Belgii, Francji<sup>1/</sup> lub Zjednoczonym Królestwie<sup>1/</sup> i Montrealu<sup>2/</sup> do Nowego Jorku.

C. Punkty na każdej z określonych tras mogą być, według uznania wyznaczonych przedsiębiorstw lotniczych, opuszczane w niektórych lub we wszystkich lotach.

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1/ Zanim prawa te będą wykorzystane, Rząd Polski dokona wyboru Francji lub Zjednoczonego Królestwa i powiadomi Rząd Stanów Zjednoczonych o swoim wyborze. Drugi punkt na trasie będzie wówczas uznany za skreślony.

2/ Montreal może być obsługiwany jako punkt pośredni na trasie do Nowego Jorku lub jako punkt położony dalej poza Nowym Jorkiem.

*The American Ambassador to the Polish Minister of Transport*EMBASSY OF THE  
UNITED STATES OF AMERICA

No. 48

WARSAW, July 19, 1972.

**EXCELLENCY:**

I have the honor to refer to the Air Transport Agreement signed today between the Government of the United States of America and the Government of the Polish People's Republic. In order to assure that the Agreement reflects an equitable exchange of opportunities for the airlines of each country, after taking into account the nature of the respective markets and the commercial access which each country is able to make available to the other, I propose, on behalf of my Government, that the Agreement be subject to the following supplementary understandings:

1. The designated airline of Poland will enjoy the full rights and privileges of Article 11 of the Agreement.

2. The Government of Poland is unable at this time to implement that part of Article 11 which contemplates the right to sell air transportation in Poland for Polish currency. However, the designated airline of the United States will otherwise enjoy the full rights and privileges of Article 11 of the Agreement. With respect to paragraphs B and C of Article 11, these rights and privileges will be implemented as follows:

(a) The designated airline of the United States will have the right to sell air transportation in Poland directly to any person for freely convertible currency using its own transportation documents.

(b) Sales for Polish currency will be made through the designated airline of Poland or any other Polish organization which is or may be authorized to settle in freely convertible currency.

(c) The revenues earned from sales performed under subparagraph (b) may, at the option of the designated airline of the United States, be used in whole or in part to cover its local expenses connected with the operation of its air services and with the activities of its local representatives. Local expenses for which such revenues may be used include office maintenance (including salaries and rent of offices and housing), maintenance of company vehicles, advertising, landing and other airport fees, handling fees, and fuel necessary for servicing aircraft.

(d) Any revenues in excess of sums locally disbursed in accordance with paragraph (c) may be converted and remitted in United States currency.

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3. (a) The designated airline of Poland will enjoy the right to operate on its route the following number of roundtrip frequencies per week during the periods indicated :

<u>Period</u>	<u>Number of frequencies</u>
1973 summer season	2
1973/74 winter season	2
1974 summer season	3
1974/75 winter season	2
1975 summer season	3
1975/76 winter season	2
1976 summer season	3

(b) Additional frequencies will be operated only following approval by the United States authorities. Requests for such additional frequencies will be made by filing the proposed schedule through diplomatic channels at least 120 days but no more than 150 days before its proposed effective date, and the Polish authorities will be informed of the decision made by the United States authorities no later than 60 days after the United States authorities receive the request. Any such additional frequencies which may be approved by the United States authorities will be exercised without traffic rights between the United Kingdom and New York and between France and New York.

4. The foregoing understandings and any other necessary matters will be reviewed in consultations between the Contracting Parties to be initiated no later than December 31, 1975. If agreement on amending these understandings, in whole or in part, is not reached before October 31, 1976, the Air Transport Agreement will automatically terminate on that date.

If these understandings are acceptable to your Government, I have the honor to propose that this note and your reply to that effect constitute an agreement between our two Governments relating to the Air Transport Agreement.

Accept, Excellency, the renewed assurances of my highest consideration.

WALTER J STOESSEL JR.

His Excellency

MIECZYSLAW ZAJFRYD,  
*Minister of Transport of the  
 Polish People's Republic,  
 Warsaw.*

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[POLISH TEXT OF THE UNITED STATES NOTE]

AMBASADA  
STANÓW ZJEDNOCZONYCH AMERYKI

Warszawa, dnia 19 lipca 1972 r.

Ekscelencjo,

Mam zaszczyt powołać się na Umowę o komunikacji lotniczej, podpisaną w dniu dzisiejszym między Rządem Stanów Zjednoczonych Ameryki a Rządem Polskiej Rzeczypospolitej Ludowej. W celu zapewnienia, by Umowa odzwierciedlała zrównoważoną wymianę możliwości przyznanych przedsiębiorstwom lotniczym każdego z krajów, po uwzględnieniu charakterystyki odnośnych rynków oraz możliwości handlowych, które każdy z krajów jest w stanie udostępnić drugiemu, proponuję w imieniu mojego Rządu, ażeby Umowa została uzupełniona następującymi uzgodnieniami:

1. Wyznaczone przedsiębiorstwo lotnicze Polski korzystać będzie z pełnych praw i przywilejów wynikających z Artykułu 11 Umowy.
2. Rząd Polski nie jest w stanie obecnie wprowadzić w życie tej części Artykułu 11, która dotyczy prawa sprzedaży przewozów lotniczych w Polsce za walutę polską. Jednakże wyznaczone przedsiębiorstwo lotnicze Stanów Zjednoczonych będzie poza tym korzystać z pełnych praw i przywilejów wynikających z Artykułu 11 Umowy.

W odniesieniu do ustępów B i C Artykułu 11 wymienione prawa i przywileje będą stosowane jak następuje:

Jego Ekscelencja,

MIECZYŚLAW ZAJFRYD

Minister Komunikacji  
Polskiej Rzeczypospolitej Ludowej

Warszawa

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/a/ Wyznaczone przedsiębiorstwo lotnicze Stanów Zjednoczonych będzie miało prawo sprzedaży przewozów lotniczych w Polsce bezpośrednio każdej osobie za waluty wolno-wymienialne przy użyciu własnych dokumentów przewozowych.

/b/ Sprzedaże za walutę polską dokonywane będą poprzez wyznaczone przedsiębiorstwo lotnicze polskie lub inną organizację polską, która jest lub może być upoważniona do rozliczania się w walutach wolno-wymienialnych.

/c/ Wpływy uzyskane ze sprzedaży zgodnie z punktem /b/ mogą, według uznania wyznaczonego przedsiębiorstwa lotniczego Stanów Zjednoczonych, być użyte w całości lub w części na pokrycie jego lokalnych wydatków związanych z eksploatacją jego linii lotniczych i z działalnością jego lokalnych przedstawicieli. Lokalne wydatki, na które przychody te mogą być użyte, obejmują utrzymanie biura /łącznie z placami oraz czynszami za najem biur i mieszkań/, utrzymanie pojazdów przedsiębiorstwa, reklamę, opłaty za lądowanie i inne opłaty lotniskowe, opłaty za obsługę naziemną oraz paliwo potrzebne do obsługi samolotów.

/d/ Nadwyżki ponad lokalne wydatki dokonane zgodnie z punktem /c/ mogą być przeliczone i przekazane w walucie Stanów Zjednoczonych.

3. /a/ Wyznaczone przedsiębiorstwo polskie korzystać będzie z prawa wykonywania lotów na swoich liniach z następującą częstotliwością tygodniowo w każdym kierunku, w podanych okresach:

	<u>OKRES</u>	<u>CZĘSTOTLIWOŚĆ</u>
1973	- sezon letni	2
1973/74	- sezon zimowy	2
1974	- sezon letni	3
1974/75	- sezon zimowy	2
1975	- sezon letni	3
1975/76	- sezon zimowy	2
1976	- sezon letni	3

/b/ Dodatkowe częstotliwości będą ustanowione jedynie za zgodą władz Stanów Zjednoczonych. Wnioski w sprawie dodatkowych częstotliwości będą przedkładane w formie zgłoszenia proponowanego rozkładu, drogą dyplomatyczną, przynajmniej 120 dni, jednak nie wcześniej niż 150 dni, przed zaproponowaną datą wprowadzenia rozkładu, a władze polskie zostaną poinformowane o decyzji podjętej przez władze Stanów Zjednoczonych nie później niż 60 dni po otrzymaniu przez nie wniosku. Dodatkowe częstotliwości, które byłyby aprobowane przez władze Stanów Zjednoczonych, wykonywane będą bez praw handlowych pomiędzy Zjednoczonym Królestwem a Nowym Jorkiem i pomiędzy Francją a Nowym Jorkiem.

4. Powyższe uzgodnienia i inne niezbędne sprawy będą przedmiotem konsultacji pomiędzy Umawiającymi się Stronami, które powinny być rozpoczęte nie później niż 31 grudnia 1975 roku. Jeżeli nie osiągnie się porozumienia w sprawie zmiany tych uzgodnień w całości lub w części przed 31 października 1976 roku, Umowa o komunikacji lotniczej wygaśnie automatycznie z tą datą.

Jeżeli niniejsze uzgodnienia mogą być przyjęte przez Pański Rząd, mam zaszczyt zaproponować by niniejsza nota i Pańska odpowiedź w tej sprawie stanowiły porozumienie pomiędzy naszymi dwoma Rządami w odniesieniu do Umowy o komunikacji lotniczej.

Proszę przyjąć, Ekscelencjo, ponowne zapewnienia o moim najwyższym poważaniu.-

*Robert T. Stoeszel*



*The Polish Minister of Transport to the American Ambassador*

MINISTER KOMUNIKACJI  
POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ

Warszawa, dnia 19 lipca 1972 r.

Ekscelencjo,

Mam zaszczyt powołać się na Pańską notę z dnia 19 lipca 1972 r.  
o następującym brzmieniu:

„Mam zaszczyt powołać się na Umowę o komunikacji lotniczej,  
podpisaną w dniu dzisiejszym między Rządem Stanów Zjednoczo-  
nych Ameryki a Rządem Polskiej Rzeczypospolitej Ludowej.  
W celu zapewnienia, by Umowa odzwierciedlała zrównoważoną wy-  
mianę możliwości przyznanych przedsiębiorstwom lotniczym każde-  
go z krajów, po uwzględnieniu charakterystyki odnośnych rynków  
oraz możliwości handlowych, które każdy z krajów jest w stanie  
udostępnić drugiemu, proponuję w imieniu mojego Rządu, ażeby Umo-  
wa została uzupełniona następującymi uzgodnieniami:

1. Wyznaczone przedsiębiorstwo lotnicze Polski korzystać będzie z pełnych praw i przywilejów wynikających z Artykułu 11 Umowy.
2. Rząd Polski nie jest w stanie obecnie wprowadzić w życie tej części Artykułu 11, która dotyczy prawa sprzedaży przewozów lotniczych w Polsce na walutę polską. Jednakże wyznaczone przedsiębiorstwo lotnicze Stanów Zjednoczonych będzie poza tym korzystać z pełnych praw i przywilejów wynikających z Artykułu 11 Umowy. W odniesieniu do ustępów B i C Artykułu 11 wymienione prawa i przywileje będą stosowane jak następuje:

Jego Ekscelencja

WALTER J. STOESSEL, JR.

Ambasador Stanów Zjednoczonych Ameryki  
w Warszawie

/a/ Wyznaczone przedsiębiorstwo lotnicze Stanów Zjednoczonych będzie miało prawo sprzedaży przewozów lotniczych w Polsce bezpośrednio każdej osobie za waluty wolno -wymienialne przy użyciu własnych dokumentów przewozowych.

/b/ Sprzedaże za walutę polską dokonywane będą poprzez wyznaczone przedsiębiorstwo lotnicze polskie lub inną organizację polską, która jest lub może być upoważniona do rozliczania się w walutach wolno-wymienialnych.

/c/ Wpływy uzyskane ze sprzedaży zgodnie z punktem /b/ mogą, według uznania wyznaczonego przedsiębiorstwa lotniczego Stanów Zjednoczonych, być użyte w całości lub w części na pokrycie jego lokalnych wydatków związanych z eksploatacją jego linii lotniczych i z działalnością jego lokalnych przedstawicieli. Lokalne wydatki, na które przychody te mogą być użyte, obejmują utrzymanie biura /łącznie z płacami oraz czynszami za najem biur i mieszkań/, utrzymanie pojazdów przedsiębiorstwa, reklamę, opłaty za lądowanie i inne opłaty lotniskowe, opłaty za obsługę naziemną oraz paliwo potrzebne do obsługi samolotów.

/d/ Nadwyżki ponad lokalne wydatki dokonane zgodnie z punktem /c/ mogą być przeliczone i przekazane w walucie Stanów Zjednoczonych.

3. /a/ Wyznaczone przedsiębiorstwo polskie korzystać będzie z prawa wykonywania lotów na swoich liniach z następującą częstotliwością tygodniowo w każdym kierunku, w podanych okresach:

	<u>OKRES</u>	<u>CZĘSTOTLIWOŚĆ</u>
1973	- sezon letni	2
1973/74	- sezon zimowy	2
1974	- sezon letni	3
1974/75	- sezon zimowy	2
1975	- sezon letni	3
1975/76	- sezon zimowy	2
1976	- sezon letni	3

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/b/ Dodatkowe częstotliwości będą ustanowione jedynie za zgodą władz Stanów Zjednoczonych. Wnioski w sprawie dodatkowych częstotliwości będą przedkładane w formie zgłoszenia proponowanego rozkładu, drogą dyplomatyczną, przynajmniej 120 dni, jednak nie wcześniej niż 150 dni, przed zaproponowaną datą wprowadzenia rozkładu, a władze polskie zostaną poinformowane o decyzji podjętej przez władze Stanów Zjednoczonych nie później niż 60 dni po otrzymaniu przez nie wniosku. Dodatkowe częstotliwości, które byłyby aprobowane przez władze Stanów Zjednoczonych wykonywane będą bez praw handlowych pomiędzy Zjednoczonym Królestwem a Nowym Jorkiem i pomiędzy Francją a Nowym Jorkiem.

4. Powyższe uzgodnienia i inne niezbędne sprawy będą przedmiotem konsultacji pomiędzy Umawiającymi się Stronami, które powinny być rozpoczęte nie później niż 31 grudnia 1975 roku. Jeżeli nie osiągnie się porozumienia w sprawie zmiany tych uzgodnień w całości lub w części przed 31 października 1976 roku, Umowa o komunikacji lotniczej wygaśnie automatycznie z tą datą.

Jeżeli niniejsze uzgodnienia mogą być przyjęte przez Pański Rząd, mam zaszczyt zaproponować by niniejsza nota i Pańska odpowiedź w tej sprawie stanowiły porozumienie pomiędzy naszymi dwoma Rządami w odniesieniu do Umowy o komunikacji lotniczej.

Proszę przyjąć, Ekscelencjo, ponowne zapewnienia o moim najwyższym poważaniu."

Mam zaszczyt potwierdzić zgodę mojego Rządu na powyższą propozycję.



[ENGLISH TEXT OF THE POLISH NOTE]

MINISTER OF TRANSPORT  
OF THE POLISH PEOPLE'S REPUBLICWARSAW, *July 19, 1972.*

## EXCELLENCY :

I have the honor to refer to your note of July 19, 1972 the text of which reads as follows :

“I have the honor to refer to the Air Transport Agreement signed today between the Government of the United States of America and the Government of the Polish People's Republic. In order to assure that the Agreement reflects an equitable exchange of opportunities for the airlines of each country, after taking into account the nature of the respective markets and the commercial access which each country is able to make available to the other, I propose, on behalf of my Government, that the Agreement be subject to the following supplementary understandings :

“1. The designated airline of Poland will enjoy the full rights and privileges of Article 11 of the Agreement.

“2. The Government of Poland is unable at this time to implement that part of Article 11 which contemplates the right to sell air transportation in Poland for Polish currency. However, the designated airline of the United States will otherwise enjoy the full rights and privileges of Article 11 of the Agreement. With respect to paragraphs B and C of Article 11, these rights and privileges will be implemented as follows :

“(a) The designated airline of the United States will have the right to sell air transportation in Poland directly to any person for freely convertible currency using its own transportation documents.

“(b) Sales for Polish currency will be made through the designated airline of Poland or any other Polish organization which is or may be authorized to settle in freely convertible currency.

“(c) The revenues earned from sales performed under subparagraph (b) may, at the option of the designated airline of the United States, be used in whole or in part to cover its local expenses connected with the operation of its air services and with the activities of its local representatives. Local expenses for which such revenues may be used include office maintenance (including salaries and rent of offices and housing), maintenance of company vehicles, advertising, landing and other airport fees, handling fees, and fuel necessary for servicing aircraft.

“(d) Any revenues in excess of sums locally disbursed in accordance with paragraph (c) may be converted and remitted in United States currency.

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“3. (a) The designated airline of Poland will enjoy the right to operate on its route the following number of roundtrip frequencies per week during the periods indicated :

<u>Period</u>	<u>Number of frequencies</u>
1973 summer season	2
1973/74 winter season	2
1974 summer season	3
1974/75 winter season	2
1975 summer season	3
1975/76 winter season	2
1976 summer season	3

(b) Additional frequencies will be operated only following approval by the United States authorities. Requests for such additional frequencies will be made by filing the proposed schedule through diplomatic channels at least 120 days but no more than 150 days before its proposed effective date, and the Polish authorities will be informed of the decision made by the United States authorities no later than 60 days after the United States authorities receive the request. Any such additional frequencies which may be approved by the United States authorities will be exercised without traffic rights between the United Kingdom and New York and between France and New York.

“4. The foregoing understandings and any other necessary matters will be reviewed in consultations between the Contracting Parties to be initiated no later than December 31, 1975. If agreement on amending these understandings, in whole or in part, is not reached before October 31, 1976, the Air Transport Agreement will automatically terminate on that date.

“If these understandings are acceptable to your Government, I have the honor to propose that this note and your reply to that effect constitute an agreement between our two Governments relating to the Air Transport Agreement.

“Accept, Excellency, the renewed assurances of my highest consideration.”

I have the honor to confirm that the foregoing proposal is acceptable to my Government.

MIECZYSLAW ZAJFRYD

His Excellency

WALTER J. STOESEL, JR.,

*Ambassador of the United States of America,  
Warsaw.*



**Annex 4**

Comprehensive Anti-Apartheid Act of 1986

(1987) 26 *International Legal Materials* 77

UNITED STATES: COMPREHENSIVE ANTI-APARTHEID  
 ACT OF 1986\*  
 [October 2, 1986]  
 +Cite as 26 I.L.M. 77 (1987)+

I.L.M. Background/Content Summary

The Comprehensive Anti-Apartheid Act of 1986 marks the most recent United States response to the continuing practice and policy of apartheid by the Government of South Africa. The Act may be seen as part of an evolving policy which has led to the increased use of economic sanctions as means to promote peaceful change in South Africa. The Export Administration Amendments Act of 1985 [24 I.L.M. 1370 (1985)] provided for the extension of certain export controls to South Africa, and Executive Order 12532 of September 9, 1985 [24 I.L.M. 1488 (1985)] authorized the Secretary of the Treasury and the Secretary of Commerce to promulgate specific rules and regulations limiting U.S. business and financial transactions with South Africa.

The recent Act imposes stiff economic sanctions on South Africa, including a ban on all new American investment in South African businesses, a ban on the importation of such products as steel and coal and the cancellation of landing rights in the United States for South African airlines. In passing the Act and in overriding the Presidential veto, the Congress has gone beyond the Administration's policy of limited sanctions. Through the specific nature of the Act's provisions, the Congress has also gone beyond many of the United Nations General Assembly and Security Council recommendations concerning the implementation of sanctions against South Africa.

The Presidential Statement of October 2, 1986 and the Executive Order 12571 of October 27, 1986 acknowledge the Congressional vote overriding the President's veto and call upon the affected governmental agencies to implement the Act's provisions. Since October 2, 1986, the State Department as well as the Departments of Commerce, Transportation and the Treasury have issued regulations pursuant to the provisions of the Act. It should be noted, however, that further regulations may be expected in the coming months.

. . . . .

--Statement by the President at I.L.M. page 78

--Executive Order 12571 at I.L.M. page 78

--Comprehensive Anti-Apartheid Act of 1986, October 2, 1986.  
 [see "Table of Contents" in Section 2 of the Act at I.L.M. page 79]

--Technical Corrections to the Act at I.L.M. page 95

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\*[Presidential Statement and Executive Order are reproduced from U.S. Weekly Compilation of Presidential Documents, Volume 22, Number 40 (October 6, 1986), p. 1321 and Volume 22, Number 44 (November 3, 1986), pp. 1459-60. The Comprehensive Anti-Apartheid Act of 1986 is reproduced from U.S. Public Law 99-440 of October 2, 1986. The Technical Corrections are reproduced from the enrolled text of U.S. Public Law 99-631 of November 7, 1986. The implementing regulations start at I.L.M. page 98.]



## Comprehensive Anti-Apartheid Act of 1986

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*Statement by the President.  
October 2, 1986*

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Today's Senate vote should not be viewed as the final chapter in America's efforts, along with our allies, to address the plight of the people of South Africa. Instead, it underscores that America—and that means all of us—opposes apartheid, a malevolent and archaic system totally alien to our ideals. The debate, which culminated in today's vote, was not whether or not to oppose apartheid but, instead, how best to oppose it and how best to bring freedom to that troubled country.

I deeply regret that Congress has seen fit to override my veto of the Comprehensive Anti-Apartheid Act of 1986. Punitive sanctions, I believe, are not the best course of action; they hurt the very people they are intended to help. My hope is that these punitive sanctions do not lead to more violence and more repression. Our administration will, nevertheless, implement the law. It must be recognized, however, that this will not solve the serious problems that plague that country. The United States must also move forward with positive measures to encourage peaceful change and advance the cause of democracy in South Africa.

Now is the time for South Africa's Government to act with courage and good sense to avert a crisis. Moderate black leaders who are committed to democracy and oppose revolutionary violence are ready to work for peaceful change. They should not be kept waiting. It would be tragic to lose this opportunity to create a truly free society which respects the rights of the majority, the minority, and the individual. There is still time for orderly change and peaceful reform. South Africans of good will, black

and white, should seize the moment.

*Note: As enacted, H.R. 4868 is Public Law 99-440.*

## Implementation of the Comprehensive Anti-Apartheid Act

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*Executive Order 12571. October 27, 1986*

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By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Comprehensive Anti-Apartheid Act of 1986 (Public Law 99-440) ("the Act"), and section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

*Section 1. Implementation of the Act.* All affected Executive departments and agencies shall take all steps necessary, consistent with the Constitution, to implement the requirements of the Act.

*Sec. 2. Functions of the Department of State.* The Secretary of State shall be responsible for implementing Sections 208, 302 (to the extent it relates to temporary imports), 303(b), 307(a)(2), 317, 318, 401(b)(2), 501(b), 504, 506, and 508 of the Act. Responsibility for transmitting the report required by Section 509 of the Act is delegated to the Secretary of State.

*Sec. 3. Functions of the Department of the Treasury.* The Secretary of the Treasury shall be responsible for implementing Sections 301, 302 (to the extent it relates to permanent imports), 303, 305, 308, 309, 310, 319, 320, 323(a)(1), and 510 of the Act.

*Sec. 4. Functions of the Department of Commerce.* The Secretary of Commerce shall be responsible for implementing Sections 304, 321, and 502(b) of the Act.

*Sec. 5. Functions of the Department of Defense.* The Secretary of Defense shall be responsible for implementing Section 322 of the Act.

*Sec. 6. Functions of the United States Trade Representative.* The United States Trade Representative shall be responsible for implementing Sections 323(a)(2) and (b) of the Act and Section 402 (except for the imposition of import restrictions).

*Sec. 7. Functions of the Agency for International Development.* The Administrator of the Agency for International Development shall be responsible for implementing Sections 210 (to the extent of determining the existence of food shortages only) and 505 of the Act.

*Sec. 8. Functions of the Department of Transportation.* The Secretary of Transportation shall take the steps specified in Sections 306(a)(2) and (3).

*Sec. 9. Definition of Strategic Minerals.* The Secretary of State shall be responsible, in consultation with the Secretary of Commerce and the Secretary of Defense, for determining which articles are strategic minerals within the meaning of the Act.

*Sec. 10. Regulatory and Enforcement Authority.* The head of each agency assigned functions by this Order is delegated authority under Sections 601 and 603 of the Act to the extent that they relate to functions delegated by this Order or conferred by the Act.

*Sec. 11. Coordination and Policy Guidance.* The Secretary of State is responsible for ensuring that implementation of the Act is effectively integrated with and is supportive of the foreign policy of the United States. In carrying out their respective functions and responsibilities, the head of each agency assigned responsibility under this Order shall consult with the heads of other affected agencies.

*Sec. 12. Inter-Agency Coordinating Committee.* An Inter-Agency Coordinating Committee on South Africa is hereby established, under the Chairmanship of the Secretary of State. The Committee shall also include the Secretary of the Treasury, Sec-

retary of Defense, Attorney General, Secretary of Commerce, Secretary of Transportation, Secretary of Agriculture, the United States Trade Representative, and other members as appropriate. The Committee shall serve as a forum for consultations on United States policy concerning South Africa and shall monitor implementation of the Act to ensure consistency with United States policy objectives.

*Sec. 13. Reservations of Functions.* All authority not expressly delegated or granted herein is retained by the President. The President retains the authority to exercise any of the authority delegated or granted in this Order.

*Sec. 14. Effective Date.* This Order shall be effective immediately.

Ronald Reagan

The White House,  
October 27, 1986.

[Filed with the Office of the Federal Register, 12:06 p.m., October 28, 1986]

100 STAT. 1086

PUBLIC LAW 99-440—OCT. 2, 1986

Public Law 99-440  
99th Congress

An Act

Oct. 2, 1986  
[H.R. 4868]

To prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Comprehensive  
Anti-Apartheid  
Act of 1986.  
Human rights.  
Terrorism.  
22 USC 5001  
note.

SHORT TITLE

SECTION 1. This Act may be cited as the "Comprehensive Anti-Apartheid Act of 1986".

TABLE OF CONTENTS

SEC. 2. The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Definitions.
- Sec. 4. Purpose.

TITLE I—POLICY OF THE UNITED STATES WITH RESPECT TO ENDING APARTHEID

- Sec. 101. Policy toward the Government of South Africa.
- Sec. 102. Policy toward the African National Congress, etc.
- Sec. 103. Policy toward the victims of apartheid.
- Sec. 104. Policy toward other countries in Southern Africa.
- Sec. 105. Policy toward "frontline" states.
- Sec. 106. Policy toward a negotiated settlement.
- Sec. 107. Policy toward international cooperation on measures to end apartheid.
- Sec. 108. Policy toward necklacing.
- Sec. 109. United States Ambassador to meet with Nelson Mandela.
- Sec. 110. Policy toward the recruitment and training of black South Africans by United States employers.

TITLE II—MEASURES TO ASSIST VICTIMS OF APARTHEID

- Sec. 201. Scholarships for the victims of apartheid.
- Sec. 202. Human rights fund.
- Sec. 203. Expanding participation in the South African economy.
- Sec. 204. Export-Import Bank of the United States.
- Sec. 205. Labor practices of the United States Government in South Africa.
- Sec. 206. Welfare and protection of the victims of apartheid employed by the United States.
- Sec. 207. Employment practices of United States nationals in South Africa.
- Sec. 208. Code of Conduct.
- Sec. 209. Prohibition on assistance.
- Sec. 210. Use of the African Emergency Reserve.
- Sec. 211. Prohibition on assistance to any person or group engaging in "necklacing".
- Sec. 212. Participation of South Africa in agricultural export credit and promotion programs.

TITLE III—MEASURES BY THE UNITED STATES TO UNDERMINE APARTHEID

- Sec. 301. Prohibition on the importation of krugerrands.
- Sec. 302. Prohibition on the importation of military articles.
- Sec. 303. Prohibition on the importation of products from parastatal organizations.
- Sec. 304. Prohibition on computer exports to South Africa.

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- Sec. 305. Prohibition on loans to the Government of South Africa.
- Sec. 306. Prohibition on air transportation with South Africa.
- Sec. 307. Prohibitions on nuclear trade with South Africa.
- Sec. 308. Government of South Africa bank accounts.
- Sec. 309. Prohibition on importation of uranium and coal from South Africa.
- Sec. 310. Prohibition on new investment in South Africa.
- Sec. 311. Termination of certain provisions.
- Sec. 312. Policy toward violence or terrorism.
- Sec. 313. Termination of tax treaty and protocol.
- Sec. 314. Prohibition on United States Government procurement from South Africa.
- Sec. 315. Prohibition on the promotion of United States tourism in South Africa.
- Sec. 316. Prohibition on United States Government assistance to, investment in, or subsidy for trade with, South Africa.
- Sec. 317. Prohibition on sale or export of items on Munition List.
- Sec. 318. Munitions list sales, notification.
- Sec. 319. Prohibition on importation of South African agricultural products and food.
- Sec. 320. Prohibition on importation of iron and steel.
- Sec. 321. Prohibition on exports of crude oil and petroleum products.
- Sec. 322. Prohibition on cooperation with the armed forces of South Africa.
- Sec. 323. Prohibition on sugar imports.

## TITLE IV—MULTILATERAL MEASURES TO UNDERMINE APARTHEID

- Sec. 401. Negotiating authority.
- Sec. 402. Limitation on imports from other countries.
- Sec. 403. Private right of action.

## TITLE V—FUTURE POLICY TOWARD SOUTH AFRICA

- Sec. 501. Additional measures.
- Sec. 502. Lifting of prohibitions.
- Sec. 503. Study of health conditions in the "homelands" areas of South Africa.
- Sec. 504. Reports on South African imports.
- Sec. 505. Study and report on the economy of southern Africa.
- Sec. 506. Report on relations between other industrialized democracies and South Africa.
- Sec. 507. Study and report on deposit accounts of South African nationals in United States banks.
- Sec. 508. Study and report on the violation of the international embargo on sale and export of military articles to South Africa.
- Sec. 509. Report on Communist activities in South Africa.
- Sec. 510. Prohibition on the importation of Soviet gold coins.
- Sec. 511. Economic support for disadvantaged South Africans.
- Sec. 512. Report on the African National Congress.

## TITLE VI—ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

- Sec. 601. Regulatory authority.
- Sec. 602. Congressional priority procedures.
- Sec. 603. Enforcement and penalties.
- Sec. 604. Applicability to evasions of Act.
- Sec. 605. Construction of Act.
- Sec. 606. State or local anti-apartheid laws, enforce.

## DEFINITIONS

## SEC. 3. As used in this Act—

(1) the term "Code of Conduct" refers to the principles set forth in section 208(a);

(2) the term "controlled South African entity" means—

(A) a corporation, partnership, or other business association or entity organized in South Africa and owned or controlled, directly or indirectly, by a national of the United States; or

(B) a branch, office, agency, or sole proprietorship in South Africa of a national of the United States;

(3) the term "loan"—

(A) means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or

22 USC 5001.

100 STAT. 1088

## PUBLIC LAW 99-440—OCT. 2, 1986

guarantee of the obligation of another to repay an extension of funds or credit, including—

- (i) overdrafts,
- (ii) currency swaps,
- (iii) the purchase of debt or equity securities issued by the Government of South Africa or a South African entity on or after the date of enactment of this Act,
- (iv) the purchase of a loan made by another person,
- (v) the sale of financial assets subject to an agreement to repurchase, and
- (vi) a renewal or refinancing whereby funds or credits are transferred or extended to the Government of South Africa or a South African entity, and

(B) does not include—

- (i) normal short-term trade financing, as by letters of credit or similar trade credits;
- (ii) sales on open account in cases where such sales are normal business practice; or
- (iii) rescheduling of existing loans, if no new funds or credits are thereby extended to a South African entity or the Government of South Africa;

(4) the term "new investment"—

(A) means—

- (i) a commitment or contribution of funds or other assets, and
- (ii) a loan or other extension of credit, and

(B) does not include—

- (i) the reinvestment of profits generated by a controlled South African entity into that same controlled South African entity or the investment of such profits in a South African entity;
- (ii) contributions of money or other assets where such contributions are necessary to enable a controlled South African entity to operate in an economically sound manner, without expanding its operations; or
- (iii) the ownership or control of a share or interest in a South African entity or a controlled South African entity or a debt or equity security issued by the Government of South Africa or a South African entity before the date of enactment of this Act, or the transfer or acquisition of such a share, interest, or debt or equity security, if any such transfer or acquisition does not result in a payment, contribution of funds or assets, or credit to a South African entity, a controlled South African entity, or the Government of South Africa;

(5) the term "national of the United States" means—

(A) a natural person who is a citizen of the United States or who owes permanent allegiance to the United States or is an alien lawfully admitted for permanent residence in the United States, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); or

(B) a corporation, partnership, or other business association which is organized under the laws of the United States, any State or territory thereof, or the District of Columbia;

(6) the term "South Africa" includes—

(A) the Republic of South Africa;

(B) any territory under the Administration, legal or illegal, of South Africa; and

(C) the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana Ciskei, and Venda; and

(7) the term "South African entity" means—

(A) a corporation, partnership, or other business association or entity organized in South Africa; or

(B) a branch, office, agency, or sole proprietorship in South Africa of a person that resides or is organized outside South Africa; and

(8) the term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

#### PURPOSE

SEC. 4. The purpose of this Act is to set forth a comprehensive and complete framework to guide the efforts of the United States in helping to bring an end to apartheid in South Africa and lead to the establishment of a nonracial, democratic form of government. This Act sets out United States policy toward the Government of South Africa, the victims of apartheid, and the other states in southern Africa. It also provides the President with additional authority to work with the other industrial democracies to help end apartheid and establish democracy in South Africa. 22 USC 5002.

### TITLE I—POLICY OF THE UNITED STATES WITH RESPECT TO ENDING APARTHEID

#### POLICY TOWARD THE GOVERNMENT OF SOUTH AFRICA

SEC. 101. (a) United States policy toward the Government of South Africa shall be designed to bring about reforms in that system of government that will lead to the establishment of a nonracial democracy. 22 USC 5011.

(b) The United States will work toward this goal by encouraging the Government of South Africa to—

(1) repeal the present state of emergency and respect the principle of equal justice under law for citizens of all races;

(2) release Nelson Mandela, Govan Mbeki, Walter Sisulu, black trade union leaders, and all political prisoners;

(3) permit the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process;

(4) establish a timetable for the elimination of apartheid laws;

(5) negotiate with representatives of all racial groups in South Africa the future political system in South Africa; and

(6) end military and paramilitary activities aimed at neighboring states.

(c) The United States will encourage the actions set forth in subsection (b) through economic, political, and diplomatic measures as set forth in this Act. The United States will adjust its actions toward the Government of South Africa to reflect the progress or lack of progress made by the Government of South Africa in meeting the goal set forth in subsection (a).

Nelson Mandela.  
Govan Mbeki.  
Walter Sisulu.

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## POLICY TOWARD THE AFRICAN NATIONAL CONGRESS, ETC.

Pan African  
Congress.  
22 USC 5012.

SEC. 102 (a) United States policy toward the African National Congress, the Pan African Congress, and their affiliates shall be designed to bring about a suspension of violence that will lead to the start of negotiations designed to bring about a nonracial and genuine democracy in South Africa.

(b) The United States shall work toward this goal by encouraging the African National Congress and the Pan African Congress, and their affiliates, to—

(1) suspend terrorist activities so that negotiations with the Government of South Africa and other groups representing black South Africans will be possible;

(2) make known their commitment to a free and democratic post-apartheid South Africa;

(3) agree to enter into negotiations with the South African Government and other groups representing black South Africans for the peaceful solution of the problems of South Africa;

(4) reexamine their ties to the South African Communist Party.

(c) The United States will encourage the actions set forth in subsection (b) through political and diplomatic measures. The United States will adjust its actions toward the Government of South Africa not only to reflect progress or lack of progress made by the Government of South Africa in meeting the goal set forth in subsection 101(a) but also to reflect progress or lack of progress made by the ANC and other organizations in meeting the goal set forth in subsection (a) of this section.

## POLICY TOWARD THE VICTIMS OF APARTHEID

22 USC 5013.

SEC. 103. (a) The United States policy toward the victims of apartheid is to use economic, political, diplomatic, and other effective means to achieve the removal of the root cause of their victimization, which is the apartheid system. In anticipation of the removal of the system of apartheid and as a further means of challenging that system, it is the policy of the United States to assist these victims of apartheid as individuals and through organizations to overcome the handicaps imposed on them by the system of apartheid and to help prepare them for their rightful roles as full participants in the political, social, economic, and intellectual life of their country in the post-apartheid South Africa envisioned by this Act.

(b) The United States will work toward the purposes of subsection (a) by—

(1) providing assistance to South African victims of apartheid without discrimination by race, color, sex, religious belief, or political orientation, to take advantage of educational opportunities in South Africa and in the United States to prepare for leadership positions in a post-apartheid South Africa;

(2) assisting victims of apartheid;

(3) aiding individuals or groups in South Africa whose goals are to aid victims of apartheid or foster nonviolent legal or political challenges to the apartheid laws;

(4) furnishing direct financial assistance to those whose non-violent activities had led to their arrest or detention by the

South African authorities and (B) to the families of those killed by terrorist acts such as “necklacings”;

(5) intervening at the highest political levels in South Africa to express the strong desire of the United States to see the development in South Africa of a nonracial democratic society;

(6) supporting the rights of the victims of apartheid through political, economic, or other sanctions in the event the Government of South Africa fails to make progress toward the removal of the apartheid laws and the establishment of such democracy; and

(7) supporting the rights of all Africans to be free of terrorist attacks by setting a time limit after which the United States will pursue diplomatic and political measures against those promoting terrorism and against those countries harboring such groups so as to achieve the objectives of this Act.

#### POLICY TOWARD OTHER COUNTRIES IN SOUTHERN AFRICA

SEC. 104. (a) The United States policy toward the other countries in the Southern African region shall be designed to encourage democratic forms of government, full respect for human rights, an end to cross-border terrorism, political independence, and economic development. 22 USC 5014.

(b) The United States will work toward the purposes of subsection (a) by—

(1) helping to secure the independence of Namibia and the establishment of Namibia as a nonracial democracy in accordance with appropriate United Nations Security Council resolutions; Namibia.

(2) supporting the removal of all foreign military forces from the region;

(3) encouraging the nations of the region to settle differences through peaceful means;

(4) promoting economic development through bilateral and multilateral economic assistance targeted at increasing opportunities in the productive sectors of national economies, with a particular emphasis on increasing opportunities for non-governmental economic activities;

(5) encouraging, and when necessary, strongly demanding, that all countries of the region respect the human rights of their citizens and noncitizens residing in the country, and especially the release of persons persecuted for their political beliefs or detained without trial;

(6) encouraging, and when necessary, strongly demanding that all countries of the region take effective action to end cross-border terrorism; and

(7) providing appropriate assistance, within the limitations of American responsibilities at home and in other regions, to assist regional economic cooperation and the development of interregional transportation and other capital facilities necessary for economic growth. Transportation.

#### POLICY TOWARD “FRONTLINE” STATES

SEC. 105. It is the sense of the Congress that the President should discuss with the governments of the African “frontline” states the President of U.S. Transportation. 22 USC 5015.



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effects on them of disruptions in transportation or other economic links through South Africa and of means of reducing those effects.

## POLICY TOWARD A NEGOTIATED SETTLEMENT

22 USC 5016.

SEC. 106. (a)(1) United States policy will seek to promote negotiations among representatives of all citizens of South Africa to determine a future political system that would permit all citizens to be full participants in the governance of their country. The United States recognizes that important and legitimate political parties in South Africa include several organizations that have been banned and will work for the unbanning of such organizations in order to permit legitimate political viewpoints to be represented at such negotiations. The United States also recognizes that some of the organizations fighting apartheid have become infiltrated by Communists and that Communists serve on the governing boards of such organizations.

Communists.

President of U.S.  
Communists.

(2) To this end, it is the sense of the Congress that the President, the Secretary of State, or other appropriate high-level United States officials should meet with the leaders of opposition organizations of South Africa, particularly but not limited to those organizations representing the black majority. Furthermore, the President, in concert with the major allies of the United States and other interested parties, should seek to bring together opposition political leaders with leaders of the Government of South Africa for the purpose of negotiations to achieve a transition to the post-apartheid democracy envisioned in this Act.

(b) The United States will encourage the Government of South Africa and all participants to the negotiations to respect the right of all South Africans to form political parties, express political opinions, and otherwise participate in the political process without fear of retribution by either governmental or nongovernmental organizations. It is the sense of the Congress that a suspension of violence is an essential precondition for the holding of negotiations. The United States calls upon all parties to the conflict to agree to a suspension of violence.

(c) The United States will work toward the achievement of agreement to suspend violence and begin negotiations through coordinated actions with the major Western allies and with the governments of the countries in the region.

Great Britain.  
Canada.  
France.  
Italy.  
Japan.  
West Germany.

(d) It is the sense of the Congress that the achievement of an agreement for negotiations could be promoted if the United States and its major allies, such as Great Britain, Canada, France, Italy, Japan, and West Germany, would hold a meeting to develop a four-point plan to discuss with the Government of South Africa a proposal for stages of multilateral assistance to South Africa in return for the Government of South Africa implementing—

Nelson Mandela.

(1) an end to the state of emergency and the release of the political prisoners, including Nelson Mandela;

African National  
Congress.  
Pan African  
Congress.  
Black  
Consciousness  
Movement.

(2) the unbanning of the African National Congress, the Pan African Congress, the Black Consciousness Movement, and all other groups willing to suspend terrorism and to participate in negotiations and a democratic process;

(3) a revocation of the Group Areas Act and the Population Registration Act and the granting of universal citizenship to all South Africans, including homeland residents; and

(4) the use of the international offices of a third party as an intermediary to bring about negotiations with the object of the establishment of power-sharing with the black majority.

**POLICY TOWARD INTERNATIONAL COOPERATION ON MEASURES TO END APARTHEID**

**SEC. 107. (a) The Congress finds that—**

22 USC 5017.

(1) international cooperation is a prerequisite to an effective anti-apartheid policy and to the suspension of terrorism in South Africa; and

(2) the situation in South Africa constitutes an emergency in international relations and that action is necessary for the protection of the essential security interests of the United States.

(b) Accordingly, the Congress urges the President to seek such cooperation among all individuals, groups, and nations.

**POLICY TOWARD NECKLACING**

**SEC. 108. It is the sense of the Congress that the African National Congress should strongly condemn and take effective actions against the execution by fire, commonly known as "necklacing", of any person in any country.**

African National Congress,  
22 USC 5018.

**UNITED STATES AMBASSADOR TO MEET WITH NELSON MANDELA**

**SEC. 109. It is the sense of the Senate that the United States Ambassador should promptly make a formal request to the South African Government for the United States Ambassador to meet with Nelson Mandela.**

Nelson Mandela,  
22 USC 5019.

**POLICY TOWARD THE RECRUITMENT AND TRAINING OF BLACK SOUTH AFRICANS BY UNITED STATES EMPLOYERS**

**SEC. 110. (a) The Congress finds that—**

22 USC 5020

(1) the policy of apartheid is abhorrent and morally repugnant;

(2) the United States believes strongly in the principles of democracy and individual freedoms;

(3) the United States endorses the policy of political participation of all citizens;

(4) a free, open, and vital economy is a primary means for achieving social equality and economic advancement for all citizens; and

(5) the United States is committed to a policy of securing and enhancing human rights and individual dignity throughout the world.

(b) It is the sense of the Congress that United States employers operating in South Africa are obliged both generally to actively oppose the policy and practices of apartheid and specifically to engage in recruitment and training of black and colored South Africans for management responsibilities.

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## TITLE II—MEASURES TO ASSIST VICTIMS OF APARTHEID

## SCHOLARSHIPS FOR THE VICTIMS OF APARTHEID

22 USC 2151c. SEC. 201. (a) Section 105(b) of the Foreign Assistance Act of 1961 is amended—

Education.  
Schools and  
colleges.

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraph:

99 Stat 260.

"(2)(A)(i) Of the amounts authorized to be appropriated to carry out this section for the fiscal years 1987, 1988, and 1989, not less than \$4,000,000 shall be used in each such fiscal year to finance education, training, and scholarships for the victims of apartheid, including teachers and other educational professionals, who are attending universities and colleges in South Africa. Amounts available to carry out this subparagraph shall be provided in accordance with the provisions of section 802(c) of the International Security and Development Cooperation Act of 1985.

22 USC 2346.

"(ii) Funds made available for each such fiscal year for purposes of chapter 4 of part II of this Act may be used to finance such education, training, and scholarships in lieu of an equal amount made available under this subparagraph.

"(B)(i) In addition to amounts used for purposes of subparagraph (A), the agency primarily responsible for administering this part, in collaboration with other appropriate departments or agencies of the United States, shall use assistance provided under this section or chapter 4 of part II of this Act to finance scholarships for students pursuing secondary school education in South Africa. The selection of scholarship recipients shall be by a nationwide panel or by regional panels appointed by the United States chief of diplomatic mission to South Africa.

"(ii) Of the amounts authorized to be appropriated to carry out this section and chapter 4 of part II of this Act for the fiscal years 1987, 1988, and 1989, up to an aggregate of \$1,000,000 may be used in each such fiscal year for purposes of this subparagraph.

"(C)(i) In addition to the assistance authorized in subparagraph (A), the agency primarily responsible for administering this part shall provide assistance for inservice teacher training programs in South Africa through such nongovernmental organizations as TOPS or teachers' unions.

"(ii) Of the amounts authorized to be appropriated to carry out this section and chapter 4 of part II of this Act, up to an aggregate of \$600,000 for the fiscal year 1987 and up to an aggregate of \$1,000,000 for the fiscal year 1988 may be used for purposes of this subparagraph, subject to standard procedures for project review and approval."

22 USC 2151  
note  
22 USC 2151e

(b) The Foreign Assistance Act of 1961 is amended by inserting after section 116 the following new section:

"SEC. 117. ASSISTANCE FOR DISADVANTAGED SOUTH AFRICANS.—In providing assistance under this chapter or under chapter 4 of part II of this Act for disadvantaged South Africans, priority shall be given to working with and through South African nongovernmental organizations whose leadership and staff are selected on a nonracial basis, and which have the support of the disadvantaged communities being served. The measure of this community support shall be the willingness of a substantial number of disadvantaged persons to participate in activities sponsored by these organizations. Such organizations to which such assistance may be provided include the

Educational Opportunities Council, the South African Institute of Race Relations, READ, professional teachers' unions, the Outreach Program of the University of the Western Cape, the Funda Center in Soweto, SACHED, UPP Trust, TOPS, the Wilgespruit Fellowship Center (WFC), and civic and other organizations working at the community level which do not receive funds from the Government of South Africa.”.

#### HUMAN RIGHTS FUND

Sec. 202. (a) Section 116(e)(2)(A) of the Foreign Assistance Act of 1961 is amended— 22 USC 2151n.

(1) by striking out “1984 and” and inserting in lieu thereof “1984,”; and

(2) by inserting after “1985” a comma and the following: “and \$1,500,000 for the fiscal year 1986 and for each fiscal year thereafter”.

(b) Section 116 of such Act is amended by adding at the end thereof the following new subsection:

“(f)(1) Of the funds made available to carry out subsection (e)(2)(A) for each fiscal year, not less than \$500,000 shall be used for direct legal and other assistance to political detainees and prisoners and their families, including the investigation of the killing of protesters and prisoners, and for support for actions of black-led community organizations to resist, through nonviolent means, the enforcement of apartheid policies such as—

“(A) removal of black populations from certain geographic areas on account of race or ethnic origin,

“(B) denationalization of blacks, including any distinctions between the South African citizenships of blacks and whites,

“(C) residence restrictions based on race or ethnic origin,

“(D) restrictions on the rights of blacks to seek employment in South Africa and to live wherever they find employment in South Africa, and

“(E) restrictions which make it impossible for black employees and their families to be housed in family accommodations near their place of employment.

“(2)(A) No grant under this subsection may exceed \$100,000.

“(B) The average of all grants under this paragraph made in any fiscal year shall not exceed \$70,000.

“(g) Of the funds made available to carry out subsection (e)(2)(A) for each fiscal year, \$175,000 shall be used for direct assistance to families of victims of violence such as ‘necklacing’ and other such inhumane acts. An additional \$175,000 shall be made available to black groups in South Africa which are actively working toward a multi-racial solution to the sharing of political power in that country through nonviolent, constructive means.”.

Employment  
and  
unemployment.

Housing.

Grants.

#### EXPANDING PARTICIPATION IN THE SOUTH AFRICAN ECONOMY

Sec. 203. (a) The Congress declares that—

22 USC 5031.

(1) the denial under the apartheid laws of South Africa of the rights of South African blacks and other nonwhites to have the opportunity to participate equitably in the South African economy as managers or owners of, or professionals in, business enterprises, and

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- (2) the policy of confining South African blacks and other nonwhites to the status of employees in minority-dominated businesses,  
is an affront to the values of a free society.
- (b) The Congress hereby—
- (1) applauds the commitment of nationals of the United States adhering to the Code of Conduct to assure that South African blacks and other nonwhites are given assistance in gaining their rightful place in the South African economy; and
- (2) urges the United States Government to assist in all appropriate ways the realization by South African blacks and other nonwhites of their rightful place in the South African economy.
- (c) Notwithstanding any other provision of law, the Secretary of State and any other head of a department or agency of the United States carrying out activities in South Africa shall, to the maximum extent practicable, in procuring goods or services, make affirmative efforts to assist business enterprises having more than 50 percent beneficial ownership by South African blacks or other nonwhite South Africans.

*Post*, p. 1097.

Business and industry.

## EXPORT-IMPORT BANK OF THE UNITED STATES

12 USC 635. SEC. 204. Section 2(b)(9) of the Export-Import Bank Act of 1945 is amended—

- (1) by striking out “(9) In” and inserting in lieu thereof “(9)(A) Except as provided in subparagraph (B), in”; and
- (2) by adding at the end thereof the following:
- “(B) The Bank shall take active steps to encourage the use of its facilities to guarantee, insure, extend credit, or participate in the extension of credit to business enterprises in South Africa that are majority owned by South African blacks or other nonwhite South Africans. The certification requirement contained in clause (c) of subparagraph (A) shall not apply to exports to or purchases from business enterprises which are majority owned by South African blacks or other nonwhite South Africans.”.

Business and industry.

## LABOR PRACTICES OF THE UNITED STATES GOVERNMENT IN SOUTH AFRICA

Employment and unemployment. 22 USC 5032. SEC. 205. (a) It is the sense of the Congress that the labor practices used by the United States Government—

- (1) for the direct hire of South Africans,
- (2) for the reimbursement out of official residence funds of South Africans and employees of South African organizations for their long-term employment services on behalf of the United States Government, and
- (3) for the employment services of South Africans arranged by contract,
- should represent the best of labor practices in the United States and should serve as a model for the labor practices of nationals of the United States in South Africa.
- (b) The Secretary of State and any other head of a department or agency of the United States carrying out activities in South Africa shall promptly take, without regard to any provision of law, the necessary steps to ensure that the labor practices applied to the employment services described in paragraphs (1) through (3) of subsection (a) are governed by the Code of Conduct. Nothing in this

Contracts.

*Post*, p. 1097.

section shall be construed to grant any employee of the United States the right to strike.

**WELFARE AND PROTECTION OF VICTIMS OF APARTHEID BY THE UNITED STATES**

**SEC. 206.** (a) The Secretary of State shall acquire, through lease or purchase, residential properties in the Republic of South Africa that shall be made available, at rents that are equitable, to assist victims of apartheid who are employees of the United States Government in obtaining adequate housing. Such properties shall be acquired only in neighborhoods which would be open to occupancy by other employees of the United States Government in South Africa.

Real property.  
Housing.  
22 USC 5033.

(b) There are authorized to be appropriated \$10,000,000 for the fiscal year 1987 to carry out the purposes of this section.

Appropriation  
authorization.

**EMPLOYMENT PRACTICES OF UNITED STATES NATIONALS IN SOUTH AFRICA**

**SEC. 207.** (a) Any national of the United States that employs more than 25 persons in South Africa shall take the necessary steps to insure that the Code of Conduct is implemented.

22 USC 5034.

(b) No department or agency of the United States may intercede with any foreign government or foreign national regarding the export marketing activities in any country of any national of the United States employing more than 25 persons in South Africa that is not implementing the Code of Conduct.

*Infra.*  
Exports.

**CODE OF CONDUCT**

**SEC. 208.** (a) The Code of Conduct referred to in sections 203, 205, 207, and 603 of this Act is as follows:

22 USC 5035.

- (1) desegregating the races in each employment facility;
- (2) providing equal employment opportunity for all employees without regard to race or ethnic origin;
- (3) assuring that the pay system is applied to all employees without regard to race or ethnic origin;
- (4) establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families;
- (5) increasing by appropriate means the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;
- (6) taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health; and
- (7) implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.

(b) It is the sense of the Congress that in addition to the principles enumerated in subsection (a), nationals of the United States subject to section 207 should seek to comply with the following principle: taking reasonable measures to extend the scope of influence on activities outside the workplace, including—

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- (1) supporting the unrestricted rights of black businesses to locate in urban areas;
- (2) influencing other companies in South Africa to follow the standards of equal rights principles;
- (3) supporting the freedom of mobility of black workers to seek employment opportunities wherever they exist, and make provision for adequate housing for families of employees within the proximity of workers' employment; and
- (4) supporting the rescission of all apartheid laws.
- President of U.S. (c) The President may issue additional guidelines and criteria to assist persons who are or may be subject to section 207 in complying with the principles set forth in subsection (a) of this section. The President may, upon request, give an advisory opinion to any person who is or may be subject to this section as to whether that person is subject to this section or would be considered to be in compliance with the principles set forth in subsection (a).
- President of U.S. (d) The President may require all nationals of the United States referred to in section 207 to register with the United States Government.
- President of U.S.  
Contracts. (e) Notwithstanding any other provision of law, the President may enter into contracts with one or more private organizations or individuals to assist in implementing this section.

## PROHIBITION ON ASSISTANCE

- 22 USC 5036. Sec. 209. No assistance may be provided under this Act to any group which maintains within its ranks any individual who has been found to engage in gross violations of internationally recognized human rights (as defined in section 502B(d)(1) of the Foreign Assistance Act of 1961).
- 22 USC 2304

## USE OF THE AFRICAN EMERGENCY RESERVE

- President of U.S.  
22 USC 5037. Sec. 210. Whenever the President determines that such action is necessary or appropriate to meet food shortages in southern Africa, the President is authorized to utilize the existing, authorized, and funded reserve entitled the "Emergency Reserve for African Famine Relief" to provide food assistance and transportation for that assistance.

## PROHIBITION ON ASSISTANCE TO ANY PERSON OR GROUP ENGAGING IN "NECKLACING"

- 22 USC 5033.  
22 USC 2161  
note. Sec. 211. No assistance may be provided under this Act, the Foreign Assistance Act of 1961, or any other provision of law to any individual, group, organization, or member thereof, or entity that directly or indirectly engages in, advocates, supports, or approves the practice of execution by fire, commonly known as "necklacing".

## PARTICIPATION OF SOUTH AFRICA IN AGRICULTURAL EXPORT CREDIT AND PROMOTION PROGRAMS

- 22 USC 5039. Sec. 212. Notwithstanding any other provision of this Act or any other provision of law, the Secretary of Agriculture may permit South Africa to participate in agricultural export credit and promotion programs conducted by the Secretary at similar levels, and under similar terms and conditions, as other countries that have

traditionally purchased United States agricultural commodities and the products thereof.

### TITLE III—MEASURES BY THE UNITED STATES TO UNDERMINE APARTHEID

#### PROHIBITION ON THE IMPORTATION OF KRUGERRANDS

Sec. 301. No person, including a bank, may import into the United States any South African krugerrand or any other gold coin minted in South Africa or offered for sale by the Government of South Africa.

Banks and  
banking  
22 USC 5051.

#### PROHIBITION ON THE IMPORTATION OF MILITARY ARTICLES

Sec. 302. No arms, ammunition, or military vehicles produced in South Africa or any manufacturing data for such articles may be imported into the United States.

22 USC 5052.

#### PROHIBITION ON THE IMPORTATION OF PRODUCTS FROM PARASTATAL ORGANIZATIONS

Sec. 303. (a) Notwithstanding any other provision of law, no article which is grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, (1) except for agricultural products during the 12-month period from the date of enactment; and (2) except for those strategic minerals for which the President has certified to the Congress that the quantities essential for the economy or defense of the United States are unavailable from reliable and secure suppliers and except for any article to be imported pursuant to a contract entered into before August 15, 1986: *Provided*, That no shipments may be received by a national of the United States under such contract after April 1, 1987.

Agriculture and  
agricultural  
products.  
Defense and  
national  
security.  
22 USC 5053.

(b) For purposes of this section, the term "parastatal organization" means a corporation or partnership owned or controlled or subsidized by the Government of South Africa, but does not mean a corporation or partnership which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned.

#### PROHIBITION ON COMPUTER EXPORTS TO SOUTH AFRICA

Sec. 304. (a) No computers, computer software, or goods or technology intended to manufacture or service computers may be exported to or for use by any of the following entities of the Government of South Africa:

22 USC 5054.

- (1) The military.
- (2) The police.
- (3) The prison system.
- (4) The national security agencies.
- (5) ARMSCOR and its subsidiaries or the weapons research activities of the Council for Scientific and Industrial Research.
- (6) The administering authorities for controlling the movements of the victims of apartheid.
- (7) Any apartheid enforcing agency.



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(8) Any local, regional, or homelands government entity which performs any function of any entity described in paragraphs (1) through (7).

(b)(1) Computers, computer software, and goods or technology intended to service computers may be exported, directly or indirectly, to or for use by an entity of the Government of South Africa other than those set forth in subsection (a) only if a system of end use verification is in effect to ensure that the computers involved will not be used for any function of any entity set forth in subsection (a).

Regulations

(2) The Secretary of Commerce may prescribe such rules and regulations as may be necessary to carry out this section.

#### PROHIBITION ON LOANS TO THE GOVERNMENT OF SOUTH AFRICA

22 USC 5055.

SEC. 305. (a) No national of the United States may make or approve any loan or other extension of credit, directly or indirectly, to the Government of South Africa or to any corporation, partnership or other organization which is owned or controlled by the Government of South Africa.

(b) The prohibition contained in subsection (a) shall not apply to—

(1) a loan or extension of credit for any education, housing, or humanitarian benefit which—

(A) is available to all persons on a nondiscriminatory basis; or

(B) is available in a geographic area accessible to all population groups without any legal or administrative restriction; or

(2) a loan or extension of credit for which an agreement is entered into before the date of enactment of this Act.

#### PROHIBITION ON AIR TRANSPORTATION WITH SOUTH AFRICA

President of U.S.  
22 USC 5056.

SEC. 306. (a)(1) The President shall immediately notify the Government of South Africa of his intention to suspend the rights of any air carrier designated by the Government of South Africa under the Agreement Between the Government of the United States of America and the Government of the Union of South Africa Relating to Air Services Between Their Respective Territories, signed May 23, 1947, to service the routes provided in the Agreement.

61 Stat. 3057

President of U.S.

(2) Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation to revoke the right of any air carrier designated by the Government of South Africa under the Agreement to provide service pursuant to the Agreement.

President of U.S.

(3) Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation not to permit or otherwise designate any United States air carrier to provide service between the United States and South Africa pursuant to the Agreement.

(b)(1) The Secretary of State shall terminate the Agreement Between the Government of the United States of America and the Government of the Union of South Africa Relating to Air Services Between Their Respective Territories, signed May 23, 1947, in accordance with the provisions of that agreement.

(2) Upon termination of such agreement, the Secretary of Transportation shall prohibit any aircraft of a foreign air carrier owned, directly or indirectly, by the Government of South Africa or

by South African nationals from engaging in air transportation with respect to the United States.

(3) The Secretary of Transportation shall prohibit the takeoff and landing in South Africa of any aircraft by an air carrier owned, directly or indirectly, or controlled by a national of the United States or by any corporation or other entity organized under the laws of the United States or of any State.

(c) The Secretary of Transportation may provide for such exceptions from the prohibition contained in subsection (a) or (b) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(d) For purposes of this section, the terms "aircraft", "air transportation", and "foreign air carrier" have the meanings given those terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

State and local governments.

Safety.

49 USC app. 1301.

#### PROHIBITIONS ON NUCLEAR TRADE WITH SOUTH AFRICA

SEC. 307. (a) Notwithstanding any other provision of law—

(1) the Nuclear Regulatory Commission shall not issue any license for the export to South Africa of production or utilization facilities, any source or special nuclear material or sensitive nuclear technology, or any component parts, items, or substances which the Commission has determined, pursuant to section 109b. of the Atomic Energy Act, to be especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes;

(2) the Secretary of Commerce shall not issue any license for the export to South Africa of any goods or technology which have been determined, pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978, to be of significance for nuclear explosive purposes for use in, or judged by the President to be likely to be diverted to, a South African production or utilization facility;

(3) the Secretary of Energy shall not, under section 57b.(2) of the Atomic Energy Act, authorize any person to engage, directly or indirectly, in the production of special nuclear material in South Africa; and

(4) no goods, technology, source or special nuclear material, facilities, components, items, or substances referred to in clauses (1) through (3) shall be approved by the Nuclear Regulatory Commission or an executive branch agency for retransfer to South Africa,

unless the Secretary of State determines and certifies to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that the Government of South Africa is a party to the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow on July 1, 1968, or otherwise maintains International Atomic Energy Agency safeguards on all its peaceful nuclear activities, as defined in the Nuclear Non-Proliferation Act of 1978.

(b) Nothing in this section shall preclude—

(1) any export, retransfer, or activity generally licensed or generally authorized by the Nuclear Regulatory Commission or the Department of Commerce or the Department of Energy; or

(2) assistance for the purpose of developing or applying International Atomic Energy Agency or United States bilateral

Exports.  
Science and technology.  
22 USC 6057.  
42 USC 2139.

42 USC 2139a.

42 USC 2077.

21 UST 483.

22 USC 3201 note.

Exports.

Research and development.  
Health and medical care.  
Safety.

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42 USC 10203. safeguards, for International Atomic Energy Agency programs generally available to its member states, for reducing the use of highly enriched uranium in research or test reactors, or for other technical programs for the purpose of reducing proliferation risks, such as programs to extend the life of reactor fuel and activities envisaged by section 223 of the Nuclear Waste Policy Act of 1982 or which are necessary for humanitarian reasons to protect the public health and safety.

Exports.  
Defense and  
national  
security.  
President of U.S.

(c) The prohibitions contained in subsection (a) shall not apply with respect to a particular export, retransfer, or activity, or a group of exports, retransfers, or activities, if the President determines that to apply the prohibitions would be seriously prejudicial to the achievement of United States nonproliferation objectives or would otherwise jeopardize the common defense and security of the United States and, if at least 60 days before the initial export, retransfer, or activity is carried out, the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth that determination, together with his reasons therefor.

#### GOVERNMENT OF SOUTH AFRICA BANK ACCOUNTS

22 USC 5058. SEC. 308. (a) A United States depository institution may not accept, receive, or hold a deposit account from the Government of South Africa or from any agency or entity owned or controlled by the Government of South Africa except for such accounts which may be authorized by the President for diplomatic or consular purposes. For purposes of the preceding sentence, the term "depository institution" has the same meaning as in section 19(b)(1) of the Federal Reserve Act.

12 USC 461.  
Effective date.

(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

#### PROHIBITION ON IMPORTATION OF URANIUM AND COAL FROM SOUTH AFRICA

22 USC 5059. SEC. 309. (a) Notwithstanding any other provision of law, no—  
(1) uranium ore,  
(2) uranium oxide,  
(3) coal, or  
(4) textiles,  
that is produced or manufactured in South Africa may be imported into the United States.

Effective date.

(b) This section shall take effect 90 days after the date of enactment of this Act.

#### PROHIBITION ON NEW INVESTMENT IN SOUTH AFRICA

22 USC 5060. SEC. 310. (a) No national of the United States may, directly or through another person, make any new investment in South Africa.

Effective date.

(b) The prohibition contained in subsection (a) shall take effect 45 days after the date of enactment of this Act.

(c) The prohibition contained in this section shall not apply to a firm owned by black South Africans.

## TERMINATION OF CERTAIN PROVISIONS

SEC. 311. (a) This title and sections 501(c) and 504(b) shall terminate if the Government of South Africa— 22 USC 5061.

(1) releases all persons persecuted for their political beliefs or detained unduly without trial and Nelson Mandela from prison; Nelson Mandela.

(2) repeals the state of emergency in effect on the date of enactment of this Act and releases all detainees held under such state of emergency;

(3) unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions, and otherwise participate in the political process;

(4) repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes; and

(5) agrees to enter into good faith negotiations with truly representative members of the black majority without preconditions.

(b) The President may suspend or modify any of the measures required by this title or section 501(c) or section 504(b) thirty days after he determines, and so reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, that the Government of South Africa has— President of U.S.

(1) taken the action described in paragraph (1) of subsection (a),

(2) taken three of the four actions listed in paragraphs (2) through (5) of subsection (a), and

(3) made substantial progress toward dismantling the system of apartheid and establishing a nonracial democracy, unless the Congress enacts within such 30-day period, in accordance with section 602 of this Act, a joint resolution disapproving the determination of the President under this subsection.

(c) It is the policy of the United States to support the negotiations with the representatives of all communities as envisioned in this Act. If the South African Government agrees to enter into negotiations without preconditions, abandons unprovoked violence against its opponents, commits itself to a free and democratic post-apartheid South Africa under a code of law; and if nonetheless the African National Congress, the Pan African Congress, or their affiliates, or other organizations, refuse to participate; or if the African National Congress, the Pan African Congress or other organizations— African National Congress. Pan African Congress.

(1) refuse to abandon unprovoked violence during such negotiations; and

(2) refuse to commit themselves to a free and democratic post-apartheid South Africa under a code of law, then the United States will support negotiations which do not include these organizations.

## POLICY TOWARD VIOLENCE OR TERRORISM

SEC. 312. (a) United States policy toward violence in South Africa shall be designed to bring about an immediate end to such violence and to promote negotiations concluding with a removal of the system of apartheid and the establishment of a non-racial democracy in South Africa. 22 USC 5062.

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(b) The United States shall work toward this goal by diplomatic and other measures designed to isolate those who promote terrorist attacks on unarmed civilians or those who provide assistance to individuals or groups promoting such activities.

(c) The Congress declares that the abhorrent practice of “necklacing” and other equally inhumane acts which have been practices in South Africa by blacks against fellow blacks are an affront to all throughout the world who value the rights of individuals to live in an atmosphere free from fear of violent reprisals.

#### TERMINATION OF TAX TREATY AND PROTOCOL

22 USC 5063. SEC. 313. The Secretary of State shall terminate immediately the following convention and protocol, in accordance with its terms, the Convention Between the Government of the United States of America and the Government of the Union of South Africa for the Avoidance of Double Taxation and for Establishing Rules of Reciprocal Administrative Assistance With Respect to Taxes on Income, done at Pretoria on December 13, 1946, and the protocol relating thereto.

3 UST 3821.

#### PROHIBITION ON UNITED STATES GOVERNMENT PROCUREMENT FROM SOUTH AFRICA

Contracts.  
22 USC 5064. SEC. 314. On or after the date of enactment of this Act, no department, agency or any other entity of the United States Government may enter into a contract for the procurement of goods or services from parastatal organizations except for items necessary for diplomatic and consular purposes.

#### PROHIBITION ON THE PROMOTION OF UNITED STATES TOURISM IN SOUTH AFRICA

22 USC 5065. SEC. 315. None of the funds appropriated or otherwise made available by any provision of law may be available to promote United States tourism in South Africa.

#### PROHIBITION ON UNITED STATES GOVERNMENT ASSISTANCE TO, INVESTMENT IN, OR SUBSIDY FOR TRADE WITH, SOUTH AFRICA

22 USC 5066. SEC. 316. None of the funds appropriated or otherwise made available by any provision of law may be available for any assistance to investment in, or any subsidy for trade with, South Africa, including but not limited to funding for trade missions in South Africa and for participation in exhibitions and trade fairs in South Africa.

#### PROHIBITION ON SALE OR EXPORT OF ITEMS ON MUNITIONS LIST

22 USC 5067. SEC. 317. (a) Except as provided in subsection (b), no item contained on the United States Munition List which is subject to the jurisdiction of the United States may be exported to South Africa. (b) Subsection (a) does not apply to any item which is not covered by the United Nations Security Council Resolution 418 of November 4, 1977, and which the President determines is exported solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.

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(c) The President shall prepare and submit to Congress every six months a report describing any license issued pursuant to subsection (b). President of U.S. Reports.

## MUNITIONS LIST SALES, NOTIFICATION

SEC. 318. (a) Notwithstanding any other provision of this Act, the President shall: President of U.S. Exports.  
22 USC 5068.

(i) notify the Congress of his intent to allow the export to South Africa any item which is on the United States Munition List and which is not covered by the United Nations Security Council Resolution 418 of November 4, 1977, and

(ii) certify that such item shall be used solely for commercial purposes and not exported for use by the armed forces, police, or other security forces of South Africa or for other military use.

(b) The Congress shall have 30 calendar days of continuous session (computed as provided in section 906(b) of title 5, United States Code) to disapprove by joint resolution of any such sale. Congress.

## PROHIBITION ON IMPORTATION OF SOUTH AFRICAN AGRICULTURAL PRODUCTS AND FOOD

SEC. 319. Notwithstanding any other provision of law, no:

(1) agricultural commodity, product, byproduct of derivative thereof, 22 USC 5069.

(2) article that is suitable for human consumption, that is a product of South Africa may be imported into the customs territory of the United States after the date of enactment of this Act.

## PROHIBITION ON IMPORTATION OF IRON AND STEEL

SEC. 320. Notwithstanding any other provision of law, no iron or steel produced in South Africa may be imported into the United States. 22 USC 5070.

## PROHIBITION ON EXPORTS OF CRUDE OIL AND PETROLEUM PRODUCTS

SEC. 321. (a) No crude oil or refined petroleum product which is subject to the jurisdiction of the United States or which is exported by a person subject to the jurisdiction of the United States may be exported to South Africa. 22 USC 5071.

(b) Subsection (a) does not apply to any export pursuant to a contract entered into before the date of enactment of this Act.

## PROHIBITION ON COOPERATION WITH THE ARMED FORCES OF SOUTH AFRICA

SEC. 322. No agency or entity of the United States may engage in any form of cooperation, direct or indirect, with the armed forces of the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. Each such activity shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947. 22 USC 5072.  
50 USC 413.

## PROHIBITIONS ON SUGAR IMPORTS

SEC. 323. (a)(1) Notwithstanding any other provision of law, no sugars, sirups, or molasses that are products of the Republic of 22 USC 5073.

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- South Africa may be imported into the United States after the date of enactment of this Act.
- Philippines. (2) The aggregate quantity of sugars, sirups, and molasses that—  
 (A) are products of the Philippines, and  
 (B) may be imported into the United States (determined without regard to this paragraph) under any limitation imposed by law on the quantity of all sugars, sirups, and molasses that may be imported into the United States during any period of time occurring after the date of enactment of this Act,  
 shall be increased by the aggregate quantity of sugars, sirups, and molasses that are products of the Republic of South Africa which may have been imported into the United States under such limitation during such period if this section did not apply to such period.
- Tariff Schedules of the U.S. 19 USC 1202 and note. Philippines. (b)(1) Paragraph (c)(i) of headnote 3 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States is amended—  
 (A) by striking out "13.5" in the item relating to the Philippines in the table and inserting in lieu thereof "15.8", and  
 (B) by striking out the item relating to the Republic of South Africa in the table.
- (2) Paragraph (c) of headnote 3 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States is amended by adding at the end thereof the following new subparagraph:  
 "(iii) Notwithstanding any authority given to the United States Trade Representative under paragraphs (e) and (g) of this headnote—  
 Philippines. "(A) the percentage allocation made to the Philippines under this paragraph may not be reduced, and  
 "(B) no allocation may be made to the Republic of South Africa,  
 in allocating any limitation imposed under any paragraph of this headnote on the quantity of sugars, sirups, and molasses described in items 155.20 and 155.30 which may be entered."

#### TITLE IV—MULTILATERAL MEASURES TO UNDERMINE APARTHEID

##### NEGOTIATING AUTHORITY

- International agreements. 22 USC 6031. Sec. 401. (a) It is the policy of the United States to seek international cooperative agreements with the other industrialized democracies to bring about the complete dismantling of apartheid. Sanctions imposed under such agreements should be both direct and official executive or legislative acts of governments. The net economic effect of such cooperative should be measurably greater than the net economic effect of the measures imposed by this Act.
- President of U.S. (b)(1) Negotiations to reach international cooperative arrangements with the other industrialized democracies and other trading partners of South Africa on measures to bring about the complete dismantling of apartheid should begin promptly and should be concluded not later than 180 days from the enactment of this Act. During this period, the President or, at his direction, the Secretary of State should convene an international conference of the other industrialized democracies in order to reach cooperative agreements to impose sanctions against South Africa to bring about the complete dismantling of apartheid.
- President of U.S. Reports. (2) The President shall, not less than 180 days after the date of enactment of this Act, submit to the Congress a report containing—

(A) a description of United States efforts to negotiate multilateral measures to bring about the complete dismantling of apartheid; and

(B) a detailed description of economic and other measures adopted by the other industrialized countries to bring about the complete dismantling of apartheid, including an assessment of the stringency with which such measures are enforced by those countries.

(c) If the President successfully concludes an international agreement described in subsection (b)(1), he may, after such agreement enters into force with respect to the United States, adjust, modify, or otherwise amend the measures imposed under any provision of sections 301 through 310 to conform with such agreement.

(d) Each agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) the President, not less than 30 days before the day on which he enters into such agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

President of U.S.  
Federal  
Register,  
publication.

(2) after entering into the agreement, the President transmits to the House of Representatives and to the Senate a document containing a copy of the final legal text of such agreement, together with—

President of U.S.

(A) a description of any administrative action proposed to implement such agreement and an explanation as to how the proposed administrative action would change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interest of United States foreign policy and as to why the proposed administrative action is required or appropriate to carry out the agreement; and

(3) a joint resolution approving such agreement has been enacted within 30 days of transmittal of such document to the Congress.

(e) It is the sense of the Congress that the President should instruct the Permanent Representative of the United States to the United Nations to propose that the United Nations Security Council, pursuant to Article 41 of the United Nations Charter, impose measures against South Africa of the same type as are imposed by this Act.

President of U.S.

#### LIMITATION ON IMPORTS FROM OTHER COUNTRIES

SEC. 402. The President is authorized to limit the importation into the United States of any product or service of a foreign country to the extent to which such foreign country benefits from, or otherwise takes commercial advantage of, any sanction or prohibition against any national of the United States imposed by or under this Act.

President of U.S.  
22 USC 5082.

#### PRIVATE RIGHT OF ACTION

SEC. 403. (a) Any national of the United States who is required by this Act to terminate or curtail business activities in South Africa may bring a civil action for damages against any person, partnership, or corporation that takes commercial advantage or otherwise benefits from such termination or curtailment.

Claims.  
Securities.  
22 USC 5033.



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(b) The action described in subsection (a) may only be brought, without respect to the amount in controversy, in the United States district court for the District of Columbia or the Court of International Trade. Damages which may be recovered include lost profits and the cost of bringing the action, including a reasonable attorney's fee.

(c) The injured party must show by a preponderance of the evidence that the damages have been the direct result of defendant's action taken with the deliberate intent to injure the party.

## TITLE V—FUTURE POLICY TOWARD SOUTH AFRICA

### ADDITIONAL MEASURES

22 USC 5091.

Sec. 501. (a) It shall be the policy of the United States to impose additional measures against the Government of South Africa if substantial progress has not been made within twelve months of the date of enactment of this Act in ending the system of apartheid and establishing a nonracial democracy.

President of U.S.  
Reports.

(b) The President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate within twelve months of the date of enactment of this Act, and every twelve months thereafter, a report on the extent to which significant progress has been made toward ending the system of apartheid, including—

(1) an assessment of the extent to which the Government of South Africa has taken the steps set forth in section 101(b) of this Act;

(2) an analysis of any other actions taken by the Government of South Africa in ending the system of apartheid and moving toward a nonracial democracy; and

(3) the progress, or lack of progress, made in reaching a negotiated settlement to the conflict in South Africa.

President of U.S.  
Reports.  
Imports.

(c) If the President determines that significant progress has not been made by the Government of South Africa in ending the system of apartheid and establishing a nonracial democracy, the President shall include in the report required by subsection (b) a recommendation on which of the following additional measures should be imposed:

(1) a prohibition on the importation of steel from South Africa;

Weapons.

(2) a prohibition on military assistance to those countries that the report required by section 508 identifies as continuing to circumvent the international embargo on arms and military technology to South Africa;

(3) a prohibition on the importation of food, agricultural products, diamonds, and textiles from South Africa;

Banks and  
banking.

(4) a prohibition on United States banks accepting, receiving, or holding deposit accounts from South African nationals; and

(5) a prohibition on the importation into the United States of strategic minerals from South Africa.

(d) A joint resolution which would enact part or all of the measures recommended by the President pursuant to subsection (c) shall be considered in accordance with the provisions of section 602 of this Act.

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## LIFTING OF PROHIBITIONS

SEC. 502. (a) Notwithstanding any other provision of this Act, the President may lift any prohibition contained in this Act imposed against South Africa if the President determines, after six months from the date of the imposition of such prohibition, and so reports to Congress, that such prohibition would increase United States dependence upon any member country or observer country of the Council for Mutual Economic Assistance (C.M.E.A.) for the importation of coal or any strategic and critical material by an amount which exceeds by weight the average amounts of such imports from such country during the period 1981 through 1985.

President of U.S.  
Reports.  
Imports.  
22 USC 5092.

(b)(1) Not later than 30 days after the date of enactment of this Act, the Secretary of Commerce shall prepare and transmit to the Congress a report setting forth for each country described in subsection (a)—

Reports.

(A) the average amount of such imports from such country during the period of 1981 through 1985; and

(B) the current amount of such imports from such country entering the United States.

(2) Thirty days after transmittal of the report required by paragraph (1) and every thirty days thereafter, the President shall prepare and transmit the information described in paragraph (1)(B).

President of U.S.

## STUDY OF HEALTH CONDITIONS IN THE "HOMELANDS" AREAS OF SOUTH AFRICA

SEC. 503. The Secretary of State shall conduct a study to examine the state of health conditions and to determine the extent of starvation and malnutrition now prevalent in the "homelands" areas of South Africa and shall, not later than December 1, 1986, prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the results of such study.

Reports.  
22 USC 5033.

## REPORT ON SOUTH AFRICAN IMPORTS

SEC. 504. (a) Not later than 90 days after the date of enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on the extent to which the United States is dependent on the importation from South Africa of—

President of U.S.  
22 USC 5094

(1) chromium,

(2) cobalt,

(3) manganese,

(4) platinum group metals,

(5) ferroalloys, and

(6) other strategic and critical materials (within the meaning of the Strategic and Critical Materials Stock Piling Act).

50 USC 5094 et seq

(b) The President shall develop a program which reduces the dependence, if any, of the United States on the importation from South Africa of the materials identified in the report submitted under subsection (a).

## STUDY AND REPORT ON THE ECONOMY OF SOUTHERN AFRICA

SEC. 505. (a) The President shall conduct a study on the role of American assistance in southern Africa to determine what needs to

President of U.S.  
Commerce and  
trade.  
Securities.  
Transportation.  
22 USC 5095.

100 STAT. 1110

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be done, and what can be done to expand the trade, private investment, and transport prospects of southern Africa's landlocked nations.

President of U.S.  
Reports.

(b) Not later than 180 days after the date of enactment of this Act, the President shall prepare and transmit to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the findings of the study conducted under subsection (a).

**REPORT ON RELATIONS BETWEEN OTHER INDUSTRIALIZED DEMOCRACIES  
AND SOUTH AFRICA**

President of U.S.  
22 USC 5096.

**SEC. 506. (a)** Not later than 180 days after the date of enactment of this Act, the President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing a detailed assessment of the economic and other relationships of other industrialized democracies with South Africa. Such report shall be transmitted without regard to whether or not the President successfully concluded an international agreement under section 401.

(b) For purposes of this section, the phrase "economic and other relationships" includes the same types of matters as are described in sections 201, 202, 204, 205, 206, 207, sections 301 through 307, and sections 309 and 310 of this Act.

**STUDY AND REPORT ON DEPOSIT ACCOUNTS OF SOUTH AFRICAN  
NATIONALS IN UNITED STATES BANKS**

22 USC 5037

**SEC. 507. (a)(1)** The Secretary of the Treasury shall conduct a study on the feasibility of prohibiting each depository institution from accepting, receiving, or holding a deposit account from any South African national.

12 USC 461

(2) For purposes of paragraph (1), the term "depository institution" has the same meaning as in section 19(b)(1) of the Federal Reserve Act.

(b) Not later than 180 days after the date of enactment of this Act, the Secretary of the Treasury shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report detailing the findings of the study required by subsection (a).

**STUDY AND REPORT ON THE VIOLATION OF THE INTERNATIONAL  
EMBARGO ON SALE AND EXPORT OF MILITARY ARTICLES TO SOUTH  
AFRICA**

President of U.S.  
22 USC 5093

**SEC. 508. (a)** The President shall conduct a study on the extent to which the international embargo on the sale and exports of arms and military technology to South Africa is being violated.

(b) Not later than 179 days after the date of enactment of this Act, the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report setting forth the findings of the study required by subsection (a), including an identification of those countries engaged in such sale or export, with a view to terminating United States military assistance to those countries.

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100 STAT. 1111

## REPORT ON COMMUNIST ACTIVITIES IN SOUTH AFRICA

SEC. 509. (a) Not later than 90 days after the date of enactment of this Act, the President shall prepare and transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate an unclassified version of a report, prepared with the assistance of the Director of the Central Intelligence Agency, the Director of the Defense Intelligence Agency, the National Security Advisor, and other relevant United States Government officials in the intelligence community, which shall set forth the activities of the Communist Party in South Africa, the extent to which Communists have infiltrated the many black and nonwhite South African organizations engaged in the fight against the apartheid system, and the extent to which any such Communist infiltration or influence sets the policies and goals of the organizations with which they are involved.

President of U.S.  
Public  
information.  
22 USC 5099.

(b) At the same time the unclassified report in subsection (a) is transmitted as set forth in that subsection, a classified version of the same report shall be transmitted to the chairmen of the Select Committee on Intelligence of the Senate and of the Permanent Select Committee on Intelligence of the House of Representatives.

Classified  
information.

## PROHIBITION ON THE IMPORTATION OF SOVIET GOLD COINS

SEC. 510. (a) No person, including a bank, may import into the United States any gold coin minted in the Union of Soviet Socialist Republics or offered for sale by the Government of the Union of Soviet Socialist Republics.

Banks and  
banking.  
22 USC 5100.

(b) For purposes of this section, the term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) Any individual who violates this section or any regulations issued to carry out this section shall be fined not more than five times the value of the rubles involved.

Law  
enforcement  
and crime.

## ECONOMIC SUPPORT FOR DISADVANTAGED SOUTH AFRICANS

SEC. 511 (a) Chapter 4 of part II of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

"SEC. 535. ECONOMIC SUPPORT FOR DISADVANTAGED SOUTH AFRICANS.—(a)(1) Up to \$40,000,000 of the funds authorized to be appropriated to carry out this chapter for the fiscal year 1987 and each fiscal year thereafter shall be available for assistance for disadvantaged South Africans. Assistance under this section shall be provided for activities that are consistent with the objective of a majority of South Africans for an end to the apartheid system and the establishment of a society based on non-racial principles. Such activities may include scholarships, assistance to promote the participation of disadvantaged South Africans in trade unions and private enterprise, alternative education and community development programs.

Commerce and  
trade.  
Education.  
Community  
development.  
22 USC 2346d.

"(2) Up to \$3,000,000 of the amounts provided in each fiscal year pursuant to subsection (a) shall be available for training programs for South Africa's trade unionists.

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Education. “(b) Assistance provided pursuant to the section shall be made available notwithstanding any other provision of law and shall not be used to provide support to organizations or groups which are financed or controlled by the Government of South Africa. Nothing in this subsection may be construed to prohibit programs which are consistent with subsection (a) and which award scholarships to students who choose to attend South African-supported institutions.”

Reports.  
22 USC 2346d  
note.

(b) Not later than 90 days after the date of enactment of this Act, the Secretary of State shall prepare and transmit to the Congress a report describing the strategy of the President during the five-year period beginning on such date regarding the assistance of black Africans pursuant to section 535 of the Foreign Assistance Act of 1961 and describing the programs and projects to be funded under such section.

Ante, p. 1111.

#### REPORT ON THE AFRICAN NATIONAL CONGRESS

22 USC 5101. SEC. 512. (a) Not later than 180 days after the date of enactment of this Act, the Attorney General shall prepare and transmit to the Congress a report on actual and alleged violations of the Foreign Agents Registration Act of 1938, and the status of any investigation pertaining thereto, by representatives of governments or opposition movements in Subsaharan Africa, including, but not limited to, members or representatives of the African National Congress.

22 USC 611.

(b) For purposes of conducting any investigations necessary in order to provide a full and complete report, the Attorney General shall have full authority to utilize civil investigative demand procedures, including but not limited to the issuance of civil subpoenas.

### TITLE VI—ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

#### REGULATORY AUTHORITY

President of U.S.  
Regulations.  
22 USC 5111.  
50 USC 1701  
note.  
50 USC 1701  
note.

SEC. 601. The President shall issue such rules, regulations, licenses, and orders as are necessary to carry out the provisions of this Act, including taking such steps as may be necessary to continue in effect the measures imposed by Executive Order 12532 of September 9, 1985, and Executive Order 12535 of October 1, 1985, and by any rule, regulation, license, or order issued thereunder (to the extent such measures are not inconsistent with this Act).

#### CONGRESSIONAL PRIORITY PROCEDURES

22 USC 5112.

SEC. 602. (a)(1) The provisions of this subsection apply to the consideration in the House of Representatives of a joint resolution under sections 311(b), 401(d), and 501(d).

(2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Affairs of the House of Representatives.

(3)(A) At any time after the joint resolution placed on the appropriate calendar has been on that calendar for a period of 5 legislative days, it is in order for any Member of the House (after consultation with the Speaker as to the most appropriate time for the consideration of that joint resolution) to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of that joint resolution. The motion is highly privileged and is in order even though a previous motion to

the same effect has been disagreed to. All points of order against the joint resolution under clauses 2 and 6 of Rule XXI of the Rules of the House are waived. If the motion is agreed to, the resolution shall remain the unfinished business of the House until disposed of. A motion to reconsider the vote by which the motion is disagreed to shall not be in order.

(B) Debate on the joint resolution shall not exceed ten hours, which shall be divided equally between a Member favoring and a Member opposing the joint resolution. A motion to limit debate is in order at any time in the House or in the Committee of the Whole and is not debatable.

(C) An amendment to the joint resolution is not in order.

(D) At the conclusion of the debate on the joint resolution, the Committee of the Whole shall rise and report the joint resolution back to the House, and the previous question shall be considered as ordered on the joint resolution to final passage without intervening motion.

(b)(1) The provisions of this subsection apply to the consideration in the Senate of a joint resolution under section 311(b), 401(d), or 501(d).

(2) A joint resolution shall, upon introduction, be referred to the Committee on Foreign Relations of the Senate.

(3) A joint resolution described in this section shall be considered in the Senate in accordance with procedures contained in paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act, 1985 (as contained in Public Law 98-473), except that—

98 Stat. 1935.

(A) references in such paragraphs to the Committee on Appropriations of the Senate shall be deemed to be references to the Committee on Foreign Relations of the Senate; and

(B) amendments to the joint resolution are in order.

(c) For purposes of this subsection, the term "joint resolution" means only—

(A) in the case of section 311(b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the report described in section 311(b) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on \_\_\_\_\_ the report of the President containing the determination required by section 311(b) of the Comprehensive Anti-Apartheid Act of 1986, disapproves of such determination.", with the date of the receipt of the report inserted in the blank;

(B) in the case of section 401(d)(3), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the document described in section 401(d)(2) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on \_\_\_\_\_ the text of the international agreement described in section 401(d)(3) of the Comprehensive Anti-Apartheid Act of 1986, approves of such agreement.", with the date of the receipt of the text of the agreement inserted in the blank; and

(C) in the case of section 501(d), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives the determination of the President pursuant to section 501(c) and for which the matter after the resolving clause reads as follows: "That the Congress, having received on \_\_\_\_\_ a determination of the President under section

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501(c) of the Comprehensive Anti-Apartheid Act of 1986, approves the President's determination.", with the date of the receipt of the determination inserted in the blank.

(d) As used in this section, the term "legislative day" means a day on which the House of Representatives or the Senate is in session, as the case may be.

(e) This section is enacted—

(1) as an exercise of the rulemaking powers of the House of Representatives and the Senate, and as such it is deemed a part of the Rules of the House and the Rules of the Senate, respectively, but applicable only with respect to the procedure to be followed in the House and the Senate in the case of joint resolutions under this section, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of the House and the Senate to change their rules at any time, in the same manner, and to the same extent as in the case of any other rule of the House or Senate, and of the right of the Committee on Rules of the House of Representatives to report a resolution for the consideration of any measure.

#### ENFORCEMENT AND PENALTIES

President of U.S.  
22 USC 5113.

**SEC. 603. (a)(1)** The President with respect to his authorities under section 601 shall take the necessary steps to ensure compliance with the provisions of this Act and any regulations, licenses, and orders issued to carry out this Act, including establishing mechanisms to monitor compliance with this Act and such regulations, licenses, and orders.

Records.  
Reports.

(2) In ensuring such compliance, the President may—

(A) require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction described in this Act either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which a foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this Act; and

(B) conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

(b) Except as provided in subsection (d)—

(1) any person that violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be subject to a civil penalty of \$50,000;

(2) any person, other than an individual, that willfully violates the provisions of this Act, or any regulation, license, or order issued to carry out this Act shall be fined not more than \$1,000,000;

(3) any individual who willfully violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall be fined not more than \$50,000, or imprisoned not more than 10 years, or both; and

(4) any individual who violates section 301(a) or any regulations issued to carry out that section shall, instead of the

penalty set forth in paragraph (2), be fined not more than 5 times the value of the krugerrands or gold coins involved.

(c)(1) Whenever a person commits a violation under subsection (b)—

(A) any officer, director, or employee of such person, or any natural person in control of such person who knowingly and willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

(B) any agent of such person who knowingly and willfully carried out such act or practice,

shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(2) Paragraph (1) shall not apply in the case of a violation by an individual of section 301(a) of this Act or of any regulation issued to carry out that section.

(3) A fine imposed under paragraph (1) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

(d)(1) Any person who violates any regulation issued under section 208(d) or who, in a registration statement or report required by the Secretary of State, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall be subject to a civil penalty of not more than \$10,000 imposed by the Secretary of State. The provisions of subsections (d), (e), and (f) of section 11 of the Export Administration Act of 1979 shall apply with respect to any such civil penalty.

Reports.

(2) Any person who commits a willful violation under paragraph (1) shall upon conviction be fined not more than \$1,000,000 or imprisoned not more than 2 years, or both.

50 USC app.  
2410.

(3) Nothing in this section may be construed to authorize the imposition of any penalty for failure to implement the Code of Conduct.

*Ante*, p. 1097.

#### APPLICABILITY TO EVASIONS OF ACT

SEC. 604. This Act and the regulations issued to carry out this Act shall apply to any person who undertakes or causes to be undertaken any transaction or activity with the intent to evade this Act or such regulations.

22 USC 5114.

#### CONSTRUCTION OF ACT

SEC. 605. Nothing in this Act shall be construed as constituting any recognition by the United States of the homelands referred to in this Act.

22 USC 5115.

#### STATE OR LOCAL ANTI-APARTHEID LAWS, ENFORCE

SEC. 606. Notwithstanding section 210 of Public Law 99-349 or any other provision of law—

22 USC 5116.  
*Ante*, p. 749.

(1) no reduction in the amount of funds for which a State or local government is eligible or entitled under any Federal law may be made, and



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Contracts.

(2) no other penalty may be imposed by the Federal Government, by reason of the application of any State or local law concerning apartheid to any contract entered into by a State or local government for 90 days after the date of enactment of this Act.

THOMAS S. FOLEY  
*Speaker pro tempore.*

STROM THURMOND  
*President of the Senate pro tempore.*

IN THE HOUSE OF REPRESENTATIVES, U.S.,

*September 29, 1986.*

The House of Representatives having proceeded to reconsider the bill (H.R. 4868) entitled "An Act to prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

*Resolved*, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

BENJAMIN J. GUTHRIE  
*Clerk.*

I certify that this Act originated in the House of Representatives.

BENJAMIN J. GUTHRIE  
*Clerk.*

IN THE SENATE OF THE UNITED STATES,

*October 2 (legislative day, September 24), 1986.*

The Senate having proceeded to reconsider the bill (H.R. 4868) entitled "An Act to prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, and passed by the House of Representatives on reconsideration of the same, it was

*Resolved*, That the said bill pass, two-thirds of the Senators present having voted in the affirmative.

JO-ANNE L. COE  
*Secretary.*

LEGISLATIVE HISTORY—H.R. 4868 (S. 2701):

HOUSE REPORTS: No. 99-638, Pt. 1 (Comm. on Foreign Affairs) and Pt. 2 (Comm. on Ways and Means).

SENATE REPORTS: No. 99-370 accompanying S. 2701 (Comm. on Foreign Relations).  
CONGRESSIONAL RECORD, Vol. 132 (1986):

June 18, considered and passed House.

Aug. 13, 14, S. 2701 considered in Senate.

Aug. 15, S. 2701 considered in Senate; H.R. 4863 considered and passed Senate, amended.

Sept. 12, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 22 (1986):

Oct. 2, Presidential veto message.

CONGRESSIONAL RECORD, Vol. 132 (1986):

Sept. 29, House overrode veto.

Oct. 2, Senate overrode veto.



# PUBLIC LAW 99-631

## Joint Resolution

To make corrections in the Comprehensive Anti-Apartheid Act of 1986.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) the Comprehensive Anti-Apartheid Act of 1986 is amended as follows:

(1) In the table of contents—

(A) strike out the item relating to section 309 and insert in lieu thereof the following new item:

"Sec. 309. Prohibition on importation of uranium, coal, and textiles from South Africa.";

(B) strike out the items relating to sections 317 and 318 and insert in lieu thereof the following new items:

"Sec. 317. Prohibition on export of items on the United States Munitions List.

"Sec. 318. Notification of certain proposed United States Munitions List exports.";

and

(C) strike out the item relating to section 510 and insert in lieu thereof the following new item:

"Sec. 510. Prohibition on the importation of Soviet gold coins."

(2) In section 3—

(A) in paragraph (6)(B), strike out "Administration" and insert in lieu thereof "administration";

(B) at the end of paragraph (7), strike out "and";

(C) redesignate paragraph (8) as paragraph (9); and

(D) after paragraph (7), insert the following new paragraph:

"(8) the term 'South African national' means—

"(A) a citizen of South Africa; and

"(B) any partnership, corporation, or other business association which is organized under the laws of South Africa; and".

(3) In section 102—

(A) in subsection (b), insert "and" at the end of paragraph (3); and

(B) in subsection (c)—

(i) strike out "subsection 101(a)" and insert in lieu thereof "section 101(a)"; and

(ii) strike out "ANC" and insert in lieu thereof "African National Congress".

(4) In section 103(b)—

(A) in paragraph (1), insert a comma after "apartheid";

(B) in paragraph (4), strike out "to those whose nonviolent activities had" and insert in lieu thereof "(A) to those whose nonviolent activities have"; and

(C) in paragraph (7), strike out "such groups so as to achieve the objectives of this Act" and insert in lieu thereof "groups promoting terrorism".

(5) In section 104(b)—

## H. J. Res. 756—2

(A) in paragraph (5), strike out "that all countries of the region respect the human rights of their citizens and noncitizens residing in the country, and especially the release" and insert in lieu thereof "the respect by all countries of the region for the human rights of their citizens and noncitizens residing in their countries and, especially, the release by all such countries"; and

(B) in paragraph (6), strike out "demanding that all countries of the region take effective action" and insert in lieu thereof "demanding, effective action by all countries of the region".

(6) In section 105—

(A) insert "(1)" after "states"; and

(B) strike out "of means" and insert in lieu thereof "(2) any means".

(7) Section 106(c) is amended to read as follows:

"(c) The United States will work, through coordinated actions with the major Western allies and with the governments of the countries in the region, toward the achievement of an agreement to suspend violence and begin negotiations."

(8) In section 109, strike out "Senate" and insert in lieu thereof "Congress".

(9) In section 207—

(A) in subsection (a), insert "with respect to the employment of those persons" after "implemented"; and

(B) in subsection (b), insert "with respect to the employment of those persons" after "Conduct".

(10) In section 208—

(A) in subsection (b)(3), strike out "make" and insert in lieu thereof "making"; and

(B) in the second sentence of subsection (c), strike out "this section" each of the two places it appears and insert in lieu thereof "section 207".

(11) In section 212, insert "are participated in by" after "as".

(12) In section 303—

(A) in subsection (b)—

(i) strike out "corporation or partnership owned or controlled" and insert in lieu thereof "corporation, partnership, or entity owned, controlled,"; and

(ii) strike out "corporation or partnership" the second place it appears and insert in lieu thereof "corporation, partnership, or entity"; and

(B) at the end of the section, add the following new subsection:

"(c) Nothing in this section prohibits the importation into the United States of any publication, including any book, newspaper, magazine, film, phonograph record, tape recording, photograph, microfilm, microfiche, poster, or any other similar material."

(13) In section 306(d), insert "'air carrier,'" after "'aircraft,'".

(14) In section 309—

(A) in the section heading relating thereto, strike out "URANIUM AND COAL" and insert in lieu thereof "URANIUM, COAL, AND TEXTILES";

(B) in subsection (a), strike out "is" and insert in lieu thereof "are";

(C) redesignate subsection (b) as subsection (c); and

## H. J. Res. 756—3

- (D) insert after subsection (a) the following new subsection:  
“(b) For purposes of this section, the term ‘textiles’ does not include any article provided for in item 812.10 or 813.10 of the Tariff Schedules of the United States.”
- (15) In section 312(b), strike out “civilians or” and insert in lieu thereof “civilians and”.
- (16) In section 313, strike out “the following convention and protocol”.
- (17) In section 314—  
(A) strike out “agency” and insert in lieu thereof “agency,”; and  
(B) strike out “diplomatic and” and insert in lieu thereof “diplomatic or”.
- (18) In section 317—  
(A) in the section heading relating thereto, strike out “SALE OR EXPORT OF ITEMS ON” and insert in lieu thereof “EXPORT OF ITEMS ON THE UNITED STATES”; and  
(B) in subsection (a), strike out “Munition” and insert in lieu thereof “Munitions”.
- (19) In section 318—  
(A) amend the section heading relating thereto to read as follows: “NOTIFICATION OF CERTAIN PROPOSED UNITED STATES MUNITIONS LIST EXPORTS”;  
(B) in subsection (a) in the text above clause (i), strike out “shall:” and insert in lieu thereof “shall—”;  
(C) in subsection (a), redesignate paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;  
(D) in subsection (a)(1), as redesignated by clause (C)—  
(i) insert “of” after “Africa”; and  
(ii) strike out “Munition” and insert in lieu thereof “Munitions”; and  
(E) amend subsection (b) to read as follows:  
“(b)(1) No item described in subsection (a) may be exported if the Congress, within 30 days of continuous session after a certification is made under subsection (a)(2), enacts, in accordance with section 602 of this Act, a joint resolution disapproving such export.  
“(2) For purposes of paragraph (1), the term “continuous session” is used within the meaning of section 906(b) of title 5, United States Code.”
- (20) In section 319—  
(A) in the text above paragraph (1), strike out “no:” and insert in lieu thereof “no—”;  
(B) in paragraph (1), strike out “commodity, product, byproduct of derivative thereof,” and insert in lieu thereof “commodity or product or any byproduct or derivative thereof, or”; and  
(C) strike out paragraph (2) and insert in lieu thereof the following:  
“(2) article that is suitable for human consumption, that is a product of South Africa may be imported into the United States after the date of enactment of this Act.”
- (21) In section 320—  
(A) strike out “Notwithstanding” and insert in lieu thereof “Notwithstanding”;

## H. J. Res. 756—4

(B) insert after “produced” a comma and the following: “or iron ore extracted,”; and

(C) insert before the period at the end thereof a comma and the following: “except that any such commodity may be imported pursuant to a contract entered into before August 15, 1986, if no shipment of such commodity is imported by a national of the United States under such contract after December 31, 1986”.

(22) In section 321—

(A) in subsection (a)—

(i) strike out “or which is exported by a person subject to the jurisdiction of the United States”; and

(ii) insert after “South Africa” the following: “, and no crude oil or refined petroleum product may be exported to South Africa by a person subject to the jurisdiction of the United States”; and

(B) in subsection (b), before the period at the end thereof insert a comma and the following: “if no shipment of such export is made under such contract after December 31, 1986”.

(23) In section 322, insert “for” after “except”.

(24) In section 401—

(A) in the third sentence of subsection (a), insert “agreements” after “cooperative”;

(B) in the first sentence of subsection (b)(1), strike out “arrangements with the other industrialized democracies and other trading partners of South Africa” and insert in lieu thereof “agreements with the other industrialized democracies”;

(C) in subsection (c), strike out “sections 301 through 310” and insert in lieu thereof “title III”; and

(D) in subsection (d)(3), insert “, in accordance with section 602 of this Act,” after “enacted”.

(25) In section 402, strike out “against any national of the United States”.

(26) In section 501—

(A) in subsection (c), strike out paragraph (1);

(B) in subsection (c)(3), strike out “food, agricultural products, diamonds, and textiles” and insert in lieu thereof “diamonds”; and

(C) in subsection (c), redesignate paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

(27) In section 502—

(A) in subsection (a), strike out “material by” and insert in lieu thereof “material to”; and

(B) in subsection (b)(2), strike out “(1) and every thirty days thereafter, the President shall prepare and transmit” and insert in lieu thereof “(1), and every thirty days thereafter, the President shall prepare and transmit to the Congress a report containing”.

(28) In section 505(a), insert a comma after “done” the second place it appears.

(29) In section 510—

(A) strike out subsection (b);

(B) redesignate subsection (c) as subsection (b); and

(C) in subsection (c), strike out “rubles” and insert in lieu thereof “gold coins”.

H. J. Res. 756—5

(30) In section 512(a), strike out "Subsaharan" and insert in lieu thereof "subSaharan".

(31) In section 602—

(A) in subsection (a)(1), insert "318(b)," after "311(b),";

(B) in subsection (b)(1), insert "318(b)," after "311(b),";

(C) in subsection (b)(3), insert "the" after "with";

(D) in subsection (c), redesignate paragraphs (A), (B), and (C) as paragraphs (1), (3), and (4), respectively; and

(E) in subsection (c), insert after paragraph (1), as redesignated by clause (D) of this paragraph, the following new paragraph:

"(2) in the case of section 318(b), a joint resolution which is introduced in a House of Congress within 3 legislative days after the Congress receives a certification of the President pursuant to section 318(b) and for which the matter after the resolving clause reads as follows: 'That the Congress, having received on a certification of the President under section 318(b)(2) of the Comprehensive Anti-Apartheid Act of 1986, approves the President's certification,' with the date of the receipt of the certification inserted in the blank;"

(b) The Foreign Assistance Act of 1961 is amended as follows:

(1) In section 105(b)(2)(C)(i), strike out "inservice" and insert in lieu thereof "in-service".

(2) In section 116(f)(2)(B), strike out "paragraph" and insert in lieu thereof "subsection".

(3) In section 535(a)(1), insert "and" after "enterprise,".

(c) The amendments made by subsections (a) and (b) shall be deemed to have taken effect upon the enactment of the Comprehensive Anti-Apartheid Act of 1986.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

## **Annex 5**

Department of Transportation Termination of Air Carrier Operations  
between the United States and South Africa,  
31 October 1986

(1987) 26 *International Legal Materials* 104

UNITED STATES: DEPARTMENT OF TRANSPORTATION TERMINATION OF AIR CARRIER OPERATIONS BETWEEN THE UNITED STATES AND SOUTH AFRICA\* [Effective November 16, 1986] +Cite as 26 I.L.M. 104 (1987)+

I.L.M. Background/Content Summary

[Final Order 86-11-29 calls for the revocation South African Airways U.S. foreign air carrier permit and the prohibition of service on U.S. carriers between the United States and South Africa.]

Order 86-11-29

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 31st day of October, 1986

In re: :  
:   
TERMINATION OF AIR CARRIER : Docket 44454  
OPERATIONS BETWEEN THE :  
UNITED STATES AND SOUTH :  
AFRICA :  
:

FINAL ORDER

By Order 86-10-60, issued and served October 28, 1986, the Department directed all interested persons to show cause why it should not 1) revoke the section 402 permit of South African Airways (SAA), 2) condition the operating authority of all U.S. air carriers to prohibit service between the United States and South Africa and 3) condition the operating authority of all U.S. air carriers to prohibit the take off and landing of their aircraft in South Africa. The Order noted that section 306 of the

\*[Reproduced from the text provided by the U.S. Department of Transportation.]



Comprehensive Anti-Apartheid Act of 1986 (Act) required the President to direct the Secretary of Transportation to take these first two steps and that, by Executive Order dated October 27, the President issued that directive. Order 86-10-60 proposed that the revocation of SAA's section 402 permit be effective on the third day following the effective date of the final order. It further required that comments be filed not later than 5:00 pm, October 30, 1986.

On October 30, SAA filed comments in opposition to Order 86-10-60, arguing that: immediate revocation of SAA's permit is not required by the Act or the Executive Order, but would violate the Air Transport Services Agreement (Agreement) and constitute an incorrect construction of the Act; the order provides insufficient response time for SAA to have an adequate hearing and that the proposed final order should provide sufficient time for SAA to cease its U.S. operations in an orderly fashion; the effective date of the final order should be stayed pending final judicial determination of its legality.

Southern Air Transport also filed a comment to Order 86-10-60, requesting an exemption so that its L-100 Hercules aircraft can land and take off from the SAFAIR maintenance facility in South Africa solely for maintenance work.

As fully discussed below, we reject South African Airways' arguments and deny its request for a stay as well as the exemption request of Southern Air Transport. Therefore, subject to the disapproval of the President pursuant to section 801(a) of the Federal Aviation Act, we are finalizing the actions proposed in Order 86-10-60.

We are taking this action to implement Congress' determination that the United States should impose sanctions on the South African government to encourage that government to adopt reforms leading to the establishment of a non-racial democracy. Section 101 of the Act. Congress, moreover, wanted immediate implementation of its policy. Senator Kasten expressed the sense of the Congress that "[w]e must make it clear to the South African Government that this policy must be abolished, and that real movement toward an egalitarian society must be made, and made now." 132 Cong. Rec. S11876 (daily ed., August 15, 1986).

We reject SAA's argument that immediate revocation is not required by the Act or the Executive Order. Section 306(a)(2) of the Act states that:

Ten days after the date of enactment of this Act, the President shall direct the Secretary of Transportation to revoke the right of any air carrier designated by the Government of South Africa under the Agreement to provide service pursuant to the Agreement.

The meaning of the words is clear. The South African carrier's rights to serve pursuant to the Agreement are to be revoked as

quickly as possible. SAA's arguments that this section does not call for action before termination of the Agreement are not convincing, since it calls for the revocation of rights to provide "service pursuant to the Agreement". Congress could not have intended that we wait until after the Agreement had been terminated because, by that time, there would be no existing agreement under which a South African carrier would be designated or have rights. Such an interpretation would render section 306(a)(2) a nullity. Thus, SAA's interpretation would render this statute meaningless, contrary to the canons of statutory construction. See, e.g., Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982); see also American Tobacco Co. v. Patterson, 456 U.S. 63 (1982). SAA's argument that immediate revocation is not required because section 306(a)(2) specifies no time constraint is equally unconvincing. The requirement that, in 10 days, "the President shall direct the Secretary . . .", clearly indicates that Congress desired haste. Had it expected DOT to wait the year that it takes to terminate the Agreement, there would have been no point in instructing the President to direct the Secretary in ten days.

The Executive Order similarly supports immediate revocation by stating:

The Secretary of Transportation shall take the steps specified in Sections 306(a)(2) and (3).

This is a simple endorsement of the steps which Congress has decided should be taken: immediate revocation of operating rights.

SAA's argument that our interpretation of section 306(a)(2) is inconsistent with section 306(b)(2) (which does not take effect until after the Agreement is terminated) is also inconsistent with the legislative history of this statute; that legislative history makes it clear that Congress wanted section 306(a)(2) to be implemented immediately.

Section 306, as it was reported out of the Senate Foreign Relations Committee on August 6, 1986, provides that aviation sanctions would occur after the Agreement had been terminated in accordance with the terms of the Agreement. What this meant was that the sanction would not be in place for a year because Article IX of the Agreement provides for one year's notice before termination.

On August 14, 1986, the Senate considered Amendment No. 2741, which was introduced by Senators Sarbanes and Kassebaum, both members of the Senate Foreign Relations Committee. This amendment proposed to add to the bill what is now paragraph (a) of section 306 which includes the immediate revocation provisions. In offering the amendment, Senator Sarbanes said he was doing so to correct a drafting error in the legislation. He stated:

When the committee considered immediate sanctions and future sanctions to express our opposition to apartheid, the termination of air transportation was included among those that would be imposed immediately...

I think most members assumed that in acting with respect to air travel, the committee was acting in a manner to ensure that the ban would take effect, if not immediately, at least in the very near future and not a year down the road. In fact, the bill itself contains in a different section a list of other sanctions which would be put into place a year from now if there were not significant progress toward dismantling apartheid. Congressional Record, S 11712 (daily ed. August 14, 1986).

Senator Pell, also a member of the Foreign Relations Committee, then noted his own understanding of what the Committee had intended:

I think it [the Amendment] fills a gap in the bill as reported by the committee. My own recollection is that the committee's intention was to impose this sanction immediately. Adoption of this measure will ensure that. Congressional Record, S 11713 (daily ed. August 14, 1986).

When the Senate approved the amendment after floor debate, it was clear that it knew it had voted for immediate sanctions. Although the Senate did not completely reconcile the Amendment's provisions and the Foreign Relations Committee's provisions, the Senate's intent was clear.

Given the clarity of the Congressional intent and the specificity of the legislation, there is no need to reconcile it with section 1102(a) of the Federal Aviation Act, which requires the Secretary to act consistently with any agreement in force between the United States and another country. To the extent that there exists an inconsistency between this section and the Comprehensive Anti-Apartheid Act, the more specific statutory provisions of the latter prevail over the the more general one. See Morton v. Mancari, 417 U.S. 535 (1974). 1/

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1 SAA also argues that section 306(a)(2) does not apply to the permit issued to South African Airways because that provision revokes the right of a South African-designated "air carrier". As section 306(d) provides that the term "air carrier" has the same meaning as it does in the Federal Aviation Act, *i.e.*, a citizen of the United States, SAA states that section 306(a)(2) does not apply to SAA because it is a legal citizen of the Republic of South Africa. We reject this argument as an attempt to use a technical distinction to obliterate the plain meaning of section 306(a)(2). Section 306(a)(2) revokes the right of air carriers designated by the Government of South Africa under the Agreement. Its language tracks the use of the term "air carrier" as used in Section I of the Agreement Annex, where the U.S. grants to South Africa "the right to conduct air transport services by one or more air carriers of South African nationality designated by the latter country." Clearly, SAA is that designated "air carrier." In fact, Section 306(a)(2) can only have meaning if it is directed to SAA. SAA acknowledges as much at page 15 of its Response when it states that "South African Airways remains the only designated carrier of the Republic of South Africa."

SAA also argues that revocation would constitute a breach of the Agreement because it is not justified by any violation of the Agreement or of any of the conditions in SAA's permit. This argument ignores the extraordinary context within which this order is being issued. The Congress has enacted a broad spectrum of sanctions, including aviation sanctions, to be taken against the Government of South Africa. The President is carrying out these sanctions, including the revocation of the rights of South African-designated air carriers to operate to the U.S. Under such circumstances, the President has sufficient authority to take actions which may be contrary to Executive Agreements. Similarly, it is established that Congress may act in a manner that is inconsistent with Executive Agreements. See Whitney v. Robertson, 124 U.S. 190 (1888), and Goldwater v. Carter, 617 F.2d 697 (D.C. Cir. 1979).

SAA also argues that it has been afforded insufficient time in which to respond to the show cause order, asserting that two day's notice denies it its due process right to a fair hearing. It now requests an additional 10 days in which to respond. Previously, SAA had filed a motion requesting that the date for responses be extended until November 7, 1986. As we stated in denying that motion in Order 86-10-62, SAA has had almost a month to prepare its response. With enactment of the Act on October 2, 1986, SAA knew precisely the actions which the Department would be taking. Furthermore, at a meeting held at the State Department at the request of the South African Government on October 8, 1986, the U.S. Government explained to SAA officials that the Department of Transportation would shortly be issuing a show cause order with comments due in two working days. In view of this lead time, which is in fact more than for many DOT show cause orders, SAA has had adequate time to prepare its response. In analogous situations, we have granted foreign air carriers far less response time. See, Order 81-12-171, December 29, 1981, suspending LOT's air carrier permit in 1981 after two days' notice to respond. SAA has filed a full response and has not been prejudiced by the response period in the show cause order. We also see no reason to provide SAA an opportunity for oral argument, since it has had an adequate opportunity to present its case.

SAA also argues that the revocation of its permit, three days after the effective date of the final order, does not provide it with sufficient time to terminate its U.S. operations in an orderly manner. We disagree. As noted above, SAA has had notice since October 2, 1986, of the Congressional action requiring sanctions. In fact it appears that SAA has already begun the process of terminating its operations. Shortly after enactment of the Act, it reduced its service from four to two roundtrips per week. In addition, routine inquiries made by the Department reveal that SAA has been informing the public that it does not know beyond the immediate week whether it will be conducting operations the following week. We do not believe that it would either be in the public interest or consistent with Congressional intent to grant SAA the additional 90 days it has requested to close down its U.S. operations.

Finally, SAA requests that the effective date of the final order be stayed pending final judicial review. SAA has failed to provide any basis for receiving a stay under the established standards for obtaining a stay of agency action. In any event, Congress' determination that the public interest requires the prompt implementation of the sanctions legislation in itself requires the denial of SAA's stay request.

With regard to the request of Southern Air Transport for an exemption to allow it to land and takeoff in South Africa solely for maintenance work, we will not grant it the blanket exemption it requests. Section 306(c) provides that exceptions can be made by the Secretary to handle "emergencies in which the safety of an aircraft or its crew or passengers is threatened." Carriers may, consistent with section 306(c), apply on a case by case basis for an exemption from the condition imposed by this order.

ACCORDINGLY,

1. We find that it is in the public interest and required by the public convenience and necessity to revoke the permit issued to South African Airways by Order 73-10-2, and to condition the operating authority of all U.S. air carriers to prohibit service between the United States and South Africa and to prohibit the takeoff and landing of their aircraft in South Africa;
2. We make final the tentative findings and conclusions in Order 86-10-60;
3. We deny all requests for relief filed by South African Airways and Southern Air Transport in Docket 44454;
4. On the third day following the effective date of this order, we revoke the foreign air carrier permit issued to South African Airways by Order 73-10-2;
5. We amend the certificates of public convenience and necessity and exemption authority of all U.S. air carriers to add the following condition:

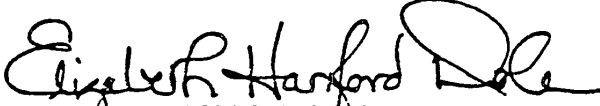
Notwithstanding the provisions of this [certificate/exemption] or any other Department regulation, effective immediately, the holder shall not provide service between the United States and South Africa, nor shall any of its aircraft take off or land in South Africa.

6. Unless disapproved by the President of the United States under section 801(a) of the Federal Aviation Act, this order shall become effective on the 61st day after its submission to the President, or upon receipt of advice from the President that he

does not intend to disapprove the Department's order under section 801(a), whichever occurs earlier; 2/

7. We will serve a copy of this order on all certificated air carriers, South African Airways, the Ambassador of South Africa and the U.S. Department of State.

By:

  
ELIZABETH HANFORD DOLE  
Secretary of Transportation

(SEAL)

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2/ This order was transmitted to the President on November 3, 1986. On November 13, 1986, we received notification that the President did not intend to disapprove the Department's order. The third day referred to in ordering paragraph 4 is November 16, 1986.

## **Annex 6**

ICAO Council – 74th Session, Minutes of the Second Meeting,  
ICAO document 8956-C/1001, 27 July 1971

INTERNATIONAL COURT OF JUSTICE

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PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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APPEAL RELATING TO THE  
JURISDICTION  
OF THE ICAO COUNCIL

(INDIA *v.* PAKISTAN)

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*COUR INTERNATIONALE DE JUSTICE*

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MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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APPEL CONCERNANT LA  
COMPÉTENCE  
DU CONSEIL DE L'OACI

(INDE *c.* PAKISTAN)





## Annex E

MINUTES OF THE COUNCIL OF THE  
INTERNATIONAL CIVIL AVIATION ORGANIZATION

## (a) COUNCIL—SEVENTY-FOURTH SESSION

*Minutes of the Second Meeting*<sup>1</sup>

(The Council Chamber, Tuesday, 27 July 1971, at 1000 hours)

## CLOSED MEETING

President of the Council: Mr. Walter Binaghi

Secretary: Dr. Assad Kotaite, Secretary General

*Present:*

Argentina	Com. R. Temporini
Australia	Dr. K. N. E. Bradfield
Belgium	Mr. A. X. Pirson
Brazil	Col. C. Pavan
Canada	Mr. J. E. Cole (Alt.)
Colombia	Major R. Charry
Czechoslovak Socialist Republic	Mr. Z. Svoboda
Federal Republic of Germany	Mr. H. S. Marzusch (Alt.)
France	Mr. M. Agésilas
India	Mr. Y. R. Malhotra
Indonesia	Mr. Karno Barkah
Italy	Dr. A. Cucci
Japan	Mr. H. Yamaguchi
Mexico	Mr. S. Alvear Lopez (Alt.)
Nigeria	Mr. E. A. Olaniyan
Norway	Mr. B. Grinde
Senegal	Mr. Y. Diallo
Spain	Lt. Col. J. Izquierdo
Tunisia	Mr. A. El Hicheri
Uganda	Mr. M. H. Mugizi (Alt.)
Union of Soviet Socialist Republics	Mr. A. F. Borisov
United Arab Republic	Mr. H. K. El Meleigy
United Kingdom	A/V/M J. B. Russell
United States	Mr. C. F. Butler

*Also present:*

Dr. J. Machado (Alt.)	Brazil
Mr. E. G. Lee (Alt.)	Canada
Mr. B. S. Gidwani (Alt.)	India
Mr. M. García Benito (Alt.)	Spain
Mr. N. V. Lindemere (Alt.)	U.K.
Mr. F. K. Willis (Alt.)	U.S.
Mr. N. A. Palkhivala (Chief Counsel)	India
Mr. Y. S. Chitale (Counsel)	India

<sup>1</sup> Reproduced from ICAO Doc. 8956-c/1001, C-Min. LXXIV/2 (closed).

Mr. I. R. Menon (Assistant Counsel)	India
Mr. S. S. Pirzada (Chief Counsel)	Pakistan
Mr. K. M. H. Darabu (Assistant Counsel)	Pakistan
Mr. A. A. Khan (Obs.)	Pakistan
Mr. H. Rashid (Obs.)	Pakistan
Mr. Magsood Khan (Obs.)	Pakistan
H.E. A. B. Bhadkamkar (Agent)	India
H.E. M. S. Shaikh (Agent)	Pakistan
<i>Secretariat:</i>	
Dr. G. F. Fitzgerald	Sr. Legal Officer
Mr. D. S. Bhatti	Legal Officer
Miss M. Bridge	CSO

### SUBJECTS DISCUSSED AND ACTION TAKEN

#### *Subject No. 26: Settlement of Disputes between Contracting States*

#### *Pakistan versus India—Suspension by India of Flights of Pakistani Aircraft over Indian Territory*

1. As decided on 12 June, this was a meeting to hear the parties on the preliminary objection filed by India on Pakistan's application to the Council under Article 84 of the Convention and Article II, Section 2 of the International Air Services Transit Agreement ("Case No. 1") and its complaint under Article II, Section 1 of the Transit Agreement ("Case No. 2"). The spokesman for India was Mr. N. A. Palkhivala, the spokesman for Pakistan Mr. S. S. Pirzada, both acting in the capacity of Chief Counsel for their respective countries. The whole of the meeting was taken up with the presentation by Mr. Palkhivala of the preliminary objection in Case No. 1.

2. The preliminary objection was, in essence, that Pakistan's application was not competent and not maintainable and that the Council had no jurisdiction to handle the matters contained therein. Two main grounds for this contention were submitted.

3. The first ground was that there was no disagreement between India and Pakistan over the interpretation and application of the Convention and the Transit Agreement because these two instruments were inoperative between the two countries. India regarded the Convention—and with it the Transit Agreement, whose existence was dependent upon it—as suspended or terminated between herself and Pakistan by the latter's conduct, which, so far as India was concerned, was directly contrary to the Convention's basic purpose: promotion of the safe and orderly development of international civil aviation. Alternatively, the Convention and Transit Agreement could be considered as suspended or terminated between the two countries by India's action in suspending the flight of Pakistani aircraft over Indian territory, action India was entitled to take under two fundamental principles of general international law most recently confirmed by the International Court of Justice in its Advisory Opinion of 21 June 1971 on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*.

4. The first of these principles was that it was the sovereign right of a State to terminate a treaty even if the treaty made no provision for termination; a State challenging the exercise of that right must be able to point to some specific provision of the treaty denying it, and there was no such provision in

the Convention or the Transit Agreement. The second principle, embodied in Article 60 of the Vienna Convention on the Law of Treaties, was that a material breach of a treaty by one of the parties—in other words, a repudiation of the treaty not sanctioned by the Vienna Convention or the violation of a provision essential to the accomplishment of the object or purpose of the treaty—was grounds for a State specially affected by it to suspend the operation of the treaty in whole or in part in the relations between itself and the defaulting State. There could be a dispute between the defaulting and the affected State over whether the suspension was justified, but there was no provision in the Convention or Transit Agreement giving the ICAO Council jurisdiction to deal with that kind of dispute. As noted by the ICAO Assembly at its first session (Resolution A1-23), the power of the Council to act as an arbitral body was much more restricted under the Convention than it had been under the Interim Agreement, being limited to disagreements relating to the interpretation or application of the Convention and its Annexes. Moreover, the composition of the Council did not make it an appropriate forum for dealing with such complicated questions of fact and law as were involved in the present case. In this connection Mr. Palkhivala read into the record paragraphs 16 to 24 of the preliminary objection.

5. He then denied Pakistan's affirmation that Articles 54, 89 and 95 of the Convention made the Council competent to deal with the application. He argued that the relevant provisions of Article 54, (*j*) and (*k*) dealing with infractions of the Convention, were applicable only if the Convention was in operation between the State alleged to have committed an infraction and the State complaining about it. Article 89, which recognized the freedom of action of States in times of war or national emergency, was irrelevant to the present case, having nothing to do with the right of termination for material breach. Article 95, dealing with denunciation of the Convention, was also irrelevant; India had no wish to withdraw from the Convention, repudiating her obligations and privileges under that instrument vis-à-vis all Contracting States; she wanted only the suspension of its operation in relation to one State.

6. Mr. Palkhivala next dealt with three of the points in Pakistan's reply to the preliminary objection. He claimed that the first—that "application" included termination and suspension—was a clear misuse of the language and a reflection upon the competence of the drafters of the Convention; moreover, the International Court of Justice, in the *Namibia* case, had accepted the argument of the United States counsel that there were three distinct types of disagreements relating to international treaties: disagreements over interpretation, disagreements over application, and disagreements over termination. He declared that the second point—that India had applied the Convention and Transit Agreement between itself and Pakistan since the cessation of the 1965 hostilities—was incorrect: there had been no scheduled or non-scheduled air services between India and Pakistan since 1965; the right accorded by Article 5 of the Convention to make non-traffic stops had been completely denied; and overflights had been only by specific permission, which was directly contrary to Article 5; if Pakistan had a complaint, therefore, it should have been made in 1965. The third point—that there was no right to terminate an agreement unless the agreement provided for it—was contrary to the opinion of the International Court of Justice, which, incidentally, was an appellate tribunal in disputes referred to the Council under Article 84 of the Convention.

7. The second ground for the preliminary objection was that since 1965 overflights of Indian and Pakistani aircraft had been covered by a special

régime, not by the Convention and Transit Agreement. In support of this contention, Mr. Palkhivala read the two notifications annexed to the preliminary objection; the first, dated 6 September 1965, directed that no aircraft registered in Pakistan or belonging to or operated by the Government or nationals of that country should be flown over any portion of India; the second, dated 10 February 1966, after the Tashkent Declaration, amended this directive by adding "except with the permission of the Central Government and in accordance with the terms and conditions of such permission". There was no agreement to arbitration by the Council in the event of a disagreement arising under this special régime and therefore the Council had no jurisdiction in the matter brought before it by Pakistan.

8. Mr. Palkhivala had not completed his presentation at the luncheon break.

## DISCUSSION

### *Subject No. 26: Settlement of Disputes between Contracting States*

#### *Pakistan versus India—Suspension by India of Flights of Pakistani Aircraft over Indian Territory*

1. *The President:* The Council is in session. This is the second meeting of the 74th Session. Some Council members have modified their representation for today's meeting, so I will give an indication of how things stand. Canada is today represented by the two Alternates to Mr. Gourdeau—Mr. Cole and Mr. Lee. The United States has an Adviser, Mr. Willis. Uganda is represented by the Alternate to Mr. Wakida—Mr. Mugizi. In addition to the permanent Representative, Mr. Malhotra, and his Alternate, Mr. Gidwani, we have, as representatives of India, the Agent—His Excellency Mr. Bhadkamkar, and the Chief Counsel, Mr. Palkhivala, who is assisted by Mr. Chitale and Mr. Menon. For Pakistan we have the Agent—His Excellency Mr. M. S. Shaikh, the Chief Counsel—Mr. S. S. Pirzada, and, as assistant to Mr. Pirzada, Mr. Darabu. Pakistan as a State also has as representatives Mr. Aftab Ahmed Khan, Mr. Rashid and Mr. Magsood Khan.

2. It will be recalled that the Council had established the 11th of July 1971 as the date for the filing of the counter-memorials in Cases No. 1 and No. 2, India/Pakistan. Meanwhile, on the 1st of June 1971 preliminary objections were filed by India on Cases No. 1 and No. 2. On the 12th of June 1971, in Vienna, the Council decided that it would hold a meeting on the 27th of July, today, and more meetings, if necessary, in order to hear the parties on the preliminary objection. The Secretary General subsequently circulated a reply by Pakistan, in English under memorandum of 7th July and in French and Spanish under memorandum of 9th July.

3. We shall now go to the first point on the Order of Business, which is the hearing on Case No. 1, and I should mention that by error the reference documents have been listed in a somewhat mixed up order. If you follow the chronological order, the one that should have been listed first is the memorandum of the Secretary General dated 3 June 1971 circulating the preliminary objection of India. The others follow in the order in which they are listed now.

4. It is my intention to give an opportunity first to India to present its preliminary objection, then to give an opportunity to Pakistan to reply. If

other interventions by both parties are necessary, I hope they will be as brief as possible. After that, Council members will have an opportunity to participate, not yet getting into the deliberations on the merits of the case itself or on the preliminary objection, but putting questions for information purposes. After the questions and replies, the Council will have to decide if it wishes to proceed to the deliberations on whether or not it is competent. So I will now invite India to present the preliminary objection on Case 1.

5. *Mr. Falkhivala:* Mr. President and honourable members, I shall first deal with Case No. 1 filed by Pakistan against India. That Case represents an application made under Article 84 of the Chicago Convention, the Convention on International Civil Aviation of 1944, which for brevity's sake I shall call "the Convention" in the course of my argument. The same application is also made under Article II, Section 2, of the International Air Services Transit Agreement of 1944, which I shall call hereafter "the Transit Agreement". The second case, which represents a complaint filed under Article II, Section 1 of the Transit Agreement, I shall deal with separately after I have finished with the first one.

6. Now, Sir, the preliminary objection is twofold and the first one rests on the proposition that any dispute arising out of termination or suspension of an international treaty, of the Convention or of the Transit Agreement, cannot be the subject-matter of proceedings before this honourable body. It is this proposition that I shall try to make good, first in the light of the express, and I would say explicit, provisions of the Convention and the Transit Agreement on this question and second by reference to the latest ruling of the International Court of Justice.

7. Mr. President, I think it would not be inappropriate to start with this: disputes between nations pertaining to the Convention or the Transit Agreement may arise in one of four ways. First, it may be a dispute as to interpretation of the treaty; second, it may be a dispute as to application of the treaty; third, it may be a dispute arising from action taken under the treaty; fourth, it may be a dispute pertaining to termination or suspension of the treaty by one State as against another. If I may for the sake of brevity call them cases of interpretation, application, action and termination, these four cases perhaps cover the normal gamut of international disputes and it is most important to note that under the terms of the Convention only the first two types of dispute can come before this honourable Council. As far as the Transit Agreement is concerned, the first three types of disputes can come before the Council. Therefore two disputes in the case of the Convention, three types of disputes in the case of the Transit Agreement, but in neither case can the fourth type, which is concerned with termination, come before this honourable Council. This is the crux of the case and I would appreciate the honourable members bearing in mind the clear distinction which the words of the English language convey to anyone familiar with the language. I am sure the distinction must be equally well brought out in the translations of these treaties, which are also authoritative texts.

8. If the honourable members have a copy of the Convention, may I request them to be kind enough to refer to Article 84 to see what are the words of this Article, which is the only Article conferring jurisdiction on this Council. The words of Article 84 are:

"If any disagreement between two or more contracting States relating to the interpretation or application of this 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. No member of the Council shall vote in the consideration by the Council of any dispute to which it is a party. Any contracting State may, subject to Article 85, appeal from the decision of the Council to an *ad hoc* arbitral tribunal agreed upon with the other parties to the dispute or to the Permanent Court of International Justice. Any such appeal shall be notified to the Council within sixty days of receipt of notification of the decision of the Council."

May I, with your leave, Mr. President, emphasize the opening words of this Article—"any disagreement between two or more Contracting States relating to the interpretation or application of this Convention". If the disagreement pertains not to interpretation or application—the two types of disputes which are covered by the terms of the Article—but is a dispute of a third category which is not covered by the words "interpretation or application", this honourable Council would have no jurisdiction to deal with it.

9. Now one thing that is at the very basis of Article 84 is the continued existence, the continued efficacy, the continued operation, of the Convention as between two States. If two States agree that the Convention continues as between them—because every multilateral treaty is at the same time a treaty between any two of the many States parties to it—and if a dispute arises between them, it would be possible to say that it is a disagreement as to interpretation or application. In other words, the concept of interpretation as well as the concept of application contemplates and postulates the continued operational existence of the agreement. If it continues to be in operation between two States, you can interpret it, and if there is a disagreement as to interpretation, the Council will decide. If the Convention continues to be in operation between two States, any disagreement about how you apply it to existing facts can again be determined by the Council.

10. However, if one State, as a result of the conduct or misconduct of the other State, has chosen to terminate or treat as terminated this Convention vis-à-vis the wrongdoing State, then this is a dispute as to termination of the Convention by State A as against State B, and such a dispute cannot be considered by anyone familiar with the English language as a dispute as to interpretation or application, because in that case there is nothing to interpret; there is nothing to apply. You do not have in operation between the two States a convention that you can possibly interpret or apply. May I request the honourable members to bear in mind—and my proposition I shall make good by reference to the opinion of the World Court—that this power to terminate a convention or an international treaty is a power which is dehors the convention or the treaty. It is outside the convention or the treaty and it is a sovereign power which can be exercised by a State. Perhaps a State may wrongly exercise the power of terminating an international treaty. If it does so, and if there is an appropriate forum to which you can go in order to get redress, that forum may decide the matter, but my limited purpose is to show that whether another forum exists or not, which is not the subject-matter here, this honourable Council is not the forum before which any State can bring the case that another State has terminated the agreement and, in the view of the complaining State, wrongly done so. This kind of dispute is a dispute as to termination, and when I come to a very important answer which the representative of the United States gave to the World Court in the South Africa case to which I will refer, you will find that the United States itself, in a very clear and unequivocal answer, made the submission I am making here:

that the power to terminate an agreement is a distinct, separate power, unconnected with the question of application or interpretation.

11. May I request the honourable members to consider how these words apply in practice. There may be some words in the Convention which are ambiguous, capable of two meanings, at least in the view of one State. That State may tell another State "I do not interpret the words this way. My interpretation is 'X', your interpretation is 'Y'." and if the parties do not agree as to what is the right interpretation, this Council would decide what that interpretation is. This is the meaning of "disagreement as to interpretation".

12. Now between India and Pakistan there is no such dispute at all. It is India's case, and in fact it is Pakistan's case, that India has terminated this agreement. It is true that in the final reply Pakistan says "No, it is a case of interpretation or application, which is a matter of legal submission.", but it is categorically India's case that by Pakistan's misconduct—I am using the word "misconduct" in the legal sense, and though the facts are not really relevant for this preliminary submission, I shall deal with them very briefly in a few minutes after I have finished the legal submission—the Convention has been terminated by Pakistan *qua* India. Alternatively, if you were to hold that Pakistan has not terminated the Convention *qua* India, India has terminated, or in any event suspended, the Convention *qua* Pakistan. Whether we have done so rightly or wrongly is a dispute pertaining to the termination of the agreement; it is not a case of interpretation or application. If this is the real dispute between India and Pakistan, there can be no question of interpretation. We are not interpreting any article of the Convention at all. There is no word of the Convention which is in dispute between India and Pakistan, India's case being that this Convention stands terminated as between India and Pakistan.

13. If you will now look at the word "application", as I read the English language it means the way you apply the provisions of this particular Convention to an existing set of facts. So long as this Convention continues in operation, there may arise between two States a question about how a particular provision should be applied to an existing set of facts. Now you cannot possibly apply the Convention unless it is in operation. Application logically must presuppose that the Convention is in operation. If it is in operation the question is how do you apply it to an existing set of facts. If one State says "I apply it this way.", and another State says "I apply it another way.", that would be a disagreement as to application. To give you one simple example, under Article 5 aircraft of one State not engaged in scheduled international air services have the right to fly into or non-stop across another State's territory or to make stops for non-traffic purposes.

14. Now in relation to an existing set of facts a dispute may arise over whether a particular country wants to make a non-traffic stop or not, whether a particular country is overflying non-stop across the territory or is claiming some higher right. Then there are various other provisions about search of aircraft, airport and similar charges, prevention of disease, etc. In relation to a particular set of facts this difficult question of fact or law may arise: "Are these provisions being correctly applied by one State or wrongly applied by one State?" These are disputes as to application of the Convention to an existing set of facts and since the Convention has more than 90 articles, you can well imagine a number of questions which could arise in applying it to an existing set of facts. The word "application" therefore presupposes the existence, the operation, the efficacy of the Convention as between two States. But if you do not have that and you have the question of termination—I am not

troubling the honourable members today with whether termination by India, or termination by Pakistan as we say it was, was rightful or wrongful; if there was an appropriate forum, we have no doubt that we would be able to prove to the hilt that, assuming the termination was by India, it was rightful—but I am requesting them to accept the submission, which is well founded in law, that since the dispute pertains to termination, it cannot possibly be treated as a case of interpretation or application.

15. In this connection may I request you, having seen that under Article 84 of the Convention only two types of disputes can possibly come to the honourable Council, disputes as to interpretation and disputes as to application, to turn to the Rules for the Settlement of Differences approved by the Council in April 1957. I shall refer to them hereafter as "the Rules". If you turn to Article 1, you will see how very precisely even the Rules for the Settlement of Differences are restricted to two types of differences—differences as to interpretation and differences as to application.

*"Article 1*

The rules of Parts I and III shall govern the settlement of the following disagreements between Contracting States which may be referred to the Council.

(a) Any disagreement between two or more Contracting States relating to the interpretation or application of the Convention on International Civil Aviation."

I shall stop here because the rest of the Rule deals with something else. Then there is a sub-clause (b) which says that these Rules apply to only two types of disputes, disagreement as to interpretation and disagreement as to application. The rest of the Rules will not come into operation unless this first condition is satisfied, namely that the dispute falls within the ambit of Article 1, Clause 1 (a), of these Rules.

16. I have finished showing that under the Convention only two types of disputes can go to the Council. May I now turn to the Transit Agreement to show that three types of disputes can go to the Council: first a dispute as to interpretation, second a dispute as to application and third a dispute arising from action taken under the Transit Agreement. You will note that so far as the Convention is concerned, unless the disagreement relates to interpretation or application it cannot come before the Council, but action taken under the Transit Agreement is separately dealt with as a matter that can go before the Council. In this connection may I request the honourable members to turn to the *Transit Agreement of December 1944, Article II, Section 2*. It is couched in words identical to those used in the Convention:

"If any disagreement between two or more contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above-mentioned Convention shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above-mentioned Convention."

The words are "interpretation or application".

17. Now the third type of dispute which can go to the Council is dealt with in Section 1 of the same Article II:

"A contracting State which deems that action by another contracting State under this Agreement"—mark the words "under this Agreement"



—“is causing injustice or hardship to it may request the Council to examine the situation. The Council shall thereupon inquire into the matter and shall call the States concerned into consultation.”

I need not read the rest. I am referring to this provision now only with a view to giving a comprehensive picture of the limits of the jurisdiction of this honourable Council. I shall refer to it in more detail when I come to the second case, the complaint of Pakistan. What I am emphasizing at the moment is that Article II, Section I refers to a third type of disagreement or dispute which can arise between States, pertaining to action taken under the Transit Agreement. Now the words “action taken under this Agreement” harmonize with the interpretation I have already put on the words “application or interpretation”. These three categories of dispute all postulate the continued operation of the Agreement. Thus you have questions of interpretation, application and action under the Agreement.

18. You have seen that the fourth type of dispute pertaining to termination is nowhere made subject to this honourable Council’s jurisdiction. Even in the Rules which deal with the Transit Agreement, you will find that the Council’s jurisdiction is restricted to cases of interpretation, application and action under the Agreement. Of course, the Rules could not possibly confer a jurisdiction not conferred by the Convention or by the Transit Agreement. No such jurisdiction is conferred in case of termination by the Convention or the Transit Agreement and I am only fortifying my argument by reference to the Rules, which are within the framework of the Convention and the Transit Agreement and in the latter case expressly limit the tribunal’s jurisdiction to these three types of disputes.

19. In order to prove that, may I request you to turn to that part of the Rules which deals with the Transit Agreement as distinct from the Convention. It is Article I, Clause 1 (b), which talks of two types of disputes: “any disagreement between two or more contracting States relating to the interpretation or application of the International Air Services Transit Agreement and of the International Air Transport Agreement (hereinafter respectively called ‘Transit Agreement’ and ‘Transport Agreement’).” The third type of dispute under the Transit Agreement is dealt with by the same Article I, Clause 2: “The Rules of Parts II and III shall govern the consideration of any complaint regarding”—now mark the words—“an action taken by a State party to the Transit Agreement and under that Agreement”. Two conditions have to be fulfilled. First, action must be taken by a State party to the Transit Agreement and, second, it must be action under the Agreement. This part of Article I of the Rules is exhaustive of the jurisdiction of the Tribunal to deal with cases arising under the Transit Agreement.

20. Now I come to this very important question of international law, which, fortunately for me, has been settled by the latest pronouncement of the *International Court of Justice*. May I first briefly explain to the honourable members in my own simple words what this principle is and then read the judgment of the World Court on that issue. After I have made my submissions the honourable members will see that what I am about to say is completely borne out by the judgment of the International Court of Justice. The principle of international law is this—when two or more States enter into a treaty the power to terminate it does not have to be conferred by the treaty itself. The right to terminate a treaty is inherent in a sovereign State. You may have an international forum before which the State wronged by the wrongful termination of the treaty by another State can go, or you may have

no such international forum, but the essential point is that this right to terminate a treaty is a principle of international law, which is not to be regarded as absent because the convention or treaty does not expressly confer the power of termination. In other words, the power to terminate the treaty does not have to be conferred by the treaty itself. It is *dehors* the treaty. It is outside the treaty. Its source is customary international law—I am using the words of the International Court of Justice. If any State says there is no such power to terminate the treaty, that State must be able to point to an express provision in the treaty which says that the States parties to this treaty shall have no power to *terminate it at any time or shall have the power to terminate it only in certain ways*. In other words, the power exists *dehors* the treaty and it can only be taken away by express words of the treaty and no other way. Now there are no express words of the Convention or of the Transit Agreement which at all affect prejudicially, at all take away or abridge, the sovereign right of a State to terminate the treaty.

21. The second proposition laid down by the World Court is that if one State which is a party to an international treaty commits a material breach of the treaty, the other party is not bound to sit idle, wring its hands and say "Will you kindly be good enough to observe your obligations." The other State has the right to terminate the treaty itself on the ground that the wrongdoing State cannot get away with the fruits of its wrong; if you have committed a breach of your part of the treaty, I am entitled to terminate the treaty. This is the international law.

22. Now a very difficult, sometimes very complicated, question will arise: Has the State which has purported to exercise the right to terminate the treaty done so for good grounds or bad grounds? The important point is that whether the right of terminating the Treaty has been exercised on good grounds or bad grounds can only be determined by the forum which has the right to decide the dispute pertaining to the termination. Such a forum is not this honourable Council. There may or may not be other forums, and in fact *this was the whole case of South Africa*. South Africa argued like this: we were given this mandate over Namibia by the United Nations; this mandate is an international treaty—the World Court accepted that position—and under this international treaty there is no right to terminate the mandate. The International Court of Justice ruled that there was a right to terminate the mandate and that it had in fact been terminated on justifiable grounds, because South Africa had committed a breach of its obligations under the treaty or mandate.

23. When you have this situation where the treaty itself has no provision for termination, the World Court says that *the power to terminate is outside the treaty*. Now may I ask you to consider whether there can be any flaw in this logic: if this power to terminate an international treaty is outside the treaty, is not to be found in the treaty itself, it must follow that a question as to termination cannot be a question as to application or interpretation of the treaty, because application means that you are trying to apply the terms of an existing treaty and interpretation means that you are trying to construe the terms of the treaty. If a State has chosen to exercise a power which is outside the treaty, it is incomprehensible to a logical mind that its action can be a case of application or interpretation. The Counsel for the United States, who strongly argued and argued in memorable words, if I may say so, put this point clearly beyond doubt and the World Court accepted it. He argued that there are three distinct types of cases, cases of interpretation, cases of application and cases of termination. He made cases of termination a third category and the World Court accepted that view.

24. The submission of South Africa that as there was no provision for termination the mandate could not be terminated was rejected. May I refer you to the Reports of Judgments of the International Court of Justice, 1971, the opinion given on 21st June 1971. I shall read slowly, because honourable members do not have the book before them. The heading of the opinion is "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)." May I refer you to pages 46-49 of this volume of the Reports. I shall read slowly in order that the very important words of the judgment may not be lost sight of. I am reading from page 46, paragraph 91: "One of the fundamental principles governing the international relationship thus established is that a party which disowns or does not fulfil its own obligations cannot be recognized as retaining the rights which it claims to derive from the relationship." In other words, if one State does wrong and makes civil aviation impossible for me—I am not going into facts because this is not the forum where the facts can be gone into, but assume hypothetically that a State has acted in such a way that my overflying that State's territory is unsafe—that destroys the very objective, the very purpose, of the Convention and the Transit Agreement. If because of that I terminate the agreement, I have terminated it rightfully. Suppose I get panicky and hastily jump to the conclusion—I will assume wrongly jump to the conclusion—that my overflying the territory of the other State is unsafe. Suppose that the view I have taken is an unduly apprehensive one and the correct view should be that it is all right for me, it is safe enough for me, to overfly, then I have wrongfully terminated the agreement. But whether I have terminated it rightfully or wrongfully is a dispute as to termination. That is the important point. Honourable members may kindly note that I am not trying to shirk the issue whether my termination was rightful or wrongful. I say it was perfectly rightful, but it is necessary to lay down the correct law as to the limits of the honourable Council's jurisdiction. Therefore without having any apprehension in my mind as to whether on merits I would succeed or not—I have no apprehension whatever; we are confident that we would be able to establish to the hilt that our termination was rightful if it becomes necessary to do so—but assume it was wrongful, it is still not a case of application or interpretation of the agreement.

25. This is what the World Court says in paragraph 94. If I may give this background, the General Assembly of the United Nations had passed a resolution saying that on account of certain facts it considered that South Africa was unfit to continue the mandate over Namibia. This is what the World Court says in paragraph 94 on page 45: "In examining this action of the General Assembly it is appropriate to have regard to the general principles of international law regulating termination of a treaty relationship on account of breach. For even if the mandate is viewed as having the character of an institution, as is maintained, it depends on those international agreements which created the system ..." I will omit the next part which deals with the point, which is not relevant for our purpose, that the mandate amounted to an international treaty. Now this is what it goes on to say: "The Court stated conclusively in that Judgment"—the judgment of 1962—"that the Mandate '... in fact and in law, is an international agreement having the character of a treaty or convention'."—I am now reading the very important words of the Judgment—"The rules laid down by the Vienna Convention on the Law of Treaties"—this is the Convention of 1969—"concerning termination of a treaty relationship on account of breach by another State (adopted without a dissenting vote) may in many respects be considered as a codification of

existing customary law on the subject." In other words, the World Court says that even apart from the Vienna Convention of 1969, every State has an inherent right, as a matter of customary international law, to terminate an agreement if another State has committed a breach of it. "In the light of these rules, only a material breach of a treaty justifies termination, such breach being defined as (a) a repudiation of the treaty not sanctioned by the present Convention or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty."

26. What I am emphasizing in this pronouncement of the World Court is that it is a rule of customary international law that one State can terminate a treaty if another State has committed a breach, and this power of termination is not to be found in the treaty itself; it is outside the treaty; it is founded in customary international law. This is made clear by paragraph 95, of which the material sentence is this: "The resolution in question is therefore to be viewed as the exercise of the right to terminate a relationship in the case of a deliberate and persistent violation of obligations which destroys the very object and purpose of that relationship."

27. Now the General Assembly of the United Nations and the World Court have the jurisdiction to deal with the question of termination of a treaty. The United Nations can deal with that question between two nations. The World Court can deal with it. This honourable Council does not have the right under its charter to deal with the question of termination. This is the important point. The World Court went into the facts because it was within its jurisdiction, but this larger jurisdiction to deal with questions of termination, rightly or wrongly, is not conferred on this honourable Council. I shall now read the next paragraph which is equally important, paragraph 96 on page 47. *Here the World Court is dealing with the argument of South Africa* that because there is no provision in the mandate for terminating the mandate the United Nations had no right to terminate it. These are very pregnant words and I submit that they apply directly to our case and have tremendous significance for it. The words are these: "The silence of a treaty as to the existence of such a right"—the right to terminate the treaty—"cannot be interpreted as implying the exclusion of a right which has its source outside the treaty, in general international law, and is dependent on the occurrence of circumstances which are not normally envisaged when a treaty is concluded." In other words, the mere fact that an international treaty like the Convention or the Transit Agreement is silent as to the right of a State to terminate does not mean that there is no such right. Such a right is outside the treaty and is founded on general international law.

28. Now it is the exercise of this right outside the treaty which is not to be brought before the Council. This honourable Council is concerned with the interpretation of the treaty, action taken under the treaty, application of the treaty to existing facts. Anything outside the treaty is outside the jurisdiction of this honourable Council. I think the position is fairly simple. Of course my knowledge is limited, but I am not aware of any case where this particular point has been over-ruled by the Council, namely that though a treaty has been terminated, we still take upon ourselves jurisdiction to deal with it. On the contrary, the very first meeting of the ICAO Assembly expressly drew attention of the learned members of the Council to the fact that its jurisdiction is extremely limited. You can deal with any disputes—the word is "any"—but they must pertain to interpretation or application. As soon as you come to action outside the treaty, and termination according to the World Court is outside the treaty, it would be outside the jurisdiction of the Council.

29. May I read again the last sentence of paragraph 98 on page 48. Perhaps I had better read the whole paragraph because otherwise you will not get the connecting link. "President Wilson's proposed draft"—this was the original draft—"did not include a specific provision for revocation, on the assumption that mandates were revocable. What was proposed was a special procedure reserving 'to the people of any such territory or governmental unit the right to appeal to the League for redress or correction of any breach of the mandate by the mandatory State' ... That this special right of appeal was not inserted in the Covenant cannot be interpreted as excluding the application of the general principle of law according to which a power of termination on account of breach, even if unexpressed, must be presumed to exist as inherent in any mandate, as indeed in any agreement." Although the power to terminate a contract is unexpressed, it must be presumed to exist in every agreement. Otherwise it would be impossible for sovereign States to enter into treaties—a State would be most reluctant. Why are so many States signatories to treaties?—because they know if the time came when, because of the misconduct of another State, they had to terminate the treaty, they would be entitled to do so. If a State was to be tied hand and foot and even for good reasons could not terminate a treaty, no State would be willing to enter into a treaty. It is open to the Convention, or to the Transit Agreement, to provide that a particular forum shall be appointed to go into the question whether termination of the Convention or Transit Agreement is *proper or improper, wrongful or rightful*, but there is no such provision. If there was such a provision we would go to that forum.

30. I have finished with the judgment of the World Court. Now let me read to you a very interesting answer given by the Counsel for the United States to a question put by Sir Gerald Fitzmaurice, one of the judges who sat on the bench when the Court delivered the judgment from which I have quoted.

"Question: It has been maintained"—this is what the Judge puts to the Counsel for the United States—"on behalf of the United States that fundamental breaches of a contract by one party entitle the other to put an end to it. I would like to know how, in your view, exactly this would work in practice. For instance, it is evident that if a party could put an end to a contract merely by alleging fundamental breaches of it, and despite the denials of the other party, whether, on the facts or as regards the existence of the obligation, there would always be an obvious and easy way out of contracts which one of the parties found onerous or inconvenient. What safeguards would you institute in order to prevent this, and how would or should such safeguards apply in the international field, in the relations between States or between States and international organizations?"

It is a very relevant question, honourable members will see. What the learned Judge asked the United States Counsel is this: "If you, Mr. Counsel, are right in your submission that if the breach is committed by one State the other State can put an end to the contract, look at the consequences. The consequences will be that any State which finds an agreement or treaty inconvenient or burdensome could say 'Well, you have committed a breach and I put an end to it'."

31. Now that is the law. The United States said it is the law and that argument was accepted by the World Court. The United States Counsel himself points out the remedy. He says that the remedy lies in making an express provision in the treaty to the effect that in the event of termination a particu-

lar forum will decide whether the termination was rightful or wrongful. If one State should try to take undue advantage of another and wrongfully put an end to the treaty, this forum would decide that the termination was wrongful and redress would be given. The United States points out that the remedy is to provide a forum where you can go, a forum which will deal with questions of termination as distinct from questions of interpretation or application. This is the answer which the United States Counsel gave. I will read his exact answer. It is on page 23 of the proceedings in this case before the World Court.

“The doctrine of material breach as a basis of terminating a contract is a doctrine of municipal contract law which has been reflected in international treaty law.”—under ordinary contracts, if one party commits a breach the other can treat the contract as terminated and the US Counsel says that the same doctrine has been imported into international law—“Obviously not every breach of a contract would justify the other party in terminating the contract but only a breach of such significance as, in the words of Article 60 (3) of the Vienna Convention on the Law of Treaties, would constitute a ‘violation of a provision essential to the accomplishment of the object or purpose of the treaty.’” Now mark the important words—I am reading his exact words—“If the party alleging breach were held by an international tribunal not to have established the material breach, the termination would not be legally justified and a party which had terminated the treaty on the basis of an alleged breach would be liable for unjustified repudiation of a contract. The fact that in the international as opposed to a municipal legal system the other party cannot be assured of bringing a case involving material breach before an international tribunal except where both parties have accepted the compulsory jurisdiction of an international tribunal is a problem relating to the efficacy of international law and institutions generally and not specially to the problem of the material breach doctrine.”

This is beautifully expressed and I would like to emphasize these words. I am reading them because this submission of the US Counsel was accepted *in toto* by the World Court. What the Counsel is pointing out is this: if A and B are two parties to a contract, a simple municipal contract relating to sale of goods, and A says that B has committed a breach of the contract, he can treat the contract as terminated, nobody can challenge the validity of his action. If he is dishonest and dishonestly terminates the contract by wrongly alleging a breach by the other party, there is a civil court to which B can go. In civil law there is in every country a municipal court. What the United States Counsel points out is that that may not be so in international law.

32. In international law there is not always a forum before which you can go. There may be no forum which can be entrusted with the jurisdiction to deal with questions of termination because unless parties agree on a forum there is no such forum. Here, for example, the parties have not agreed to any forum under the Convention or under the Transit Agreement. The parties have not agreed to any forum to decide questions of termination. The United States Counsel points out that in such a case there may be no remedy, but if there is no remedy, this is, if I may read his words again, “a problem relating to the efficacy of international law”. It is not something which casts any doubt on the validity of the doctrine of termination for material breach by the other party. In other words, all that you are saying is that when under international

law there is no forum, it does not mean that the right to terminate does not exist. "The best safeguard"—these are again very significant words—"against misuse of the doctrine of material breach would be through the extension of the compulsory jurisdiction of the International Court of Justice or other appropriate international tribunals over legal disputes arising between States or between States and international organizations, at least with respect to those disputes"—now mark the words—"which relate to interpretation, application and termination of international agreements." The Counsel, whoever he was, was using his words with great care and he says that the remedy lies in having an international tribunal which can deal with three types of disputes—interpretation, application and termination. Two of these types are reflected in our Convention; the third one is not. The Counsel points out—and this is the argument the World Court accepted—that in this case you may have no forum; it is a pity, but unless there is a forum expressly constituted to deal with termination, it is an international wrong which goes without remedy or redress. I am emphasizing all this with a view to showing the limits of this honourable Council's jurisdiction.

33. Before I close this chapter, may I refer you to Resolution A1-23, adopted at the first session of the ICAO Assembly in 1947 in this City of Montreal. You will find it in the volume entitled "Resolutions and Recommendations of the Assembly—1st to 9th Sessions". May I read it to you because it expressly recognizes that there are very serious limits on the Council's jurisdiction and it cannot deal with every dispute between States relating to the Convention.

34. If I may just give you the background, the Interim Agreement, arrived at before the Convention and the Transit Agreement were reached, provided that any difference between States would be left to the arbitration of the Council—"arbitration", "any difference". The words "interpretation" and "application" did not appear; any differences would go to the Council. But when they came to draft the Convention and the Transit Agreement, they expressly reduced the limits of the Council's jurisdiction and instead of "any difference" they said "any disagreement relating to the interpretation or application". This is very interesting. It shows that the nations originally thought that any differences would go to the Council, but afterwards changed their minds and said "No. Let only a limited category of differences go to the Council."

35. If I may read the whole resolution as it stands:

"Whereas the Interim Agreement on International Civil Aviation provides, under Article III, Section 6 (8), that one of the functions of the Council shall be:

'When expressly requested by all the parties concerned, act as an arbitral body on any differences arising among Member States'—mark the words—'relating to international civil aviation which may be submitted to it.'

(Then the Council is to render an advisory report or decide as an arbitrator.)

"Whereas the Convention on International Civil Aviation contains no such provision and the competence of the Council of the Organization in the settlement of disputes, as accorded to it by Article 84 of the Convention, is limited to decisions on disagreements relating to the interpretation or application of the Convention and its Annexes;

*Now therefore the first assembly resolves:*

- (1) That pending further discussion and ultimate decision by the Organization as to the methods of dealing with international disputes in the field of civil aviation, the Council be authorized to act as an arbitral body ...”

36. The great importance of this resolution is this: the Assembly recognized that the original concept of giving all differences to the Council to deal with had been abandoned and that the competence of the Council was limited to disagreements relating to interpretation or application. So ICAO itself has recognized, from its very inception, the severe limits on its jurisdiction by comparison with the original idea, which ultimately was not accepted by the nations.

37. Now one last thing on international law—and this may conclude the first part of my argument—is the Vienna Convention of 1969, from which I would like to read. The honourable members have noted the ruling of the International Court of Justice that Article 60 of the Vienna Convention merely codifies an existing rule of international law. So it is nothing new. It is an existing rule of customary international law, which is merely codified by the Vienna Convention. I shall read only the relevant portion of Article 60, Clause 2 (b):

“A material breach of a multilateral treaty by one of the parties entitles a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State.”

In other words, if there is a multilateral treaty—the Convention and the Transit Agreement are, needless to add, multilateral treaties—and if one nation does a wrong specially affecting another, the nation which is specially affected can suspend or terminate the operation of the treaty in whole or in part *qua* that one State only. Thus I continue to be a party to the Convention and the Transit Agreement. I will honour them *qua* all other parties, but *qua* the nation which has done me a wrong, I purport to suspend them in whole or in part, and I am entitled to do so. This is the clear right given under the Vienna Convention, but I need not dwell at length on it because, as the International Court of Justice pointed out,—and I am repeating it because it is very important—Article 60 is only a codification of an existing rule of international law.

38. Now under that rule of international law, which existed prior to the Vienna Convention, I had the right to suspend the Convention and the Transit Agreement, as against Pakistan, in whole or in part. This right was given to me not by the Convention, not by the Transit Agreement, but by international law, and I am asking you honourable gentlemen to consider how it is possible for a logical mind to put forward the proposition that is a case of application, of interpretation. It is something outside the agreement altogether. It is something outside the international treaty altogether. What is outside?—my right to suspend or terminate. It is that right which I have exercised.

39. This finishes my reading of the relevant provisions of the statute. I will call the treaty and the Rules the statute because we are a law-abiding nation and to us they have the force of law. I therefore refer to them as a statute. I have referred to the law or the statute to satisfy you as to how limited the jurisdiction of the court is. In this connection, in our preliminary objections, which necessarily have to be brief and concise because we did not want to set



out the entire argument, we have, on pages 11 to 18, set out the legal propositions and I would request the honourable members to read a few portions with me, because we tried to put as concisely as we could the correct law on the subject as we understand it. On page 11 of our preliminary objections you find the relevant provisions of the Convention and the Transit Agreement set out. I will not read them now because I have already read them.

40. If I may refer the honourable members to paragraph 16 of the preliminary objections: "Under Article 84 of the Convention and under Article 1 (1) of the Rules, two of the conditions which are required to be fulfilled in order to make the Application competent and maintainable, and in order that the Council may have jurisdiction to deal with it and handle the matter presented by the Applicant, are the following: (a) there should be a disagreement between the two contracting States, and (b) the disagreement should relate to the interpretation or application of the Convention. (The Transit Agreement is dealt with subsequently.)"

41. I will now read paragraph 17: "Both the aforesaid conditions postulate and presuppose the continued existence and operation of the Convention as between two States." Now the honourable members must have noted that the Vienna Convention of 1969 says that you may suspend the agreement in whole or in part. Once the agreement is suspended it is not in operation; that is the whole meaning and effect of suspension; and if it is not in operation there can be no question of construing or applying it. "If the Convention has been terminated, by repudiation, abrogation or otherwise, or has been suspended, as between two States, any dispute relating to such termination or suspension cannot possibly be referred to the Council under the aforesaid Articles of the Convention and the Rules, since in such a case no question of 'interpretation' or 'application' of the Convention can possibly arise (there being no Convention in operation as between the two States). Further, there cannot possibly be a disagreement on a point of interpretation or application of a treaty which is not in operation as between two States. In other words, so long as two contracting States accept the existence, operation and efficacy of the Convention as between them, all points of disagreement as to the interpretation or application of the Convention would be within the jurisdiction of the Council. But any question of termination or suspension of the Convention as between two States cannot be referred to the Council under the aforesaid Articles."

42. "What is stated above regarding the Convention also represents accurately the position under the Transit Agreement"—I am reading paragraph 18—"which confers limited jurisdiction on the Council in identical words. Section 2 of Article II of the Transit Agreement and Article 1 (1) (b) of the Rules permit an application limited only to cases of disagreement between two States relating to the 'interpretation' or 'application' of the Transit Agreement."

43. Paragraph 19. "The aforesaid construction of Article 84 of the Convention, Article II (2) of the Transit Agreement, and Article 1 (1) of the Rules harmonizes with Article II (1) of the Transit Agreement and Article 1 (2) of the Rules which deal with complaints regarding an action taken by a State under the Transit Agreement, and not regarding termination or suspension of the Transit Agreement, which would be *dehors* that Agreement."

44. Now paragraph 20 is a rather important submission. Very fortunately for the honourable members, they—or at least the overwhelming majority of them—are not lawyers. This particular subject of the law is not something the honourable members are very familiar with or are professionally trained to

deal with. I am saying this with the greatest respect, because I do not hold lawyers in very special esteem, far from it; I am only stating a fact. The World Court will consist of lawyers and that is why it can deal with the questions "Was the termination rightful or wrongful? Was it or was it not in accordance with international law?" These are complicated questions of fact and law which trained juries, trained judges, may deal with. The honourable members of the Council, fortunately, as I was saying, not falling in the category of lawyers, are entrusted with other tasks, diplomatic tasks, which are tasks of trying to reconcile differences between different States, but not bearing on the question of rights exercised under international law, suspension, termination, etc., which, as I said, present *certain legal aspects that cannot be correctly brought before this honourable forum.*

45. That is what we deal with in paragraph 20. "The composition of the Council and its powers and functions are, again, in keeping with the limited jurisdiction, which has been conferred upon it by Article 84 of the Convention, Article II of the Transit Agreement and Article I of the Rules, to hear international disputes. The sovereign power of a State to suspend, abrogate or otherwise terminate an international treaty—not seldom involving vastly complicated questions of fact and international law—are outside the scope of the Council's jurisdiction ..." To give you one instance, the International Court of Justice will hear a dispute for six months. A hearing on the merits of this dispute between India and Pakistan to decide which country really was in the wrong would go on for a large number of days, to put it very mildly and to make an under-estimate of the time involved. This Council is not a body that can take evidence, call witnesses, look at documents, find out which are fabricated documents, sit in judgment on the hilarious report made by the Commission in Pakistan which was asked to go into this question of hijacking. I am using my words very carefully in calling it a hilarious report. It says that India brought about this hijacking for its own secret purposes. It is like the President of a country being assassinated and his successor appointing a Commission which reports that the President brought about his own assassination. India is charged with this degree of lunacy, that it brought about the hijacking and burning of its own plane—got the two hijackers into the plane and supplied them with nothing more than dummy grenades and a pistol with which they were able to blow up the whole plane, which was surrounded by the police and the military forces of Pakistan! This amazing fantasy I will not deal with. I was only pointing out that if such a dispute were to go before the appropriate forum, it would mean an enormous *consumption of time. For days and weeks, if not months, the dispute would go on, and ultimately the appropriate forum, if there is one, would decide who is right and who is wrong. The Council is not to be troubled with these questions which refer to this issue of international law: has a State justifiably or unjustifiably terminated or suspended the agreement? If it has done so justifiably, all right. If it has done so unjustifiably, the appropriate forum will give the appropriate orders. I am only pointing out that this Council is not the appropriate forum for such complicated questions of fact and law.*

46. Then paragraph 21: "To sum up, the scheme of the aforesaid Articles is simple and clear. So long as the Convention or the Transit Agreement continues to be in operation as between two States, any disagreement as to the *construction* of its Articles or the *application* of the Articles to the existing state of facts can be referred to the Council; and, likewise, *any action* taken under the Transit Agreement can be referred to the Council. But if a State has terminated or suspended the Convention or the Transit Agreement vis-à-vis

another State, there cannot possibly be any question of interpretation or application of the treaty, or of action taken under the treaty, and the Council is not the forum for deciding such disputes. These disputes are usually in the realm of political confrontation between two States, often involving military hostilities not amounting to war, and these matters of political confrontation or military hostilities are outside the ambit of the Council's competence. The question of overflying raised by Pakistan is directly connected with military hostilities in the past and continues to be inextricably tied up with the posture of political confrontation bordering on hostility adopted by Pakistan."

47. I shall not read further just now, but I should just like to make one simple submission. It is Pakistan's somewhat naïve case that the word "application" would cover termination or suspension. It just happened that on the plane I was reading *Call No Man Happy* by André Maurois, his autobiography, and there is a lovely passage where he says that to children words do not have precise meanings because the concepts of words are vague and nebulous to a child. He says that some adults go through life with this simple temperament of a child, to whom words do not convey clear-cut, definite concepts. I would submit to the honourable members that the words "interpretation" and "application" are clear-cut and precise and to equate "application" with "termination" or "suspension" or to equate "interpretation" with "termination" or "suspension" is a clear misuse of the language. These terms "application", "interpretation", "suspension", "termination" express well-known legal concepts. They are known to nations; they are known to international law; they are known to municipal law; and it is a reflection upon the competence of those who drafted the Convention and the Transit Agreement to say that they did not know the distinction between interpretation and application on the one hand and termination and suspension on the other. The distinction is so clear-cut that no draftsman of an international treaty could possibly have confused these distinct, separate, independent concepts.

48. Sir, may I now read paragraphs 22, 23 and 24 and then stop. "22. The Government of India submit that Pakistan by its conduct has repudiated the Convention vis-à-vis India, since its conduct has militated against the very objectives underlying, and the express provisions of, the Convention, and has been completely and totally against the principle of safety in civil aviation. It is expressly stated by Section 2 of Article I of the Transit Agreement that exercise of the privileges conferred by that Agreement shall be in accordance with the provisions of the Convention. Consequently, Pakistan's conduct also amounts to a repudiation of the Transit Agreement vis-à-vis India. In the circumstances, India has accepted the position that the Convention and the Transit Agreement stand repudiated, or in any event suspended, by Pakistan vis-à-vis India."

49. "23. Without prejudice to the above, and in the alternative, the Government of India submit that they have terminated, or in any event suspended, the Convention as regards overflying and the Transit Agreement vis-à-vis Pakistan." You will see that under international law any nation has the right of suspension in whole or in part. You need not suspend the whole agreement. You may suspend part of it *qua* another nation and, when the treaty is multilateral, you may suspend it *qua* one nation only.

50. "24. Reciprocity is of the essence of the Convention and the Transit Agreement. The conduct of Pakistan has made it impossible for Indian aircraft to overfly Pakistan. That country has shown no regard for the most elementary notions of safety in civil aviation and has made it impossible for

India to enjoy its rights under the Convention, and its privileges under the Transit Agreement, over Pakistan territory." It is true that Pakistan has not imposed a ban on Indian aircraft overflying Pakistan but our right of overflight is theoretical. The conditions are such that no government with a sense of responsibility to its people would choose to fly its aircraft over Pakistan if it is in the position of India today vis-à-vis Pakistan. In other words, if a nation brings about a situation where a government with a sense of responsibility to its own people dare not overfly the territory of that other State, it is no use for that other State to say that theoretically I have given you the right to overfly. There was a famous English Judge Darling, who, commenting on the principle that the doors of the courts of justice are open to rich and poor alike, added the words "So are the doors of the Ritz Hotel." It was the most expensive hotel in London at that time. Theoretically even a poor man has the right to enter the Ritz Hotel in London, but is this a right he can in practice exercise? There are many theoretical possibilities—nothing prevents us from going to the moon, but practically we just cannot do it. So the theoretical right is meaningless if in practice, as a result of a nation's conduct, I find it impossible to fly my aircraft over that nation's territory. If that is the situation I am not bound to give that nation the corresponding right to overfly my territory, because reciprocity is of the very essence of the Convention and the Transit Agreement.

51. If I may continue with paragraph 24, "Pakistan's theoretically permitting Indian aircraft to overfly Pakistan is, in the context of the facts stated above, a mockery of the principles underlying and the provisions embodied in the Convention and the Transit Agreement. In the circumstances, the Government of India submit that they had complete justification for terminating or suspending the Convention as regards overflying and the Transit Agreement vis-à-vis Pakistan. The Government of India do not set out here the full facts concerning justification, since, as stated above, the question of justification for termination or suspension of the Convention or the Transit Agreement is not within the scope of the Council's jurisdiction ..." We therefore have not gone into the detailed facts, but I shall refer to some later.

52. *The President:* I suggest we now have a coffee break.

#### *Recess*

53. *The President:* The Council is again in session and I give the floor to Mr. Palkhivala if he wishes to continue.

54. *Mr. Palkhivala:* May I refer to three Articles of the Convention which according to Pakistan's submission are supposed to lend support to their contention that there is no power to terminate the agreement and that this Council is competent to deal with the type of application Pakistan has filed. These three Articles are 54, 89 and 95.

55. With respect to Article 54, the argument urged by Pakistan is that if there is an infraction of the Convention, the aggrieved State has a right to move the Council. This Article, entitled "Mandatory Functions of the Council", says "The Council shall"—the relevant clauses are (j) and (k)—"report to contracting States any infraction of this Convention, as well as any failure to carry out recommendations or determinations of the Council" and "report to the Assembly any infraction of this Convention where a contracting State has failed to take appropriate action within a reasonable time after notice of the infraction."

56. Now the answer is very clear and obvious but since the point has been

raised, even a very obvious answer must go on record, and it is this: Article 54 deals with cases where the Convention has not been terminated, has not been suspended; while it continues to be in operation, admittedly in operation, one State commits an infraction; in such a case you invoke Article 54 and say "There is an infraction and I want the Council to deal with it". The mere fact that an infraction is referred to in Article 54 does not mean that it covers cases of suspension and termination, because in law the very word "infraction" presupposes the continued efficacy of the agreement; if the whole agreement, or the material portions of it, has been terminated or suspended, the question of infraction does not arise; it is a question of termination or suspension. So the words used here do not go against me at all, because clauses (j) and (k) of Article 54 deal only with cases where the agreement continues to be in operation between two States.

57. Now Article 89. Pakistan says that under Article 89 you have a right to say that you are not bound to observe the terms of this Convention only in case of war or national emergency. Article 89 (War and Emergency Conditions) reads: "In case of war, the provisions of this Convention shall not affect the freedom of action of any of the contracting States affected, whether as belligerents or as neutrals. The same principle shall apply in the case of any contracting State which declares a state of national emergency and notifies the fact to the Council." Again, this Article has no relevance whatever to the point at issue on this preliminary objection.

58. Article 89 says that in case of war or national emergency a nation is given freedom of action and will not be tied down to observe the terms of the Convention, even if it is not a belligerent but a neutral nation. This Article has nothing to do with what the International Court of Justice called the principle of international law that in cases of breach of the treaty by one party, another party has the right to terminate or suspend it. This right to suspend or terminate the treaty in the event of a breach by another State is not dealt with by Article 89 at all. This Article is not exhaustive of the circumstances in which the Convention can be terminated or suspended; it deals with only two. To show what, speaking frankly, I may call the absurdity of the argument, suppose this Article was not there. Is it suggested that in time of war a country would still allow aircraft of the other country to overfly, saying "This is my international contract and I do not want to be guilty of breaking it"? Surely in case of war the rule of international law must apply and even if there were no Article 89 you would still have the right to say "No more overflights. I cannot allow my enemy to overfly my territory." This is an elementary principle. Not all States were very keen to become signatories to this Convention, which was the first of its type, and certain provisions had to be put in in order to assure them that *their national interests, their national security, would be safeguarded*. With a view to getting wider and wider support for this Convention, this particular Article was put in, but by no process of reasoning can it be said to be exhaustive of the cases where the Convention can be suspended or terminated. It only deals with two, leaving the international law free and open. No principle of international law is superseded by Article 89. Can you read it as superseding what the World Court says is a rule of international law, namely that if one State commits a breach, another State has a right to suspend or terminate the treaty? What are the words in Article 89 which suspend this rule of international law? There are none. Therefore, again, Article 89 does not deal with our case.

59. It does, however, help me in this way. In Article 89 the word "war" is not used in the technical sense of war as distinct from military hostilities. It

would cover military hostilities. Military hostilities broke out between India and Pakistan and continued for about three weeks in August/September 1965. Now that "war" gave me the freedom of action under Article 89 and a very important point honourable members will notice is this. Freedom of action is permitted under Article 89 not just for the duration of the war—the text does not say "during the war"—but even after the war is terminated, if the essential security of the State requires some freedom of action. In our case military hostilities did break out in 1965 and since then we have never given Pakistan the right, without our permission, to overfly India at all. In fact we gave them the right to overfly with the permission of the Government of India. Now once we give it with the permission of the Government of India it means that the Convention is not in operation, because Article 5 gives the right to make flights into or in transit non-stop across another State's territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission. The whole object of this provision is that you do not need the prior permission of a State to overfly its territory or to make non-traffic stops; you are entitled to overfly and to make non-traffic stops without the Government's permission. This is the effect of the Convention.

60. Now what happened after 1965? Since 1965 the right to make stops for non-traffic purposes has been completely denied to Pakistan by us and completely denied to us by Pakistan. Since 1965 Pakistan aircraft have never made a non-traffic stop in India, and Indian aircraft have never made a non-traffic stop in Pakistan, except with special permission. Even the right to overfly has been only with the permission of our Government; I will point out the relevant notifications after I have finished the argument. After the war broke out in 1965—I am using "war" in the broad sense, because there were military hostilities perhaps not amounting to war under international law, but, as I have already said, "war" in Article 89 is used in the sense of military hostilities, not the technical international concept of war—we denied the benefit of the Convention to Pakistan. We said that any overflying or any non-traffic stop must be with our Government's permission and that has been the position since 1965. That is a separate point I will deal with later, but I am only pointing out that once the war, in the broad sense of military hostilities, broke out freedom of action was available to us under Article 89 and that freedom of action is not limited to the period of actual military hostilities. The period is not specified; it must be as long as the nation considers necessary in its own interest—because how can any outside party decide what a nation's security requires? After a war you may need five years, seven years, in order to build up your defences in such a way that your enemy cannot attack you again. No period is mentioned in Article 89. Therefore if Article 89 helps any party at all, it helps India, not Pakistan, because, military hostilities having broken out in 1965, we had freedom of action under it which was not restricted to the period of the war and which we have exercised even after the military hostilities ceased. To sum up, Article 89 has no bearing whatever on the rule of international law; it does not supersede, it does not override, the rule of international law, which is, as the World Court said, that in the case of breach by one party, another party may suspend or terminate the contract.

61. Lastly, Pakistan says "You should have given notice under Article 95." Well, I would have to be completely out of my mind to give notice under Article 95, because Article 95 deals with a completely different topic. It has no application at all to a case like the present one, where there is misconduct on the part of one State as against another. If I may read it:

“Article 95 (*Denunciation of Convention*)

(a) Any contracting State may give notice of denunciation of this Convention three years after its coming into effect by notification addressed to the Government of the United States of America, which shall at once inform each of the contracting States.

(b) Denunciation shall take effect one year after the date of the receipt of the notification and shall operate only as regards the State effecting the denunciation.”

Article 95 deals with the case where a State party to the Convention wants to back out and says “I do not want this Convention.” In other words, so far as that State is concerned, the whole Convention is at an end; it is at an end as regards the relations between that State and all the other States which are parties to the Convention. Now India does not want that. It has never been India’s desire to withdraw from this agreement. We want to honour it, and every other State which is a party to the Convention will find that India respects that agreement. So I cannot possibly denounce; this remedy is not open to me, because, if I denounce the Convention, I denounce it as regards all the States which are parties to it. If I want to terminate or suspend the contract *qua* only one State, I cannot act under Article 95, because the denunciation provision does not apply. Termination or suspension of an agreement *qua* a single State can never be denunciation of the Convention. It is a complete misuse of words to say that it is.

62. As I said at the beginning, in this case we are really concerned with the nuance of words. What do English words mean—words which are hoary with tradition, words which have come down through the centuries, words which have acquired certain precise, clear connotations. If one is prepared to play with words and treat them as matters of no consequence, or like Alice in Wonderland say that words mean what I say they mean because I am master, not the word, if that is the attitude, of course there is no need for further argument. But if the attitude is that this is an international treaty and must be read in a manner which international law understands, then denunciation means that you want to get out of a treaty altogether. That is what Article 95 deals with, and India has never had any desire whatever to denounce the Convention. It wants to be a party to the Convention; it continues to be a party; and it will honour its obligations under this Convention with respect to every State but Pakistan, between whom and us, unfortunately, military hostilities continue, political confrontation persists. I shall not apportion blame here. That is not my purpose; I am only stating facts.

63. Therefore, neither Article 54 (Infraction), Article 89 (War), nor Article 95 (Denunciation) is of any use in dealing with the questions that arise here.

64. Normally I would not have dealt with the facts of the case at all, because I am dealing with the legal point, but on full consideration I am inclined to the view that if I took about 10 or 15 minutes of the honourable members’ time in stating some facts it would be helpful, just to satisfy you about the bona fides of my country’s case, not with any other purpose. It is now with a view to satisfying you by proving by facts, etc., that our termination or suspension of the contract was justified—not that, but merely to show you that it is an honest bona fide exercise of the right we have under international law to terminate or suspend the contract.

65. With that objective only, may I request you to turn to the preliminary objections of India, paragraph 5. I shall not state the facts orally. I shall only read what is here, so that you can decide for yourselves whether any self-

respecting State, whether any government that was conscious of its duty to its own citizens, could possibly act any differently from the way India has acted.

66. "Paragraph 5. For years past, Pakistan has been pursuing and continuing a policy of political confrontation bordering on hostility against India. This policy culminated in August/September 1965 in an armed attack by Pakistan against India on a large scale. On the outbreak of the conflict, the Air Services Agreement of 1948 between the two countries was immediately suspended, and there was a stoppage of air transport services of Indian aircraft to and across Pakistan and of Pakistan aircraft to and across India. The conflict was followed by an Agreement between the two countries signed at Tashkent in the Union of Soviet Socialist Republics in January 1966. As a result of this Agreement, a special arrangement was worked out whereby the two countries permitted each other to operate some overflying services. Air services as they existed prior to the conflict were, however, not restored, since Pakistan refused all other aspects of normalization of relations as envisaged in the Tashkent Agreement. Up to date Pakistan has continued its policy of confrontation bordering on hostility against India, some instances of which are listed hereunder: ". Now this is what continues to be done by Pakistan.

- "(1) Confiscation of all properties of Indian citizens and of the Government of India in Pakistan. These remain confiscated to this day.
- (2) Confiscation of all Indian river boats on East Bengal rivers which are an essential lifeline for the transport of the produce of Eastern India to the port of Calcutta.
- (3) The continued ban on passage of Indian boats and steamers on rivers, streams or waterways of East Bengal.
- (4) Continued ban on trade and commerce with India.
- (5) Continued ban on civil air flights, railway and road communications between the two countries."

(There are no civil air flights, railway or road communications between the two countries, and international airlines like Swissair or Pan-Am may fly from Bombay to Karachi, but Indian airlines do not fly that way nor do Pakistan airlines. In other words, Pakistan airlines do not connect Pakistan with India; Indian airlines do not connect India with Pakistan. This has been the position since 1965.)

- "(6) Continued ban on entry into Pakistan of Indian newspapers, books, magazines, etc., printed or published in India. (Not a single Indian newspaper can be imported into Pakistan.)
- (7) Continued assistance with arms, ammunition and training to rebel elements in areas of Eastern India.
- (8) Continued attempts to foment, through sabotage and infiltration, disturbances in Jammu and Kashmir.
- (9) Intensive hate-propaganda against India on the radio and in the press, which continues unabated to this day."

67. "The subject-matter of Pakistan's Application"—I am reading paragraph 6—"and Complaint relates to the suspension, since 4th February 1971, of overflights over Indian territory. The conduct of Pakistan immediately preceding that date in relation to the hijacking of an Indian aircraft was most reprehensible and amounted to the very negation of all the aims and objectives, the scheme and provisions, of the Convention and the Transit Agreement."

68. If I may pause here for a minute just to consider what this Convention



is. This Convention is not an exercise in lexicography; it is not merely an exercise in putting English words together, or French or Spanish words together. It has a certain objective and that objective is set out in the Preamble. Its objective is safe and orderly development of international civil aviation—safe and orderly development of international civil aviation. I am not apportioning any blame at the moment, because I am not justifying my conduct at all just now; that is not my purpose—I am on the question of law—but if between two countries safe and orderly development of international aviation is an impossibility, what do you do with the Convention as between those two countries? Do you still apply it as a formality or are you frank and honest enough to say that between these two countries it is impossible to work the very basis of this Convention? What is the point of talking of the safe and orderly development of international aviation when not a single Indian aircraft can land in Pakistan or a single Pakistani aircraft can land in India? Since 1965, as I told you, there has been no scheduled service between India and Pakistan except by foreign airlines, which are apart, but Indian and Pakistani airlines, scheduled or non-scheduled, do not connect the two countries.

69. Now if safe and orderly development, which is the prime objective, the principal fundamental objective, of the Convention, cannot be achieved between two States, what is left? The whole substratum of the Convention is gone as between India and Pakistan, and this has been so since 1965. This complaint is made in 1971, but if Pakistan had a case the complaint should have been made in 1965, because since then we have not given the right to overfly India or to make non-traffic stops in India without our Government's permission, which is the right guaranteed by the Convention. This right has never been given to Pakistan, nor given by Pakistan to us, since 1965. So what are we hearing after six years?

70. The other Agreement—the Transit Agreement—expressly says that it is not to have an existence independent of the Convention. It is to continue, and it is to be in operation, only in accordance with the Convention. In other words, the Convention is the very basis and foundation of the Transit Agreement. If you do not observe the Convention you cannot possibly observe the Transit Agreement, and for that may I request you to turn to Article I, Section 2 of the Transit Agreement. Before I read it, I do not have to remind the honourable members that both the Convention and the Transit Agreement deal with the right to overfly another nation's territory, and the right to make non-traffic stops in another nation's territory, the only difference being that the Convention deals with non-scheduled aviation and the Transit Agreement deals with scheduled international air services. Otherwise, the subject-matter, so far as this point is concerned, is the same, namely overflying and non-traffic stops.

71. Article I, section 1 speaks of two freedoms of the air: (1) the privilege to fly across the territory of another State without landing, which I will call overflying, and (2) the privilege to land for non-traffic purposes. These are the two freedoms of the air given by Section 1 of Article I. Now look at the important Section 2 of the same Article. Section 2 says "The exercise of the foregoing privileges shall be in accordance with the provisions of the Interim Agreement on International Civil Aviation and, when it comes into force, the provisions of the Convention on International Civil Aviation, both drawn up at Chicago on 7 December 1944." So these freedoms given by the Transit Agreement are to be exercised in accordance with the Convention, and the Convention, as I have already pointed out, talks of the safe and orderly devel-

opment of international civil aviation. This is what Pakistan would not permit and that is why we treat it as a repudiation by Pakistan of the Convention and the Transit Agreement and if Pakistan says "I have not repudiated them.", we say "We propose to terminate or suspend because your conduct has been such that it is impossible to have the terms of the Convention and the Transit Agreement in operation as between our two countries."

72. I would like to read again the second sentence of paragraph 6 of the preliminary objections—"The conduct of Pakistan immediately preceding that date" (4 February 1971) "in relation to the hijacking of an Indian aircraft was most reprehensible and amounted to the very negation of all the aims and objectives, the scheme and provisions, of the Convention and of the Transit Agreement." I would like now to take a minute to explain one important point. Unfortunately criminals have made many nations familiar with hijacking and the malpractices which are commonly called hijacking, but very fortunately for the decencies of international life, it seldom happens that the government of a State is either an accomplice before the fact or what is called in law an accomplice after the fact, which means that either you actively assist the hijacking, as one nation is reputed to have done—it may or may not be true—or, again as it is called in law, you harbour and comfort the criminals. When a government chooses to go out of its way to do things which amount to virtually making heroes of hijackers, it is about time that self-respecting nations say to it "If you have so little regard for the decencies of international aviation, we propose to terminate or suspend the contract as between you and us."

73. May I request you now to turn to the incidents connected with the hijacking in paragraph 7 and you can judge for yourselves. We have no evidence to show whether the Pakistan Government was an accomplice before the event, so I shall make no statement, but if any of the honourable members here has any doubt as to whether it was at least an accomplice after the event, that doubt should be removed by reading the report of the Commission appointed by the Pakistan Government. Fortunately that report is annexed to Pakistan's reply to our preliminary objections. As normal human beings with some knowledge of human affairs, you have only to read the report to see that any government that was really objective and did not want to identify itself with the hijackers could never have got such a document. The report is so unacceptable—to use the mildest term I can think of—that it makes you wonder how any government could solemnly present it to an international body. But before I come to that report let me read the summary of the facts about the hijacking starting on page 5 of the preliminary objection, after making this one further point. We do not suggest that a State can terminate or suspend the Convention or Transit Agreement if there is a hijacking incident, but it has the right to do so if the government of another State identifies itself with the hijackers or sympathizes with them. So it was not just the hijacking incident but also the Pakistan Government's identification with the hijackers that led to India's action. Kindly look at the facts narrated in paragraph 7 of the preliminary objection.

74. "(a) An Indian Airlines Fokker Friendship aircraft on a scheduled flight from Srinagar to Jammu with 28 passengers and 4 crew on board was hijacked by two persons among the passengers and diverted at gun point to Lahore in Pakistan shortly after noon on 30th January 1971. One of the two hijackers had a grenade in his hand and threatened to use it if the plane was not diverted to Lahore, while the other pointed his revolver at the pilot.

(b) The Government of India requested the Pakistan Government the same afternoon at Islamabad, and through their High Commissioner in New Delhi, for the immediate release of the passengers, crew, cargo, baggage, mail as well as the aircraft. The Pakistan Government informed the Acting High Commissioner of India in Islamabad the same afternoon of its decision to allow the plane, crew and passengers to fly back to India.

(c) The Indian civil aviation authorities and the Government of India informed the Government of Pakistan on the morning of 31st January about a relief plane being ready to take off for Lahore, together with spare crew, to bring back the passengers, crew, cargo, baggage and mail as well as the hijacked aircraft as soon as the Pakistan authorities gave the necessary clearance. Permission was given by the Director General of Civil Aviation of Pakistan the same morning for the relief aircraft to leave, but this was rendered infructuous by further instructions from the Pakistan authorities that the relief plane should not take off until further specific instructions from the DGCA Pakistan. Such permission was repeatedly deferred in spite of numerous reminders from the DGCA India. The Ministers for External Affairs and Civil Aviation of India sent messages on 1st February 1971 to the Minister of Home Affairs and the Minister-in-Charge of Civil Aviation respectively in Pakistan, requesting the immediate return of the passengers and clearance for the relief aircraft to bring back the hijacked aircraft along with the baggage, cargo and mail. The Pakistan High Commission in India consistently refused to issue visas to the crew of the relief aircraft and the spare crew."

Now this is important. Another plane, a foreign plane, was to leave Lahore for India and there was room on board for the Indian passengers. Yet the Pakistan Government would not permit them to be put on board that plane. This is the next paragraph, (d).

"(d) Pakistan took more than 48 hours to send the passengers and crew by road to the Indian border at Hussainiwala at 1500 hours (IST) on the 1st February 1971, though the distance from Lahore to Hussainiwala is only 36 miles."

A military government is in power, a foreign aircraft is hijacked, the passengers are there, and the military government which can deal with the problems of the entire nation cannot arrange for these passengers to go 36 miles under military escort! For 48 hours nothing can be done for these passengers. If I may continue:

"The Government of India had earlier made arrangements for the return of the passengers to India on board a scheduled Ariana Afghan Airlines Service from Kabul to Amritsar, which landed at Lahore at 23 hours on 31st January, but although a large number of passengers disembarked from the plane and 30 passengers were boarded on that aircraft at Lahore, the authorities in Pakistan said that they could not make arrangements to board the passengers and crew of the hijacked aircraft on this plane because of the alleged presence of crowds at the airport."

I find it impossible to believe that if a government really wanted to do it—a military government with police and military forces at its command—it could not do so simple a thing as put 20 or 30 Indian passengers aboard a plane. Other passengers could get on board.

“(e) The Government of Pakistan not only failed to return the two persons who had hijacked the aircraft but announced that they had been given asylum in Pakistan.”—The Government of Pakistan announced publicly that the hijackers were being given asylum in Pakistan.—“This was done even without first disarming them and taking them into custody for their criminal acts. On the other hand, they were treated as heroes and were freely permitted to visit, by turns, the terminal building at Lahore Airport, to put long-distance calls to their accomplices and friends in Pakistan and meet various people, besides being provided with food and other amenities which enabled them to continue their so-called occupation of the aircraft for 3-½ days. This was allowed to happen on the apron of the international airport at Lahore, in full view of the authorities, troops and police there, who took no action to make them vacate the hijacked aircraft.”

75. Now just consider the absurdity of Pakistan’s explanation of why they did this. All the passengers have been removed from the aircraft. The aircraft belongs to India. The two hijackers are on the plane. The worst the hijackers could do was to blow up the plane. That was all they could do because the passengers were safe and ultimately they did blow up the plane. What did Pakistan achieve as an internationally responsible government by allowing these hijackers to come out of the plane one after another? For 3-½ days these hijackers were given food and water and were looked after. And Pakistan says “We did all this because we were worried as one of the hijackers was always on it; one would come out and one would remain; so one hijacker might blow up the plane.” This great concern of Pakistan for Indian aircraft and Indian property—can you imagine that being the real motive when millions and millions of dollars worth of property has been confiscated by Pakistan and not returned? Can you seriously believe that Pakistan was concerned with the safety of India’s one little aircraft, which was ultimately blown up? What prevented Pakistan from taking the two hijackers into custody? The worst they could have done was to blow up the plane. Pakistan could have asked India “Are you willing to have us arrest these people and let your plane be blown up?” Would India have said “No”? Did we have any sympathy with these criminals? Now for three and a half days, mind you, these hijackers come out of the plane, first one, then the other. They come to the terminal building. They make long distance calls, trunk calls also, to their accomplices in Pakistan, and nothing happens to them at the hands of the military and police forces at the airport.

“(f) Finally, at about 2000 hours on 2nd February these two criminals were allowed to blow up the hijacked Indian aircraft and even to prevent the fire brigade from putting out the fire.”

76. Look at the absurdity of the whole story put forward by Pakistan. The Commission they appointed to report on this hijacking says that the two hijackers had only a dummy pistol, not a real one, and a grenade which was also a dummy. If so, how could the hijackers blow up the plane? What did they blow it up with if the pistol was a toy pistol and the grenade was a dummy grenade? These are some of the absurdities of the whole story, whereas the simple straightforward fact is that Pakistan wanted to make heroes of these hijackers and a situation was created where India found the position intolerable for any self-respecting country.

77. If I may read further in the same paragraph—clause (f). “This”—the

blowing up and burning of the aircraft—"took place in full view of the airport authorities, troops and police at the Lahore Airport, which is a protected area,"—mind you, this is a protected area in Pakistan, under military occupation—and at a time when Martial Law was (as it still is) in force in Pakistan." Now mark this—"The Lahore TV also televised the destruction of the aircraft on a special programme and it was made to appear as if the event was an occasion for celebration. The time extended for the television programme"—the television programme normally would have ended but the time was extended by the Lahore television authorities—"was clear proof that the Pakistan authorities knew the plans of the hijackers and connived at the destruction of the aircraft. This further criminal act of destroying the aircraft occurred only a few hours after the Pakistan High Commissioner in India had assured the Government of India that his Government were committed to, and were taking all necessary measures for, the safe return of the aircraft.

78. "(g) The Government of India informed the President of the International Civil Aviation Organization Council on 1st February 1971 of the hijacking of the Indian aircraft and later about its destruction. It is understood that the President of the ICAO Council sent the following message to Pakistan:

'Regarding unlawful seizure India Airlines aircraft confident Pakistan acting in accordance with ICAO Assembly Resolution A17-5 has permitted or will permit aircraft occupants and cargo continue journey immediately. Would appreciate your information regarding present situation. Am also very concerned by possibility proliferation hijackings in that part of the world unless severe measures taken. Therefore trust Pakistan will follow Assembly declaration A17-1 and prosecute perpetrators so as to deter repetition similar acts.'

The Government of India are not aware of the response given by Pakistan to this communication. In fact Pakistan neither permitted the aircraft with passengers and cargo to continue the journey immediately, nor returned the hijackers to India, nor prosecuted nor punished them in Pakistan."

Pakistan in the reply says that they are awaiting trial. They are very familiar with trials and I will say no more about it.

79. "(h) The Government of India had, as far back as September 1970, informed the Pakistan High Commissioner in India that certain subversive elements in Pakistan were conspiring to hijack Indian aircraft and that there was definite information about a possible attempt to hijack an Indian aircraft to Pakistan and had requested the Government of Pakistan to take adequate steps to prevent this. There was no response from the Government of Pakistan except the strange request from their High Commissioner to disclose the source from which the Government of India had obtained this information."

Imagine the attitude of a responsible government wanting to honour its international commitments about safe and orderly aviation. That government is given information by another government: "We have information that one of our planes is going to be hijacked. Please see to it that such a thing does not happen, that the hijackers do not get asylum in your country ..." What is the reply of the Pakistan Government? "Please tell us the source from which you got this information." If this is "safe and orderly development of

aviation" we may as well scrap the Convention of 1944. There is no meaning to it. It is meant to be a convention among nations which intend to honour and respect its provisions. It is not intended to be a formality between nations, one of which is at liberty to make a mockery of it and then ask the other nation to adhere to its provisions.

80. These are the facts. If anyone had any doubt as to whether the Pakistan Government itself was really involved in the hijacking, either before or after the event, it would be completely removed if you look at Pakistan's reply and at the conclusions of the Commission of Inquiry which Pakistan has annexed to it. I ask you honourable gentlemen, as men of common sense and men of knowledge of world affairs, to read this Commission's report and ask yourselves whether you believe for a moment that an honest government, which had nothing to do with the hijacking or the hijackers and had no sympathy with them, could have possibly procured such a report from a Commission appointed by it. Look at the report. As I started to say earlier, it makes hilarious reading. You only have to read it to see what type of conclusions were reached by a responsible government commission. It is Annexure A to Pakistan's reply and I propose to read the whole of it.

81. *The President:* I do not mean to interrupt you, but is the point that you are going to make now related to the preliminary objection?

82. *Mr. Palkhivala:* Sir, it has no bearing on the legality of the preliminary objection. It has a bearing on the justification for the suspension or termination of the Agreement and that justification is not within the Council's jurisdiction. So if the learned President rightly reminds me that if the preliminary objection is well founded in law—and I submit it is—then the question whether our termination was rightful or wrongful is not for the Council to consider. If that is the view then I do not have to read it at all because I would be unnecessarily wasting your time, and the learned President, if I may say, is quite logical in reminding me that on my own argument this is not relevant. I concede that point against myself straight away and I will not read it, because I see the implication of what the learned President has said. Without asking me not to read it, you have rightly reminded me that it is really not relevant. My only objective in asking the honourable members to have a look at it was to satisfy you about the bona fides of my country's case, which is not really the question before the Council because you are not concerned really with our bona fides and our justification as much as with our contention that if for any reason, good or bad, we choose to terminate the agreement, the Council has no jurisdiction to deal with it. Well, Sir, I will not read the report, but I will ask the honourable members to have a look at it later and will only make one or two comments without reading it.

83. The sum and substance of the report is this. Here is India, tremendously agitated over this hijacking, very perturbed. This is the first time in history that an Indian aircraft has been hijacked and our people, inside and outside of Parliament, are so agitated that we beg the President of the ICAO Council to intervene, we request Pakistan to send back our plane, passengers, cargo, etc., and this Commission appointed by the Pakistan Government discovers the real secret. The real secret is that Indian secret agents have somehow manoeuvred this hijacking for their own purposes! In other words, the Indian Government was behind the hijacking. It is like saying that the Jews were behind the hijacking which, according to the newspapers, was the handiwork of terrorists, but according to some Commission was the handiwork of the Jews themselves, who got their own plane hijacked. My point is that if such a report is procured by a government, it tells you volumes about the bona fides

of that government. If there was not this Commission's report I could have understood a government saying "We had nothing to do with the hijacking.", but if such a Commission is appointed and such a report is made available to an international body, I can only say, weighing my words carefully, that it is an insult to that body to be asked to accept it. The report says that India itself procured this hijacking by its own agents. It says that this Mohammad Hashim Qureshi, the one who blew up the aircraft, really had no grenade and no pistol. As I have already mentioned, if that was the case, could he blow up the aircraft? How could it happen? Who supplied him with the grenade to blow up the aircraft? Did the Pakistan Government supply the grenade, and what were they doing for three and a half days while the aircraft was standing on the apron of the airport, which is an area occupied by the military? It is all too absurd for words and in deference to what the learned President said, I shall not read it.

84. I am now concluding my exposition of the first ground, the first preliminary objection, but before I do so I would just like to mention three points in Pakistan's reply to our preliminary objection. The first is that the word "application" includes termination or suspension. I will not say anything more on that point because I have already cited to you the judgment of the International Court of Justice and also the answer given by the United States Counsel, which clearly shows that application is something quite different from termination.

85. The second point which Pakistan makes is that India has applied the Convention and Transit Agreement between itself and Pakistan since the military hostilities of 1965. This is completely incorrect. Since April 1965 there has been no application of the Convention or the Transit Agreement between India and Pakistan. I shall not say anything more on this point just now, because it is a separate preliminary point which I propose to deal with as a second point. I shall therefore leave it alone just now.

86. The third point made by Pakistan is that there is no power to terminate an agreement except to the extent to which the agreement itself provides for termination. In other words, if the Convention and the Transit Agreement do not provide for suspension or termination, you have no power to terminate or suspend them. This is clearly wrong. It is contrary to what the World Court understands to be the international law, and therefore Pakistan's attempt to say that there is no power to terminate or suspend has already been negated by the International Court of Justice. I take it that the honourable members of the Council will follow the ruling of the International Court of Justice, which, as you have seen, is the authority to which an appeal from decisions of the Council lies. As the appellate authority, the superior authority, its judgment would have to be followed and that judgment is categorical and clear: you do not need a provision for termination or suspension in an agreement before you can exercise the right to terminate or suspend.

87. I have finished with the point that the Application of Pakistan is misconceived because it deals with the question of termination or suspension which is outside the Council's jurisdiction. I shall now deal with the second point—what we have called "Preliminary Objection No. 2, Special Régime".

88. *The President:* I think we should take the two cases separately. We are now dealing only with Case I.

89. *Mr. Palkhivala:* Yes, I am not on the Complaint; I am only on the Application and am now putting forward my second preliminary objection to the Application. I shall first explain the position briefly and then read the relevant part of the pleadings. The point is briefly this. The Council has juris-

diction in cases which are governed by the Convention and the Transit Agreement; if two nations choose, as from a certain date and as a result of events like war, military hostilities, to have a special régime, a special agreement, between themselves regarding overflying, it is their business; if one of them terminates or suspends such a special régime, this Council is not the forum because the agreement is not something with which this Council deals. The Council does not deal with special régimes; it deals only with the Convention and the Transit Agreement. It is my submission that the facts leave no doubt that since 1965 there has been a special régime regarding overflying. I am referring only to overflying and making non-traffic stops, nothing else, because as you have seen from the World Court's opinion and the Vienna Convention on the Law of Treaties of 1969, which only codifies existing law, a country may suspend or terminate an international treaty in whole or in part regarding another State. So I am confining myself to overflying, because that is what Pakistan wants.

90. Now as between India and Pakistan overflying has not been governed by the Convention and Transit Agreement since the military hostilities of 1965. What happened was this. In August/September 1965, when military hostilities broke out between them, the two countries, quite naturally, obviously, and inevitably, suspended overflying; neither country could make a stop, whether for traffic or non-traffic purposes, in the other country. That was clear. Thanks to the efforts of Russia we were able to come to an agreement at Tashkent in January 1966. This agreement provided that the two countries would try to restore normal relations between them. We did our best. We went out of our way to do one thing or another, but without any response from Pakistan. I shall refer to the facts presently. It is not a bold statement; I will particularize it and show by facts and figures what we did. One of the things on which normal relations had to be restored was international aviation. So some letters were exchanged between the Prime Minister of India and the President of Pakistan and we said "All right, let us come to some arrangement." What was the arrangement?—it said that with the permission of the Indian Government, Pakistan might overfly India. The words are "with the permission of the Indian Government". Now this is the very negation of the Convention and the Transit Agreement. It is the very converse of the Convention and the Transit Agreement, because they contemplate overflying without the Government's special permission, whereas the special régime after the war between India and Pakistan was that overflying could be only with the express permission of the Government. When our notification, which I shall read presently, expressly says that overflying shall be with the permission of the Government of India, how can anyone possibly still argue, as Pakistan tries to do, that the Convention and the Transit Agreement were brought back into operation after 1965? It is impossible to say that, because when I say "with my Government's permission", I say in so many words that the benefit of the Convention and the Transit Agreement is not available to you; otherwise the question of my Government's permission does not arise.

91. Now Pakistan is fully aware that from 1966, when the Tashkent Agreement was reached, up to date, Pakistan has never overflowed India without the Government's permission. This permission we may give or withhold, because permission has no meaning unless the authority which is to give it has discretion not to give it. We told Pakistan "No Convention and no Transit Agreement as between you and me; overflying is with my Government's permission." Of course Pakistan returned the compliment by saying it was also with their Government's permission, which I am not disputing, but since they are



the complainant and I am the defendant, I am concerned only with my action, not with Pakistan's. What was my action? It was clear and categorical: hereafter overflying by Pakistan can only be with the Government of India's permission. If this is so—and I will prove it by reference to our own Government's notification, which is unchallenged—you will immediately see that there was no question of applying the Convention or the Transit Agreement as between India and Pakistan after the military hostilities of 1965. If there was a special régime, as undoubtedly there was, between India and Pakistan regarding overflying after the military hostilities of 1965, it means the Convention and the Transit Agreement are not in operation as between these two States as regards overflying. Now how can an application be made to the Council saying that the Government of India has now proposed to withdraw permission for overflying? If I choose to withdraw permission that is my right as a sovereign State, and under what document have I agreed that if under the special régime I withdraw my permission for overflying, I shall appoint the Council of ICAO as the body to whom the complaint can be made? No one has agreed to such arbitration or adjudication by the Council. Therefore it is my respectful submission that the honourable members of the Council cannot be troubled with this question, which pertains to a special régime between India and Pakistan that is completely outside the Convention and the Transit Agreement.

92. May I refer you to conclusive evidence of this, conclusive because the documents are not in dispute. Would you kindly refer to India's preliminary objections, Annexure No. 3. It reproduces two notifications, one issued during and the other after the war of 1965—throughout my argument I have used the word "war" in place of "military hostilities" because I am not trying to be technically correct here; wherever I have used the word "war" you will take it as "military hostilities", because an international authority in Geneva, before which I had the honour to appear against my learned friend, the Attorney General of Pakistan, has held that the military hostilities of September 1965 did not amount to a war in international law and I accept that wording as correct; it is a case of military hostilities, not amounting to war, in September 1965. May I read the two notifications before the honourable members have a recess for lunch.

93. The first is the notification of the Government of India dated 6 September 1965.

*"Whereas* the Central Government is of the opinion that in the interests of the public safety and tranquillity, the issue of an order under clause (b) of sub-section (1) of section 6 of the Aircraft Act, 1934 (22 of 1934), is expedient:

*Now, therefore*, in exercise of the powers conferred by clause (b) of sub-section (1) of the said section 6, the Central Government hereby directs that no aircraft registered in Pakistan, or belonging to or operated by the Government of Pakistan or persons who are nationals of Pakistan, shall be flown over any portion of India."

This is September 1965. Military hostilities are in progress. India says no overflying by any Pakistan aircraft. After peace was restored and the Tashkent Declaration was signed, there was a second notification, dated 10 February 1966, which is on the next page of our preliminary objections. It continues in operation even today and you will see how it reads:

*"Whereas* the Central Government is of opinion that in the interests

of the public safety and tranquillity, it is necessary so to do:

*Now, therefore*, in exercise of the powers conferred by clause (b) of sub-section 6 of the Aircraft Act, 1934 (22 of 1934), the Central Government hereby makes the following amendment to the notification of the Government of India in the late Ministry of Civil Aviation No. GSR 1299 dated the 6th September 1965, namely:—

In the said notification, after the words 'any portion of India', the following words shall be inserted, namely:—

'except with the permission of the Central Government and in accordance with the terms and conditions of such permission'."

94. *The effect of this notification of February 1966 is clear and undoubted.* It is this. In September 1965 India said to Pakistan "No overflying at all." In February 1966 the Government of India said "Overflying only with the permission of the Central Government of India." and this is the notification in force today and means that Pakistan cannot overfly without India's permission. Therefore, as early as from September 1965, the benefits of the Convention and the Transit Agreement have not been available to Pakistan, because under both those treaties Pakistan has a right to overfly without our Government's permission. But we told them in 1966 "You may now overfly with our permission, not without it." Thus the Convention and the Transit Agreement were terminated or suspended as early as 1966. All that has happened in 1971 is that the permission has been withdrawn, but the obligation, the requirement, the necessity of obtaining permission, which meant that the Convention and the Transit Agreement were no longer in operation between the two countries, has existed since 1966. If India has terminated or suspended the Convention and the Transit Agreement as regards Pakistan, it was done in 1966, not 1971. In 1971 we have withdrawn permission, but the termination or suspension of the international treaty took place in 1966 when Pakistan was asked to obtain permission. This is a very important point which Pakistan has completely overlooked.

95. *You have the special régime of 1965/1966 and this special régime is that contrary to the Convention, contrary to the Transit Agreement, no Pakistan aircraft shall overfly India without our special permission.* Therefore the special régime, which Pakistan accepted for overflying India, and we accepted for overflying Pakistan, came in 1965/1966. If in 1971 we have withdrawn permission, it has been withdrawn under the special régime and has nothing to do with the Convention or the Transit Agreement. May I stop here, Sir.

96. *The President:* We shall now have the break and shall reconvene at 2.30.

## **Annex 7**

Settlement of Differences: United States and 15 European States  
(2000), Note on Procedure: Preliminary Objections  
(Working Paper Presented by the President of the Council),  
ICAO document C-WP/11380, 9 November 2000



C-WP/11380  
9/11/00

**INTERNATIONAL CIVIL AVIATION ORGANIZATION**

**COUNCIL - 161ST SESSION**

**Subject No. 26: Settlement of Disputes between Contracting States**  
**Subject No. 16: Legal Work of the Organization**

**SETTLEMENT OF DIFFERENCES:  
UNITED STATES AND 15 EUROPEAN STATES (2000)**

**NOTE ON PROCEDURE: PRELIMINARY OBJECTIONS**

(Presented by the President of the Council)

**SUMMARY**

This paper provides an overview of the procedure applicable to the above case during the preliminary objections stage.

Action by the Council: see paragraph 7.1

**REFERENCES**

Doc 7300/7 — Convention on International Civil Aviation  
Doc 7782/2 — *Rules for the Settlement of Differences*  
SG 1658/00  
SG 1670/00  
SG 1674/00  
State letter Ref. LE 6/5-00/38  
*Appeal Relating to the Jurisdiction of the ICAO Council*, Judgment,  
I.C.J. Reports 1972, p. 46 ff.

**1. INTRODUCTION**

1.1 On 14 March 2000, the United States of America submitted an application and memorial to the Council for settlement of a difference with Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom, under Article 84 of the *Convention on International Civil Aviation* and Article 2 of the *Rules for the Settlement of Differences* (hereinafter “the Rules”).

(4 pages)

C-WP/11380

- 2 -

## 2. APPLICATION AND MEMORIAL

2.1 The application and memorial asserted that a disagreement exists regarding European Council Regulation (EC) No. 925/1999 (“Hushkits”) and its compatibility with the *Convention on International Civil Aviation*, in particular in Articles 11, 15, 38 and 82, as well as Annex 16. According to the wording of the application and memorial, the Applicant requested that the Council:

- (1) determine that the Respondents are in violation of the Convention and Annex 16;
- (2) order Respondents to comply with all provisions of the Convention; and
- (3) order Respondents to take immediate steps to procure their release from their obligations under the EC Regulation; and (4) grant such other and further relief as the Council deems proper and just.

2.2 In accordance with Article 3, paragraph (1)(b), of the Rules, all Contracting States were notified that the application and memorial had been received (State letter Ref. LE 6/5-00/38 of 31 March 2000). Copies of the application and memorial were distributed to Representatives on the Council by memorandum SG 1658/00, LE 6/5 dated 3 April 2000.

## 3. PRELIMINARY OBJECTIONS

3.1 Acting under Articles 3, paragraph (1)(c), and 28, paragraph (3) of the Rules, the President of the Council determined 26 June 2000 as the date by which the counter-memorial specified in Articles 3, paragraph (1)(c), and 4 of the Rules should be filed by the Respondents. This time-limit was extended until 21 July 2000, and further until 4 August 2000.

3.2 On 19 July 2000, the Respondents submitted a Statement of Preliminary Objections, in accordance with Article 5 of the Rules.

3.3 Copies of the Statement of Preliminary Objections were sent to the Applicant by letter dated 4 August 2000 and to Representatives on the Council by memorandum SG 1670/00, LE 6/5 dated 17 August 2000.

3.4 According to the Statement of Preliminary Objections, the Respondents raised the following objections as a preliminary matter:

- (1) The Council lacks jurisdiction due to the inadmissibility of the United States’ claims for failure to resolve the dispute by negotiation;
- (2) The Council lacks jurisdiction due to the inadmissibility of the United States’ claims for failure to exhaust local remedies; and
- (3) The Council lacks jurisdiction due to the inadmissibility of points 2 to 4 of the relief requested by the United States, as these requests go beyond the powers given to the Council under the *Convention on International Civil Aviation*.

The Respondents therefore requested that all the Applicants' claims, and points 2 to 4 of the requested relief, be dismissed as inadmissible.

3.5 The Respondents also underlined their commitment to seeking a solution of the differences underlying this dispute and reiterated their willingness to enter into negotiations with the United States for the purpose of resolving the dispute.

#### **4. RESPONSE TO THE PRELIMINARY OBJECTIONS**

4.1 Acting under Articles 3, paragraph (1)(c), and 28, paragraph 3, of the Rules, the President of the Council determined 15 September 2000 as the date by which the Response of the Applicant to the Preliminary Objections specified in Articles 5, paragraph (4), and 3, paragraph 1(c), of the Rules should be filed.

4.2 On 15 September 2000, the United States filed a Statement of Response to the Preliminary Objections.

4.3 Copies of the Statement of Response were sent to the Respondents by letter dated 18 September 2000 and to Representatives on the Council by memorandum SG 1674/00, LE 6/5 dated 27 September 2000 (English only); other language versions were circulated on 13 October 2000.

4.4 According to the wording of the Statement of Response, the United States requested that the Council:

- (1) reject the propositions of the Preliminary Objections and reaffirm the Council's competence to consider the application and memorial of the United States;
- (2) order that the time-period for the filing of counter-memorials shall begin to run again immediately following the Council's denial of the preliminary objections; and
- (3) deny any further requests of the Respondents for additional time to file their counter-memorials.

#### **5. WORK PROGRAMME OF THE COUNCIL**

5.1 At the 14th meeting of its 160th Session, the Council decided to include the item "Settlement of Differences: United States and 15 European States (2000)" in the work programme of its current 161st Session.

#### **6. FURTHER PROCEDURE UNDER THE RULES**

6.1 The procedure applicable in the case of preliminary objections being filed is essentially set out in Article 5 of the Rules. Paragraph (4) of Article 5 reads as follows:

“(4) 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 these Rules.”

6.2 Therefore, a decision of the Council shall be taken as a formal decision which may be subject to appeal to the International Court of Justice (ICJ). In the case *India vs. Pakistan (Appeal Relating to the Jurisdiction of the ICAO Council)*, Judgement of 18 August 1972, ICJ Reports 1972, p. 46), the International Court of Justice decided that decisions of the ICAO Council regarding its jurisdiction to entertain a dispute under Article 84 of the Convention should from a procedural viewpoint be treated similar to decisions on the merits of the case, and are therefore appealable to the ICJ. Furthermore, the Court also indicated that Article 15 of the Rules applies to such a decision, including the requirement to give reasons for the Council’s decision in writing (ICJ Reports, 1972, p. 13-14).

6.3 Under Article 15 of the Rules, the following requirements apply:

- The Council shall render its decision after hearing the arguments of the Parties;
- The decision of the Council shall be in writing and shall contain all the particulars of Article 15, paragraph (2);
- Any Member of the Council who voted against the majority opinion may, if he/she so wishes, have his/her views recorded in the form of a dissenting opinion to be attached to the decision of the Council; and
- No Member of the Council who is a party to the dispute shall participate in the vote.

## 7. ACTION BY THE COUNCIL

7.1 The Council is invited to :

- a) proceed to hearing the arguments of the Parties relating to the preliminary objections;
- b) discuss the matter; and
- c) take a decision on the matter in line with the procedure set out in paragraph 6 above.

— END —





## **Annex 8**

Bahrain and UAE comments on draft Minutes C-MIN 214.8 Closed  
circulated by the Secretariat, 2 August 2018

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----- Forwarded message -----

From: "Larcos, Andrew" <[ALarcos@icao.int](mailto:ALarcos@icao.int)>  
To: "Delegation, UAE" <[UAE@icao.int](mailto:UAE@icao.int)>  
Cc: "Weber, Ludwig J." <[LWeber@icao.int](mailto:LWeber@icao.int)>, Mohamed Salem <[msalem@gcaa.gov.ae](mailto:msalem@gcaa.gov.ae)>, Aysha Mohammed Al Hamili <[ahamili@gcaa.gov.ae](mailto:ahamili@gcaa.gov.ae)>  
Bcc:  
Date: Thu, 2 Aug 2018 19:02:53 +0000  
Subject: RE: comment on C-MIN 214/8 (Closed)

This message has been archived. [View the original item](#)

Dear Mohammed,

This is to acknowledge receipt of your e-mail message. We will be in contact should we encounter any difficulties with the proposed amendments.

Kind regards,

Andrew Larcos

C/ACS

From: Delegation, UAE  
Sent: 2-Aug-18 2:53 PM  
To: Larcos, Andrew  
Cc: Weber, Ludwig J.; Mohamed Salem; Aysha Mohammed Al Hamili  
Subject: comment on C-MIN 214/8 (Closed)

Dear Andrew,

please find UAE comments & Bahrain comments attached

if any more clarification is needed please contact me.

Best Regards

Eng. Mohammad Salem | سالم محمد م.  
UAE Alt Representative to ICAO Council الأيكاو مجلس في المتحدة العربية الإمارات دولة ممثل نائب

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**Comments on Draft Minutes C-Min 214/8 (Closed) 23/7/18**

We respectfully suggest the changes noted below to the draft Minutes. Requested changes are noted in red text for ease of reference.

We request that **paragraph 23** should be revised as follows:

*H.E. Al Mansoori affirmed that the Applicant had made no attempt to negotiate the real dispute with the Respondents, and had not even attempted to fulfil the said Article 2(g) requirement when filing its Application (A). He noted that, in fact, the Applicant conceded on page 7 of its Memorial (A) that it had not attempted to enter into negotiations in relation to the matters it now raised before the Council, taking the position instead that the severance of diplomatic relations had made negotiations “futile.”*

We request that **paragraph 111** should be revised as follows:

*In seeking clarification regarding the voting majority required ~~(19)~~, H.E. Al Mansoori (United Arab Emirates) noted that, pursuant to Article 84 of the Chicago Convention, 33 Council Members were eligible to vote on the Respondents’ preliminary objection relating to Application (A). In his view, that meant that 17 positive votes constituted a majority. In further noting that in accordance with Article 66 b) of the Chicago Convention 25 Council Members were eligible to vote on the Respondents’ preliminary objection relating to Application (B), he indicated that in his opinion 13 positive votes constituted a majority.*



**International Civil Aviation Organization**

**DRAFT MINUTES**

DRAFT  
C-MIN 214/8 (Closed)  
23/7/18

**COUNCIL — 214TH SESSION**

**SUMMARY MINUTES OF THE EIGHTH MEETING**

**(THE COUNCIL CHAMBER, TUESDAY, 26 JUNE 2018, AT 1430 HOURS)**

**CLOSED MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

Algeria	— Mr. A.D. Mesroua	Mexico	— Mr. D. Méndez Mayora
Argentina	— Mr. G.E. Ainchil	Nigeria	— Mr. M.S. Nuhu
Australia	— Mr. S. Lucas	Panama	— Mr. G.S. Oller
Brazil	— Mr. O. Vieira (Alt.)	Republic of Korea	— Mr. Y.J. Lee
Cabo Verde	— Mr. C. Monteiro	Russian Federation	— Mr. S. Gudkov
Canada	— Mr. M. Pagé	Saudi Arabia	— H.E. Dr. N.B.M. Al-Amudi, Minister of Transport and Chairman, GACA
China	— Mr. Shengjun Yang	Singapore	— Mr. T.C. Ng
Colombia	— Mr. A. Muñoz Gómez	South Africa	— Mr. M.D.T. Peege
Congo	— Mr. R.M. Ondzotto	Spain	— Mr. V.M. Aguado
Cuba	— Mrs. M. Crespo Frasquieri	Sweden	— Ms. H. Jansson Saxe
Ecuador	— Mr. I. Arellano	Turkey	— Mr. A.R. Çolak
Egypt	— H.E. H. EL-Adawy, President, CAA	United Arab Emirates	— H.E. S.B.S. Al Mansoori, Minister of Economy and Chairman, GCAA
France	— Mr. P. Bertoux	United Kingdom	— Mr. D.T. Lloyd
Germany	— Mr. U. Schwierczinski	United Republic of Tanzania	— Mr. R.W. Bokango
India	— Mr. A. Shekhar	United States	— Mr. T.L. Carter
Ireland	— Ms. N. O'Brien	Uruguay	— Mr. M. Vidal
Italy	— Mr. M.R. Rusconi		
Japan	— Mr. S. Matsui		
Kenya	— Ms. M.B. Awori		
Malaysia	— Mr. K.A. Ismail		

**ALSO PRESENT:**

Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
H.E. K.B.A. Mohammed, Minister of Transportation and Telecommunications (Obs.)	— Bahrain
Mr. M.T. Al Kaabi (Obs.)	— Bahrain
Mr. S.M. Hassan (Obs.)	— Bahrain
Mr. D. Krishan (Adv.)	— Bahrain
Mr. G. Petrochilos (Adv.)	— Bahrain
Ms. A. Keene (Adv.)	— Bahrain
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. H. Gonzales (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
H.E. A. Salama (Alt.)	— Egypt
Mr. A. Khedr (Rep.)	— Egypt
Mrs. S. El Mowafi (Alt.)	— Egypt
Mrs. Y.H.M. Elbedewy (Alt.)	— Egypt
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico

**SECRETARIAT:**

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. J. Huang	— D/LEB
Mr. Y. Nyampong	— LEB
Mrs. D. Brookes	— LEB
Mr. M. Vaugeois	— LEB
Mr. A. Larcos	— C/ACS
Miss S. Black	— Précis-writer

Mr. Hassan was not  
part of the Bahrain  
delegation.

C-MIN 214/8 (Closed)

-2-

**ALSO PRESENT (CONTINUED):**

H.E. J.B.S. AlSulaiti, Minister of Transport and Communications (Obs.)	— Qatar
H.E. A.N. AlSubaey (Obs.)	— Qatar
H.E. F.M. Kafood (Obs.)	— Qatar
H.E. Y.S. Laram (Obs.)	— Qatar
Mr. E.A. Al-Malki (Obs.)	— Rep. of Qatar to ICAO
Mr. M.A. AlHajri (Obs.)	— Qatar
Mr. T.A. Almalki (Obs.)	— Qatar
Mr. E.A. Mindney (Obs.)	— Qatar
Mr. A. Altamimi (Obs.)	— Qatar
Mr. J. Augustin (Adv.)	— Qatar
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D.S. Ha (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
H.E. A.M. Altamimi (Alt.)	— Saudi Arabia
H.E.H.E. W.M.A. Alidrisi (Adv.)	— Saudi Arabia
Mr. S.A.R. Hashem (Rep.)	— Saudi Arabia
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. N.B.B. Alsudairy (Obs.)	— Saudi Arabia
Mr. D.L.Q. Ming (Adv.)	— Singapore
Mr. L.C. Yong (Adv.)	— Singapore
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Dođrukol (Alt.)	— Turkey
H.E. S.M. Al Suwaidi (Alt.)	— United Arab Emirates
H.E. M.S.H. Al Shehhi (Alt.)	— United Arab Emirates
H.E. F. Al Raqhani (Alt.)	— United Arab Emirates
Miss A. Alhameli (Rep.)	— United Arab Emirates
Mr. M. Salem (Alt.)	— United Arab Emirates
Mr. M. Al Shamsi (Alt.)	— United Arab Emirates
Dr. L. Weber (Alt.)	— United Arab Emirates
Mrs. L. Coquard-Patry (Alt.)	— United Arab Emirates
Mrs. S. Aminian (Alt.)	— United Arab Emirates
Mrs. S. Kirwin (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. S. Kotis (Alt.)	— United States
Mr. J.M. Padilla (Alt.)	— United States
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina (Alt.)	— Uruguay

**Representatives to ICAO**

Bolivia (Plurinational State of)  
Chile  
Cyprus  
Ethiopia  
Greece  
Honduras  
Indonesia  
Iran (Islamic Republic of)  
Lebanon  
Paraguay  
Peru  
Qatar  
Senegal  
Sudan

**Subject No. 16: Legal work of the Organization**  
**Subject No. 26: Settlement of disputes between Contracting States**

**Settlement of Differences: 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) (relating to the interpretation and application of the Chicago Convention and its Annexes): Preliminary Objection Stage**

**Settlement of Differences: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain and the United Arab Emirates (2017) – Application (B) (relating to the interpretation and application of the International Air Services Transit Agreement): Preliminary Objection Stage**

1. On behalf of the Council, the President extended a warm welcome to the following high-level Government Officials who were duly accredited to represent their respective Member States as their Authorized Agents: H.E. Kamal Bin Ahmed Mohammed, Minister of Transportation and Telecommunications of Bahrain, H.E. Hany EL-Adawy, President of the Civil Aviation Authority of Egypt, H.E. Jassem Bin Saif ALSulaiti, Minister of Transport and Communications of Qatar, H.E. Dr. Nabeel bin Mohamed Al-Amudi, Minister of Transport and Chairman of the Board of the General Authority of Civil Aviation of Saudi Arabia, and H.E. Sultan Bin Saeed Al Mansoori, Minister of Economy and Chairman of the Board of the General Civil Aviation Authority of the United Arab Emirates. In addition, he welcomed all other officials from the said five Member States who were also in attendance. The Secretary General joined in this welcome.

2. The Parties and the Council agreed to the proposal by the President for the concurrent presentation and consideration of the two above-mentioned items, on the understanding that the Council would take separate decisions thereon given that Application (A) and Application (B) related to two different international air law instruments, namely, the Chicago Convention and the International Air Services Transit Agreement (Transit Agreement), and that there were different Respondents thereto. The items were considered on the basis of two working papers presented by the Secretary General, C-WP/14778 Restricted (with Addendum No. 1) and C-WP/14779 Restricted (with Addendum No. 1), respectively, and the following memoranda issued by the Secretary General to Council Representatives:

- memorandum **SG 2411/18 (with Blue rider)** dated 23 March 2018, which transmitted the Respondents' Statements of preliminary objections with respect to Application (A) and Application (B);
- memorandum **SG 2416/18 (with Blue rider)** dated 8 May 2018, which transmitted the Applicant's Response to the said Statements of preliminary objections; and
- memorandum **SG 2420/18** dated 13 June 2018, which transmitted the Respondents' Rejoinders to the Applicant's Responses to their Statements of preliminary objections.

*Introduction of C-WP/14778 Restricted (with Addendum No. 1) – Application (A)*

3. The Secretary General introduced C-WP/14778 Restricted (with Addendum No. 1), which provided an overview of the procedure applicable to **Application (A)** – the disagreement between Qatar, as Applicant, on the one hand and Bahrain, Egypt, Saudi Arabia and the United Arab Emirates, as Respondents, on the other hand, during the preliminary objection stage.

4. In the executive summary of C-WP/14778 Restricted, the Council was invited to hear the arguments of the Parties relating to the preliminary objection and to take a decision on the matter in line with the procedure set forth in Article 5 of the *Rules for the Settlement of Differences* (Doc 7782/2), paragraph (4) of which specified 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 these Rules."

*Introduction of C-WP/14779 Restricted (with Addendum No. 1) – Application (B)*

5. The Secretary General then introduced C-WP/14779 Restricted (with Addendum No. 1), which provided an overview of the procedure applicable to **Application (B)** – the disagreement between Qatar, as Applicant, on the one hand and Bahrain, Egypt and the United Arab Emirates, as Respondents, on the other hand, during the preliminary objection stage. The action by the Council proposed in the executive summary of C-WP/14779 Restricted was identical to that proposed in the executive summary of C-WP/14778 Restricted.

6. The President of the Council recalled that, for the two cases before it, the Council was sitting as a judicial body under Article 84 of the Chicago Convention, taking its decisions on the basis of the submission of written documents by the Parties, as well as on the basis of oral arguments. The Council's consideration was limited to the Respondents' two Statements of preliminary objections with respect to Application (A) and Application (B), the Applicant's respective Responses thereto, and the Respondents' respective Rejoinders, and would not address the merits of the cases. The *Rules for the Settlement of Differences* (Doc 7782/2) and the *Rules of Procedure for the Council* (Doc 7559/10) would be used.

*Presentation by the Respondents' Authorized Agents of their oral arguments with respect to Application (A) and Application (B)*

7. At the invitation of the President of the Council, and on behalf of Bahrain, Egypt, Saudi Arabia and the United Arab Emirates, H.E. Dr. Nabeel bin Mohamed Al-Amudi (Saudi Arabia) presented the preliminary objection filed by the Respondents in response to Qatar's **Application (A)** under Article 84 of the Chicago Convention. Before he began, H.E. Al-Amudi reiterated the Respondents' utmost respect for ICAO, the Council, and the international rules and principles governing civil aviation. He emphasized that safety had been, and continued to be, the Respondents' top priority. In noting that the Respondents, the Secretariat, and the ICAO Middle East Regional Office (MID) (Cairo), among others, had worked diligently to ensure that contingency arrangements were in place in the Gulf region, and that such arrangements ensured the safe operation of civil aircraft, H.E. Al-Amudi indicated that that task had been accomplished.

8. H.E. Al-Amudi underscored that, as one of the Council Members had astutely recognized and stated during the Extraordinary Session of the Council convened on 31 July 2017 pursuant to the request made by Qatar under Article 54n) of the Chicago Convention, the aviation component of the situation in the Gulf region was but one part of a complex environment. ICAO's role, within that environment, was to administer an international aviation system that delivered safe, secure and efficient air navigation for all Member States. He observed that that role had been fulfilled.

9. In emphasizing that the Respondents had not chosen to bring this dispute before the Council today, H.E. Al-Amudi stressed that, as previously notified to the President of the Council and the Secretary General, the procedures set for the present hearing were contrary to the Respondents' requests, the *Rules for the Settlement of Differences* (Doc 7782/2), and the fundamental rules of due process. He cited two notable examples, as follows: firstly, the Respondents' preliminary objections needed 19 positive votes to carry the day, but the Rules only required a simple majority of the Council Members entitled to vote; and secondly, the Respondents had not been provided with sufficient or equal time to adequately present their case. Their right to be heard had thus been compromised.

10. H.E. Al-Amudi highlighted that during the present meeting it fell on the Council to recognize that the real issue of this dispute did not concern international civil aviation but rather the Applicant's breaches of its international obligations, which had left the Respondents with no effective option other than to exercise their sovereign right to implement measures to protect their national security interests.



11. Underscoring the importance of the dispute's context, H.E. Al-Amudi recalled the 2013 and 2014 timeframe, when the Gulf Cooperation Council States, including Qatar, had agreed to a series of collective obligations known as the Riyadh Agreements. He noted that although Egypt was not a signatory thereto, under their terms, and in particular, as expressly stated in Article 4 of the November 2014 Agreement, Egypt was a beneficiary of those Agreements. H.E. Al-Amudi further noted that, under the signature of its Emir, Qatar had committed to stop funding, harboring, and supporting persons and organizations engaging in terrorist or extremist activities, and to desist from interfering in the internal affairs of neighbouring States. He emphasized that the Riyadh Agreements reinforced the Applicant's international law obligations, as set forth in the *Charter of the United Nations* (UN), the *International Convention for the Suppression of the Financing of Terrorism*, relevant binding United Nations Security Council Resolutions, and the customary international law principle of non-interference in the internal affairs of other States.

12. Recalling that the Respondents had asked the Applicant, time and again, to halt these practices, in line with its commitments, H.E. Al-Amudi underscored that, time and again, the Applicant had failed to do so. He indicated that in June 2017, after assessing that all other options had been exhausted, the Respondents had determined that the only way to address these grave threats to their national security was to terminate diplomatic and consular relations with the Applicant, and to institute a basket of lawful counter-measures, including the said airspace restrictions. He stressed that unless and until the Applicant fulfilled its obligations under the Riyadh Agreements, the Respondents would consider it a grave national security threat, and would continue the basket of counter-measures necessary to counter that threat.

13. In affirming that the Respondents did not implement such counter-measures to punish the Applicant, H.E. Al-Amudi underscored that their purpose was rather to induce the Applicant to bring its actions into compliance with its fundamental obligations. He emphasized that when the Applicant fully complied with its international obligations, as reinforced in the Riyadh Agreements, then the said counter-measures would be lifted, and that as long as the Applicant continued to breach its obligations, the counter-measures would remain.

14. Noting that some Council Representatives might be asking themselves why the Respondents were talking about terrorism in an Organization established to deal with international civil aviation, H.E. Kamal Bin Ahmed Mohammed (Bahrain) emphasized that that was exactly the point of ~~first ground of their preliminary objection with respect to Qatar's Application (A)~~, which rested on the fact that the present dispute between Qatar, as Applicant, and the Respondents would require the Council to determine issues that fell outside the latter's jurisdiction. Noting that the Applicant had all but conceded that point, he recalled that it had promised to present a "robust defence" against the allegations of its funding and support of terrorism and to show why the Respondents' counter-measures were unlawful were the case to get to the merits. The Council would then have to determine those issues. H.E. Mohammed underscored, however, that the Council's jurisdiction under Article 84 of the Chicago Convention was limited to "any disagreement . . . relating to the interpretation or application" of the Chicago Convention. In emphasizing that that provision clearly limited the types of matters that the Contracting States to the Convention intended the Council to hear, he underscored that the exercise of jurisdiction over matters unrelated to civil aviation was outside the latter's mandate. H.E. Mohammed stressed that by asking the Council to ignore that principle, the Applicant was in fact asking the Council to act far beyond the scope of its authority, which was not appropriate.

the First Preliminary Objection
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15. Noting that the Parties apparently agreed on the content and applicability of the customary international law principle on counter-measures in this case, H.E. Mohammed emphasized that the obligations in the Chicago Convention could not be viewed in isolation of those rules. The Respondents maintained that the Applicant's breaches of its international law obligations created a situation where they had no choice but to impose lawful counter-measures to induce the Applicant to change its behaviour.

16. H.E. Mohammed recalled that the International Court of Justice (ICJ) had held in the *Hungary/Slovakia* case that an injured State could take counter-measures against a State which had breached its obligations. Under international law, five conditions had to be met for the counter-measures to be considered lawful, the first of which was that the counter-measure must be adopted in reaction to a previous internationally wrongful act and directed against the wrong-doing State. He affirmed that such was the case here.

17. H.E. Mohammed underscored that the Respondents maintained that their said airspace restrictions were lawful counter-measures, and were permitted under international law. He indicated that Council Members would know from their own experience that States had, in the past, been compelled to restrict their airspace in the face of illegal conduct by other States. They had done so bilaterally or collectively, and on various legal grounds, including by way of counter-measures. H.E. Mohammed cited, as examples, a European Union (EU) flight ban at the time of the Kosovo crisis; the flight bans on Libyan outbound flights in 2015; similar bans on North Korean flights; and bans on South African flights as a reaction to the continuation of apartheid policies in the 1980's. He noted that although the list of examples was much longer, the salient point was clear, and it had never been suggested by the States involved, and rightly so, that any of those broader disputes could be characterized as an aviation matter and resolved by the Council.

18. H.E. Mohammed emphasized that despite the Applicant's allegations, the Respondents were not asking the Council to decide those issues now; rather, at this stage, the Council had only to decide whether it could properly exercise jurisdiction over the merits, as it related to the real issue in the case. However, the Respondents did ask the Council to make a decision on its jurisdiction at this phase of the case. They submitted that their ~~preliminary objection~~ had an exclusively preliminary character. Deciding on the objection now would not require the Council to rule on the merits of the real issue in dispute, but simply require it to decide whether it had jurisdiction at all. H.E. Mohammed underscored that in keeping with ICAO's *Rules for the Settlement of Differences* (Doc 7782/2), as well as the practice of the ICJ, the objection should be resolved at the preliminary stage, if at all possible.

First  
Preliminary  
Objection

19. H.E. Mohammed noted that in order to rule on the legality of the Respondents' said airspace measures at large, the Council would first have to determine if the Applicant had in fact violated the Riyadh Agreements, the *Convention of the Organization of the Islamic Conference on Combatting International Terrorism*, the *Arab Convention for the Suppression of Terrorism*, the *International Convention for the Suppression of the Financing of Terrorism*, numerous United Nations Security Council Resolutions, and the customary international law principle of non-interference. To state the obvious, such matters were outside the mandate of the Council. Recalling that the Council had not once ruled on an Article 84 case in its history, H.E. Mohammed underscored that to do so on a matter involving national security and counter-terrorism would be unprecedented.

20. H.E. Mohammed stressed that it was impossible to rule on the legality of the Respondents' said airspace measures without dealing with the larger dispute at hand, a dispute in which the real issue was the Applicant's illegal actions. In indicating that for that reason the Council should rule in favour of the Respondents' ~~preliminary objection~~, he reiterated that the real and principal issue in this dispute was not civil aviation. Recalling that the Council itself had reviewed and confirmed that the contingency arrangements in the Gulf region agreed in 2017 ensured the safe operation of civil aircraft, H.E. Mohammed maintained that the larger dispute at issue that the Applicant sought to bring before the Council did not belong in ICAO.

First  
Preliminary  
Objection

"not"  
please  
italicise

21. H.E. Sultan Bin Saeed Al Mansoori (United Arab Emirates) then presented the ~~second ground of the Respondents' preliminary objection with respect to Qatar's Application (A)~~. Recalling that Article 84 of the Chicago Convention provided that only disagreements which "cannot be settled by negotiation" may be submitted to the Council, he indicated that that meant that an Applicant, in the present

Respondents'  
Second  
Preliminary  
Objection

case, Qatar, must show that it had attempted negotiations about the dispute *before* submitting a case to the Council. The text of Article 84 was quite clear.

22. H.E. Al Mansoori also brought to the Council Members' attention Article 2(g) of the *Rules for the Settlement of Differences* (Doc 7782/2), which provided that the Applicant's Memorial must contain "A statement that negotiations to settle the disagreement had taken place between the parties but were not successful." [a] He noted that the Respondents' submissions cited numerous precedents where the ICJ had dealt with that issue, including the 2011 case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (cf. Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, ~~paragraph 160~~). H.E. Al Mansoori underscored that where a treaty, such as the Chicago Convention, explicitly called for negotiations before a dispute may be brought, that requirement operated as a precondition that the Applicant must satisfy before filing an Application with the Council. Towards that end, it was notable that many of the exhibits the Applicant had provided to support its attempt at negotiations had come after it had filed its Application (A) and Memorial.

23. H.E. Al Mansoori affirmed that the Applicant had made no attempt to negotiate the real dispute with the Respondents, and had not even attempted to fulfil the said Article 2(g) requirement when filing its Application (A). He noted that, in fact, the Applicant conceded on page 9 of its Memorial (A) that it had not attempted to enter into negotiations in relation to the matters it now raised before the Council, taking the position instead that the severance of diplomatic relations had made negotiations "futile."

24. Indicating that the Applicant appeared to have realized, belatedly, that that argument did not satisfy the precondition to negotiate, H.E. Al Mansoori highlighted that in its Response, the Applicant had fundamentally changed its position, and now asserted that it had in fact attempted negotiations. It was notable, however, that despite exhibiting dozens of media reports containing the Applicant's supposed official statements, the Applicant had only illustrated that it had made vague public statements to third party States about its willingness to negotiate. However, the Applicant had not proved that it had demonstrated that willingness to the Respondents and the Applicant had never made a formal request to initiate negotiations. H.E. Al Mansoori maintained that the issuance of empty statements regarding the Applicant's "willingness" to negotiate was insufficient.

25. H.E. Al Mansoori emphasized that, as the Party asserting jurisdiction, the burden fell on the Applicant to demonstrate that it had satisfied the requirement of negotiations by making an attempt to negotiate, consistent with the ICJ Judgment in the said case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*. The Applicant had failed to do so, however.

26. This led H.E. Al Mansoori to bring to the Council's attention to another clear contradiction in the Applicant's submission. He noted that the ~~first ground of the Respondents' preliminary objection~~ with respect to Qatar's Application (A) rested on the fact that the real issue of this dispute fell outside of international civil aviation. The Applicant disagreed with them in that regard. However, at the same time, the Applicant's response in relation to the question of whether it had fulfilled the precondition of negotiations was to point to vague statements relating to the larger dispute at hand. H.E. Al Mansoori reiterated that, indeed, none of the exhibits that the Applicant had pointed to as evidence of its attempts at negotiations touched on the Respondents' airspace restrictions.

Respondents'  
First  
Preliminary  
Objection

27. H.E. Al Mansoori queried why, if the real issue of the dispute was the Respondents' airspace restrictions, did the evidence that the Applicant relied upon as supposedly demonstrating its attempts at negotiation of those airspace restrictions contain statements *only* as to the larger dispute. He underscored that if the real issue of the dispute was indeed the said airspace restrictions, as the Applicant would have the Council believe, then the Applicant had failed to fulfil the requirement of negotiations under Article 84 of the Chicago Convention.

28. H.E. Al Mansoori observed that the Applicant had further attempted to confuse the issue by referring to discussions held in entirely unrelated fora, for example, to proceedings before the World Trade Organization (WTO), which related to a different dispute. He underscored that, consistent with the views expressed by the ICJ in the said case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, such discussions did not satisfy the requirement of prior negotiations because they did not relate to what the Applicant claimed was the subject of its Application (A) before ICAO.

29. H.E. Al Mansoori noted that the Applicant had also asserted that the proceedings of the the Extraordinary Session of the Council on 31 July 2017, held pursuant to Article 54 n) of the Chicago Convention, were evidence that there had been negotiations between the Parties within the framework of ICAO. He emphasized that, as the Council Members well knew, those Article 54 n) proceedings had been rightfully confined to discussions regarding the safety of civil aviation in the context of the contingency arrangements in the Gulf region. H.E. Al Mansoori affirmed that such discussions could not, under any characterization, constitute an attempt by the Applicant to negotiate for purposes of satisfying the requirement of prior negotiations under Article 84 of the Chicago Convention. He noted that while the Applicant had also pointed to letters that it had submitted to the President of the ICAO Council and the ICAO Secretary General, arguing that it had indeed attempted negotiations, none of the letters it had referred to included any request to the Respondents to negotiate on the said airspace restrictions. Indeed, those letters had not even been addressed to the Respondents.

30. H.E. Al Mansoori indicated that, in these circumstances, the Respondents respectfully submitted that the Council should conclude that the Applicant had failed to fulfil the precondition of negotiations required by Article 84 of the Chicago Convention and, further, that it had failed to comply with Article 2(g) of the *Rules for the Settlement of Differences (Doc 7782/2)*. As a consequence, the Respondents respectfully submitted that the Council should decline to proceed with this matter further.

31. H.E. Al Mansoori underscored that even if the Applicant were to affirm today its willingness to undertake negotiations with the Respondents, it would be too late for the present case. Maintaining that any such request for negotiations had to occur before the Application was filed with ICAO, he reiterated that the law on that question was crystal-clear.

32. H.E. Al Mansoori indicated that, for all of the foregoing reasons, the Respondents respectfully requested that the Council accept and uphold their preliminary objection with respect to Qatar's Application (A) and therefore decide: i) that it lacked jurisdiction to adjudicate the claims raised by Qatar's Application (A); or ii) in the alternative, that Qatar's claims were inadmissible. objections

33. On behalf of Bahrain, Egypt and the United Arab Emirates, H.E. Hany EL-Adawy (Egypt) addressed the preliminary objection filed by them, as Respondents, in response to Qatar's **Application (B)** under Article II, Section 2 of the Transit Agreement. He prefaced his remarks with an affirmation of the Respondents' utmost respect for ICAO, the Council, and the international rules and principles governing civil aviation and their commitment to cooperating with all parties, including Qatar, under the auspices of ICAO, to ensure the safe and secure operation of civil aviation.

34. H.E. EL-Adawy underscored that the grounds for the preliminary objection explained earlier in respect of the Chicago Convention applied with equal force to the Transit Agreement. He reiterated that the ~~first ground of the preliminary objection~~ rested on the fact that the real issue of this dispute, the Applicant's illegal actions, fell outside the scope of ICAO's mandate, and that the ~~second ground of the preliminary objection~~ rested on the fact that the Applicant had not satisfied the precondition to make a genuine attempt at negotiations. objections  
Second Preliminary Objection

35. H.E. EL-Adawy took this opportunity to re-emphasize that the central issue in the current crisis was the Applicant's ongoing support for extremism and terrorism and its continued interference in the

internal affairs of other States. He reiterated that the Applicant's policies represented a threat not only to the security and stability of Arab States, but also to many other countries.

36. In noting that at this stage the Council was only called upon to decide whether it could properly exercise jurisdiction over the merits of the case, as they pertained to the real issue, H.E. EL-Adawy reiterated that if the Council were to accept jurisdiction and proceed to the merits of the case, then it would be acting inconsistently with international law and contrary to the expectations of States, because it would be required to pass judgment on issues outside its jurisdiction.

37. H.E. EL-Adawy underscored that the Applicant had overstated the breadth of the Council's jurisdiction when it claimed in its Response that "the Council has never refused jurisdiction in any case brought before it.". He emphasized that the Council had only rejected preliminary objections challenging its ability to hear a disagreement on three occasions, and that it had never issued a final decision on the merits. H.E. EL-Adawy noted, by contrast, that since the founding of ICAO, the Council had never asserted jurisdiction over a counter-measures defence. He indicated that the Respondents respectfully submitted that ICAO should not be involved in setting this dangerous precedent today and accordingly respectfully requested the Council to uphold their preliminary objection with respect to Qatar's Application (B) on the grounds that: i) the Council lacked jurisdiction to adjudicate the claims raised by Qatar's Application (B); or ii) in the alternative, that Qatar's claims were inadmissible.

two

objections

*Presentation by the Applicant's Authorized Agent of its oral arguments in response to the Respondents' oral arguments*

38. H.E. Jassem Bin Saif AlSulaiti (Qatar) prefaced his presentation with an expression of Qatar's gratitude to ICAO for its efforts and service to ensure the safety and security of international civil aviation, and for assuming its responsibilities by convening the present Council meeting to consider Qatar's requests regarding the aviation restrictions imposed on it by Saudi Arabia, the United Arab Emirates, Bahrain and Egypt on 5 June 2017.

39. H.E. AlSulaiti underscored that the purpose of the meeting was to discuss the Respondents' preliminary objections and not the merits of the claims made by Qatar in its Application (A) and Application (B) and their corresponding Memorials filed with ICAO on 30 October 2017. He emphasized that the current hearing was simply to discuss the jurisdiction of the Council, which was set out in Article 84 of the Chicago Convention and Article II, Section 2 of the Transit Agreement. Under those agreements, the jurisdictional clause was simple: the Council had jurisdiction to decide the case if there was any disagreement relating to the interpretation or application of the Chicago Convention or the Transit Agreement which could not be settled by negotiation. There was nothing under those agreements or in the *Rules for the Settlement of Differences* (Doc 7782/2) which set any other limits on, or otherwise circumscribed, the assumption of jurisdiction by the Council. The Council was simply being asked to undertake a function with which it had been constitutionally mandated.

40. H.E. AlSulaiti recalled that, on 5 June 2017, without any previous warning and without any effort to negotiate with Qatar, the said four States, acting in concert and in coordination, had taken what Qatar considered to be a series of brutal and unprecedented measures against it, which included the prevention of Qatari-registered civil aircraft from transiting their airspace and from landing for non-traffic purposes. He asserted that those actions explicitly violated a number of provisions of the Chicago Convention and the Transit Agreement as set out in Qatar's Application (A) and Application (B) and their corresponding Memorials, which had been filed with ICAO on 30 October 2017.

41. H.E. AlSulaiti noted that by letter dated 19 March 2018, the Respondents had presented to ICAO their Statements of preliminary objections to Qatar's Application (A) and Application (B). Qatar had responded on 30 April 2018. The Respondents subsequently had filed so-called "Rejoinders" on 12 June 2018. Before proceeding further, H.E. AlSulaiti wished to place on record that Qatar believed that it had

been procedurally and substantively prejudiced by virtue of the fact that the Respondents had been permitted to file the so-called “Rejoinders” under Article 7(1) of the *Rules for the Settlement of Differences* (Doc 7782/2). As stated in Qatar’s e-mail of 25 May 2018 to Council Delegations, Qatar was equivalent to the defendant for the purposes of consideration of the Respondents’ Statements of preliminary objections, yet the said Rules had been interpreted to allow the Respondents to file Rejoinders, which were the last written pleadings permitted following the filing of the Counter-memorials. The Respondents’ Counter-memorials had not yet been submitted, however.

42. H.E. AlSulaiti noted that since the Parties were making a single presentation for both of the said Applications for convenience and to save time, references in his current presentation to certain excerpts or texts were to Qatar’s Application (A), the Respondents’ Statement of preliminary objections (A), Qatar’s Response (A) and the Respondents’ so-called “Rejoinder” (A). He indicated that they were to be taken as cross-read with the comparable provisions in the pleadings for Application (B).

43. H.E. AlSulaiti emphasized that essentially, the crux of the Respondents’ arguments was that the Council did not have jurisdiction, or alternatively, that Qatar’s claims were inadmissible. He indicated that, at times, the Respondents confused the two concepts in their Statement of preliminary objections. They claimed that their actions constituted lawful counter-measures, and that that would require the Council to determine issues forming part of a wider dispute between the Parties. The Respondents stated that there was a body of law outside of the Chicago Convention which afforded them a dispositive defence to the claims of Qatar. The basis of the alleged lack of jurisdiction essentially boiled down to an allegation that “While the Council has considerable expertise in the technical aspects of aviation enshrined in the Chicago Convention, it is not well-suited or well-equipped to handle disputes of a wider nature ...”(cf. Statement of preliminary objections, executive summary, paragraph 4). Additionally, the Respondents claimed that Qatar had failed to meet the condition of negotiation.

44. H.E. AlSulaiti underscored that although the Respondents claimed that, in determining the issues raised by Qatar under the Chicago Convention or the Transit Agreement, the Council was prevented or circumscribed from considering any issues falling outside of the Convention or Agreement, they did not explain or explain satisfactorily why that should be so. He highlighted that most legal disputes arose in a wider context and that their determination could also take into account other issues relevant to the determination of the legal question placed before the tribunal. In adjudicating issues, tribunals, even those with subject matter jurisdictional clauses like the Council, were not placed in blinkers.

45. H.E. AlSulaiti affirmed that, as Qatar had pointed out in its Response to the said Statement of preliminary objections, the Council had jurisdiction as long as the question for decision related to the interpretation or application of the Chicago Convention or the Transit Agreement and could not be settled by negotiations.

46. H.E. AlSulaiti underscored that, as Qatar has shown in its said Responses, the *Rules for the Settlement of Differences* (Doc 7782/2) did not permit the Council to consider issues of *admissibility* at the preliminary objection stage. Article 5(1) of the Rules, adopted by the Council to govern its consideration of disputes under Article 84 of the Chicago Convention and Article II, Section 2 of the Transit Agreement, quite clearly only allowed a preliminary objection to be filed as to jurisdiction.

47. H.E. AlSulaiti averred that the reference made in paragraph 15 of the Respondents’ “Rejoinder” to Article 36(6) of the *Statute of the International Court of Justice* (ICJ) was intended to divert the Council’s attention from the central issue. The Article simply stated that in the event of a dispute as to whether the Court had jurisdiction, the matter shall be settled by the decision of the Court itself. It had nothing to do with admissibility.

48. H.E. AlSulaiti noted that it was quite remarkable how the Respondents attempted to explain away the recent decision of the Council in the case *Settlement of Differences: Brazil and United*

*States (2016)*. He emphasized that if Brazil had not wished to make the point that the Council should not address issues of admissibility at the preliminary objection stage, then that had been Brazil's prerogative. Qatar now raised the matter. H.E. AlSulaiti underscored that contrary to what had been alleged by the Respondents, there was no confirmation by the Council that it could have ruled on admissibility at that stage. In fact, for the Council, the matter to be decided at the preliminary objection stage was only jurisdiction, which was why the Council had not even discussed the arguments on extinctive prescription in the said case. He maintained that it was the Respondents who were wrong in law on that point.

49. H.E. AlSulaiti recalled that in paragraph 24 of the "Rejoinder", the Respondents stated that Qatar presumably intended to invite the Council to join the Respondents' preliminary objections to the merits in both Applications. Underscoring that the Respondents' presumption was wrong, he highlighted that in paragraph 214 of its Response, Qatar invited the Council to declare that it had no competence at the preliminary objection stage to consider the claims, arguments and submissions of the Respondents on admissibility.

50. H.E. AlSulaiti observed that the statement made by the Respondents in paragraph 26 of their Rejoinder that Article 5(4) of the *Rules for the Settlement of Differences* (Doc 7782/2) did not give the Council the option of joining preliminary objections to the merits was correct. He emphasized, however, that under Article 5(1) of the Rules, preliminary objections were to be on issues of jurisdiction, not issues of admissibility.

51. H.E. AlSulaiti averred that, given Qatar's arguments, it was disingenuous and trickery for the Respondents to claim, as they did in paragraph 14 of their Rejoinder, that Qatar did not dispute a Respondent's right to file an objection on grounds of admissibility under ICAO's Rules. Qatar's response was that although such an objection should be presented, the Council could not consider it at this stage.

52. H.E. AlSulaiti indicated that, as had been pointed out in paragraph 17 of Qatar's Response, although the ICJ could rule on admissibility at the preliminary objection stage, the ICJ had indicated in its Judgment in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* that under its Rules, where the Court found that an objection did not possess an exclusively preliminary character, it would be dealt with at the merits stage (cf. Preliminary Objections, Judgment, ICJ Reports 2008)

53. H.E. AlSulaiti underscored that the Respondents' claim that the real issue before the Council was something different from their actions which were not in conformity with the Chicago Convention and the Transit Agreement was wrong and misleading. He averred that the Respondents had not understood or had ignored the case law. H.E. AlSulaiti stressed that the object of Qatar's claim, or the real issue for the Council to determine, was whether or not the Respondents had violated the Chicago Convention and the Transit Agreement, and to declare that accordingly. He emphasized that, as Qatar had pointed out in paragraph 34 of its Response, the fact that a legal dispute had wider underlying elements did not mean that such a dispute fell outside the jurisdiction of the Council or was inadmissible. H.E. AlSulaiti recalled that many of the cases under Article 84 of the Chicago Convention or the Transit Agreement previously referred to the Council had had wider underlying political issues or other non-aviation problems, and that in no case had the Council since its inception declined jurisdiction over it.

54. H.E. AlSulaiti highlighted that, as stated by the ICJ in its Judgment in the *United States Diplomatic and Consular Staff in Tehran* case, no provision of its Statute or Rules contemplated that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute had other aspects, however important (cf. ICJ Reports 1980).

55. H.E. AlSulaiti emphasized that, although the Respondents would like the Council to believe otherwise, there was no provision in the Chicago Convention or the Transit Agreement which stipulated that the Council should decline jurisdiction over a disagreement on their interpretation or

application merely because there were other aspects to the dispute before the Council, or that the decision could or must take into account elements which did not fall completely within the parameters of civil aviation. He underscored that the violation of the Chicago Convention and the Transit Agreement was not a marginal or incidental matter before the Council.

56. H.E. AlSulaiti averred that the reference made by the Respondents in their Statement of preliminary objections and paragraph 42 of their Rejoinder to the *Chagos Islands* arbitration case did not help them. They had helpfully pointed out that the Tribunal had stated that where a dispute concerned the interpretation or application of the Convention, the jurisdiction of a court or tribunal extended to making such findings of fact or ancillary determinations of law as were necessary to resolve the dispute presented to it. H.E. AlSulaiti emphasized that that was exactly what Qatar was requesting the Council to do.

57. H.E. AlSulaiti underscored that the assertion made by the Respondents in paragraph 44 of their Rejoinder that bodies such as the Council may not encroach upon the jurisdiction which other bodies may have over the real dispute, which was related to the so-called “principle of specialty”, was wrong in law and unsubstantiated. He indicated that as Qatar had addressed that issue in paragraphs 49 to 65 of its Response to show that that principle espoused by the Respondents could not apply to prevent the Council from assuming jurisdiction, he would not repeat the arguments here in the Council. H.E. AlSulaiti indicated that it would mean that no other Specialized Agency or other body would have jurisdiction to consider a matter as long as there was some connection, incidental or otherwise, with the functions of another organization. The net result would be a complete denial everywhere of the justiciability of Qatar’s grievances. It would also render invalid the constitutional mandate under the Chicago Convention and the Transit Agreement to settle differences or disagreements relating to their interpretation and application.

58. H.E. AlSulaiti averred that the point which the Respondents tried to make about the use of the words “political issues” was, in the main, one of pure semantics. Noting that the words “wider issues”, “wider disputes”, “political issues”, “broader issues”, “wider underlying elements”, “broader questions”, “other aspects” and so on were all used, he underscored that, fundamentally, whatever terminology was used, the law was still the same.

59. H.E. AlSulaiti observed that all of the Respondents’ arguments as to why the Council could not answer the legal question put to it boiled down to one thing. In the Statement of preliminary objections, executive summary, paragraph 3, the Respondents claimed that resolution of Qatar’s claims would require the Council to determine issues forming part of the wider dispute between the Parties. They stated that the Council would have to determine, amongst other things, whether Qatar had breached its relevant counter-terrorism obligations under international law. In paragraph 4, they alleged that the Council did not have jurisdiction to adjudicate issues as to whether Qatar had breached its other obligations under international law. In particular, the Respondents stated in paragraph 58 of their Rejoinder: “Such a factual and legal assessment requires considerable expertise on technical and legal matters. The Council has considerable specialist expertise in the technical aspects of aviation enshrined in the Chicago Convention. But it is not well-suited or equipped to handle disputes about violation of sovereignty, breach of the principle of non-intervention, subversion and terrorism”. More or less the same statement was repeated in the Respondents’ Statement of preliminary objections, executive summary, paragraph 4, and paragraph 69; and in their Rejoinder, executive summary, paragraph 5.

60. H.E. AlSulaiti stressed that while it was clear that most of the Respondents’ arguments boiled down to the rationale that the Council was not well-suited or well-equipped to answer the legal question put to it or to assume its legal mandate, that was not a valid argument in law or in fact. Yet that was what the Respondents were, in effect, having as the conclusion of their reasoning and arguments.

61. In emphasizing that Qatar had the utmost respect for the Council, H.E. AlSulaiti indicated that although it might or might not agree with every decision of the Council, it had confidence in the ability of the Council and the Representatives to answer the legal questions put to them. He recalled that the Group



of Experts established to draft Rules for the Settlement of Differences in the 1950's had been of the view that: "If Council decides to hear a case arising under Article 84 [of the Chicago Convention] which presents problems of legal complexity or requires special knowledge of economic or air transport matters on the part of the Council, it is open for each State member of the Council to designate, temporarily, a legal, economic or other expert as Representative of that State on Council during the period or on the occasions where the contemplated case under Article 84 is being dealt with."

62. Further, as to the supposed difficulty the Council Representatives would face if the Respondents would put forward a defence that they had instituted lawful counter-measures, Qatar believed that, based on the documents which the Respondents had unfortunately produced as exhibits and the statements they had made in their Statements of preliminary objections and Rejoinders, the matter would be one of the easiest for the Council to decide at that session when it would examine the merits of the two cases.

63. H.E. AlSulaiti underscored that, whether or not Council Representatives believed that statement, the fact was that the assessment could only be made after the Respondents' Counter-memorial was presented, which may or may not contain a claim from the Respondents that their actions were lawful counter-measures, and after Qatar replied to whatever defence was put forward by the Respondents. In emphasizing that the Council could not make that assessment now, he noted that that was what the ICJ had been guarding against in its 1972 Judgment regarding the *Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan)*.

64. H.E. AlSulaiti recalled that in that ICJ case India had alleged then that flights of Pakistani aircraft over India was governed by a Special Regime in force between the two States, which was completely outside of the Chicago Convention and the Transit Agreement, and also that India had become entitled under international law or international treaty law outside of those two agreements, to terminate or suspend them. In its Judgment, the ICJ had decided that as long as there was "a dispute of such a character as to amount to a 'disagreement ... relating to the interpretation or application' of the Chicago Convention or of the related Transit Agreement ... then *prima facie* the Council is competent. Nor could the Council be deprived of jurisdiction merely because considerations that are claimed to lie outside the Treaties may be involved, if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question." (cf. ICJ Reports 1972, p. 61, paragraph 27). The Court had gone on to state that "The fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, – otherwise parties would be in a position themselves to control that competence, which would be inadmissible." (cf. ICJ Reports 1972, p. 61, paragraph 27). Thus the competence or jurisdiction of the Council must depend on the character of the dispute submitted to it and on the issues raised, not on those defences on the merits or other considerations, which would become relevant only after the jurisdictional issues had been settled.

65. H.E. AlSulaiti emphasized that although the Respondents had tried to explain away the importance of that ICJ Judgment, they could not hide from the plain, clear wording of the Court. They could not claim that the Council had no jurisdiction because they intended to raise a defence of counter-measures at the stage of the merits. They could not bring forward a defence, any defence, on the merits so as to deny jurisdiction. The Council had not seen the Respondents' Counter-memorial and Qatar's reply, and it could not assume that it had no jurisdiction because of issues which might be in there.

66. Further, all those arguments of the Respondents went to admissibility, not jurisdiction, and should be dismissed at this stage.

67. The Respondents kept claiming that the actions they had taken were lawful counter-measures. They were not.

68. On the issue of the negotiations, Qatar had made it clear that the threshold to establish jurisdiction was quite low.

69. H.E. AlSulaiti underscored that compromissory clauses such as, or similar to, Article 84 of the Chicago Convention or Article II, Section 2 of the Transit Agreement were not uncommon. Qatar believed, and reiterated, that the question as to the date when the condition of negotiation must be fulfilled was not definitively settled in law, as prior to the *Racial Discrimination* case, there had been a long string of cases, going back to 1924 right through to 2008, to the effect that any initially unmet condition, including for jurisdiction, may be fulfilled at the time the Court rules, as otherwise the Applicant would be entitled to initiate fresh proceedings, which would not be in the interests of sound administration of justice. The one case that went against the grain was the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* case, which had a strong dissenting opinion by five judges (cf. Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, paragraph 160).

70. Recalling that Qatar had mentioned in its said Response that none of its efforts to negotiate with the Respondents had been fruitful, H.E. AlSulaiti indicated that the core issue before the Council was Qatar's request that it determine whether the Respondents had violated the provisions of the Chicago Convention and the Transit Agreement. In so doing, the Council was free, as the Respondents had pointed out in paragraph 42 of their Rejoinder, to make such findings of fact or ancillary determination of law as were necessary to resolve the dispute presented to it. For example, if the Respondents would keep their promise to defend their actions by saying that their counter-measures were valid, then the Council was not prevented from considering elements which would go to a determination of the question. Nor was it an argument in law or in fact to say that the Council was ill-suited or ill-equipped to do so.

71. H.E. AlSulaiti underscored that the issue of negotiations in the two cases now under consideration must be considered in the context that the Respondents had broken off diplomatic relations with Qatar at the same time as they had instituted the said measures. They had acted then, and had continued to act, in concert and in coordination with each other. The Respondents had refused to negotiate with Qatar, instead presenting non-negotiable demands and principles, which if accepted, would render Qatar no longer a sovereign nation. H.E. AlSulaiti averred that it was therefore self-serving for the Respondents to claim that Qatar did not negotiate the aviation aspects with them, when in fact all the other coercive measures had been taken jointly as one package.

72. H.E. AlSulaiti emphasized that Qatar had nevertheless presented evidence that it had negotiated or attempted to negotiate with the Respondents, through the mechanism of ICAO, the very subject matter of the violations of the Chicago Convention and the Transit Agreement. Qatar was seeking to work with the Respondents through ICAO to find a solution to the measures which they had taken. He recalled that when Qatar had taken the matter to the Council under Article 54 n) of the Chicago Convention, the Respondents had asked the Council to recognize that the Parties were cooperating and to encourage them to cooperate further. H.E. AlSulaiti noted that the United Arab Emirates had indicated that the ICAO MID Regional Office had coordinated multiple meetings to review the contingency measures in the Gulf region and to discuss additional proposals. Numerous Representatives had spoken of the need for the Parties to "continue" to cooperate, or negotiate, or dialogue, or discuss. The Council had encouraged all Parties to continue their collaboration. Contrary to the Respondents' assertion, in carrying out those negotiations through the mechanism of ICAO, Qatar did not have to indicate that they were under Article 84 of the Chicago Convention. Discussions and negotiations on the Respondents' aviation restrictions had taken place in ICAO. If the other Parties had not responded then in a manner to negotiate in good faith and to resolve the aviation measures taken against Qatar, Qatar could not be faulted for that.

73. H.E. AlSulaiti noted that the multiple ICAO meetings held in the Gulf region had also been to seek solutions to mitigate the effects of the coercive measures taken by the Respondents by preventing Qatari-registered aircraft from overflying their airspace.

74. With regard to the WTO, H.E. AlSulaiti recalled that although Qatar had written to three of the Respondents in Application (A) and to two of the Respondents in Application (B) requesting consultations on the prohibition of Qatari-registered aircraft from accessing their airspaces and landing at their airports, the answer from the three States had been a flat “no”. So within another multilateral framework Qatar had sought unsuccessfully to engage the Respondents on the subject matter of the specific dispute before the Council today.

75. H.E. AlSulaiti recalled that under international jurisprudence, it was not necessary for Qatar to have referred specifically to the Chicago Convention or the Transit Agreement, as long as the negotiations related to the subject matter of those Agreements.

76. With respect to the use of good offices of the Emir of Kuwait and certain other States, H.E. AlSulaiti noted that despite the expressions of willingness by Qatar to negotiate a solution, the only reaction on the part of the four Respondents had been to issue non-negotiable demands, some of which would be an affront to the sovereignty of any State.

77. H.E. AlSulaiti highlighted that among the demands which the Respondents stated were non-negotiable were to: immediately shut down the Turkish military base; shut down Al Jazeera and its affiliate stations; align Qatar’s military, political, social and economic policies with the Gulf and Arab countries; shut down all news outlets funded directly and indirectly by Qatar; respond within 10 days of the list being submitted to Qatar, or the list would become invalid; and consent to monthly compliance audits in the first year, quarterly audits in the second year and annual audits in the following 10 years.

78. H.E. AlSulaiti emphasized that Qatar had made clear that it was open to negotiations and had attempted negotiations, that it would not negotiate on items which would derogate from its sovereignty, but was open to discuss all other issues in accordance with international law.

79. H.E. AlSulaiti indicated that Qatar had noted with particular interest the statement in paragraph 137 of the Respondents “Rejoinder” that Qatar had not made any genuine attempt to negotiate through other channels, such as via Kuwait and the United States. He considered that that was quite an astonishing assertion, which utterly ignored the evidence produced by Qatar in its various exhibits attached to its Response. H.E. AlSulaiti recalled that the then US Secretary of State Rex Tillerson had said on 19 October 2017 that “It is up to the leadership of the quartet when they want to engage with Qatar because Qatar has been very clear – they’re ready to engage.”

80. H.E. AlSulaiti stressed that under these circumstances, it was clear that negotiations were futile and the Parties were deadlocked.

81. H.E. AlSulaiti underscored that Qatar clearly had met the requirement for negotiations under Article 84 of the Chicago Convention and Article II, Section 2 of the Transit Agreement. He reiterated that Qatar had been subjected to a brutal campaign from the four States, targeting its civil aviation and aiming to cause direct and premeditated damage to Qatar and its airlines. The campaign was still going on for a year. The Respondents refused to allow Qatari-registered aircraft to fly over or land in their territories, in violation of numerous provisions of the Chicago Convention and the Transit Agreement. They acted with complete impunity.

82. H.E. AlSulaiti recalled that the drafters of the Chicago Convention had given the Council a noble and sacred function to decide upon disagreements between States relating to the interpretation or application of those two instruments. That duty became even more important to protect Member States from aggressive and arbitrary actions by other Member States. The Council was elected by all of the Member States of ICAO to work for the global good of civil aviation. That was the vision of the creators of this Organization.

83. H.E. AlSulaiti recalled Article 4 of the Chicago Convention, which indicated that each Contracting State agreed not to use civil aviation for any purpose inconsistent with the aims of the Convention. He underscored that ICAO contracting States looked to the Council Members to preserve the integrity of the Chicago Convention and the Transit Agreement, and to set an example to the other Contracting States, not to violate themselves those treaties.

84. In concluding, H.E. AlSulaiti indicated that Qatar respectfully requested the Council to accept its submissions at paragraphs 214 and 215 of its Response, including to reject the preliminary objection of the Respondents in both Application (A) and Application (B).

85. After a brief recess to enable consultations, the Respondents and the Applicant presented the following rebuttals to each other's oral arguments, all of which were duly noted and recorded for the minutes of the meeting.

#### *Respondents' rebuttal*

86. Speaking on behalf of the four Respondents on this very important matter which raised novel issues for the Council, Mr. Georgios Petrochilos (Legal Advisor, Bahrain Delegation) noted that the latter had heard arguments from the Applicant on a number of points. Rather than reiterating the Respondents' procedural concerns at this stage, he focused only on three of the Applicant's points. He started with its argument, or perhaps lack of argument, on what was the real issue in dispute. As the Council would have seen, in the pleadings, the term "real issue in dispute" was a legal term of art. Mr. Petrochilos noted that there were three main propositions, the first of which was that it was within the power of the Council to address and assess objectively the object of the dispute. Affirming that that was indeed a responsibility of the Council, he underscored that it was a responsibility that went hand-in-hand with the power of the Council to determine the existence and the scope of its jurisdiction. The second proposition – and it followed from the first one like the night follows the day – was that in so doing the Council was not bound by the characterizations made by the Parties, and in particular, by the characterizations that were made by one Party, in the present case, the Applicant. The third proposition was that the object of the dispute consisted of the issues that arose objectively from the pleadings of both sides.

87. In now applying that test to the facts of the cases, Mr. Petrochilos indicated that when one looked at Qatar's Applications one saw an attempt – and Council had heard it today – to frame the dispute as one under ICAO international treaties. Even so, it was hard to keep up that pretense in the pleadings, and so the Applicant had had to admit, as in fact it did, that the Respondents had adopted a set of measures which included the severance of diplomatic and consular relations with the Applicant and various other restrictions placed on the latter. Mr. Petrochilos recalled that the Applicant called those measures "actions", in the plural, and that it admitted that they had several "aspects". He noted that the position was then made clearer in the Respondents' pleadings, which described the main measures, although very briefly. The pleadings also referred to the stated position of the Respondents from the outset of the measures that the latter were being adopted as lawful counter-measures. Those had been taken, as the Council had heard, in the face of the Applicant's multiple grave and persistent breaches of international obligations essential to the security of the Respondents and the region. Mr. Petrochilos underscored that the Applicant did not dispute that counter-measures were what the Respondents intended to take, nor that the Respondents were entitled to bring that defence and have it determined before any court or tribunal that had proper jurisdiction to adjudicate the real dispute. Indeed, the Applicant conceded in its Response, and had stated the same thing during the present meeting, that in order for the Council to decide on the merits of the case the Council would need to determine "on the facts and in law whether the Respondents have met the conditions for lawful counter-measures". Mr. Petrochilos underscored that that would require the Council to conduct a forensic factual enquiry, in proper judicial fashion, into the Applicant's illegal activities. He respectfully submitted that that left the Council in a place clearly outside the Chicago Convention and the Transit Agreement

88. In elaborating thereon, Mr. Petrochilos indicated that, on the merits of the case the Council would first have to determine whether the Applicant had breached or had not breached a number of international obligations that, as it admitted, had, in the main, nothing whatever to do with civil aviation. He queried how the Council was to assess the long list of the Applicant's grave misdeeds which the Respondents said were not related to civil aviation, the Chicago Convention, or to the Transit Agreement, and what legal standard the Council would apply. Mr. Petrochilos noted that, while the Council would then have to determine whether the four Respondent States were entitled to react to the Applicant's breaches by taking a set of counter-measures to induce it to come back to the fold of legality, the Chicago Convention and the Transit Agreement could not help the Council answer that question. He underscored that it was crucial to understand that this forensic and legal examination would come before the Applicant's complaints under the Chicago Convention and Transit Agreement. Why was that? because – and this was uncontroversial between the Parties – counter-measures precluded any question of unlawfulness at the threshold. Mr. Petrochilos emphasized that the Council would not get anywhere near the Chicago Convention or the Transit Agreement, which were the texts that granted it jurisdiction, until it had fully considered and decided a host of other issues on which the Chicago Convention and the Transit Agreement had nothing whatever to say. He averred that one was unable to see how the Council might uphold its jurisdiction in those circumstances. Mr. Petrochilos reiterated that this was not a civil aviation dispute but rather a dispute about fundamentally different and broader duties of international law. He underscored that those duties were neither ancillary, as the Applicant had said, nor incidental issues on any possible view, but rather “the core of the dispute”, to quote the *Chagos Islands* ICJ decision.

89. Turning to the second point, the Applicant's argument about the preliminary nature of the Respondents' objections, or otherwise, Mr. Petrochilos recalled that the *Rules for the Settlement of Differences* (Doc 7782/2), at Article 5(1), characterized a preliminary objection as a question as to “the jurisdiction of the Council to handle the matter presented by the Applicant.”. Thus a preliminary objection might concern either, firstly, whether the Council had jurisdiction at all to consider the Application, or secondly, whether the Council should, in the circumstances of the case, exercise a jurisdiction that it had. Mr. Petrochilos noted that the first type of objection was one of jurisdiction, while the other type of objection could perhaps, in legal theory, be called one of admissibility. He averred that those distinctions did not matter for the Council's purposes as both of those types of objection were covered by the wording of Article 5(1). They were points as to the jurisdiction of the Council to handle the dispute, whether it had jurisdiction or whether it should exercise it. Mr. Petrochilos indicated that, in any event, there was not much daylight between the two types of objection because both, if successful, precluded the consideration of the substance of the dispute. They operated at the threshold.

90. Mr. Petrochilos highlighted that Article 5(4) of the said Rules provided that where preliminary objections had been lodged, as in the present case, the Council *shall* decide the question as a preliminary matter. Recalling that the ICJ had held “that in principle a Party raising preliminary objections is entitled to have them resolved preliminarily”, he underscored that all the said Rules were doing was expressing a general procedural principle. Mr. Petrochilos underscored that the Council had always resolved preliminary objections that it had characterized as going to its jurisdiction in a preliminary decision and had never joined them to the merits of the dispute for consideration later. The only circumstances in which the Council had joined preliminary objections to the merits was where the objection did not possess “an exclusively preliminary character”, which might mean either that the Council did not have enough information to properly evaluate the objection at that stage or that it was impossible to rule on the preliminary objection separately on its own without prejudging the merits. Mr. Petrochilos stressed that at present the Council was not in either one of these territories. The Respondents were not asking the Council to validate the lawfulness of the measures they had taken, nor were they asking the Council to condemn the Applicant for its severely unlawful conduct. They were simply asking the Council to recognize the real object of the dispute between the Parties and to recognize and declare on that basis that it did not possess jurisdiction to consider the substance of this dispute.

91. The last point that Mr. Petrochilos wished to make on this issue of the Respondents' primary position was that both of their preliminary objections went to the Council's jurisdiction i.e. to the issue of whether the Contracting States, including the four Respondent States, had or had not consented to have this dispute adjudicated by the Council. In the interest of time, he picked that point up only by reference to Article 84 of the Chicago Convention, in which the Contracting States had consented to the Council's jurisdiction to adjudicate disputes which firstly related to "the interpretation or application of this Convention". It was thus necessary for Council Members to satisfy themselves that the real dispute that was objectively before them was about the interpretation or application of the Chicago Convention. Secondly, it was necessary for them to satisfy themselves that this was a dispute that could not be settled by negotiation. Those were jurisdictional requirements enshrined in Article 84 of the Convention.

92. Turning to the requirement of exhaustion of negotiations before an Applicant may commence proceedings, Mr. Petrochilos re-emphasized that Qatar had not fulfilled that precondition. He noted that Article 84 of the Chicago Convention and Article II of Section 2 of the Transit Agreement were formal: they required that the dispute must be one that could not be settled by negotiations. At the risk of stating the obvious, Mr. Petrochilos underscored that that was not an option at the Applicant's discretion, nor was it a mere formality. He recalled that the ICJ, which was the appeal body in respect of the Council's decisions, required an Applicant to make at least "a genuine attempt to resolve the disagreement through negotiations and that attempt and these negotiations must take place prior to the filing of an Application". Mr. Petrochilos underscored that an Applicant which commenced legal proceedings first and only thereafter sought to start negotiations fell afoul of that jurisdictional requirement. He noted that there were good policy reasons why the Respondents asked the Council to enforce that precondition, as follows: firstly, that unless the Parties had tried to negotiate and had clearly stated their positions in a formal and appropriate way, the contours of the dispute were not known and it was not possible to see the pathology that had developed in this case. The Council was able to assess the nature and the scope of the dispute only through the exchange of pleadings between the Parties, which the Respondents considered was neither appropriate nor helpful. The second policy reason was that if the Council were to accept jurisdiction on the basis that one can start proceedings first and only then pick up the phone perhaps or send a formal diplomatic correspondence, more importantly and more appropriately, then there would be no motivation for Applicant States to do that which was required of them by the Chicago Convention, and that was not a policy to be encouraged. Thirdly, it was necessary to always bear in mind that judicial resolution was the mechanism of last resort, and that negotiation was the primary method of resolution in international relations. Mr. Petrochilos recalled that the Applicant represented to the Council in its Application (A) and Application (B) that it had not sought to negotiate. It stated in section (g) thereof that "The Respondents did not permit any opportunity to negotiate the aviation aspects ...". Then the Applicant had had to prove that assertion. He noted that that kind of assertion, which was one that went to futility, was a very demanding one which required one, at the very least, to try to commence negotiations. Mr. Petrochilos underscored that when the Respondents had put the Applicant to that point in their pleadings, the latter had changed ~~fact,~~ <sup>presumably</sup> ~~assumedly~~ because it had not been able to sustain its allegation anymore. The Applicant had therefore stated that it had invited negotiations after all. <sup>tack</sup>

93. In making two points on that allegation, Mr. Petrochilos averred that as 11 of the statements relied upon by the Applicant during the present meeting post-dated its said Applications, the Council could ignore them. He highlighted that all of the remaining statements were addressed to third parties, for political consumption in the view of the Respondents: they had not been made in the formal fashion of formal correspondence on specific issues. Mr. Petrochilos further emphasized that, in fact, not even in that irregular fashion adopted by the Applicant had the latter even once formulated a specific invitation to negotiate specific complaints that it now claimed to have under the Chicago Convention and the Transit Agreement, and yet the Applicant had admitted in its own Applications that the negotiations would have to concern civil aviation specifically. He underscored that an invitation to negotiations would have been a very straightforward thing to do for any State that resorted to the Council with a genuine complaint within the ICAO system. Any State would know how to do it. That the Applicant had instead

expended its energies on vague political statements addressed to third parties showed that it had no intention to have a genuine negotiation on specific legal rights and obligations.

94. Before closing, Mr. Petrochilos noted that he was authorized to represent to the Council one important factual point: the four Respondent States had heard today for the first time, if they had understood correctly, that the Applicant had invited all of them to negotiate. So far as ICAO-related complaints were concerned, he was authorized to place on record on behalf of the said Respondents that that was incorrect. It had never happened. Unless he could be of further help to the Council under the control of the Respondents' Authorized Agents, that concluded Mr. Petrochilos' intervention.

95. Returning to the point raised regarding the safety of civil aviation, H.E. Al Mansoori (United Arab Emirates) recalled that the Council, at its said Extraordinary Session on 31 July 2017, had successfully addressed the issue of contingency arrangements in the Gulf region. In emphasizing that the Applicant's airports and airspace remained open, he noted that: Qatar Airways alone currently had over 100 aircraft in operation flying to more than 150 destinations worldwide; Qatari-registered aircraft continued to fly in and out of Doha every day; contingency routes had been established through the Respondents' FIRs; and, in addition, landing and overflight options remained available for safety or emergency purposes. H.E. Al Mansoori indicated that it was very regrettable that the Applicant was exploiting ICAO, a very important technical organization, for its political and media campaign purposes.

*Applicant's surrebuttal*

96. H.E. AlSulaiti (Qatar) reiterated that Qatar's sole intention in submitting its Application (A) and Application (B) and their corresponding Memorials to ICAO had been to raise purely technical issues relating to the interpretation and application of the Chicago Convention and the Transit Agreement and not any political issues. He then gave the floor to his Legal Advisor, Mr. John Augustin.

97. Enquiring whether the Respondents' Legal Advisor had given an additional presentation or a rebuttal, Mr. Augustin noted that whereas his rebuttal was supposed to have addressed issues raised by the Applicant in its oral arguments, his comments had gone well beyond that into a fresh presentation. He underscored that the Applicant had neither been afforded such an opportunity to give an additional presentation nor been prepared to give one, although the Respondents had apparently been prepared to do so.

98. In then commencing his surrebuttal, Mr. Augustin highlighted that approximately one-third of the Respondents' comments had had to do with issues which absolutely went to the merits of the two cases and whether the Applicant supported terrorism or terrorism financing. He pointed out that whereas in the past when the Council has considered similar matters it had drawn a curtain on discussions which touched on the merits of the case, some ten minutes had been spent by the Respondents in commenting on the Applicant's alleged support for terrorism or terrorism financing, which had nothing to do with the matter currently before the Council.

99. In emphasizing that the Applicant had a completely different view from the Respondents on the issue of admissibility of its claims and the *Rules for the Settlement of Differences* (Doc 7782/2), Mr. Augustin indicated that it was completely unable to understand the logic of the Respondents' reasoning with regard to Article 5(1) of the Rules, which clearly stated "If the Respondent questions the jurisdiction of the Council to handle the matter presented by the Applicant, he shall file a preliminary objection setting out the basis of the objection." The Respondents accepted that there was a difference between jurisdiction and admissibility. However, Article 5(1) referred to the jurisdiction of the Council and not to the admissibility of a case. Mr. Augustin emphasized that ICAO's *Rules for the Settlement of Differences* (Doc 7782/2) were different from the ICJ's Rules in that regard.

100. Mr. Augustin highlighted that a completely new philosophy had been presented by the Respondents, namely, that of the “real issue” in the case. He noted that although Qatar’s Application (A) and Application (B) and their corresponding Memorials related purely to the interpretation and application of the Chicago Convention and the Transit Agreement, for some reason the Respondents considered that the Council lacked the jurisdiction to hear and resolve the claims raised therein. Mr. Augustin further indicated that the Respondents had avoided the substantive issue of the *Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan)* on which the ICJ had rendered its Judgment on 18 August 1972, referred to earlier by H.E. AlSulaiti (cf. paragraphs 69 and 70 above). In that Appeal India had claimed that there were issues outside the Chicago Convention and the Transit Agreement which prevented the Council from examining the merits of the case, the same argument being used by the Respondents in the present two cases. He repeated the ICJ’s decision that as long as there was “a dispute of such a character as to amount to a ‘disagreement ... relating to the interpretation or application’ of the Chicago Convention or of the related Transit Agreement ... then *prima facie* the Council is competent. Nor could the Council be deprived of jurisdiction merely because considerations that are claimed to lie outside the Treaties may be involved, if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question.” (cf. ICJ Reports 1972, p. 61, paragraph 27).

101. Recalling that the Respondents had indicated that they might have a defence on the merits, Mr. Augustin enquired whether that was a promise that they would bring forward the issue of their counter-measures. Noting that neither the Respondents’ defence on the merits nor the Applicant’s reply had been seen by the Council, he underscored that as a consequence the latter could not make a determination that it lacked jurisdiction to hear and resolve the claims raised in Qatar’s Application (A) and Application (B). Mr. Augustin quoted, in this regard, the ICJ’s Judgment in the said Appeal relating to the jurisdiction of the ICAO Council (*India v. Pakistan*) “The fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, – otherwise parties would be in a position themselves to control that competence, which would be inadmissible.” (cf. ICJ Reports 1972, p. 61, paragraph 27). Averring that that was the very core of the Respondents’ arguments, he asserted that they wanted, at this stage, to control the competence of the Council for a defence on the merits which no one had seen and to which the Applicant had not replied.

102. Mr. Augustin reiterated that if the Respondents were to put forward a defence that they had instituted lawful counter-measures, then the Applicant considered, on the basis of the evidence referred to earlier, that the matter would be one of the easiest for the Council to decide at that session when it would examine the merits of the two cases. The Respondents, on the other hand, had indicated that it would be extremely difficult as the Council’s hands were tied and it was incapable of handling the matter. The point was that the Council could not make a determination that it had no jurisdiction until it had seen the Respondents’ defence on the merits and the Applicant’s response, which was exactly what the said *Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan)* had been trying to avoid.

103. Mr. Augustin then referred to the Respondents’ argument, presented in their Statement of preliminary objections, executive summary, paragraph 4, that “While the Council has considerable expertise in the technical aspects of aviation enshrined in the Chicago Convention, it is not well-suited or well-equipped to handle disputes of a wider nature ... including issues regarding terrorism and other matters related thereto.” He recalled that that argument was repeated in paragraph 69 of the said Statement (“The Council, comprised of aviation specialists, has considerable expertise in the technical aspects of aviation enshrined in the Chicago Convention, but is not well-suited or well-equipped to handle disputes about interference, violation of sovereignty, subversion and terrorism.”), as well as in the Respondents’ Rejoinder, executive summary, paragraph 5 (“The Council is not well-suited or equipped to handle disputes of this nature, nor is it competent to do so.”) and paragraph 58 (“Such a factual and legal assessment requires considerable expertise on technical and legal matters. The Council has considerable specialist expertise in the technical aspects of aviation enshrined in the Chicago Convention. But is not well-suited or equipped to handle disputes about violation of sovereignty, breach of the principle of non-intervention, subversion and terrorism.”).



104. Mr. Augustin indicated that he would very much like to see the Respondents go before a proper tribunal or court of law such as the ICJ and claim that it was not well-suited or well-equipped to discuss issues which went to the merits of a case, whatever the type of issue. He averred that it was a novel legal argument and that it had no basis in fact or in law. Recalling the oral arguments presented earlier by H.E. AISulaiti (cf. paragraph 67 above), Mr. Augustin reiterated that the Group of Experts established to draft Rules for the Settlement of Differences in the 1950's had been of the view that: "If Council decides to hear a case arising under Article 84 [of the Chicago Convention] which presents problems of legal complexity or requires special knowledge of economic or air transport matters on the part of the Council, it is open for each State member of the Council to designate, temporarily, a legal, economic or other expert as Representative of that State on Council during the period or on the occasions where the contemplated case under Article 84 is being dealt with". Affirming that each Council Member State was free to designate temporarily whomever it wished to listen to a particular case, Mr. Augustin stressed that it could not be said that the Council was ill-equipped or ill-suited and that the case should therefore be dismissed upfront at the preliminary objection stage.

105. All of the preceding oral arguments were duly noted and recorded for the minutes of the meeting. In the absence of any direct questions to the Authorized Agents or Legal Advisors of the Applicant and the Respondents by Council Members non-Parties to the disagreements, the Council proceeded to its deliberations on the items.

#### *Deliberations*

106. Taking into account the Council's recent experience with the *Settlement of Differences: Brazil and United States (2016)* (cf. C-DECs 211/9 and 211/10), and the views of the many Council Representatives who had been consulted prior to the present meeting, the Representative of Mexico, in his capacity as Dean of the Council, proposed that the Council proceed directly to a vote by secret ballot in order to take a decision on each of the Respondents' preliminary objections with respect to Application (A) and Application (B), pursuant to Article 50 of the *Rules of Procedure for the Council* (Doc 7559/10).

107. This proposal <sup>constituted</sup> was seconded by the Representative of Singapore, in his capacity as First Vice-President of the Council, ~~as constituting~~ the most efficient way forward.

108. The Council agreed to the said proposal. Under Article 52 of the Chicago Convention, decisions by the Council required approval by a majority of its Members. In line with the consistent practice of the Council in applying that provision in previous cases, since the Council comprised 36 Members, acceptance of the Respondents' preliminary objections in both Application (A) and Application (B) required 19 positive votes.

109. It was highlighted: that Egypt, Saudi Arabia and the United Arab Emirates were not entitled to vote under Application (A) and that Egypt and the United Arab Emirates were not entitled to vote under Application (B) in accordance with Article 84 of the Chicago Convention and Article 15 (5) of the *Rules for the Settlement of Differences* (Doc 7782/2), which specified that "No Member of the Council shall vote in the consideration by the Council of any dispute to which it is a Party"; that pursuant to Article 66 b) of the Chicago Convention only those Council Member States parties to the Transit Agreement were eligible to vote under Application (B)<sup>1</sup>; and that following the completion of each secret ballot, a staff member from LEB would assist in the tallying of all of the votes cast for the purpose of ensuring its accuracy.

The President then said that he understood this as a matter of procedure, but he wished to understand whether there should be deliberations. He noted that in the case between the United States v. Brazil, there were deliberations, whereby Representatives spoke and expressed their views. He wished to be sure on whether there ought to be deliberations. There were no comments from the Council.

<sup>1</sup> List of Council Member States parties to the Transit Agreement: Algeria, Argentina, Australia, China (Hong Kong Special Administrative Region and Macao Special Administrative Region), Congo, Cuba, Ecuador, Egypt, France, Germany, India, Ireland, Italy, Japan, Malaysia, Mexico, Nigeria, Panama, Republic of Korea, Singapore, South Africa, Spain, Sweden, Turkey, United Arab Emirates, United Kingdom and the United States.

The President the Council then asked for clarification as to whether deliberations were required. He concluded that the decision would be taken by secret ballot.

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on the advice of the Director of the Legal Bureau,

110. A request made by H.E. Al-Amudi (Saudi Arabia) on behalf of the Respondents for an open ballot for the sake of transparency in the process given that the Council was currently acting as an adjudicator was declined by the Council on the basis of Rule 50 of the *Rules of Procedure for the Council* (Doc 7559/10), which stipulated that “Unless opposed by a majority of the Members of the Council, the vote shall be taken by secret ballot if a request to that effect is supported, if made by a Member of the Council, by one other Member, and, if made by the President, by two Members”.

111. In seeking clarification regarding the voting majority required (19), H.E. Al Mansoori (United Arab Emirates) noted that, pursuant to Article 84 of the Chicago Convention, 33 Council Members were eligible to vote on the Respondents’ preliminary objection relating to Application (A). In his view, that meant that 17 positive votes constituted a majority. In further noting that in accordance with Article 66 b) of the Chicago Convention 25 Council Members were eligible to vote on the Respondents’ preliminary objection relating to Application (B), he indicated that in his opinion 13 positive votes constituted a majority.

112. Reiterating that Article 52 of the Chicago Convention stipulated that “Decisions by the Council shall require approval by a majority of its Members.”, the Director, Legal Affairs and External Relations Bureau (D/LEB) noted that his Bureau had examined the historical records of previous ICAO proceedings under Article 84 of the Chicago Convention relating to the settlement of disputes and that it had been the consistent and unanimous practice of the Council to require approval of its decisions by a majority of its Members, which currently stood at 19.:-

113. H.E. Al-Amudi (Saudi Arabia) wished to place on record his objection to the statement that 19 votes would constitute the voting majority required under Article 52 of the Chicago Convention. Indicating that it was the Respondents’ understanding that a review of the *Rules for the Settlement of Differences* (Doc 7782/2) would be undertaken in September 2018, he underscored that they considered that it was contrary to due process to conduct such a review of the rules whereby the Council adjudicated the settlement of differences while such momentous and critical decisions by the Council on Qatar’s Application (A) and Application (B) were pending.

The President then asked whether it would be appropriate to take a 5 minute pause to enable discussion before voting. He received no support from the Council. It was agreed to proceed with the voting.

114. In clarifying that when the Council was sitting as a court, as at present, it was not the role of LEB to provide its interpretation of relevant rules, D/LEB underscored that earlier he had merely read the text of Article 52 of the Chicago Convention and recited to the Council the factual historical records of previous Council decisions, no more, no less.

115. In providing factual information in response to a query by the President of the Council, D/LEB recalled that at the Tenth Meeting of its 211th Session on 23 June 2017 the Council had requested the Secretariat to review the *Rules for the Settlement of Differences* (Doc 7782/2) with the aim of determining whether they needed to be revised and updated taking into account relevant developments that had occurred since the publication of that document (cf. C-DEC 211/10, paragraph 45). The Secretariat had subsequently reported that it was necessary to consult the Legal Committee thereon during its upcoming 37th Session (Montréal, 4-7 September 2018). D/LEB further clarified that while Article 33 of the said Rules stipulated that the latter “may, at any time, be amended by the Council”, it also stipulated that “No amendment shall apply to a pending case except with the agreement of the parties”.

116. H.E. Al Mansoori (United Arab Emirates) also wished to place on record his objection to the voting majority required (19) for the Council’s acceptance of the Respondents’ preliminary objections with respect to Qatar’s Application (A) and Application (B). In protesting against the voting majority required (19), he noted that Article 52 of the Chicago Convention did not provide for a qualified majority and instead provided that decisions by the Council “shall require approval by a majority of its Members”. H.E. Al Mansoori further noted that Article 84 of the Chicago Convention and Article 15(5) of the *Rules of Settlement of Differences* (Doc 7782/2) both provided that “No Member of the Council shall vote in the consideration by the Council of any dispute to which it is a party.”. He affirmed that Article 52 of the

Chicago Convention, read together with Article 84 thereof, should be interpreted as meaning that the majority required was of all Council Members entitled to vote. Accordingly, as there were 33 Council Members entitled to vote on the preliminary objection with respect to Application (A), 17 positive votes would constitute a majority. Furthermore, as there were 25 Council Members entitled to vote on the preliminary objection with respect to Application (B), 13 votes would constitute a majority. H.E. Al Mansoori averred that any other reading of the rules would defeat their purpose and also defy the principle of treaty interpretation, fairness and equal treatment of the Parties. He therefore felt compelled to clearly express his disagreement with the voting majority required (19).

117. In supporting the above intervention by H.E. Al Mansoori, H.E. EL-Adawy (Egypt) requested that his objection to the said voting majority required be also placed on record. He enquired how that requirement would be applied in the case of a dispute regarding the interpretation or application of a Convention to which there were fewer than 19 parties and thus fewer than 19 States, in particular, Council Member States, eligible to vote

118. A request then made by H.E. Al Mansoori (United Arab Emirates) that the Council reconsider the above-mentioned majority of 19 positive votes in the current Council for the approval of its decisions on the Respondents' preliminary objections with respect to both Application (A) and Application (B) was declined in the absence of any desire on the part of the Council to determine what constituted the voting majority other than the relevant provisions of the Chicago Convention read by D/LEB.

119. The above-mentioned requests and statements were noted for the record.

120. The Council then proceeded to the holding of a secret ballot on the Respondents' preliminary objection with respect to Application (A) and on their preliminary objection with respect to Application (B). In response to questions by the Representatives of the United States and South Africa, D/LEB clarified that: a "Yes" vote was a vote in favour and meant acceptance of the Respondents' preliminary objection; a "No" vote was a vote against and meant disagreement with the said preliminary objection; and "Abstain" meant that there was no vote, neither for nor against the preliminary objection.

121. H.E. Mohammed (Bahrain) recalled that the Respondents had two preliminary objections each to Qatar's Application (A) and Application (B). As explained by Mr. Petrochilos (Legal Advisor, Bahrain Delegation), the first preliminary objection was that the real issue in dispute was not an issue of the interpretation or application of the Chicago Convention or the Transit Agreement. The second preliminary objection was that the dispute was not one which cannot be settled by negotiation as was required by the jurisdictional clauses of those two treaties. As accepting either one of those preliminary objections had the effect of disposing of the case here and now, Mr. Petrochilos suggested that the appropriate wording of the question for the secret ballot for each Application would be "Do you accept either one of the two preliminary objections formulated by the Respondents in respect of each of the Applications?"

122. The President of the Council observed that both of the Respondents' said preliminary objections related to the jurisdiction of the Council. At his request, D/LEB read the text of Article 5(1) of the *Rules for the Settlement of Differences* (Doc 7782/2), which stipulated that "If the Respondent questions the jurisdiction of the Council to handle the matter presented by the Applicant, he shall file a preliminary objection setting out the basis of the objection."

123. The President of the Council noted that in essence for each of Qatar's Application (A) and Application (B) the Respondents had a preliminary objection for which they provided two justifications. He took the point made by Mr. Petrochilos that the voting on each preliminary objection applied to both of the justifications provided therefor.

Before proceedings to vote, the Representative from South Africa again requested clarity and stressed the need for everyone to be on board. What does a no vote mean and what does a yes vote mean? The President explains that a Yes means you accept the Preliminary Objection and a No means you reject it, and you disagree with the Preliminary Objection of the Respondents. An abstain vote means you take no view.

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*Secret ballot on the Respondents' Preliminary Objection – Application (A)  
(relating to the interpretation and application of the Chicago Convention and its Annexes)*

124. The result of the secret ballot on the question “Do you accept the preliminary objection?”, in which 33 votes were cast by the Council Members eligible to vote, was as follows:

In favour	4 votes
Against	23 votes
Abstentions	6 votes

There were no invalid ballots or blank votes.

125. Based on this result, the President declared that the preliminary objection filed by the Respondents with respect to Application (A) was not accepted by the Council.

*Secret ballot on the Respondents' Preliminary Objection – Application (B)  
(relating to the interpretation and application of the Transit Agreement)*

126. The result of the secret ballot on the question “Do you accept the preliminary objection?”, in which 25 votes were cast by the Council Members eligible to vote, was as follows:

In favour	2 votes
Against	18 votes
Abstentions	5 votes

There were no invalid ballots or blank votes.

127. Based on the above result, the President declared that the preliminary objection filed by the Respondents with respect to Application (B) was not accepted by the Council.

*Closing statements*

128. H.E. AlSulaiti (Qatar), as Applicant, expressed appreciation to the Council for having been afforded the opportunity to participate in the present meeting and to present its views regarding the Respondents' preliminary objections with respect to Qatar's Application (A) and Application (B).

129. Speaking on behalf of the Respondents, H.E. Al-Amudi (Saudi Arabia) reiterated their utmost respect for ICAO and the Council and reaffirmed their unwavering commitment to the rules and principles of the Chicago Convention and the Strategic Objectives and principles of ICAO. He re-emphasized that the cases brought before the Council during the present meeting involved: the Applicant's multiple and persistent breaches of international law, obligations that did not relate to civil aviation; and the sovereign right of the Respondents under international law to take lawful counter-measures to induce the Applicant to comply with its international obligations and to protect against a national security threat. Underscoring that the Respondents regretted that the Council had decided that ICAO had jurisdiction to hear the Applicant's complaints, H.E. Al-Amudi reiterated that they believed that the rules applied today were contrary to the fundamental rules of due process. In particular, they considered that the super majority voting requirement was not in line with the plain meaning of the Chicago Convention.

130. Repeating that the Respondents had not chosen to bring this dispute before the Council, H.E. Al-Amudi indicated that they respectfully submitted that ICAO's role did not extend to consideration of a dispute where the real issue involved national security and international instruments outside of civil aviation. He underscored that while the Respondents had the utmost respect for the Council, they were compelled to exercise their right under Article 84 of the Chicago Convention to appeal the Council's

decisions to the ICJ and would file their applications with the Court in this regard immediately following the receipt of the Council's approved decisions. The Respondents continued to take the view that the dispute that the Applicant had brought before the Council fell outside the scope of matters that the ICAO Council could adjudicate upon under Article 84 of the Chicago Convention and Article II, Section 2, of the Transit Agreement. By cause of the Respondents' impending appeal, the dispute was now moving to the ICJ. H.E. Al-Amudi emphasized, however, that as the Respondents had expressed before and as they now again expressed, their four States were committed to continuing to work with all Parties, including Qatar, under the auspices of ICAO to ensure the safe operation of air traffic. He stressed that the safety of civil aviation had been, and remained, the Respondents' top priority. In concluding, H.E. Al-Amudi thanked the President and the Council for their efforts in this matter and their commitment to the Strategic Objectives of this esteemed Organization.

131. The above statements were noted and recorded for the summary minutes of the meeting.

132. On behalf of the Council, the President expressed appreciation to the high-level Government officials from Bahrain, Egypt, Qatar, Saudi Arabia and the United Arab Emirates and the members of their Delegations for having participated in the present meeting. He stressed that, regardless of the Council's decisions regarding the Respondents' preliminary objections with respect to Application (A) and Application (B), it was important that as Member States of the same Organization, ICAO, they continue to communicate, consult and collaborate for the further development of international civil aviation. The President expressed the hope that all ICAO Member States would continue to move forward in that spirit.

133. It was noted that, on the basis of the above proceedings, the Secretariat would prepare and circulate the draft text of the Council's decisions at the preliminary objection stage of the *Settlement of Differences: 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)*, and the *Settlement of Differences: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain and the United Arab Emirates (2017) – Application (B)*, which would be tabled for the Council's consideration and approval at its Eleventh Meeting (214/11) on Friday, 29 June 2018.

134. It was further noted that the time-balance of seven calendar days remaining for the Respondents to file their Counter-memorial with ICAO shall begin to run from the date of receipt by the Respondents of the Council's approved decisions regarding their preliminary objections with respect to Application (A) and Application (B). However, the Respondents had indicated their intention to exercise their right under Article 84 of the Chicago Convention and to immediately thereafter file appeals of the Council's said decisions with the ICJ, in which case, pursuant to Article 86 thereof, the said decisions of the Council would be suspended until the appeals were decided by the ICJ.

135. The meeting adjourned at 1810 hours.

— END —



## **Annex 9**

United Nations, Resolution 569 (1985) adopted by the Security  
Council at its 2602nd meeting on 26 July 1985

United Nations document S/RES/569(1985)

and a half million indigenous African people to date, thus swelling the ranks of the other millions already doomed to permanent unemployment and starvation,

*Noting with indignation* that South Africa's policy of bantustanization is also aimed at the creation of internal bases for the fomenting of fratricidal conflict,

1. *Strongly condemns* the Pretoria régime for the killing of defenceless African people protesting against their forced removal from Crossroads and other places;

2. *Strongly condemns* the arbitrary arrests by the Pretoria régime of members of the United Democratic Front and other mass organizations opposed to South Africa's policy of *apartheid*;

3. *Calls upon* the Pretoria régime to release unconditionally and immediately all political prisoners and detainees, including Nelson Mandela and all other black leaders with whom it must deal in any meaningful discussion of the future of the country;

4. *Also calls upon* the Pretoria régime to withdraw the charges of "high treason" instituted against the United Democratic Front officials, and calls for their immediate and unconditional release;

5. *Commends* the massive united resistance of the oppressed people of South Africa against *apartheid*, and reaffirms the legitimacy of their struggle for a united, non-racial and democratic South Africa;

6. *Requests* the Secretary-General to report to the Security Council on the implementation of the present resolution;

7. *Decides* to remain seized of the matter.

*Adopted unanimously at the 2574th meeting.*

### Decisions

At its 2600th meeting, on 25 July 1985, the Council decided to invite the representatives of Cuba, Kenya, Mali and South Africa to participate, without vote, in the discussion of the item entitled:

"The question of South Africa:

"Letter dated 24 July 1985 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council (S/17351);<sup>37</sup>

"Letter dated 25 July 1985 from the Permanent Representative of Mali to the United Nations addressed to the President of the Security Council (S/17356)".<sup>37</sup>

At the same meeting, the Council also decided to extend an invitation, under rule 39 of the provisional rules of procedure, to the Chairman of the Special Committee against *Apartheid*.

At its 2601st meeting, on 26 July 1985, the Council decided to invite the representatives of the Central

<sup>37</sup> *Ibid.*, Supplement for July, August and September 1985.

African Republic, Ethiopia, the German Democratic Republic, Senegal, the Syrian Arab Republic and Zaire to participate, without vote, in the discussion of the question.

At its 2602nd meeting, on 26 July 1985, the Council decided to invite the representative of Yugoslavia to participate, without vote, in the discussion of the question.

### Resolution 569 (1985)

of 26 July 1985

*The Security Council,*

*Deeply concerned* at the worsening of the situation in South Africa and at the continuance of the human suffering that the *apartheid* system, which the Council strongly condemns, is causing in that country,

*Outraged* at the repression, and condemning the arbitrary arrests of hundreds of persons,

*Considering* that the imposition of the state of emergency in thirty-six districts of the Republic of South Africa constitutes a grave deterioration of the situation in that country,

*Considering* as totally unacceptable the practice by the South African Government of detention without trial and of forcible removal, as well as the discriminatory legislation in force,

*Acknowledging* the legitimacy of the aspirations of the South African population as a whole to benefit from all civil and political rights and to establish a united non-racial and democratic society,

*Acknowledging further* that the very cause of the situation in South Africa lies in the policy of *apartheid* and the practices of the South African Government,

1. *Strongly condemns* the *apartheid* system and all the policies and practices deriving therefrom;

2. *Strongly condemns* the mass arrests and detentions recently carried out by the Pretoria Government and the murders which have been committed;

3. *Strongly condemns* the establishment of the state of emergency in the thirty-six districts in which it has been imposed and demands that it be lifted immediately;

4. *Calls upon* the South African Government to set free immediately and unconditionally all political prisoners and detainees, first of all, Mr. Nelson Mandela;

5. *Reaffirms* that only the total elimination of *apartheid* and the establishment in South Africa of a free, united and democratic society on the basis of universal suffrage can lead to a solution;

6. *Urges* States Members of the United Nations to adopt measures against South Africa, such as the following:

(a) Suspension of all new investment in South Africa;

(b) Prohibition of the sale of krugerrands and all other coins minted in South Africa;



- (c) Restrictions on sports and cultural relations;
- (d) Suspension of guaranteed export loans;
- (e) Prohibition of all new contracts in the nuclear field;

(f) Prohibition of all sales of computer equipment that may be used by the South African army and police;

7. *Commends* those States which have already adopted voluntary measures against the Pretoria Government and urges them to adopt new provisions, and invites those which have not yet done so to follow their example;

8. *Requests* the Secretary-General to report to the Security Council on the implementation of the present resolution;

9. *Decides* to remain seized of the matter and to reconvene as soon as the Secretary-General has issued his report, with a view to considering the progress made in the implementation of the present resolution.

*Adopted at the 2602nd meeting by 13 votes to none, with 2 abstentions (United Kingdom of Great Britain and Northern Ireland, United States of America).*

#### Decisions

On 20 August 1985, after consultations with the members of the Council, the President issued the following statement,<sup>38</sup> on behalf of the members of the Council:

"The members of the Security Council have learned with great concern the intention of the South African authorities to carry out shortly the death sentence imposed upon Mr. Malesela Benjamin Maloise.

"The members of the Council recall Council resolution 547 (1984), which, *inter alia*, called upon the South African authorities not to carry out the execution of Mr. Maloise.

"The members of the Security Council once again urge the South African authorities to rescind the death sentence imposed on Mr. Maloise, convinced that the carrying out of the execution, apart from being a direct defiance of the above-mentioned Council resolution, will result in the further deterioration of an already extremely grave situation."

At its 2603rd meeting, on 21 August 1985, the Council proceeded with the discussion of the item entitled "The question of South Africa".

At the same meeting, after consultations with the members of the Council, the President made the following statement<sup>39</sup> on behalf of the Council:

"The members of the Security Council, deeply alarmed by the worsening and deteriorating situation of the oppressed black majority population in South Africa since the imposition of the state of emergency on 21 July 1985, express once again their profound concern at this deplorable situation.

"The members of the Council condemn the Pretoria régime for its continued failure to heed the repeated appeals made by the international community, including Security Council resolution 569 (1985) and, in particular, the demand made in that resolution for the immediate lifting of the state of emergency.

"The members of the Council strongly condemn the continuation of killings and the arbitrary mass arrests and detentions carried out by the Pretoria Government. They call, once again, upon the South African Government to set free immediately and unconditionally all political prisoners and detainees, first of all, Mr. Nelson Mandela, whose home has lately been subjected to an act of arson.

"The members of the Council believe that a just and lasting solution in South Africa must be based on the total eradication of the system of *apartheid* and the establishment of a free, united and democratic society in South Africa. Without concrete action towards such a just and lasting solution in South Africa, any pronouncements of the Pretoria régime can represent nothing more than a reaffirmation of its attachment to *apartheid* and underline its continuing intransigence in the face of mounting domestic and international opposition to the continuation of this thoroughly unjustified political and social system. In this context, the members of the Council express their grave concern at the latest pronouncements of the President of the Pretoria régime."

At the 2623rd meeting, on 17 October 1985, prior to the adoption of the agenda,<sup>40</sup> the President made the following statement on behalf of the members of the Council:<sup>41</sup>

"The members of the Security Council have learned with indignation and the gravest concern of the South African authorities' intention to implement the death sentence imposed on Malesela Benjamin Maloise, in spite of the Council's appeals in this regard.

"The members of the Council once again draw the attention of the South African authorities to the Council President's statement of 20 August 1985 and Council resolution 547 (1984), which, *inter alia*, called upon the South African authorities not to carry out the execution of Mr. Maloise.

"The members of the Council are convinced that the carrying out of the execution will only result in a further worsening of an extremely grave situation.

"Once again, the members of the Council strongly urge the South African Government to extend clemency to Mr. Maloise and to rescind his death sentence."

<sup>38</sup> S/17408.

<sup>39</sup> S/17413.

<sup>40</sup> The agenda of the meeting was: The situation in the Middle East.

<sup>41</sup> S/17575.



## **Annex 10**

Common Position of 29 June 1998 defined by the Council on the basis of Article J.2 of the Treaty on European Union concerning a ban on flights by Yugoslav carriers between the Federal Republic of Yugoslavia and the European Community  
(98/426/CFSP) [1998] OJ L190/3

Available at <http://data.europa.eu/eli/compos/1998/426/oj>

**COMMON POSITION**

of 29 June 1998

**defined by the Council on the basis of Article J.2 of the Treaty on European Union concerning a ban on flights by Yugoslav carriers between the Federal Republic of Yugoslavia and the European Community**

(98/426/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and, in particular, Article J.2 thereof,

Whereas, on 19 March 1998 the Council adopted Common Position 98/240/CFSP<sup>(1)</sup> on restrictive measures against the Federal Republic of Yugoslavia;

Whereas further measures were contemplated in Common Position 98/240/CFSP should the conditions set out therein not be met and repression continue in Kosovo;

Whereas neither the said conditions nor those called for by the European Council at its meeting in Cardiff on 15 June 1998 have been met and therefore a further reduction of economic relations with the Federal Republic of Yugoslavia should be foreseen;

Whereas the restrictive measures set out in Article 1 hereto will be reconsidered immediately if the Federal Republic of Yugoslavia and Serbian Governments move to adopt and implement a framework for dialogue and a stabilisation package,

HAS DEFINED THIS COMMON POSITION:

*Article 1*

Flights by Yugoslav carriers between the Federal Republic of Yugoslavia and the European Community will be banned.

*Article 2*

This Common Position shall take effect from the date of its adoption.

*Article 3*

This Common Position shall be published in the Official Journal.

Done at Luxembourg, 29 June 1998.

*For the Council**The President*

R. COOK

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<sup>(1)</sup> OJ L 95, 27. 3. 1998, p. 1.

## **Annex 11**

Council Regulation (EC) No 1901/98 of 7 September 1998  
concerning a ban on flights of Yugoslav carriers between the Federal  
Republic of Yugoslavia and the European Community  
[1998] OJ L248/1

Available at <http://data.europa.eu/eli/reg/1998/1901/oj>

## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EC) No 1901/98**  
**of 7 September 1998**  
**concerning a ban on flights of Yugoslav carriers between the Federal Republic of**  
**Yugoslavia and the European Community**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 228A thereof,

Having regard to Common Position 98/426/CFSP of 29 June 1998 defined by the Council on the basis of Article J.2 of the Treaty on European Union, concerning a ban on flights by Yugoslav carriers between the Federal Republic of Yugoslavia and the European Community<sup>(1)</sup>,

Having regard to the proposal from the Commission,

Whereas the developments regarding Kosovo have already led the Security Council of the United Nations to impose an arms embargo against the Federal Republic of Yugoslavia (FRY) under Chapter VII of the Charter of the United Nations, and to the consideration of additional measures in case of failure to make constructive progress towards the peaceful resolution of the situation in Kosovo;

Whereas the European Union has already decided on additional measures as envisaged by Common Positions 98/240/CFSP<sup>(2)</sup>, 98/326/CFSP<sup>(3)</sup> and 98/374/CFSP<sup>(4)</sup> and the ensuing Council Regulations (EC) Nos 926/98<sup>(5)</sup>, 1295/98<sup>(6)</sup> and 1607/98<sup>(7)</sup>;

Whereas the Government of the FRY has not stopped the use of indiscriminate violence and brutal repression against its own citizens, which constitute serious violations of human rights and international humanitarian law, and has not taken effective steps to find a political solution to the issue of Kosovo through a process of peaceful dialogue with the Kosovar Albanian Community in order to maintain the regional peace and security;

Whereas, therefore, Common Position 98/426/CFSP foresees a ban on flights by Yugoslav carriers between the Federal Republic of Yugoslavia (FRY) and the European

Community as a further measure to obtain from the Government of the FRY the fulfilment of the requirements of UNSC Resolution 1160 (1998) and of the said Common Positions;

Whereas this further measure falls under the scope of the Treaty establishing the European Community;

Whereas, therefore, and notably with a view to avoiding distortion of competition, Community legislation is necessary for the implementation of these measures, as far as the territory of the Community is concerned; whereas such territory is deemed to encompass, for the purposes of this Regulation, the territories of the Member States to which the Treaty establishing the European Community is applicable, under the conditions laid down in that Treaty;

Whereas there is a need to provide for certain specific exemptions;

Whereas there is a need for the Commission and Member States to inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. Aircraft operated directly or indirectly by a Yugoslav carrier, that is a carrier having its principal place of business or its registered office in the Federal Republic of Yugoslavia, shall be prohibited from flying between the Federal Republic of Yugoslavia and the European Community.

2. All operating authorisations granted to Yugoslav carriers are hereby revoked.

<sup>(1)</sup> OJ L 190, 4. 7. 1998, p. 3.

<sup>(2)</sup> OJ L 95, 27. 3. 1998, p. 1.

<sup>(3)</sup> OJ L 143, 14. 5. 1998, p. 1.

<sup>(4)</sup> OJ L 165, 10. 6. 1998, p. 1.

<sup>(5)</sup> OJ L 130, 1. 5. 1998, p. 1.

<sup>(6)</sup> OJ L 178, 23. 6. 1998, p. 33.

<sup>(7)</sup> OJ L 209, 25. 7. 1998, p. 16.

*Article 2*

No new operating authorisations shall be granted or existing ones renewed enabling aircraft registered in the Federal Republic of Yugoslavia to fly to or from airports in the Community.

*Article 3*

1. Articles 1 and 2 shall not apply to
  - (a) emergency landings on the territory of the Community and ensuing take-offs;
  - (b) authorisations for charter series flights between Leipzig and Tivat by Montenegro Airlines.
2. Nothing in this Regulation shall be construed as limiting any existing rights of Yugoslav carriers and aircraft registered in the FRY other than rights to land in or to take off from the territory of the Community.

*Article 4*

The participation, knowingly and intentionally, in related activities, the object or effect of which is, directly or indirectly, to circumvent the provisions of Articles 1 and 2 shall be prohibited.

*Article 5*

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are

infringed. Such sanctions must be effective, proportionate and dissuasive.

*Article 6*

The Commission and the Member States shall inform each other of the measures taken under this Regulation and supply each other with any other relevant information at their disposal in connection with this Regulation, such as breaches and enforcement problems, judgments handed down by national courts or decisions of relevant international fora.

*Article 7*

This Regulation shall apply:

- within the territory of the Community including its airspace,
- on board any aircraft or any vessel under the jurisdiction of a Member State,
- to any person elsewhere who is a national of a Member State,
- to any body which is incorporated or constituted under the law of a Member State.

*Article 8*

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 September 1998.

*For the Council*  
*The President*  
 W. SCHÜSSEL





## **Annex 12**

United Nations, Resolution 1718 (2006) adopted by the Security Council at its 5551st meeting on 14 October 2006

United Nations document S/Res/1718(2006); Available at website of the United Nations available at [https://undocs.org/S/RES/1718\(2006\)](https://undocs.org/S/RES/1718(2006))

**Security Council**Distr.: General  
14 October 2006

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**Resolution 1718 (2006)****Adopted by the Security Council at its 5551st meeting, on  
14 October 2006**

*The Security Council,*

*Recalling* its previous relevant resolutions, including resolution 825 (1993), resolution 1540 (2004) and, in particular, resolution 1695 (2006), as well as the statement of its President of 6 October 2006 (S/PRST/2006/41),

*Reaffirming* that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security,

*Expressing the gravest concern* at the claim by the Democratic People's Republic of Korea (DPRK) that it has conducted a test of a nuclear weapon on 9 October 2006, and at the challenge such a test constitutes to the Treaty on the Non-Proliferation of Nuclear Weapons and to international efforts aimed at strengthening the global regime of non-proliferation of nuclear weapons, and the danger it poses to peace and stability in the region and beyond,

*Expressing* its firm conviction that the international regime on the non-proliferation of nuclear weapons should be maintained and recalling that the DPRK cannot have the status of a nuclear-weapon state in accordance with the Treaty on the Non-Proliferation of Nuclear Weapons,

*Deploring* the DPRK's announcement of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons and its pursuit of nuclear weapons,

*Deploring further* that the DPRK has refused to return to the Six-Party talks without precondition,

*Endorsing* the Joint Statement issued on 19 September 2005 by China, the DPRK, Japan, the Republic of Korea, the Russian Federation and the United States,

*Underlining* the importance that the DPRK respond to other security and humanitarian concerns of the international community,

*Expressing* profound concern that the test claimed by the DPRK has generated increased tension in the region and beyond, and *determining* therefore that there is a clear threat to international peace and security,

06-57207 (E)



*Acting* under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41,

1. *Condemns* the nuclear test proclaimed by the DPRK on 9 October 2006 in flagrant disregard of its relevant resolutions, in particular resolution 1695 (2006), as well as of the statement of its President of 6 October 2006 (S/PRST/2006/41), including that such a test would bring universal condemnation of the international community and would represent a clear threat to international peace and security;

2. *Demands* that the DPRK not conduct any further nuclear test or launch of a ballistic missile;

3. *Demands* that the DPRK immediately retract its announcement of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons;

4. *Demands* further that the DPRK return to the Treaty on the Non-Proliferation of Nuclear Weapons and International Atomic Energy Agency (IAEA) safeguards, and *underlines* the need for all States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons to continue to comply with their Treaty obligations;

5. *Decides* that the DPRK shall suspend all activities related to its ballistic missile programme and in this context re-establish its pre-existing commitments to a moratorium on missile launching;

6. *Decides* that the DPRK shall abandon all nuclear weapons and existing nuclear programmes in a complete, verifiable and irreversible manner, shall act strictly in accordance with the obligations applicable to parties under the Treaty on the Non-Proliferation of Nuclear Weapons and the terms and conditions of its International Atomic Energy Agency (IAEA) Safeguards Agreement (IAEA INFCIRC/403) and shall provide the IAEA transparency measures extending beyond these requirements, including such access to individuals, documentation, equipments and facilities as may be required and deemed necessary by the IAEA;

7. *Decides* also that the DPRK shall abandon all other existing weapons of mass destruction and ballistic missile programme in a complete, verifiable and irreversible manner;

8. *Decides* that:

(a) All Member States shall prevent the direct or indirect supply, sale or transfer to the DPRK, through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories, of:

(i) Any battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems as defined for the purpose of the United Nations Register on Conventional Arms, or related materiel including spare parts, or items as determined by the Security Council or the Committee established by paragraph 12 below (the Committee);

(ii) All items, materials, equipment, goods and technology as set out in the lists in documents S/2006/814 and S/2006/815, unless within 14 days of adoption of this resolution the Committee has amended or completed their provisions also taking into account the list in document S/2006/816, as well as other items, materials, equipment, goods and technology, determined by the

Security Council or the Committee, which could contribute to DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes;

(iii) Luxury goods;

(b) The DPRK shall cease the export of all items covered in subparagraphs (a) (i) and (a) (ii) above and that all Member States shall prohibit the procurement of such items from the DPRK by their nationals, or using their flagged vessels or aircraft, and whether or not originating in the territory of the DPRK;

(c) All Member States shall prevent any transfers to the DPRK by their nationals or from their territories, or from the DPRK by its nationals or from its territory, of technical training, advice, services or assistance related to the provision, manufacture, maintenance or use of the items in subparagraphs (a) (i) and (a) (ii) above;

(d) All Member States shall, in accordance with their respective legal processes, freeze immediately the funds, other financial assets and economic resources which are on their territories at the date of the adoption of this resolution or at any time thereafter, that are owned or controlled, directly or indirectly, by the persons or entities designated by the Committee or by the Security Council as being engaged in or providing support for, including through other illicit means, DPRK's nuclear-related, other weapons of mass destruction-related and ballistic missile-related programmes, or by persons or entities acting on their behalf or at their direction, and ensure that any funds, financial assets or economic resources are prevented from being made available by their nationals or by any persons or entities within their territories, to or for the benefit of such persons or entities;

(e) All Member States shall take the necessary steps to prevent the entry into or transit through their territories of the persons designated by the Committee or by the Security Council as being responsible for, including through supporting or promoting, DPRK policies in relation to the DPRK's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes, together with their family members, provided that nothing in this paragraph shall oblige a state to refuse its own nationals entry into its territory;

(f) In order to ensure compliance with the requirements of this paragraph, and thereby preventing illicit trafficking in nuclear, chemical or biological weapons, their means of delivery and related materials, all Member States are called upon to take, in accordance with their national authorities and legislation, and consistent with international law, cooperative action including through inspection of cargo to and from the DPRK, as necessary;

9. *Decides* that the provisions of paragraph 8 (d) above do not apply to financial or other assets or resources that have been determined by relevant States:

(a) To be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant States to the Committee of the intention

to authorize, where appropriate, access to such funds, other financial assets and economic resources and in the absence of a negative decision by the Committee within five working days of such notification;

(b) To be necessary for extraordinary expenses, provided that such determination has been notified by the relevant States to the Committee and has been approved by the Committee; or

(c) To be subject of a judicial, administrative or arbitral lien or judgement, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgement provided that the lien or judgement was entered prior to the date of the present resolution, is not for the benefit of a person referred to in paragraph 8 (d) above or an individual or entity identified by the Security Council or the Committee, and has been notified by the relevant States to the Committee;

10. *Decides* that the measures imposed by paragraph 8 (e) above shall not apply where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligations, or where the Committee concludes that an exemption would otherwise further the objectives of the present resolution;

11. *Calls upon* all Member States to report to the Security Council within thirty days of the adoption of this resolution on the steps they have taken with a view to implementing effectively the provisions of paragraph 8 above;

12. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council, to undertake the following tasks:

(a) To seek from all States, in particular those producing or possessing the items, materials, equipment, goods and technology referred to in paragraph 8 (a) above, information regarding the actions taken by them to implement effectively the measures imposed by paragraph 8 above of this resolution and whatever further information it may consider useful in this regard;

(b) To examine and take appropriate action on information regarding alleged violations of measures imposed by paragraph 8 of this resolution;

(c) To consider and decide upon requests for exemptions set out in paragraphs 9 and 10 above;

(d) To determine additional items, materials, equipment, goods and technology to be specified for the purpose of paragraphs 8 (a) (i) and 8 (a) (ii) above;

(e) To designate additional individuals and entities subject to the measures imposed by paragraphs 8 (d) and 8 (e) above;

(f) To promulgate guidelines as may be necessary to facilitate the implementation of the measures imposed by this resolution;

(g) To report at least every 90 days to the Security Council on its work, with its observations and recommendations, in particular on ways to strengthen the effectiveness of the measures imposed by paragraph 8 above;

13. *Welcomes and encourages further* the efforts by all States concerned to intensify their diplomatic efforts, to refrain from any actions that might aggravate

tension and to facilitate the early resumption of the Six-Party Talks, with a view to the expeditious implementation of the Joint Statement issued on 19 September 2005 by China, the DPRK, Japan, the Republic of Korea, the Russian Federation and the United States, to achieve the verifiable denuclearization of the Korean Peninsula and to maintain peace and stability on the Korean Peninsula and in north-east Asia;

14. *Calls upon* the DPRK to return immediately to the Six-Party Talks without precondition and to work towards the expeditious implementation of the Joint Statement issued on 19 September 2005 by China, the DPRK, Japan, the Republic of Korea, the Russian Federation and the United States;

15. *Affirms* that it shall keep DPRK's actions under continuous review and that it shall be prepared to review the appropriateness of the measures contained in paragraph 8 above, including the strengthening, modification, suspension or lifting of the measures, as may be needed at that time in light of the DPRK's compliance with the provisions of the resolution;

16. *Underlines* that further decisions will be required, should additional measures be necessary;

17. *Decides* to remain actively seized of the matter.

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### **Annex 13**

European Union, Council Decision (CFSP) 2016/849 of 27 May 2016  
concerning restrictive measures against the Democratic People's  
Republic of Korea and repealing Decision 2013/183/CFSP  
[2016] OJ L141/79

Available at <http://data.europa.eu/eli/dec/2016/849/oj>

**COUNCIL DECISION (CFSP) 2016/849****of 27 May 2016****concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 22 December 2010, the Council adopted Decision 2010/800/CFSP<sup>(1)</sup> concerning restrictive measures against the Democratic People's Republic of Korea ('the DPRK'), which, inter alia, implemented United Nations Security Council Resolutions ('UNSCRs') 1718 (2006) and 1874 (2009).
- (2) On 7 March 2013, the UN Security Council adopted UNSCR 2094 (2013), condemning in the strongest terms the nuclear test conducted by the DPRK on 12 February 2013 in violation of and with flagrant disregard for the relevant UNSCRs.
- (3) On 22 April 2013, the Council adopted Decision 2013/183/CFSP<sup>(2)</sup>, which replaced Decision 2010/800/CFSP and, inter alia, implemented UNSCRs 1718 (2006), 1874 (2009), 2087 (2013) and 2094 (2013).
- (4) On 2 March 2016, the UN Security Council adopted UNSCR 2270 (2016), expressing its gravest concern at the nuclear test conducted by the DPRK on 6 January 2016 in violation of the relevant UNSCRs, condemning the DPRK's launch of 7 February 2016, which used ballistic-missile technology and was in serious violation of the relevant UNSCRs, and determining that there continues to exist a clear threat to international peace and security in the region and beyond.
- (5) On 31 March 2016, the Council adopted Decision (CFSP) 2016/476<sup>(3)</sup>, which amended Decision 2013/183/CFSP and implemented UNSCR 2270 (2016).
- (6) In view of the DPRK's actions earlier this year, considered to be a grave threat to international peace and security in the region and beyond, the Council has decided to impose additional restrictive measures.
- (7) UNSCR 2270 (2016), which expresses great concern that the DPRK's arms sales have generated revenues that are diverted to the pursuit of nuclear weapons and ballistic missiles, provides that the restrictions on arms should cover all arms and related materiel, including small arms and light weapons and their related materiel. It also further extends prohibitions on the transfer and procurement of any items that could contribute to the development of the operational capabilities of the DPRK's armed forces or to exports that support or enhance the operational capabilities of armed forces of another UN Member State outside the DPRK.
- (8) UNSCR 2270 (2016) specifies that the prohibition on the procurement of technical assistance related to arms prohibits UN Member States from engaging in the hosting of trainers, advisors or other officials for the purpose of military-, paramilitary- or police-related training.

<sup>(1)</sup> Council Decision 2010/800/CFSP of 22 December 2010 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Common Position 2006/795/CFSP (OJ L 341, 23.12.2010, p. 32).

<sup>(2)</sup> Council Decision 2013/183/CFSP of 22 April 2013 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2010/800/CFSP (OJ L 111, 23.4.2013, p. 52).

<sup>(3)</sup> Council Decision (CFSP) 2016/476 of 31 March 2016 amending Decision 2013/183/CFSP concerning restrictive measures against the Democratic People's Republic of Korea (OJ L 85, 1.4.2016, p. 38).



- (9) UNSCR 2270 (2016) affirms that the prohibitions on the transfer, procurement and provision of technical assistance related to certain goods also apply with respect to the shipment of items to or from the DPRK for repair, servicing, refurbishing, testing, reverse-engineering and marketing, regardless of whether ownership or control is transferred, and underscores that the visa-ban measures are also to apply to any individual traveling for those purposes.
- (10) The Council considers it appropriate to prohibit the supply, sale or transfer to DPRK of further items, materials, equipment relating to dual-use goods and technology.
- (11) UNSCR 2270 (2016) extends the list of individuals and entities subject to asset freeze and visa-ban measures and provides that the asset freeze is to apply with respect to entities of the Government of the DPRK or the Worker's Party of Korea, where the UN Member State determines that they are associated with the DPRK's nuclear or ballistic-missile programmes or other activities prohibited by the relevant UNSCRs.
- (12) UNSCR 2270 (2016), which expresses concern that the DPRK is abusing the privileges and immunities accorded to it under the Vienna Conventions on Diplomatic and Consular Relations, lays down additional measures aimed at preventing DPRK diplomats or governmental representatives or individuals from third States from acting on behalf or at the direction of designated individuals or entities or from engaging in prohibited activities.
- (13) UNSCR 2270 (2016) further clarifies the scope of the obligation for UN Member States to prevent specialised training of DPRK nationals in certain sensitive disciplines.
- (14) UNSCR 2270 (2016) also expands the scope of the measures applicable to the transportation and financial sectors.
- (15) In the context of the measures applicable to the financial sector, the Council considers that it is appropriate to prohibit transfers of funds to and from the DPRK, unless specifically authorised in advance, as well as investment by the DPRK in the territories under the jurisdiction of Member States and investment by nationals or entities of the Member States in the DPRK.
- (16) In addition to the measures provided for in the relevant UNSCR, Member States should deny permission to land in, take off from or overfly their territory to any aircraft operated by DPRK carriers or originating from the DPRK. Member States should also prohibit the entry into their ports of any vessel that is owned, operated or crewed by the DPRK.
- (17) UNSCR 2270 (2016) prohibits the procurement of certain minerals and the export of aviation fuel.
- (18) The Council considers that the prohibition on the export of luxury goods should be extended to cover the import of such goods from the DPRK.
- (19) UNSCR 2270 (2016) further extends the prohibitions on the provision of financial support for trade with the DPRK.
- (20) Furthermore, the Council considers it appropriate to extend the prohibitions on public financial support for trade with the DPRK, in particular to avoid any financial support contributing to proliferation-sensitive nuclear activities or to the development of nuclear-weapon delivery systems.
- (21) UNSCR 2270 (2016) recalls that the Financial Action Task Force (FATF) has called upon countries to apply enhanced due diligence and effective countermeasures to protect their jurisdictions from the DPRK's illicit financial activity, and calls upon UN Member States to apply FATF Recommendation 7, its Interpretive Note and related guidance to effectively implement targeted financial sanctions related to proliferation.

- (22) UNSCR 2270 (2016) also underlines that measures imposed thereby are not intended to have adverse humanitarian consequences for the civilian population of the DPRK or to affect negatively activities that are not prohibited by the relevant UNSCRs, or the work of international organisations and non-governmental organisations carrying out assistance and relief activities in the DPRK for the benefit of the civilian population.
- (23) UNSCR 2270 (2016) expresses its commitment to a peaceful, diplomatic and political solution to the situation. It reaffirms support for the Six-Party Talks and calls for their resumption.
- (24) UNSCR 2270 (2016) affirms that the DPRK's actions are to be kept under continuous review and that the UN Security Council is prepared to strengthen, modify, suspend or lift the measures as necessary in light of the DPRK's compliance and is determined to take further significant measures in the event of a further DPRK nuclear test or launch.
- (25) In February 2016, the Council carried out a review in accordance with Article 22(2) of Decision 2013/183/CFSP and Article 6(2) and (2a) of Regulation (EC) No 329/2007 <sup>(1)</sup> and confirmed that the persons and entities that appear in Annex II to that Decision and in Annex V to that Regulation should remain listed.
- (26) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to an effective remedy and to a fair trial, the right to property and the right to the protection of personal data. This Decision should be applied in accordance with those rights and principles.
- (27) This Decision also fully respects the obligations of Member States under the Charter of the United Nations and the legally binding nature of UNSCRs.
- (28) For the sake of clarity, Decision 2013/183/CFSP should be repealed and replaced by a new Decision.
- (29) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

#### CHAPTER I

#### EXPORT AND IMPORT RESTRICTIONS

##### *Article 1*

1. The direct or indirect supply, sale, transfer or export of the following items and technology, including software, to the DPRK by nationals of Member States or through or from the territories of Member States, or using the flag vessels or aircraft of Member States, shall be prohibited, whether or not originating in the territories of the Member States:
- (a) arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, with the exception of non-combat vehicles which have been manufactured or fitted with materials to provide ballistic protection and are intended solely for protective use of personnel of the Union and its Member States in the DPRK;
- (b) all items, materials, equipment, goods and technology, as determined by the UN Security Council or the Committee established pursuant to paragraph 12 of UNSCR 1718 (2006) ('the Sanctions Committee') in accordance with paragraph 8(a)(ii) of UNSCR 1718 (2006), paragraph 5(b) of UNSCR 2087 (2013) and paragraph 20 of UNSCR 2094 (2013), which could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes;

<sup>(1)</sup> Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea (OJ L 88, 29.3.2007, p. 1).

- (c) certain other items, materials, equipment, goods and technology which could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes or which could contribute to its military activities, including all dual-use goods and technology listed in Annex I to Council Regulation (EC) No 428/2009 <sup>(1)</sup>;
- (d) any further items, materials and equipment relating to dual-use goods and technology; the Union shall take the necessary measures in order to determine the relevant items to be covered by this point;
- (e) certain key components for the ballistic-missile sector, such as certain types of aluminium used in ballistic-missile-related systems; the Union shall take the necessary measures in order to determine the relevant items to be covered by this point;
- (f) any other item that could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes, to activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision, or to the evasion of measures imposed by those UNSCRs or by this Decision; the Union shall take the necessary measures in order to determine the relevant items to be covered by this point.
- (g) any other item, except food or medicine, if a Member State determines that it could contribute directly to the development of the operational capabilities of the DPRK's armed forces or to exports that support or enhance the operational capabilities of armed forces of another State outside the DPRK.

2. It shall also be prohibited to:

- (a) provide technical training, advice, services, assistance or brokering services, or other intermediary services, related to items or technology referred to in paragraph 1 or to the provision, manufacture, maintenance or use of those items, directly or indirectly, to any person, entity or body in, or for use in, the DPRK;
- (b) provide financing or financial assistance related to items or technology referred to in paragraph 1, including, in particular, grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of those items or that technology, or for the provision of related technical training, advice, services, assistance or brokering services, directly or indirectly, to any person, entity or body in, or for use in, the DPRK;
- (c) participate, knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a) and (b).

3. The procurement from the DPRK by nationals of Member States, or using the flag vessels or aircraft of Member States, of items or technology referred to in paragraph 1, as well as the provision to nationals of Member States by the DPRK of technical training, advice, services, assistance, financing and financial assistance referred to in paragraph 2, shall also be prohibited, whether or not originating in the territory of the DPRK.

#### Article 2

The measures imposed by Article 1(1)(g) shall not apply to the supply, sale or transfer of an item, or its procurement, where:

- (a) the Member State determines that such activity is exclusively for humanitarian purposes or exclusively for livelihood purposes which will not be used by DPRK persons or entities to generate revenue, and is not related to any activity prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision, provided that the Member State notifies the Sanctions Committee in advance of such determination and informs the Sanctions Committee of measures taken to prevent the diversion of the item for such other purposes; or
- (b) the Sanctions Committee has determined on a case-by-case basis that a particular supply, sale or transfer would not be contrary to the objectives of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).

<sup>(1)</sup> Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

*Article 3*

1. The direct or indirect sale, purchase, transport or brokering of gold and precious metals, as well as of diamonds, to, from or for the Government of the DPRK, its public bodies, corporations and agencies or the Central Bank of the DPRK, as well as persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, shall be prohibited.
2. The Union shall take the necessary measures in order to determine the relevant items to be covered by this Article.

*Article 4*

1. The procurement from the DPRK by nationals of Member States, or using the flag vessels or aircraft of Member States, of gold, titanium ore, vanadium ore and rare-earth minerals, shall be prohibited, whether or not originating in the territory of the DPRK.
2. The Union shall take the necessary measures in order to determine the relevant items to be covered by this Article.

*Article 5*

The delivery of newly printed or minted or unissued DPRK-denominated banknotes and coinage to or for the benefit of the Central Bank of the DPRK shall be prohibited.

*Article 6*

1. The direct or indirect supply, sale or transfer of luxury goods to the DPRK by nationals of Member States or through or from the territories of Member States, or using the flag vessels or aircraft of Member States, shall be prohibited whether or not originating in the territories of Member States.
2. The import, purchase or transfer of luxury goods from the DPRK shall be prohibited.
3. The Union shall take the necessary measures in order to determine the relevant items to be covered by paragraphs 1 and 2.

*Article 7*

1. The procurement from the DPRK by nationals of Member States, or using the flag vessels or aircraft of Member States, of coal, iron, and iron ore, shall be prohibited, whether or not originating in the territory of the DPRK. The Union shall take the necessary measures in order to determine the relevant items to be covered by this paragraph.
2. Paragraph 1 shall not apply with respect to coal that the procuring Member State confirms, on the basis of credible information, originates from outside the DPRK and was transported through the DPRK solely for export from the port of Rajin (Rason), provided that the Member State notifies the Sanctions Committee in advance and such transactions are unrelated to generating revenue for the DPRK's nuclear or ballistic-missile programmes or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision.
3. Paragraph 1 shall not apply with respect to transactions that are determined to be exclusively for livelihood purposes and unrelated to generating revenue for the DPRK's nuclear or ballistic-missile programmes or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision.

*Article 8*

1. The sale or supply of aviation fuel, including aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel and kerosene-type rocket fuel, to the DPRK by nationals of Member States or from the territories of Member States, or using the flag vessels or aircraft of Member States, shall be prohibited whether or not originating in the territories of Member States.
2. Paragraph 1 shall not apply if the Sanctions Committee has approved in advance on an exceptional case-by-case basis the transfer to the DPRK of such products for verified essential humanitarian needs and subject to specified arrangements for effective monitoring of delivery and use.
3. Paragraph 1 shall not apply with respect to the sale or supply of aviation fuel to a civilian passenger aircraft outside the DPRK exclusively for consumption during its flight to the DPRK and its return flight.

*Article 9*

The import, purchase or transfer from the DPRK of petroleum products not covered by UNSCR 2270 (2016) shall be prohibited. The Union shall take the necessary measures in order to determine the relevant items to be covered by this Article.

## CHAPTER II

**RESTRICTIONS ON FINANCIAL SUPPORT FOR TRADE***Article 10*

1. Member States shall not provide public financial support for trade with the DPRK, including the granting of export credits, guarantees or insurance, to their nationals or entities involved in such trade. This shall not affect commitments established prior to the entry into force of this Decision provided that such financial support does not contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes or activities, or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision.
2. Private financial support for trade with the DPRK, including the granting of export credits, guarantees or insurance, to Member States' nationals or entities involved in such trade where such financial support could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes or activities, or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision, or to the evasion of measures imposed by those UNSCRs or by this Decision, shall be prohibited.
3. Paragraphs 1 and 2 shall not concern trade for food, agricultural, medical or other humanitarian purposes.

## CHAPTER III

**RESTRICTIONS ON INVESTMENT***Article 11*

1. Investment in the territories under the jurisdiction of Member States by the DPRK, its nationals, or entities incorporated in the DPRK or subject to its jurisdiction, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them, shall be prohibited.

2. The following shall be prohibited:
- (a) the acquisition or extension of a participation in entities in the DPRK, or DPRK entities or DPRK-owned entities outside the DPRK, that are engaged in activities involving the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related activities or programmes, or in activities in the sectors of mining, refining and chemical industries, including the acquisition in full of such entities and the acquisition of shares or other securities of a participatory nature;
  - (b) the granting of any financing or financial assistance to entities in the DPRK, or DPRK entities or DPRK-owned entities outside the DPRK, that are engaged in activities referred to in point (a) or for the documented purpose of financing such entities in the DPRK;
  - (c) the creation of any joint venture with entities in the DPRK that are engaged in activities referred to in point (a) or with any subsidiary or affiliate under their control;
  - (d) the provision of investment services directly related to the activities referred to in points (a) to (c).

#### CHAPTER IV

#### FINANCIAL SECTOR

##### *Article 12*

Member States shall not enter into new commitments for grants, financial assistance or concessional loans to the DPRK, including through their participation in international financial institutions, except for humanitarian and developmental purposes directly addressing the need of the civilian population or the promotion of denuclearisation. Member States shall also exercise vigilance with a view to reducing current commitments and, if possible, putting an end to them.

##### *Article 13*

In order to prevent the provision of financial services or the transfer to, through, or from the territory of Member States, or to or by nationals of Member States or entities organised under their laws, or persons or financial institutions within their jurisdiction, of any financial or other assets or resources, including bulk cash, that could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes or activities, or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013) 2094 (2013) or 2270 (2016) or by this Decision, or to the evasion of measures imposed by those UNSCRs or by this Decision, the following shall apply:

- (1) No transfer of funds to or from the DPRK shall take place, except for transactions that fall within the scope of point (3) and have been authorised in accordance with point (4).
- (2) Financial institutions under the jurisdiction of Member States shall not enter into, or continue to participate in, any transactions with:
  - (a) banks domiciled in the DPRK, including the Central Bank of the DPRK;
  - (b) branches or subsidiaries within the jurisdiction of the Member States of banks domiciled in the DPRK;
  - (c) branches or subsidiaries outside the jurisdiction of the Member States of banks domiciled in the DPRK; or
  - (d) financial entities that are neither domiciled in the DPRK nor within the jurisdiction of the Member States but are controlled by persons or entities domiciled in the DPRK,

unless such transactions fall within the scope of point (3) and have been authorised in accordance with point (4).

- (3) The following transactions may be carried out, subject to the prior authorisation referred to in point (4):
- (a) transactions regarding foodstuffs, healthcare or medical equipment, or for agricultural or humanitarian purposes;
  - (b) transactions regarding personal remittances;
  - (c) transactions regarding the execution of the exemptions provided for in this Decision;
  - (d) transactions in connection with a specific trade contract not prohibited under this Decision;
  - (e) transactions regarding a diplomatic or consular mission or an international organisation enjoying immunities in accordance with international law, insofar as such transactions are intended to be used for official purposes of the diplomatic or consular mission or international organisation;
  - (f) transactions required exclusively for the implementation of projects funded by the Union or its Member States for development purposes directly addressing the need of the civilian population or the promotion of denuclearisation;
  - (g) transactions regarding payment to satisfy claims against the DPRK or DPRK persons or entities, on a case-by-case basis and subject to notification 10 days prior to authorisation, and transactions of a similar nature that do not contribute to activities prohibited under this Decision.
- (4) Any transfer of funds to or from the DPRK for the transactions referred to in point (3) shall require prior authorisation by the competent authority of the Member State concerned if above EUR 15 000. The relevant Member State shall inform the other Member States of any authorisation granted.
- (5) The prior authorisation referred to in point (4) shall not be required for any transfer of funds or transaction which is necessary for the official purposes of a diplomatic or consular mission of a Member State in the DPRK.
- (6) Financial institutions shall be required, in their activities with banks and financial institutions as set out in point (2), to:
- (a) exercise continuous vigilance over account activity, including through their programmes on customer due diligence and in accordance with their obligations relating to money-laundering and the financing of terrorism;
  - (b) require that all information fields of payment instructions which relate to the originator and the beneficiary of the transaction in question be completed and, if that information is not supplied, refuse the transaction;
  - (c) maintain all records of transactions for a period of five years and make them available to national authorities on request;
  - (d) promptly report their suspicions to the Financial Intelligence Unit (FIU) or another competent authority designated by the Member State concerned if they suspect, or have reasonable grounds to suspect, that funds contribute to the DPRK's nuclear-related, ballistic-missile related or other weapons of mass destruction-related programmes or activities; the FIU or other competent authority shall have access, directly or indirectly, on a timely basis to the financial, administrative and law-enforcement information that it requires to perform that function properly, including the analysis of suspicious transaction reports.

#### Article 14

1. The opening of branches, subsidiaries or representative offices of DPRK banks, including the Central Bank of the DPRK, its branches and subsidiaries, and of other financial entities referred to in point (2) of Article 13, in the territories of Member States shall be prohibited.
2. Existing branches, subsidiaries and representative offices shall be closed within 90 days of the adoption of UNSCR 2270 (2016).

3. Unless approved in advance by the Sanctions Committee, it shall be prohibited for DPRK banks, including the Central Bank of the DPRK, its branches and subsidiaries, and for other financial entities referred to in point (2) of Article 13, to:

- (a) establish new joint ventures with banks under the jurisdiction of Member States;
- (b) take an ownership interest in banks under the jurisdiction of Member States;
- (c) establish or maintain correspondent banking relationships with banks under the jurisdiction of Member States.

4. Existing joint ventures, ownership interests and correspondent banking relationships with DPRK banks shall be terminated within 90 days of the adoption of UNSCR 2270 (2016).

5. Financial institutions within the territories of Member States or under their jurisdiction shall be prohibited from opening representative offices, subsidiaries, branches or banking accounts in the DPRK.

6. Existing representative offices, subsidiaries or banking accounts in the DPRK shall be closed within 90 days of the adoption of UNSCR 2270 (2016) if the relevant Member State has credible information that provides reasonable grounds to believe that such financial services could contribute to the DPRK's nuclear or ballistic-missile programmes, or to other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).

7. Paragraph 6 shall not apply if the Sanctions Committee determines on a case-by-case basis that such offices, subsidiaries or accounts are required for the delivery of humanitarian assistance, the activities of diplomatic missions in the DPRK pursuant to the Vienna Conventions on Diplomatic and Consular Relations, the activities of the UN or its specialised agencies or related organisations, or any other purposes consistent with UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).

8. Existing representative offices, subsidiaries or banking accounts in the DPRK shall be closed if the relevant Member State has credible information that provides reasonable grounds to believe that such financial services could contribute to the DPRK's nuclear or ballistic-missile programmes or to other activities prohibited by this Decision.

9. A Member State may grant exemptions from paragraph 8 if it determines on a case-by-case basis that such offices, subsidiaries or accounts are required for the delivery of humanitarian assistance, the activities of diplomatic missions in the DPRK pursuant to the Vienna Conventions on Diplomatic and Consular Relations, the activities of the UN or its specialised agencies or related organisations, or any other purposes consistent with this Decision. The Member State concerned shall inform the other Member States in advance of its intention to grant an exemption.

#### Article 15

The direct or indirect sale or purchase of, or brokering or assistance in the issuance of, DPRK public or public-guaranteed bonds issued after 18 February 2013 to or from the Government of the DPRK, its public bodies, corporations and agencies, the Central Bank of the DPRK, or banks domiciled in the DPRK, or branches and subsidiaries, within and outside the jurisdiction of Member States, of banks domiciled in the DPRK, or financial entities that are neither domiciled in the DPRK nor within the jurisdiction of the Member States, but are controlled by persons or entities domiciled in the DPRK, as well as any persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, shall be prohibited.

#### CHAPTER V

#### TRANSPORT SECTOR

#### Article 16

1. Member States shall inspect, in accordance with their national authorities and legislation and consistent with international law, including the Vienna Conventions on Diplomatic and Consular Relations, all cargo to and from the DPRK in their territory, or transiting through their territory, including at their airports, seaports and free-trade zones, or cargo brokered or facilitated by the DPRK or DPRK nationals, or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, or by persons or entities listed in Annex I, or cargo that is being transported on DPRK-flagged aircraft or maritime vessels, for the purposes of ensuring that no items are transferred in violation of UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).



2. Member States shall inspect, in accordance with their national authorities and legislation and consistent with international law, including the Vienna Conventions on Diplomatic and Consular Relations, all cargo to and from the DPRK in their territory, or transiting through their territory, or cargo brokered or facilitated by the DPRK or DPRK nationals, or persons or entities acting on their behalf, including at their airports and seaports, if they have information that provides reasonable grounds to believe that the cargo contains items whose supply, sale, transfer or export is prohibited under this Decision.
3. Member States shall inspect vessels, with the consent of the flag State, on the high seas if they have information that provides reasonable grounds to believe that the cargo of such vessels contains items whose supply, sale, transfer or export is prohibited under this Decision.
4. Member States shall cooperate, in accordance with their national legislation, with inspections pursuant to paragraphs 1 to 3.
5. Aircrafts and vessels transporting cargo to and from the DPRK shall be subject to the requirement of additional pre-arrival or pre-departure information for all goods brought into or out of a Member State.
6. In cases where inspection referred to in paragraphs 1 to 3 is undertaken, Member States shall seize and dispose of items whose supply, sale, transfer or export is prohibited under this Decision in accordance with paragraph 14 of UNSCR 1874 (2009) and paragraph 8 of UNSCR 2087 (2013).
7. Member States shall deny entry into their ports of any vessel that has refused to allow an inspection after such an inspection has been authorised by the vessel's flag State, or if any DPRK-flagged vessel has refused to be inspected pursuant to paragraph 12 of UNSCR 1874 (2009).
8. Paragraph 7 shall not apply where entry is required for the purpose of an inspection, or in the case of an emergency or in the case of return to the vessel's port of origin.

#### *Article 17*

1. Member States shall deny permission to land in, take off from or overfly their territory to any aircraft, operated by DPRK carriers or originating from the DPRK in accordance with their national authorities and legislation and consistent with international law, in particular relevant international civil-aviation agreements.
2. Paragraph 1 shall not apply in the case of an emergency landing or under the condition of landing for inspection.
3. Paragraph 1 shall not apply in the event that the relevant Member State determines in advance that such entry is required for humanitarian purposes or any other purposes consistent with the objectives of this Decision.

#### *Article 18*

1. Member States shall prohibit the entry into their ports of any vessel that is owned, operated or crewed by the DPRK.
2. Member States shall prohibit the entry into their ports of any vessel if they have information that provides reasonable grounds to believe that the vessel is owned or controlled, directly or indirectly, by a person or entity listed in Annex I, II or III, or contains cargo whose supply, sale, transfer or export is prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision.
3. Paragraph 1 shall not apply in the case of an emergency, in the case of return to the vessel's port of origination, where entry is required for the purpose of inspection or if the relevant Member State determines in advance that such entry is required for humanitarian purposes or any other purposes consistent with the objectives of this Decision.

4. Paragraph 2 shall not apply in the case of an emergency, in the case of return to the vessel's port of origination, where entry is required for the purpose of inspection or if the Sanctions Committee determines in advance that such entry is required for humanitarian purposes or any other purposes consistent with the objectives of UNSCR 2270 (2016) or if the relevant Member State determines in advance that such entry is required for humanitarian purposes or any other purposes consistent with the objectives of this Decision. The Member State concerned shall inform the other Member States of any entry it has granted.

#### *Article 19*

The provision by nationals of Member States or from the territories of Member States of bunkering or ship-supply services, or other servicing of vessels, to DPRK vessels shall be prohibited if they have information that provides reasonable grounds to believe that the vessels carry items whose supply, sale, transfer or export is prohibited under this Decision, unless provision of such services is necessary for humanitarian purposes or until the cargo has been inspected, and seized and disposed of if necessary, in accordance with Article 16(1), (2), (3) and (6).

#### *Article 20*

1. It shall be prohibited to lease or charter Member States' flagged vessels or aircraft or to provide crew services to the DPRK, any persons or entities listed in Annex I, II or III, any other DPRK entities, any other persons or entities whom the Member State determines to have assisted in the evasion of sanctions or in the violation of the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or of this Decision, any persons or entities acting on behalf or at the direction of any of the aforementioned, or any entities owned or controlled by any of the aforementioned.

2. Paragraph 1 shall not apply to the leasing, chartering or provision of crew services, provided that the relevant Member State has notified the Sanctions Committee in advance on a case-by-case basis and has provided the Sanctions Committee with the information demonstrating that such activities are exclusively for livelihood purposes which will not be used by DPRK persons or entities to generate revenue, as well as information on measures taken to prevent such activities from contributing to violations of the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).

3. A Member State may grant an exemption from paragraph 1 if it determines on a case-by-case basis that such activities are exclusively for livelihood purposes which will not be used by DPRK persons or entities to generate revenue, and provided that it has information on measures taken to prevent such activities from contributing to violations of the provisions of this Decision. The Member State concerned shall inform the other Member States in advance of its intention to grant the exemption.

#### *Article 21*

Member States shall deregister any vessel that is owned, operated or crewed by the DPRK and shall not register any such vessel that is deregistered by another State pursuant to paragraph 19 of UNSCR 2270 (2016).

#### *Article 22*

1. It shall be prohibited to register vessels in the DPRK, to obtain authorisation for a vessel to use the DPRK flag, or own, lease, operate, or provide any vessel classification, certification or associated service, or to insure any vessel flagged by the DPRK.

2. Paragraph 1 shall not apply to activities notified in advance to the Sanctions Committee on a case-by-case basis, provided that the relevant Member State has provided the Sanctions Committee with detailed information on the activities, including the names of persons and entities involved in them, information demonstrating that such activities are exclusively for livelihood purposes which will not be used by DPRK persons or entities to generate revenue and information on measures taken to prevent such activities from contributing to violations of UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and 2270 (2016).

#### CHAPTER VI

#### RESTRICTIONS ON ADMISSION AND RESIDENCE

##### Article 23

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of:
  - (a) the persons designated by the Sanctions Committee or by the UN Security Council as being responsible for, including through supporting or promoting, the DPRK's policies in relation to its nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes, together with their family members, or persons acting on their behalf of or at their direction, as listed in Annex I;
  - (b) the persons not covered by Annex I, as listed in Annex II, who:
    - (i) are responsible for, including through supporting or promoting, the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes or persons acting on their behalf or at their direction,
    - (ii) provide financial services or the transfer to, through, or from the territory of Member States, or involving nationals of Member States or entities organised under their laws, or persons or financial institutions in their territory, of any financial or other assets or resources that could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes,
    - (iii) are involved in, including through the provision of financial services, the supply to or from the DPRK of arms and related materiel of all types, or the supply to the DPRK of items, materials, equipment, goods and technology which could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes;
  - (c) the persons not covered by Annex I or Annex II working on behalf or at the direction of a person or entity listed in Annex I or Annex II or persons assisting in the evasion of sanctions or violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or of this Decision, as listed in Annex III to this Decision.
2. Point (a) of paragraph 1 shall not apply where the Sanctions Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligations, or where the Sanctions Committee concludes that an exemption would otherwise further the objectives of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).
3. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.
4. Paragraph 1 shall be without prejudice to cases where a Member State is bound by an obligation of international law, namely:
  - (a) as a host country of an international intergovernmental organisation;
  - (b) as a host country to an international conference convened by, or under the auspices of, the UN;
  - (c) under a multilateral agreement conferring privileges and immunities;
  - (d) under the 1929 Treaty of Conciliation (Lateran pact) concluded by the Holy See (Vatican City State) and Italy.

5. Paragraph 4 shall also be considered to apply in cases where a Member State is host country of the Organisation for Security and Cooperation in Europe (OSCE).
6. The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraph 4 or 5.
7. Member States may grant exemptions from the measures imposed in point (b) of paragraph 1 where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings and those promoted or hosted by the Union, or hosted by a Member State holding the chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes the policy objectives of restrictive measures, including democracy, human rights and the rule of law in the DPRK.
8. A Member State wishing to grant exemptions referred to in paragraph 7 shall notify the Council thereof in writing. The exemption shall be deemed to be granted unless one or more of the Council members raises an objection in writing within two working days of receiving notification of the proposed exemption. Should one or more of the Council members raise an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.
9. Point (c) of paragraph 1 shall not apply in case of transit of representatives of the Government of the DPRK to the UN Headquarters to conduct UN business.
10. In cases where, pursuant to paragraphs 4, 5, 7 and 9, a Member State authorises the entry into, or transit through, its territory of persons listed in Annex I, II or III, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.
11. Member States shall exercise vigilance and restraint regarding the entry into, or transit through their territories of persons working on behalf or at the direction of a designated person or entity listed in Annex I.

#### *Article 24*

1. Member States shall expel DPRK nationals who they determine are working on behalf of or at the direction of a person or entity listed in Annex I or Annex II, or who they determine are assisting in the evasion of sanctions or violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or of this Decision, from their territories for the purpose of repatriation to the DPRK, consistent with applicable national and international law.
2. Paragraph 1 shall not apply where the presence of a person is required for the fulfilment of a judicial process or exclusively for medical, safety or other humanitarian purposes.

#### *Article 25*

1. Member States shall expel DPRK diplomats, government representatives or other DPRK nationals acting in a governmental capacity who they determine are working on behalf of or at the direction of a person or entity listed in Annex I, II or III, or of a person or entity assisting in the evasion of sanctions or violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or of this Decision, from their territories for the purpose of repatriation to the DPRK, consistent with applicable national and international law.
2. Paragraph 1 shall not apply in case of transit of representatives of the Government of the DPRK to the UN Headquarters or other UN facilities to conduct UN business.
3. Paragraph 1 shall not apply where the presence of a person is required for the fulfilment of a judicial process or exclusively for medical, safety or other humanitarian purposes, or the Sanctions Committee has determined on a case-by-case basis that the expulsion of a person would be contrary to the objectives of UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and 2270 (2016), or the relevant Member State has determined on a case-by-case basis that the expulsion of a person would be contrary to the objectives of this Decision. The Member State concerned shall inform the other Member States of any decision not to expel a person referred to in paragraph 1.

*Article 26*

1. Member States shall expel any national of a third country who they determine is working on behalf of or at the direction of a person or entity listed in Annex I or II, assisting in the evasion of sanctions or violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or of this Decision, from their territories for the purpose of repatriation to that person's State of nationality, consistent with applicable national and international law.

2. Paragraph 1 shall not apply where the presence of a person is required for the fulfilment of a judicial process or exclusively for medical, safety or other humanitarian purposes, or the Sanctions Committee has determined on a case-by-case basis that the expulsion of a person would be contrary to the objectives of UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and 2270 (2016), or if the relevant Member State has determined on a case-by-case basis that the expulsion of a person would be contrary to the objectives of this Decision. The Member State concerned shall inform the other Member States of any decision not to expel a person referred to in paragraph 1.

3. Paragraph 1 shall not apply in case of transit of representatives of the Government of the DPRK to the UN Headquarters or other UN facilities to conduct UN business.

## CHAPTER VII

## FREEZING OF FUNDS AND ECONOMIC RESOURCES

*Article 27*

1. All funds and economic resources belonging to or owned, held or controlled, directly or indirectly, by the following persons and entities shall be frozen:

- (a) the persons and entities designated by the Sanctions Committee or by the UN Security Council as being engaged in or providing support for, including through illicit means, the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes, or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, including through illicit means, as listed in Annex I;
- (b) the persons and entities not covered by Annex I, as listed in Annex II, that:
  - (i) are responsible for, including through supporting or promoting, the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction related programmes or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, including through illicit means,
  - (ii) provide financial services or the transfer to, through, or from the territory of Member States, or involving nationals of Member States or entities organised under their laws, or persons or financial institutions in their territory, of any financial or other assets or resources that could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes, or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them,
  - (iii) are involved, including through the provision of financial services, in the supply to or from the DPRK of arms and related materiel of all types, or the supply to the DPRK of items, materials, equipment, goods and technology which could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes;
- (c) the persons and entities not covered by Annex I or Annex II working on behalf or at the direction of a person or entity listed in Annex I or Annex II or persons assisting in the evasion of sanctions or violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or of this Decision, as listed in Annex III to this Decision;
- (d) the entities of the Government of the DPRK or the Worker's Party of Korea, or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, that the Member State determines are associated with the DPRK's nuclear or ballistic-missile programmes or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of persons or entities referred to in paragraph 1.

3. Exemptions may be made for funds and economic resources which are:

- (a) necessary to satisfy basic needs, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public-utility charges;
- (b) intended exclusively for the payment of reasonable professional fees or the reimbursement of incurred expenses associated with the provision of legal services; or
- (c) intended exclusively for the payment of fees or service charges, in accordance with national laws, for the routine holding or maintenance of frozen funds and economic resources,

after notification, where appropriate, by the Member State concerned to the Sanctions Committee of the intention to authorise access to such funds and economic resources and in the absence of a negative decision by the Sanctions Committee within five working days of such notification.

4. Exemptions may also be made for funds and economic resources which are:

- (a) necessary for extraordinary expenses. Where appropriate, the Member State concerned shall first notify and get approval from the Sanctions Committee; or
- (b) the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds and economic resources may be used to satisfy that lien or judgment, provided that the lien was entered into or the judgment delivered prior to the date on which the person or entity referred to in paragraph 1 was designated by the Sanctions Committee, the UN Security Council or the Council, and is not for the benefit of a person or entity referred to in paragraph 1. Where appropriate the Member State concerned shall first notify the Sanctions Committee.

5. Paragraph 2 shall not apply to the addition to frozen accounts of:

- (a) interest or other earnings on those accounts; or
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the date on which those accounts became subject to the restrictive measures,

provided that any such interest, other earnings and payments continue to be subject to paragraph 1.

6. Paragraph 1 shall not prevent a designated person or entity listed in Annex II from making a payment due under a contract entered into before the listing of that person or entity, provided that the relevant Member State has determined that:

- (a) the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in Article 1;
- (b) the payment is not directly or indirectly received by a person or entity referred to in paragraph 1,

and after notification by the relevant Member State of the intention to make or receive such payments or to authorise, where appropriate, the unfreezing of funds or economic resources for this purpose, 10 working days prior to such authorisation.

7. With regard to Korea National Insurance Corporation (KNIC):

(a) The relevant Member States may authorise the receipt by Union persons and entities of payments by KNIC provided that:

(i) the payment is due:

(a) in accordance with the provisions of a contract for insurance services provided by KNIC necessary for the activities of the Union person or entity in the DPRK, or

(b) in accordance with the provisions of a contract for insurance services provided by KNIC in respect of damage caused within the territory of the Union by any party to such a contract;

- (ii) the payment is not directly or indirectly received by a person or entity referred to in paragraph 1; and
  - (iii) the payment is not directly or indirectly related to activities prohibited under this Decision.
- (b) The relevant Member State may authorise Union persons and entities to make payments to KNIC exclusively for the purpose of obtaining insurance services necessary for the activities of such persons or entities in the DPRK, provided that those activities are not prohibited under this Decision.
  - (c) No such authorisation shall be required for payments by or to KNIC which are necessary for the official purposes of a diplomatic or consular mission of a Member State in the DPRK.
  - (d) Paragraph 1 shall not prevent KNIC from making a payment due under a contract concluded before its listing, provided that the relevant Member State has determined that:
    - (i) the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in this Decision;
    - (ii) the payment is not directly or indirectly received by a person or entity referred to in paragraph 1.

A Member State shall inform the other Member States of any authorisation granted pursuant to this paragraph.

#### *Article 28*

Point (d) of Article 27(1) shall not apply with respect to funds, other financial assets or economic resources that are required to carry out the activities of the DPRK's missions to the UN and its specialised agencies and related organisations or other diplomatic and consular missions of the DPRK, or to any funds, other financial assets or economic resources that the Sanctions Committee determines in advance on a case-by-case basis are required for the delivery of humanitarian assistance, denuclearisation or any other purpose consistent with the objectives of UNSCR 2270 (2016).

#### *Article 29*

1. Representative offices of entities listed in Annex I shall be closed.
2. The direct or indirect participation in joint ventures or any other business arrangements by entities listed in Annex I, as well as persons or entities acting for or on their behalf, is prohibited.

### CHAPTER VIII

#### **OTHER RESTRICTIVE MEASURES**

#### *Article 30*

Member States shall take the necessary measures to exercise vigilance and prevent specialised teaching or training of DPRK nationals, within their territories or by their nationals, in disciplines which would contribute to the DPRK's proliferation-sensitive nuclear activities and the development of nuclear-weapon delivery systems, including teaching or training in advanced physics, advanced computer simulation and related computer sciences, geospatial navigation, nuclear engineering, aerospace engineering, aeronautical engineering and related disciplines.

#### *Article 31*

Member States shall, in accordance with international law, exercise enhanced vigilance over DPRK diplomatic personnel so as to prevent such persons from contributing to the DPRK's nuclear or ballistic-missile programmes, or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision, or to the evasion of measures imposed by those UNSCRs or by this Decision.

## CHAPTER IX

## GENERAL AND FINAL PROVISIONS

*Article 32*

No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, wholly or in part, by the measures imposed pursuant to UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016), including measures of the Union or of any Member State in accordance with, as required by or in any connection with the implementation of the relevant decisions of the UN Security Council or measures covered by this Decision, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

- (a) designated persons or entities listed in Annex I, II or III;
- (b) any other person or entity in the DPRK, including the Government of the DPRK, its public bodies, corporations and agencies; or
- (c) any person or entity acting through or on behalf of one of the persons or entities referred to in points (a) or (b).

*Article 33*

1. The Council shall adopt modifications to Annex I on the basis of the determinations made by the UN Security Council or by the Sanctions Committee.
2. The Council, acting by unanimity on a proposal from Member States or the High Representative of the Union for Foreign Affairs and Security Policy, shall establish the lists in Annex II or III and adopt modifications thereto.

*Article 34*

1. Where the UN Security Council or the Sanctions Committee lists a person or entity, the Council shall include that person or entity in Annex I.
2. Where the Council decides to subject a person or entity to the measures referred to in points (b) or (c) of Article 23(1) or point (b) of Article 27(1), it shall amend Annex II or III accordingly.
3. The Council shall communicate its decision to the person or entity referred to in paragraphs 1 and 2, including the grounds for listing, either directly, if the address is known, or through the publication of a notice, providing that person or entity with an opportunity to present observations.
4. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the person or entity accordingly.

*Article 35*

1. Annexes I, II and III shall include the grounds for listing of listed persons and entities, as provided by the UN Security Council or by the Sanctions Committee with regard to Annex I.
2. Annexes I, II and III shall also include, where available, information necessary to identify the persons or entities concerned, as provided by the UN Security Council or by the Sanctions Committee with regard to Annex I. With regard to persons, such information may include names, including aliases, date and place of birth, nationality, passport and ID card numbers, gender, address, if known, and function or profession. With regard to entities, such information may include names, place and date of registration, registration number and place of business. Annex I shall also include the date of designation by the UN Security Council or by the Sanctions Committee.



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*Article 36*

1. This Decision shall be reviewed, and, if necessary, amended, in particular as regards the categories of persons, entities or items or additional persons, entities or items to be covered by the restrictive measures, or in accordance with relevant UNSCRs.

2. The measures referred to in points (b) and (c) of Article 23(1) and points (b) and (c) of Article 27(1) shall be reviewed at regular intervals and at least every 12 months. They shall cease to apply in respect of the persons and entities concerned if the Council determines, in accordance with the procedure referred to in Article 33(2), that the conditions for their application are no longer met.

*Article 37*

Decision 2013/183/CFSP is repealed.

*Article 38*

This Decision shall enter into force on the date following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 27 May 2016.

*For the Council*  
*The President*  
A.G. KOENDERS



## **Annex 14**

European Union, Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007 [2017] OJ L224/1

Available at <http://data.europa.eu/eli/reg/2017/1509/oj>

## II

(Non-legislative acts)

## REGULATIONS

## COUNCIL REGULATION (EU) 2017/1509

of 30 August 2017

**concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP <sup>(1)</sup>,

Having regard to the joint proposal of the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission,

Whereas:

- (1) On 14 October 2006, the UN Security Council ('UNSC') adopted Resolution 1718 (2006) in which it condemned the nuclear test that the Democratic People's Republic of Korea ('DPRK') had conducted on 9 October 2006, determining that there was a clear threat to international peace and security, and required all Member States of the UN to apply a number of restrictive measures against the DPRK. Subsequent UNSC Resolutions (UNSCRs) 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016) and 2371 (2017) further extended these restrictive measures.
- (2) In accordance with these UNSCRs, Decision (CFSP) 2016/849 provides in particular for restrictions on the import and export of certain goods, services and technology which could contribute to the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes (Weapons of mass destruction (WMD) programmes), a luxury goods embargo as well as an asset freeze on persons, entities and bodies that have been linked to the WMD programmes. Further measures target the transport sector, including inspections of cargo and prohibitions pertaining to DPRK vessels and aircraft, the financial sector, such as a provision of certain financial services, and the diplomatic sphere, to prevent abuse of privileges and immunities.
- (3) Furthermore, the Council has adopted several additional EU restrictive measures that complement and reinforce the UN-based restrictive measures. To that end, the Council extended the arms embargo, import and export restrictions, extended the list of persons and entities subject to an asset freeze and introduced prohibitions on transfers of funds and investment.
- (4) Adoption of a regulation within the meaning of Article 215 of the Treaty at the level of the Union is necessary in order to give effect to the above-mentioned restrictive measures, in particular with a view to ensuring their uniform application by economic operators in all Member States.
- (5) Council Regulation (EC) No 329/2007 <sup>(2)</sup> has been amended several times. In view of the extent of the amendments introduced, it is appropriate to consolidate all measures into a new regulation which repeals and replaces Regulation (EC) No 329/2007.

<sup>(1)</sup> OJ L 141, 28.5.2016, p. 79.

<sup>(2)</sup> Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea (OJ L 88, 29.3.2007, p. 1).

- (6) The Commission should be empowered to publish the list of goods and technology that will be adopted by the Committee of the UNSC which was established pursuant to paragraph 12 of UNSCR 1718 (2006) ('Sanctions Committee') or the UNSC and, if appropriate, to add the nomenclature codes from the Combined Nomenclature as set out in Annex I to Council Regulation (EEC) No 2658/87 <sup>(1)</sup>.
- (7) The Commission should also be empowered to amend the list of luxury goods if necessary in view of any definition or guidelines that the Sanctions Committee may promulgate to facilitate the implementation of the restrictions concerning luxury goods, taking the lists of luxury goods produced in other jurisdictions into account.
- (8) The power to amend the lists in Annexes XIII, XIV, XV, XVI and XVII to this Regulation should be exercised by the Council, in view of the specific threat to international peace and security posed by DPRK, and in order to ensure consistency with the process for amending and reviewing Annexes I, II, III, IV and V to Decision (CFSP) 2016/849.
- (9) The Commission should be empowered to amend the list of services, taking into account information provided by Member States as well as any definition or guidelines that may be issued by the United Nations Statistical Commission, or in order to add reference numbers taken from the Central Product Classification system for goods and services promulgated by the United Nations Statistical Commission.
- (10) UNSCR 2270 (2016) recalls that the Financial Action Task Force ('FATF') has called upon countries to apply enhanced due diligence and effective countermeasures to protect their jurisdictions from the DPRK's illicit financial activity, and calls upon UN Member States to apply FATF Recommendation 7, its Interpretive Note and related guidance to effectively implement targeted financial sanctions related to proliferation.
- (11) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and in particular the right to an effective remedy and to a fair trial and the right to the protection of personal data. This Regulation should be applied in accordance with those rights.
- (12) For the implementation of this Regulation, and to create the highest level of legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources are to be frozen in accordance with this Regulation, should be made public. Any processing of personal data of natural persons under this Regulation should be in conformity with Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(2)</sup> and Directive 95/46/EC of the European Parliament and of the Council <sup>(3)</sup>,

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

#### Definitions

##### Article 1

This Regulation shall apply:

- (a) within the territory of the Union;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Union who is a national of a Member State;
- (d) to any legal person, entity or body, inside or outside the territory of the Union which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

<sup>(1)</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1)

<sup>(2)</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

<sup>(3)</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

## Article 2

For the purposes of this Regulation, the following definitions apply:

- (1) 'branch' of a financial or credit institution means a place of business which forms a legally dependent part of a financial or credit institution and which carries out directly all or some of the transactions inherent in the business of financial or credit institutions;
- (2) 'brokering services' means:
  - (a) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, including from a third country to any other third country; or
  - (b) the selling or buying of goods and technology or of financial and technical services, including where they are located in third countries for their transfer to another third country;
- (3) 'claim' means any claim, whether asserted by legal proceedings or not under or in connection with a contract or transaction, and includes in particular:
  - (a) a claim for performance of any obligation arising under or in connection with a contract or transaction;
  - (b) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;
  - (c) a claim for compensation in respect of a contract or transaction;
  - (d) a counterclaim;
  - (e) a claim for the recognition or enforcement, including by the procedure of exequatur, of a judgment, an arbitration award or an equivalent decision, wherever made or given;
- (4) 'competent authorities' refers to the competent authorities as identified on the websites listed in Annex I;
- (5) 'contract or transaction' means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose 'contract' includes a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;
- (6) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(1)</sup>, including branches thereof, as defined in point (17) of Article 4(1) of that Regulation, located in the Union, whether its head office is situated within the Union or in a third country;
- (7) 'diplomatic missions, consular posts and their members' has the same meaning as in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, and also includes missions of the DPRK to international organisations hosted in the Member States and DPRK members of those missions;
- (8) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, actual or potential, which are not funds but can be used to obtain funds, goods or services, including vessels, such as maritime vessels;
- (9) 'financial institution' means
  - (a) an undertaking, other than a credit institution, which carries out one or more of the activities listed in points (2) to (12), (14) and (15) of Annex I to Directive 2013/36/EU of the European Parliament and of the Council <sup>(2)</sup>, including the activities of currency exchange offices (bureaux de change);
  - (b) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council <sup>(3)</sup>, insofar as it carries out life assurance activities covered by that Directive;

<sup>(1)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ L 176, 27.6.2013, p. 1).

<sup>(2)</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>(3)</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

- (c) an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council <sup>(1)</sup>;
  - (d) a collective investment undertaking marketing its units or shares;
  - (e) an insurance intermediary as defined in point (5) of Article 2 of Directive 2002/92/EC of the European Parliament and of the Council <sup>(2)</sup> where it acts with respect to life insurance and other investment-related services, with the exception of a tied insurance intermediary as defined in point (7) of that Article;
  - (f) branches, when located in the Union, of financial institutions as referred to in points (a) to (e), whether their head office is situated in a Member State or in a third country;
- (10) 'freezing of economic resources' means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;
- (11) 'freezing of funds' means preventing any moving, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management;
- (12) 'funds' means financial assets and benefits of every kind, including but not limited to:
- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
  - (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
  - (c) publicly and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
  - (d) interest, dividends or other income on or value accruing from or generated by assets;
  - (e) credit, right of set-off, guarantees, performance bonds or other financial commitments;
  - (f) letters of credit, bills of lading, bills of sale;
  - (g) documents evidencing an interest in funds or financial resources;
- (13) 'insurance' means an undertaking or commitment whereby one or more natural or legal persons are obliged, in return for a payment, to provide one or more other persons, in the event of the materialisation of a risk, with an indemnity or a benefit as determined by the undertaking or commitment;
- (14) 'investment services' means the following services and activities:
- (a) reception and transmission of orders in relation to one or more financial instruments;
  - (b) execution of orders on behalf of clients;
  - (c) dealing on own account;
  - (d) portfolio management;
  - (e) investment advice;
  - (f) underwriting of financial instruments and/or placing of financial instruments on a firm-commitment basis;
  - (g) placing of financial instruments without a firm-commitment basis;
  - (h) any service in relation to the admission to trading on a regulated market or trading on a multilateral trading facility;
- (15) 'payee' means a natural or legal person who is the intended recipient of the transfer of funds;

<sup>(1)</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

<sup>(2)</sup> Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3).

- (16) 'payer' means a person who holds a payment account and allows a transfer of funds from that payment account, or, where there is no payment account, that gives a transfer-of-funds order;
- (17) 'payment service provider' means the categories of payment service provider referred to in Article 1(1) of Directive 2007/64/EC of the European Parliament and of the Council <sup>(1)</sup>, natural or legal persons benefiting from a waiver pursuant to Article 26 of Directive 2007/64/EC and legal persons benefiting from a waiver pursuant to Article 9 of Directive 2009/110/EC of the European Parliament and of the Council <sup>(2)</sup>, providing transfer-of-funds services;
- (18) 'reinsurance' means the activity consisting in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking or, in the case of the association of underwriters known as Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;
- (19) 'services incidental to' means services rendered on a fee or contract basis by units mainly engaged in the production of transportable goods, as well as services typically related to the production of such goods;
- (20) 'shipowner' means the registered owner of a seagoing ship, or any other person such as the bareboat charterer who is responsible for the operation of the ship;
- (21) 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; including verbal forms of assistance;
- (22) 'territory of the Union' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace;
- (23) 'transfer of funds' means:
- (a) any transaction at least partially carried out by electronic means on behalf of a payer through a payment service provider, with a view to making funds available to a payee through a payment service provider, irrespective of whether the payer and the payee are the same person and irrespective of whether the payment service provider of the payer and that of the payee are one and the same, including:
- (i) a credit transfer as defined in point (1) of Article 2 of Regulation (EU) No 260/2012 of the European Parliament and of the Council <sup>(3)</sup>;
- (ii) a direct debit as defined in point (2) of Article 2 of Regulation (EU) No 260/2012;
- (iii) a money remittance as defined in point (13) of Article 4 of Directive 2007/64/EC, whether national or cross border;
- (iv) a transfer carried out using a payment card, an electronic money instrument, or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics; and
- (b) any transaction by non-electronic means, such as in cash, cheques or accountancy orders, with a view to making funds available to a payee irrespective of whether the payer and the payee are the same person.
- (24) 'a vessel crewed by the DPRK' means:
- (a) a vessel whose manning is controlled by:
- (i) a natural person of DPRK nationality; or
- (ii) a legal person, entity or body incorporated or constituted under the law of the DPRK;
- (b) a vessel entirely manned by DPRK nationals.

<sup>(1)</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market (OJ L 319, 5.12.2007, p. 1).

<sup>(2)</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (OJ L 267, 10.10.2009, p. 7).

<sup>(3)</sup> Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22)



## CHAPTER II

**Export and import restrictions***Article 3*

1. It shall be prohibited:

- (a) to sell, supply, transfer or export, directly or indirectly, the goods and technology, including software, listed in Annex II, whether or not originating in the Union, to any natural or legal person, entity or body in, or for use in the DPRK;
- (b) to sell, supply, transfer or export aviation fuel, directly or indirectly, as listed in Annex III to the DPRK or transport to DPRK aviation fuel on board the flag vessels or aircraft of Member States, whether or not originating in the territories of Member States;
- (c) to import, purchase or transfer, directly or indirectly, the goods and technology listed in Annex II from the DPRK, whether or not originating in the DPRK;
- (d) to import, purchase or transfer, directly or indirectly, gold, titanium ore, vanadium ore and rare-earth minerals, as listed in Annex IV, from the DPRK, whether or not originating in the DPRK;
- (e) to import, purchase or transfer, directly or indirectly, coal, iron and iron ore, as listed in Annex V, from the DPRK, whether or not originating in the DPRK;
- (f) to import, purchase or transfer, directly or indirectly, from DPRK petroleum products, as listed in Annex VI, whether or not originating in the DPRK; and
- (g) to import, purchase or transfer, directly or indirectly, copper, nickel, silver and zinc, as listed in Annex VII, from the DPRK, whether or not originating in the DPRK;

2. Part I of Annex II shall include all items, materials, equipment, goods and technology, including software, which are dual-use items or technology as defined in Annex I to Council Regulation (EC) No 428/2009 <sup>(1)</sup>.

Part II of Annex II shall include other items, materials, equipment, goods and technology which could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.

Part III of Annex II shall include certain key components for the ballistic-missile sector.

Part IV of Annex II shall include weapons of mass destruction-related items, materials, equipment, goods and technology designated, pursuant to paragraph 25 of UNSCR 2270 (2016).

Part V of Annex II shall include weapons of mass destruction-related items, materials, equipment, goods and technology designated, pursuant to paragraph 4 of UNSCR 2321 (2016).

Annex III shall include the aviation fuel referred to in point (b) of paragraph 1.

Annex IV shall include the gold, titanium ore, vanadium ore and rare-earth minerals, referred to in point (d) of paragraph 1.

Annex V shall include the coal, iron and iron ore, referred to in point (e) of paragraph 1.

Annex VI shall include the petroleum products referred to in point (f) of paragraph 1.

Annex VII shall include the copper, nickel, silver and zinc, referred to in point (g) of paragraph 1.

3. The prohibition referred to in point (b) of paragraph 1 shall not apply with respect to the sale or supply of aviation fuel to civilian passenger aircraft outside the DPRK exclusively for consumption during their flight to the DPRK and their return to the airport of origin.

<sup>(1)</sup> Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

*Article 4*

1. By way of derogation from point (b) of Article 3(1), the competent authorities of the Member States may authorise the sale, supply or transfer of aviation fuel, provided that the Member State has obtained the advance approval of the Sanctions Committee on an exceptional case-by-case basis for the transfer to the DPRK of such products for verified essential humanitarian needs and subject to specified arrangements for effective monitoring of delivery and use.
2. By way of derogation from point (e) of Article 3(1), the competent authorities of the Member States may authorise:
  - (a) the import, purchase or transfer of coal provided that the competent authorities of the Member States have determined on the basis of credible information that the shipment originated outside the DPRK and was transported through the DPRK solely for export from the Port of Rajin (Rason), that the relevant Member State has notified the Sanctions Committee in advance of such transactions, and that the transactions are unrelated to generating revenue for the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes and other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016), or by this Regulation;
  - (b) transactions in iron and iron ore that are determined to be exclusively for livelihood purposes and unrelated to generating revenue for the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes or other activities prohibited by UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016), or by this Regulation; and
  - (c) transactions in coal that are determined to be exclusively for livelihood purposes provided that all of the following conditions are met:
    - (i) the transactions are unrelated to generating revenue for the DPRK's nuclear or ballistic missile programmes or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016);
    - (ii) the transactions do not involve individuals or entities that are associated with the DPRK's nuclear or ballistic missile programmes or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016), including the persons, entities and bodies listed in Annex XIII, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, directly or indirectly, or individuals or entities assisting in the evasion of sanctions; and
    - (iii) the Sanctions Committee has not notified the Member States that the aggregate annual limit has been reached.
3. The Member State concerned shall notify the other Member States and the Commission of any authorisation granted pursuant to paragraphs 1 and 2.

*Article 5*

1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, to the DPRK any item, except food or medicine, if the exporter knows or has reasonable grounds to believe that:
  - (a) the item is destined directly or indirectly for the DPRK's armed forces; or
  - (b) the export of the item could support or enhance the operational capabilities of the armed forces of a State other than the DPRK.
2. It shall be prohibited to import, purchase or transport from DPRK items referred to in paragraph 1 if the importer or transporter knows or has reasonable grounds to believe that one of the grounds in point (a) or (b) of paragraph 1 is met.

*Article 6*

1. By way of derogation from Article 5, the competent authorities of the Member States may authorise the sale, supply, transfer or export of an item to the DPRK, or the import, purchase or transport of an item from the DPRK, where:
  - (a) the item does not relate to the production, development, maintenance or use of military goods, or development or the maintenance of military personnel, and the competent authority has determined that the item would not directly contribute to the development of the operational capabilities of the DPRK's armed forces or to exports that support or enhance the operational capabilities of armed forces of a third country other than the DPRK;

- (b) the Sanctions Committee has determined that a particular supply, sale or transfer would not be contrary to the objectives of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016); or
  - (c) the competent authority of the Member State is satisfied that the activity is exclusively for either humanitarian or livelihood purposes which will not be used by DPRK persons, entities or bodies to generate revenue, and is not related to any activity prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016), provided that the Member State notifies the Sanctions Committee in advance of such a determination and informs the Sanctions Committee of measures taken to prevent the diversion of the item for any prohibited purpose.
2. The Member State concerned shall notify the other Member States and the Commission of its intention to grant an authorisation under this Article at least one week prior to granting the authorisation.

#### Article 7

1. It shall be prohibited:
- (a) to provide, directly or indirectly, technical assistance and brokering services related to goods and technology listed in the EU Common List of Military Equipment or in Annex II, and related to the provision, manufacture, maintenance and use of goods listed in the EU Common List of Military Equipment or in Annex II, to any natural or legal person, entity or body in, or for use in the DPRK;
  - (b) to provide, directly or indirectly, financing or financial assistance related to goods and technology listed in the EU Common List of Military Equipment or in Annex II, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any natural or legal person, entity or body in, or for use in the DPRK;
  - (c) to obtain, directly or indirectly, technical assistance related to goods and technology listed in the EU Common List of Military Equipment or in Annex II, and to the provision, manufacture, maintenance and use of goods listed in the EU Common List of Military Equipment or in Annex II from any natural or legal person, entity or body in, or for use in the DPRK;
  - (d) to obtain, directly or indirectly, financing or financial assistance related to goods and technology listed in the EU Common List of Military Equipment or in Annex II, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance from any natural or legal person, entity or body in, or for use in, the DPRK.
2. The prohibitions set out in paragraph 1 shall not apply to non-combat vehicles which have been manufactured or fitted with materials to provide ballistic protection, intended solely for protective use of personnel of the Union and its Member States in the DPRK.

#### Article 8

1. By way of derogation from Article 3(1) and Article 7(1), the competent authorities of the Member States may authorise, under the terms and conditions they deem appropriate, the direct or indirect supply, sale, transfer or export of the items and technology, including software, referred to in point (a) and (b) of Article 3(1) or the assistance or brokering services referred to in Article 7(1), provided that the goods and technology, assistance or brokering services are for food, agricultural, medical or other humanitarian purposes.
2. By way of derogation from point (a) of Article 3(1) and points (a) and (b) of Article 7(1), the competent authorities of the Member States may authorise the transactions referred to therein under the conditions they deem appropriate and provided that the UNSC has approved the request.
3. The Member State concerned shall notify the other Member States and the Commission of any request for approval which it has submitted to the UNSC pursuant to paragraph 3.
4. The Member State concerned shall notify the other Member States and the Commission within four weeks of authorisations granted pursuant to this Article.

*Article 9*

1. In addition to the obligation to provide the competent customs authorities with the pre-arrival and pre-departure information as determined in the relevant provisions concerning entry and exit summary declarations as well as customs declarations in Regulation (EU) No 952/2013 of the European Parliament and of the Council <sup>(1)</sup>, in Commission Delegated Regulation (EU) 2015/2446 <sup>(2)</sup> and in Commission Implementing Regulation (EU) 2015/2447 <sup>(3)</sup>, the person who provides the information referred to in paragraph 2 shall declare whether the goods are covered by the EU Common List of Military Equipment or by this Regulation and, where their export is subject to authorisation, specify the goods and technology covered by the export licence granted.
2. The required additional information shall be submitted using an electronic customs declaration or, in the absence of such a declaration, in any other electronic or written form, as appropriate.

*Article 10*

1. It shall be prohibited:
  - (a) to sell, supply, transfer or export, directly or indirectly, luxury goods as listed in Annex VIII, to the DPRK;
  - (b) to import, purchase or transfer from the DPRK, directly or indirectly, luxury goods, as listed in Annex VIII, whether or not originating in the DPRK.
2. The prohibition referred to in point (b) of paragraph 1 shall not apply to travellers' personal effects or to goods of a non-commercial nature for travellers' personal use contained in their luggage.
3. The prohibitions referred to in paragraph 1 shall not apply to goods which are necessary for the official purposes of diplomatic or consular missions of Member States in the DPRK or of international organisations enjoying immunities in accordance with international law, or to the personal effects of their staff.
4. The competent authorities of the Member States may authorise, under the conditions they deem appropriate, a transaction with regard to goods referred to in point (17) of Annex VIII, provided that the goods are for humanitarian purposes.

*Article 11*

It shall be prohibited:

- (a) to sell, supply, transfer or export, directly or indirectly, gold, precious metals and diamonds as listed in Annex IX, whether or not originating in the Union, to or for the Government of the DPRK, its public bodies, corporations and agencies, the Central Bank of the DPRK and any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them;
- (b) to import, purchase or transport, directly or indirectly, gold, precious metals and diamonds, as listed in Annex IX, whether or not originating in the DPRK, from the Government of the DPRK, its public bodies, corporations and agencies, the Central Bank of the DPRK and any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them;
- (c) to provide, directly or indirectly, technical assistance or brokering services, financing or financial assistance, related to the goods referred to in points (a) and (b), to the Government of the DPRK, its public bodies, corporations and agencies, the Central Bank of the DPRK and any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them.

<sup>(1)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

<sup>(2)</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

<sup>(3)</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

*Article 12*

It shall be prohibited to sell, supply, transfer or export, directly or indirectly, newly printed or unissued DPRK denominated banknotes and minted coinage, to or for the benefit of the Central Bank of DPRK.

*Article 13*

It shall be prohibited to import, purchase or transfer, directly or indirectly, statues as listed in Annex X, from DPRK whether or not originating in the DPRK.

*Article 14*

By way of derogation from the prohibition in Article 13, the competent authorities of the Member States may authorise the import, purchase or transfer, provided that the Member State concerned has obtained the advance approval of the Sanctions Committee on a case-by-case basis.

*Article 15*

It shall be prohibited to sell, supply, transfer or export, directly or indirectly, helicopters and vessels, as listed in Annex XI, to the DPRK.

*Article 16*

By way of derogation from the prohibition in Article 15, the competent authorities of the Member States may authorise such a sale, supply, transfer or export, provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.

## CHAPTER III

**Restrictions on Certain Commercial Activities***Article 17*

1. It shall be prohibited, in the territory of the Union, to accept or approve investment in any commercial activity, where such investment is made by:

- (a) natural or legal persons, entities or bodies of the Government of the DPRK;
- (b) the Workers' Party of Korea;
- (c) nationals of the DPRK;
- (d) legal persons, entities or bodies incorporated or constituted under the law of the DPRK;
- (e) natural or legal persons, entities or bodies acting on behalf or at the direction of persons, entities or bodies referred to in (a) to (d); and
- (f) natural or legal persons, entities or bodies owned or controlled by the natural or legal persons, entities or bodies referred to in (a) to (d).

2. It shall be prohibited:

- (a) to establish a joint venture with, or take or extend an ownership interest, including by acquisition in full or the acquisition of shares and other securities of a participatory nature in, any natural or legal person, entity or body referred to in paragraph 1 engaged in the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related activities or programmes, or in activities in the sectors of mining, refining, chemical, metallurgy and metalworking, and aerospace or conventional arms-related industries;

- (b) to grant financing or financial assistance to any natural or legal person, entity or body referred to in points (d) to (f) of paragraph 1 or for the documented purpose of financing such natural or legal persons, entities or bodies;
- (c) to provide investment services directly or indirectly related to the activities referred to in points (a) and (b) of this paragraph; and
- (d) to participate directly or indirectly in joint ventures or in any other business arrangements with entities listed in Annex XIII, as well as with natural or legal persons, entities or bodies acting for or on their behalf or direction.

#### Article 18

1. It shall be prohibited:
  - (a) to provide, directly or indirectly, any services incidental to mining or any services incidental to manufacturing in the chemical, mining and refining industry, that are referred to in part A of Annex XII, to any natural or legal person, entity or body in, or for use in, the DPRK; and
  - (b) to provide, directly or indirectly, computer and related services as referred to in part B of Annex XII, to any natural or legal person, entity or body in, or for use in, the DPRK.
2. The prohibition in point (b) of paragraph 1 shall not apply with respect to computer and related services, insofar as such services are intended to be used exclusively for the official purposes of a diplomatic or consular mission or an international organisation enjoying immunities in the DPRK in accordance with international law.
3. The prohibition in point (b) of paragraph 1 shall not apply with respect to the provision of computer and related services by public bodies or by legal persons, entities or bodies that receive public funding from the Union or Member States to provide these services for development purposes that directly address the needs of the civilian population or the promotion of denuclearisation.

#### Article 19

1. By way of derogation from point (a) of Article 18(1), the competent authorities of the Member States may authorise the provision of services incidental to mining and the provision of services incidental to manufacturing in the chemical, mining and refining industries, insofar as such services are intended to be used exclusively for development purposes that directly address the needs of the civilian population or the promotion of denuclearisation.
2. In cases not covered by Article 18(3), and by way of derogation from point (b) of Article 18(1), the competent authorities of the Member States may authorise the provision of computer and related services, insofar as those services are intended to be used exclusively for development purposes that directly address the needs of the civilian population or the promotion of denuclearisation.

#### Article 20

1. It shall be prohibited:
  - (a) to lease or otherwise make available real property, directly or indirectly, to persons, entities or bodies of the Government of the DPRK, for any purpose other than diplomatic or consular activities, pursuant to the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations;
  - (b) to lease real property, directly or indirectly, from persons, entities or bodies of the Government of the DPRK; and
  - (c) to engage in any activity linked to the use of real property that persons, entities or bodies of the Government of the DPRK own, lease or are otherwise entitled to use, except for the provision of goods and services which:
    - (i) are essential for the functioning of diplomatic missions or consular posts, pursuant to the 1961 and 1963 Vienna Conventions; and
    - (ii) cannot be used to generate income or profit, directly or indirectly, for the Government of the DPRK.
2. For the purposes of this Article 'real property' means land, buildings and parts thereof which are located outside the territory of the DPRK.

## CHAPTER IV

**Restrictions on Transfers of Funds and Financial Services***Article 21*

1. It shall be prohibited to transfer funds to and from the DPRK.
2. It shall be prohibited for credit and financial institutions to enter into, or continue to participate in, any transactions with:
  - (a) credit and financial institutions domiciled in the DPRK;
  - (b) branches or subsidiaries falling within the scope of Article 1 of credit and financial institutions domiciled in the DPRK;
  - (c) branches or subsidiaries falling outside the scope of Article 1 of credit and financial institutions domiciled in the DPRK;
  - (d) credit and financial institutions that are not domiciled in the DPRK, that fall within the scope of Article 1 and that are controlled by persons, entities or bodies domiciled in the DPRK;
  - (e) credit and financial institutions that are not domiciled in DPRK or do not fall within the scope of Article 1, but are controlled by persons, entities or bodies domiciled in the DPRK.
3. The prohibitions in paragraphs 1 and 2 shall not apply to any transfer of funds or transaction which is necessary for the official purposes of a diplomatic or consular mission of a Member State in the DPRK or an international organisation enjoying immunities in DPRK in accordance with international law.
4. The prohibitions in paragraphs 1 and 2 shall not apply to any of the following transactions, provided that they involve a transfer of funds for amounts equal to or below EUR 15 000 or equivalent:
  - (a) transactions regarding foodstuffs, healthcare or medical equipment or for agricultural or humanitarian purposes;
  - (b) transactions regarding personal remittances;
  - (c) transactions regarding the execution of the exemptions provided for in this Regulation;
  - (d) transactions in connection with a specific trade contract not prohibited by this Regulation;
  - (e) transactions required exclusively for the implementation of projects funded by the Union or its Member States for development purposes directly addressing the needs of the civilian population or the promotion of denuclearisation; and
  - (f) transactions regarding a diplomatic or consular mission or an international organisation enjoying immunities in accordance with international law, insofar as such transactions are intended to be used for official purposes of the diplomatic or consular mission or international organisation.

*Article 22*

1. By way of derogation from the prohibitions in Article 21(1) and (2), the competent authorities of the Member States may authorise the transactions mentioned in points (a) to (f) of Article 21(4) with a value above EUR 15 000 or equivalent.
2. The requirement for authorisation referred to in paragraph 1 shall apply regardless of whether the transfer of funds is executed in a single operation or in several operations which appear to be linked. For the purpose of this Regulation, 'operations which appear to be linked' includes:
  - (a) a series of consecutive transfers from or to the same credit or financial institution within the scope of Article 21(2), to or from the same DPRK person, entity or body, which are made in connection with a single obligation to transfer funds, where each individual transfer falls below EUR 15 000 but which, in the aggregate, meet the criteria for authorisation; and

- (b) a chain of transfers involving different payment service providers, or natural or legal persons, which is related to a single obligation to make a transfer of funds.
3. The Member States shall notify each other and the Commission of any authorisation granted pursuant to paragraph 1.
4. By way of derogation from the prohibitions in Article 21(1) and (2), the competent authorities of the Member States may authorise transactions regarding payments to satisfy claims against the DPRK, its nationals or legal persons, entities or bodies incorporated or constituted under the law of the DPRK, and transactions of a similar nature that do not contribute to activities prohibited by this Regulation, on a case-by-case basis and if the Member State concerned has notified the other Members States and the Commission at least 10 days in advance of granting an authorisation.

#### Article 23

1. Credit and financial institutions shall, in their activities with credit and financial institutions referred to in Article 21(2):
- (a) apply customer due diligence measures established pursuant to Articles 13 and 14 of Directive (EU) 2015/849 of the European Parliament and of the Council <sup>(1)</sup>;
  - (b) ensure compliance with anti-money-laundering and counter-terrorist-financing procedures established pursuant to Directive (EU) 2015/849 and Regulation (EU) 2015/847 of the European Parliament and of the Council <sup>(2)</sup>;
  - (c) require that information on payers as well as information on payees accompanying transfers of funds is provided as required by Regulation (EU) 2015/847 and refuse to process the transaction if any of this information is missing or incomplete;
  - (d) maintain records of the transactions in accordance with point (b) of Article 40 of Directive (EU) 2015/849;
  - (e) where there are reasonable grounds to suspect that funds could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes or activities (proliferation financing), promptly notify the competent Financial Intelligence Unit (FIU) as defined by Directive (EU) 2015/849, or any other competent authority designated by the Member State concerned, without prejudice to Article 7(1) or Article 33 of this Regulation;
  - (f) promptly report any suspicious transactions, including attempted transactions;
  - (g) refrain from carrying out transactions which they reasonably suspect could be related to proliferation financing until they have completed the necessary action in accordance with point (e) and have complied with any instructions from the relevant FIU or competent authority.
2. For the purposes of paragraph 1, the FIU, or any other competent authority serving as a national centre for receiving and analysing suspicious transactions, shall receive reports regarding potential proliferation financing and shall have access, directly or indirectly, on a timely basis, to the financial, administrative and law-enforcement information that it requires in order to perform that function properly, including the analysis of suspicious transaction reports.

#### Article 24

It shall be prohibited for credit and financial institutions:

- (a) to open an account with a credit or financial institution referred to in Article 21(2);
- (b) to establish a correspondent banking relationship with a credit or financial institution referred to in Article 21(2);

<sup>(1)</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

<sup>(2)</sup> Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).



- (c) to open representative offices in the DPRK, or to establish a new branch or subsidiary, in the DPRK; and
- (d) to establish a joint venture with or to take an ownership interest in a credit or financial institution referred to in Article 21(2).

#### Article 25

1. By way of derogation from the prohibitions in points (b) and (d) of Article 24, the competent authorities of the Member States may authorise transactions if they have been approved by the Sanctions Committee in advance.
2. The Member State concerned shall promptly notify the other Member States and the Commission of any authorisation under paragraph 1.

#### Article 26

In accordance with the requirements of UNSCR 2270 (2016), credit and financial institutions shall, on 31 May 2016 at the latest:

- (a) close any account with a credit or financial institution referred to in Article 21(2);
- (b) terminate any correspondent banking relationship with a credit or financial institution referred to in Article 21(2);
- (c) close representative offices, branches, and subsidiaries in the DPRK;
- (d) terminate joint ventures with a credit or financial institution referred to in Article 21(2); and
- (e) relinquish any ownership interest in a credit or financial institution referred to in Article 21(2).

#### Article 27

1. By way of derogation from points (a) and (c) of Article 26, the competent authorities of the Member States may authorise certain representative offices, subsidiaries or accounts to remain operational, provided that the Sanctions Committee has determined on a case-by-case basis that such offices, subsidiaries or accounts are required for the delivery of humanitarian activities or the activities of diplomatic missions in the DPRK or the activities of the UN or its specialised agencies or related organisations or any other purpose consistent with the objectives of UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016) or 2371 (2017).
2. The Member State concerned shall promptly notify the other Member States and the Commission of any authorisation granted pursuant to paragraph 1.

#### Article 28

1. It shall be prohibited for credit and financial institutions to open an account for DPRK diplomatic missions or consular posts, and their DPRK members.
2. On 11 April 2017 at the latest, credit and financial institutions shall close any account held or controlled by a DPRK diplomatic mission or consular post, and their DPRK members.

#### Article 29

1. By way of derogation from Article 28(1), the competent authorities of the Member States may authorise, upon request of a DPRK diplomatic mission, consular post, or one of their members, the opening of one account per mission, post and member, provided that the mission or post is hosted in that Member State or the member of the mission or post is accredited to that Member State.

2. By way of derogation from Article 28(2), the competent authorities of the Member States may authorise an account to remain open, upon request by a DPRK mission, post, or member, provided that the Member State has determined that:

- (i) the mission or post is hosted in that Member State or the member of that mission or post is accredited to that Member State; and
- (ii) the mission, post or its member does not hold any other account within that Member State.

In the event that the mission, post or the DPRK member holds more than one account within that Member State, the mission, post, or member may indicate which account shall be retained.

3. Subject to the applicable rules of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, the Member States shall inform the other Member States and the Commission of the names and identifying information of any DPRK member of the diplomatic mission and consular post accredited to that Member State, at the latest on 13 March 2017, and of subsequent updates within one week.

4. The competent authorities of the Member States may inform credit and financial institutions in that Member State of the identity of any DPRK member of a diplomatic mission or consular post accredited to that or any other Member State.

5. The Member States shall inform the other Member States and the Commission of any authorisation granted pursuant to paragraphs 1 and 2.

#### *Article 30*

It shall be prohibited:

- (a) to authorise the opening of a representative office or the establishment of a branch or subsidiary in the Union of a credit or financial institution referred to in Article 21(2);
- (b) to conclude agreements for, or on behalf of, a credit or financial institution referred to in Article 21(2) pertaining to the opening of a representative office or the establishment of a branch or subsidiary in the Union;
- (c) to grant an authorisation for taking up and pursuing the business of a credit institution or for any other business requiring prior authorisation, by a representative office, branch or subsidiary of a credit or financial institution referred to in Article 21(2), if the representative office, branch or subsidiary was not operational before 19 February 2013;
- (d) to acquire or to extend a participation, or to acquire any other ownership interest, in a credit or financial institution falling within the scope of Article 1 by any credit or financial institution referred to in Article 21(2); and
- (e) to operate or facilitate the operation of a representative office, branch or subsidiary of a credit or financial institution referred to in Article 21(2).

#### *Article 31*

It shall be prohibited:

- (a) to sell or purchase public or public-guaranteed bonds issued after 19 February 2013, directly or indirectly, to or from any of the following:
  - (i) the DPRK or its Government, and its public bodies, corporations and agencies;
  - (ii) the Central Bank of the DPRK;
  - (iii) any credit or financial institution referred to in Article 21(2);
  - (iv) a natural person or a legal person, entity or body acting on behalf or at the direction of a legal person, entity or body referred to in point (i) or (ii);
  - (v) a legal person, entity or body owned or controlled by a person, entity or body referred to in point (i), (ii) or (iii);

- (b) to provide brokering services with regard to public or public-guaranteed bonds issued after 19 February 2013 to a person, entity or body referred to in point (a);
- (c) to assist a person, entity or body referred to in point (a) in order to issue public or public-guaranteed bonds, by providing brokering services, advertising or any other service with regard to such bonds.

#### *Article 32*

It shall be prohibited to provide financing or financial assistance for trade with the DPRK, including the granting of export credits, guarantees or insurance to natural or legal persons, entities or bodies involved in such trade.

#### *Article 33*

1. By way of derogation from Article 32, the competent authorities of the Member States may authorise financial support for trade with the DPRK, provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.
2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

### CHAPTER V

#### **Freezing of Funds and Economic Resources**

#### *Article 34*

1. All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annexes XIII, XV, XVI and XVII shall be frozen.
2. All vessels listed in Annex XIV shall be seized.
3. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes XIII, XV, XVI and XVII.
4. Annex XIII shall include the persons, entities and bodies designated by the Sanctions Committee or the UNSC in accordance with paragraph 8(d) of UNSCR 1718 (2006), and paragraph 8 of UNSCR 2094 (2013).

Annex XIV shall include the vessels that have been designated by the Sanctions Committee pursuant to paragraph 12 of UNSCR 2321 (2016).

Annex XV shall include persons, entities and bodies not listed in Annex XIII and XIV, who, in accordance with point (b) of Article 27(1) of Decision (CFSP) 2016/849, or any equivalent subsequent provision, have been identified by the Council:

- (a) as responsible for, including through supporting or promoting, the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, or persons, entities or bodies acting on their behalf or at their direction, or persons, entities or bodies owned or controlled by them, including through illicit means;
- (b) as providing financial services or the transfer to, through or from the territory of the Union, or involving nationals of Member States or entities organised under their laws, or persons or financial institutions in the territory of the Union, of any financial or other assets or resources that could contribute to the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, or persons, entities or bodies acting on their behalf or at their direction, or persons, entities or bodies owned or controlled by them; or
- (c) as involved in, including through the provision of financial services, the supply to or from the DPRK of arms and related material of all types, or of items, materials, equipment, goods and technology which could contribute to the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes.

5. Annex XVI shall include the persons, entities or bodies not covered by Annex XIII, XIV or XV who are working on behalf of or at the direction of a person, entity or body listed in Annex XIII, XIV or XV or persons assisting in the evasion of sanctions or violating the provisions of this Regulation.
6. Annex XVII shall include the entities or bodies of the Government of the DPRK, or the Workers' Party of Korea, persons, entities or bodies acting on their behalf or at their direction, and entities or bodies owned or controlled by them, which are associated with the DPRK's nuclear or ballistic missile programs or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016) or 2371 (2017), and which are not covered by Annexes XIII, XIV, XV or XVI.
7. Annexes XV, XVI and XVII shall be reviewed at regular intervals and at least every 12 months.
8. Annexes XIII, XIV, XV, XVI and XVII shall include the grounds for the listing of listed persons, entities, bodies and vessels concerned.
9. Annexes XIII, XIV, XV, XVI and XVII shall also include, where available, information necessary to identify the natural or legal persons, entities, bodies and vessels concerned. With regard to natural persons, such information may include names including aliases, date and place of birth, nationality, passport and ID card numbers, gender, address, if known, and function or profession. With regard to legal persons, entities and bodies, such information may include names, place and date of registration, registration number and place of business.
10. The prohibition in paragraphs 1 and 3, inasmuch as they refer to the persons, entities or bodies listed in Annex XVII, shall not apply where the funds and economic resources are required to carry out the activities of the DPRK's missions to the UN and its specialised agencies and related organisations or other diplomatic and consular missions of the DPRK, or where the competent authority of the Member State has obtained advance approval of the Sanctions Committee on a case-by-case basis that the funds, financial assets or economic resources are required for the delivery of humanitarian assistance, denuclearisation or any other purpose consistent with the objectives of UNSCR 2270 (2016).
11. Paragraph 3 shall not prevent financial or credit institutions in the Union from crediting frozen accounts where they receive funds transferred by third parties to the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall notify the competent authorities about such transactions without delay.
12. Provided that any such interest, other earnings and payments are frozen in accordance with paragraph 1, paragraph 3 shall not apply to the addition to frozen accounts of:
  - (a) interest or other earnings on those accounts; and
  - (b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which the person, entity or body referred to in this article was designated.

#### Article 35

1. By way of derogation from Article 34, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under the conditions they deem appropriate, where the following conditions are met:
  - (a) after having determined that the funds or economic resources concerned are necessary to satisfy the basic needs of natural or legal persons, entities or bodies listed in Annexes XIII, XV, XVI or XVII and dependent family members of such natural persons, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges and payments intended exclusively for:
    - (i) reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; or
    - (ii) fees or services charges for routine holding or maintenance of frozen funds or economic resources; and
  - (b) where the authorisation concerns a person, entity or body listed in Annex XIII, the Member State concerned has notified the Sanctions Committee of that determination and its intention to grant an authorisation, and the Sanctions Committee has not objected to that course of action within five working days of notification.

2. By way of derogation from Article 34, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, after having determined that the funds or economic resources are necessary for extraordinary expenses, provided that:
- (a) where the authorisation concerns a person, entity or body listed in Annex XIII, the Sanctions Committee has been notified of this determination by the Member State concerned and that the determination has been approved by that Committee;
  - (b) where the authorisation concerns a person, entity or body listed in Annex XV, XVI or XVII the Member State concerned has notified other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation.
3. The Member State concerned shall promptly notify the other Member States and the Commission of any authorisation granted under paragraphs 1 and 2.

#### Article 36

1. By way of derogation from Article 34, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, where the following conditions are met:
- (a) the funds or economic resources are the subject of a judicial, administrative or arbitral decision established prior to the date on which the person, entity or body referred to in Article 34 was designated, or of a judicial, administrative or arbitral lien rendered prior to that date;
  - (b) the funds or economic resources are to be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a lien, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
  - (c) the decision or lien is not for the benefit of a person, entity or body listed in Annex XIII, XV, XVI or XVII;
  - (d) recognising the decision or lien is not contrary to public policy in the Member State concerned;
  - (e) the decision or lien in respect of persons, entities and bodies listed in Annex XIII has been notified by the Member State concerned to the Sanctions Committee.
2. By way of derogation from Article 34, and provided that a payment by a person, entity or body listed in Annex XV, XVI or XVII is due under a contract or agreement that was concluded by, or under an obligation for the person, entity or body concerned that arose before the date on which that person, entity or body has been designated, the competent authorities of the Member States may authorise, under the conditions they deem appropriate, the release of certain frozen funds or economic resources, provided that the competent authority concerned has determined that:
- (a) the contract is not related to any item, operation, service or transaction referred to in point (a) of Article 3(1), Article 3(3) or Article 7; and
  - (b) the payment is not directly or indirectly received by a person, entity or body listed in Annex XV, XVI or XVII.
3. The Member State concerned shall, at least 10 days prior to the granting of each authorisation pursuant to paragraph 2, notify the other Member States and the Commission of that determination and of its intention to grant an authorisation.

#### Article 37

The prohibitions in Article 34(1) and (3) shall not apply with regard to funds and economic resources belonging or made available to the Foreign Trade Bank or the Korean National Insurance Company (KNIC) insofar as such funds and economic resources are meant exclusively for the official purposes of a diplomatic or consular mission in the DPRK, or for humanitarian assistance activities which are undertaken by, or in coordination with, the United Nations.

## CHAPTER VI

**Restrictions on Transport***Article 38*

1. Cargo, including personal luggage and checked baggage, within or transiting through the Union, including airports, seaports and free zones, as referred to in Articles 243 to 249 of Regulation (EU) No 952/2013, shall be liable for inspection for the purposes of ensuring that it does not contain items prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2371 (2017), or by this Regulation where:

- (a) the cargo originates from the DPRK;
- (b) the cargo is destined for the DPRK;
- (c) the cargo has been brokered or facilitated by the DPRK or its nationals or its individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them;
- (d) the cargo has been brokered or facilitated by persons, entities or bodies listed in Annex XIII;
- (e) the cargo is being transported on a DPRK flagged vessel or aircraft registered to the DPRK, or on a stateless vessel or aircraft.

2. Where the cargo within or transiting through the Union, including airports, seaports and free zones, falls outside of the scope of paragraph 1, it shall be liable for inspection where there are reasonable grounds to believe that it may contain items the sale, supply, transfer or export of which is prohibited by this Regulation in the following circumstances:

- (a) the cargo originates in the DPRK;
- (b) the cargo is destined for the DPRK; or
- (c) the cargo has been brokered or facilitated by the DPRK or its nationals or individuals or entities acting on their behalf.

3. Paragraphs 1 and 2 shall be without prejudice to the inviolability and protection of diplomatic and consular bags provided for in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations.

4. The provision of bunkering or ship-supply services, or any other servicing of vessels, to DPRK vessels is prohibited where the providers of the service have information, including from the competent customs authorities on the basis of the pre-arrival and pre-departure information referred to in Article 9(1), that provides reasonable grounds to believe that the vessels carry items whose supply, sale, transfer or export is prohibited by this Regulation, unless the provision of such services is necessary for humanitarian purposes.

*Article 39*

1. It shall be prohibited to provide access to ports in the territory of the Union to any vessel:

- (a) that is owned, operated or crewed by the DPRK;
- (b) that is flagged to the DPRK;
- (c) where there are reasonable grounds to believe that it is owned or controlled, directly or indirectly, by a person or entity listed in Annex XIII, XV, XVI or XVII;
- (d) where there are reasonable grounds to believe that it contains items the supply, sale, transfer or export of which is prohibited by this Regulation;
- (e) which has refused to be inspected after such an inspection has been authorised by the vessel's flag State or State of registration;
- (f) which is without nationality and has refused to be inspected in accordance with Article 38(1); or
- (g) that is listed under Annex XIV.

2. Paragraph 1 shall not apply:
- (a) in the case of an emergency;
  - (b) where the vessel is returning to its port of origin;
  - (c) in the case of a vessel coming into port for inspection where that concerns a vessel within the scope of points (a) to (e) of paragraph 1.

#### Article 40

1. By way of derogation from the prohibition in Article 39(1), where that concerns a vessel within the scope of points (a) to (e), the competent authorities of the Member States may authorise that vessel to come into port if:
- (a) the Sanctions Committee has determined in advance that this is required for humanitarian purposes or any other purpose consistent with the objectives of UNSCR 2270 (2016); or
  - (b) the Member State has determined in advance that this is required for humanitarian purposes or any other purpose consistent with the objectives of this Regulation.
2. By way of derogation from the prohibition in point (f) of Article 39(1), the competent authorities of the Member States may authorise a vessel to come into port if the Sanctions Committee has so directed.

#### Article 41

1. It shall be prohibited for any aircraft operated by DPRK carriers or originating from the DPRK to take off from, land in or overfly the territory of the Union.
2. Paragraph 1 shall not apply:
- (a) where the aircraft is landing for inspection;
  - (b) in the case of an emergency landing.

#### Article 42

By way of derogation from Article 41, the competent authorities of the Member States may authorise an aircraft to take off from, land in or overfly the territory of the Union if those competent authorities have determined in advance that this is required for humanitarian purposes or any other purpose consistent with the objectives of this Regulation.

#### Article 43

It shall be prohibited:

- (a) to lease or charter vessels or aircraft or provide crew services to the DPRK, persons or entities listed in Annex XIII, XV, XVI or XVII, any other DPRK entities, any other persons or entities which have assisted in violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016) or 2371 (2017) or any person or entity acting on behalf of, or at the direction of, any such person or entity, and entities owned or controlled by them;
- (b) to procure vessel or aircraft crew services from the DPRK;
- (c) to own, lease, operate, insure or provide vessel classification services or associated services, to any vessel flagged to the DPRK;
- (d) to register or maintain on the register, any vessel that is owned, controlled or operated by the DPRK or DPRK nationals, or has been de-registered by another State pursuant to paragraph 24 of UNSCR 2321 (2016); or
- (e) to provide insurance or reinsurance services to vessels owned, controlled or operated by the DPRK.

*Article 44*

1. By way of derogation from the prohibition in point (a) of Article 43, the competent authorities of the Member States may authorise the leasing, chartering or provision of crew services, provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.
2. By way of derogation from the prohibitions in points (b) and (c) of Article 43, the competent authorities of the Member States may authorise the owning, leasing, operating of, or providing vessel classification services or associated services to any DPRK flagged vessel, or the registration, or maintenance on the register, of any vessel that is owned, controlled or operated by the DPRK or DPRK nationals, provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.
3. By way of derogation from the prohibition in point (e) of Article 43, the competent authorities of the Member States may authorise the provision of insurance or reinsurance services, provided that the Sanctions Committee has determined in advance on a case-by-case basis that the vessel is engaged in activities exclusively for livelihood purposes which will not be used by DPRK individuals or entities to generate revenue or exclusively for humanitarian purposes.
4. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraphs 1, 2 and 3.

## CHAPTER VII

**General and Final Provisions***Article 45*

By way of derogation from the prohibitions arising from UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2070 (2016), 2321 (2016), 2356 (2016) or 2371 (2017) the competent authorities of Member States may authorise any activities if the Sanctions Committee has determined, on a case-by-case basis, that they are necessary to facilitate the work of international and non-governmental organisations carrying out assistance and relief activities in the DPRK for the benefit of the civilian population in the DPRK, pursuant to paragraph 46 of UNSCR 2321 (2016).

*Article 46*

The Commission shall be empowered to:

- (a) amend Annex I on the basis of information supplied by Member States;
- (b) amend Parts II, III, IV and V of Annex II and Annexes VI, VII, IX, X and XI on the basis of determinations made by either the Sanctions Committee or the UNSC and to update nomenclature codes from the Combined Nomenclature as set out in Annex I to Regulation (EEC) No 2658/87;
- (c) amend Annex VIII in order to refine or adapt the list of goods included therein, taking into account any definition or guidelines that may be promulgated by the Sanctions Committee or to update nomenclature codes from the Combined Nomenclature as set out in Annex I to Regulation (EEC) No 2658/87;
- (d) amend Annexes III, IV and V on the basis of determinations made by either the Sanctions Committee or the UNSC, or decisions taken concerning these Annexes in Decision (CFSP) 2016/849;
- (e) amend Annex XII in order to refine or adapt the list of services included therein, taking into account information provided by Member States as well as any definition or guidelines that may be issued by the United Nations Statistical Commission, or in order to add reference numbers taken from the Central Product Classification system for goods and services promulgated by the United Nations Statistical Commission.



*Article 47*

1. Where the Security Council or the Sanctions Committee lists a natural or legal person, entity or body, the Council shall include such natural or legal person, entity or body in Annex XIII and XIV.
2. Where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Article 34(1), (2) or (3), it shall amend Annexes XV, XVI and XVII accordingly.
3. The Council shall communicate its decision to the natural or legal person, entity or body referred to in paragraphs 1 and 2, including the grounds for listing, either directly, if the address is known, or through the publication of a notice, providing that natural or legal person, entity or body with an opportunity to present observations.
4. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body referred to in paragraphs 1 and 2 accordingly.
5. Where the United Nations decides to delist a natural or legal person, entity or body, or to amend the identifying data of a listed natural or legal person, entity or body, the Council shall amend Annexes XIII and XIV accordingly.

*Article 48*

The Commission and Member States shall immediately notify each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violations and enforcement problems and judgments handed down by national courts.

*Article 49*

1. Member States shall designate the competent authorities referred to in this Regulation and identify them in, or through, the websites as listed in Annex I.
2. Member States shall notify the Commission of their competent authorities without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

*Article 50*

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:
  - (a) supply immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 34, to the competent authorities of the Member States, where they are resident or located, and shall promptly transmit such information, directly or through the relevant Member States, to the Commission and;
  - (b) cooperate with the competent authorities, in any verification of this information.
2. Any additional information directly received by the Commission shall promptly be made available to the Member State concerned.
3. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

*Article 51*

The Commission shall process personal data in order to carry out the tasks incumbent on it under this Regulation and in accordance with the provisions of Regulation (EC) No 45/2001.

*Article 52*

It shall be prohibited to participate knowingly and intentionally in activities the object or effect of which is to circumvent the prohibitions contained in this Regulation.

*Article 53*

1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed by this Regulation, including claims for indemnity or any other claim of that type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

- (a) designated persons, entities or bodies listed in Annex XIII, XV, XVI or XVII, or the shipowners of vessels listed in Annex XIV;
- (b) any other DPRK person, entity or body, including the Government of the DPRK and its public bodies, corporations and agencies;
- (c) any person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in points (a) and (b).

2. The performance of a contract or transaction shall be regarded as having been affected by the measures imposed by this Regulation where the existence or content of the claim results directly or indirectly from those measures.

3. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the person seeking the enforcement of that claim.

4. This Article is without prejudice to the right of the persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.

*Article 54*

1. The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person, entity or body implementing it, or its directors or employees, unless it is proven that the funds and economic resources were frozen or withheld as a result of negligence.

2. Actions by natural or legal persons, entities or bodies shall not give rise to liability of any kind on their part, if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.

*Article 55*

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2. Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

*Article 56*

Regulation (EC) No 329/2007 is hereby repealed. References to the repealed Regulation shall be construed as references to this Regulation.

*Article 57*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 August 2017.

*For the Council*  
*The President*  
M. MAASIKAS

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## **Annex 15**

A. Barnett, “Suicide bombs are a duty, says Islamic scholar”,  
*The Guardian*, 28 August 2005

Available at  
<https://www.theguardian.com/politics/2005/aug/28/uk.terrorism>

# The Guardian

## Suicide bombs are a duty, says Islamic scholar

**Antony Barnett**

Sun 28 Aug 2005 00.42 BST

A controversial Islamic scholar who is backed by London Mayor Ken Livingstone has said it is a duty of Muslims in Iraq to become suicide bombers.

Sheikh Yusuf al-Qaradawi, speaking at a conference of Islamic scholars in Egypt last Monday, criticised a fellow scholar who said the Koran categorically forbids suicide but an individual has the right to take such action.

Al-Qaradawi said: 'I think that saying it is a legitimate right in Palestine and Iraq is not enough because a right is something that can be relinquished. It is a duty...

'The truth is we should refrain from raising this issue because doubting it is like joining the Zionists and Americans in condemning our brothers in Hamas, the Jihad, the Islamic factions and the resistance factions in Iraq.'

Although Al-Qaradawi goes on to condemn the terrorist attacks in London, he also said: 'We cannot say we pat these misguided boys on the back but we do want to listen to them. They have gone astray so we want to treat them in a way that will set them straight... we want to treat them the way clerics treat their students, the way fathers treat their sons.'

His comments will be certain to stir up controversy. Last week Livingstone said he would take the government to court if they tried to ban Al-Qaradawi from coming to Britain under its new anti-terrorist laws. Al-Qaradawi has supported suicide attacks on civilians in Israel but this appears to be the first time he has openly supports such terrorist attacks in Iraq.

The latest statements from Al-Qaradawi come as a Saudi Islamic activist in London has decided to shut down his controversial website. Mohammed al-Massari, the Saudi dissident whose site featured videos of suicide bombings in Israel and Iraq, and anti-Western and pro-al-Qaeda propaganda, posted an internet 'obituary' announcing his site had been a victim of the 'murder of freedom of opinion and expression by the oppressive regime lead by Tony Blair, the liar and well-known war criminal.'

Al-Massari, 58, who took refuge in London more than 10 years ago, said his website had been 'open to anyone who wanted to post a message,' suggesting he did not necessarily endorse them all.

He said he had temporarily shut the site while awaiting clarification on his status in Britain. 'Unfortunately, we had to suspend big parts of our electronic site until this inquisition blows over or until I move to a country that allows an acceptable degree of free speech,' Al-Massari said.

Last Wednesday, the government said it was prepared to act within days against 'a number of names' to either deport or bar them from the country under new anti-terrorism measures.

Suicide bombs are a duty, says Islamic scholar | Politics | The Guardian

The identities of those facing this action was not revealed, but among them was expected to be Palestinian cleric Abu Qatada, who has been called Osama bin Laden's spiritual ambassador in Europe, and Saad al-Faqih, a Saudi accused of supporting Bin Laden's terror network.





## **Annex 16**

Video Excerpt of Yusuf Al-Qaradawi, *Al-Jazeera Television*,  
9 January 2009

**(Video not reproduced)**

Website of the Middle East Media Research Institute available at  
<https://www.memri.org/tv/hamas-psychological-warfare-al-aqsa-tv-calls-israelis-return-where-you-came-and-promises-big>



January 29, 2009

Special Dispatch No.2183

## Sheikh Yousef Al-Qaradhawi on Al-Jazeera Incites Against Jews, Arab Regimes, and the U.S.; Calls on Muslims to Boycott Starbucks and Others; Says 'Oh Allah, Take This Oppressive, Jewish, Zionist Band of People... And Kill Them, Down to the Very Last One'

*Following are excerpts from a Friday sermon delivered by Sheikh Yousef Al-Qaradhawi, which aired on Al-Jazeera TV on January 9, 2009.*

*To view this clip, visit <http://www.memri.org/legacy/clip/1981>*

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**"The Islamic Countries... Received [the Jews] With Open Arms [When They Were Banished From Europe]... [But The Jews] Turned Their Backs On [Us], And We Have Become Their Victims"**

**Sheikh Yousef Al-Qaradhawi:** "I address my first message to the aggressor Jews, those arrogant plunderers, who act arrogantly toward the servants of Allah in the land of Allah.

[...]

"In the past, the Jews spread corruption in the land twice, and Allah punished them both times, by setting as masters upon them people who tormented them, humiliated them, and made them bow their heads. This is what they did in history, and it is well known that Allah set as master upon them the king of Babylon, Nebuchadnezzar, who took them into captivity. He destroyed their homes, razed their temples, and burned their Torah, and took them into captivity in Babylon for 70 years. Then they repeated their deeds, so He set the Romans as masters upon them.

[...]

"The Jews have lived as *dhimmis* in our land for a long time, and no Muslim violated the covenant with them. They were free, and were among the richest people of the nation. It reached the point that the Muslims envied them. They were close to the sultans, the kings, and the rulers of those times. Despite this, they were not faithful to the [covenant]. When they were banished from Europe, they found no compassionate bosom, no cave to shelter them, except for the lands of Islam. It was the Ottoman Empire, the Mameluke state, and the Islamic countries that received them with open arms, [and] gave them shelter and protection – but when [the Jews] gained influence, they turned their backs on them, and we have become their victims."

**"We Wait for the Revenge of Allah to Descend Upon Them [i.e. the Jews] – And, Allah Willing, It Will Be By Our Own Hands"**

"This is one of the peculiarities of our times. The nation upon which abasement and humiliation was inflicted, and which drew the wrath of Allah – the people most covetous of life – we have become their victims. The cowards have grown bold in their attitude towards us, the weak and humiliated have grown strong in their dealings with us. The small birds in our land have turned into eagles, and the sheep have turned into wolves that devour us. What has befallen our nation?!

"But Allah lies in wait for them, and He will not forsake this nation. He will not allow these people to continue to spread corruption in the land. We wait for the revenge of Allah to descend upon them, and, Allah willing, it will be by our own hands: 'Fight them, Allah will torment them by your hands, and bring

them to disgrace, and will assist you against them, and will heal the hearts of the believers, and you will still the anger of your hearts.' This is my message to the treacherous Jews, who have never adhered to what is right, or been true to their promises, who violate each time the promises they make to you." [...]

**"It Is America That Supports Israel, Whether Right Or Wrong... We Say to the West, And Especially To America, That Allah Will Not Let You Support... Inequity Against Justice"; "The USSR Collapsed Before [The West and America's] Eyes... According to the Law of Allah, They Should Collapse As Well, Unless They Pull Themselves Together"**

"My second message is addressed to the West, which collaborates with Zionism, and especially to America, which acts like a god on Earth. Nobody asks America about the things it does, and nobody holds it accountable for the things it says, because it is like a god in this world. It is America that supports Israel, whether right or wrong.

[...]

"We say to the West, and especially to America, that Allah will not let you support falsehood. He will not let you support inequity against justice.

[...]

"The USSR collapsed before their eyes. The USSR possessed military power, including a nuclear arsenal, but nevertheless, it collapsed. According to the law of Allah, they should collapse as well, unless they pull themselves together and stand by what is just. My message to the Muslim rulers in general, and to the Arab rulers in particular, is that they should be God-fearing with regard to their nation. The peoples have spoken, but the rulers have closed their ears, as if they cannot hear, and have covered their eyes as if they cannot see." [...]

**"My Message to the Muslim Rulers In General, And to the Arab Rulers in Particular, Is That They Should Be God-Fearing With Regard to Their Nation – The Peoples Have Spoken, But the Rulers Have Closed Their Ears"**

"This nation is a great nation, but its problem lies with its rulers and its leaders, who are completely detached from the nation. If this goes on, these rulers will not be able to remain [in power], because they derive their legitimacy from the masses of their peoples, and if the peoples, these masses, leave them, they will lose all legitimacy. These rulers are desperate, powerless, and incapable of doing anything. They couldn't even convene a summit. Is that so difficult?!

[...]

"Oh rulers, this is a disgrace on your part. I do not want to say that this is prohibited, because many of you do not care about what is permitted or prohibited. But I say that it is a disgrace on your part to do nothing but watch while your brothers are being destroyed, slaughtered and tormented. This is extremely strange.

[...]

"Are these [Arab rulers] the descendents of Abu 'Ubayda, Khaled ibn Al-Walid, Tareq ibn Ziyad, and all our nation's conquerors throughout the ages?! This is my message to our rulers: They should heed their peoples when they make their decisions, or else history will sweep them up with its broom." [...]

"Even though Gaza has no gateway except for Egypt, Israel is surrounded by several Arab states. Lebanon and Syria, Jordan, and Saudi Arabia are all neighbors of Israel, and whoever wanted to set out [on Jihad] from these countries could have done so, if the gateways were opened. But it is as if we have become the protectors of Israel." [...]

**"Marks and Spencer... Regularly Dedicates its Saturday Revenue To Israel... Starbucks Is Zionist.... My Brothers, Put the Boycott Against The Nation's Enemies Into Action"**

"Here in Qatar, we have a branch of Marks and Spencer, which regularly dedicates its Saturday revenue to Israel. We have a Starbucks, which serves coffee. They used to hang a sign on the doors of their shops: 'We benefit our most important partner, which is Israel, we help in the education of students in Israel, we help build up the Israeli defense arsenal,' and so on. People go and drink their expensive coffee. Instead of paying 2 riyals for a cup of coffee, they pay 20 riyals. This Starbucks is Zionist. Why do we not teach the nation to make do with its own products, when possible, even if they are of lesser quality? This is the only way the nation will rise. My brothers, put the boycott against the nation's enemies into action. Every riyal you pay turns into a bullet in the heart of your brothers in Gaza and in other Islamic countries." [...]

**"Oh Allah, Take This Oppressive, Jewish, Zionist Band Of People; Oh Allah, Do Not Spare A Single One Of Them; Oh Allah, Count Their Numbers, And Kill Them, Down To The Very Last One"**

"Oh Allah, take your enemies, the enemies of Islam. Oh Allah, take the Jews, the treacherous aggressors. Oh Allah, take this profligate, cunning, arrogant band of people. Oh Allah, they have spread much tyranny and corruption in the land. Pour Your wrath upon them, oh our God. Lie in wait for them. Oh Allah, You annihilated the people of Thamoud at the hand of a tyrant, and You annihilated the people of 'Aad with a fierce, icy gale. Oh Allah, You annihilated the people Thamoud at the hand of a tyrant, You annihilated the people of 'Aad with a fierce, icy gale, and You destroyed the Pharaoh and his soldiers – oh Allah, take this oppressive, tyrannical band of people. Oh Allah, take this oppressive, Jewish, Zionist band of people. Oh Allah, do not spare a single one of them. Oh Allah, count their numbers, and kill them, down to the very last one."

### Transcript of Arabic:

"الرسالة الاولى أوجهها الى اليهود المعتدين الغاصبين المستكبرين، المتجبرين في أرض الله على عباد الله"

[...]

"لقد جرب اليهود في تاريخهم أنهم أفسدوا في أرضهم مرتين، فعاقبهم الله تعالى على كل افساده بأن سلط عليهم من أدبهم و أذلهم و طنطى رؤوسهم، هكذا فعلوا في التاريخ، و من المعروف أن الله سلط عليهم ملك بابل، بختنصر، هذا الذي سباهم، داس في الارض، داس خلال الديار، و أحرق معابدهم و توراتهم، و أخذهم أسرى إلى بابل سبعين سنة. و فعلوا بعد ذلك، فسلط عليهم الرومان."

[...]

"لقد عاش اليهود زمن طويلا و هم أهل ذمة في ديارنا، فما نقض أحد لهم عهدا، بل كانوا أحرارا، وكانوا من أغنياء الامة، حتى حسدهم المسلمون، وكانوا قريبيين من السلاطين و الملوك و الرؤساء في ذلك الحين، و مع هذا لم يرعوا هذا، طردوا من اوربا، لم يجدو صدرا حنونا و لم يجدو كهفا يؤويهم الا ديار الاسلام."

"الدولة العثمانية و دولة المماليك و الدول الاسلامية و البلاد الاسلامية، هي التي فتحت لهم صدورها و أوتهم و آمنتهم من خوف، فلما تمكنوا قلبوا لها ظهر المجن، و أصبحنا نحن ضحاياهم، و هذا من عجائب الزمن. الأمة التي ضربت عليها الذلة و المسكنة و باءوا بغضب من الله، هم أحرص الناس على حياة، أصبحنا ضحايا لهم."

"تجرأ علينا الجبناء و استقوى علينا الضعفاء و تعزز علينا الأذلاء. البغاث أصبح في أرضنا يستنسر. أصبح هؤلاء النعاج، أصبحوا ذئابا يفترسوننا، ماذا جرى لأمتنا. ولكن الله تعالى بالمرصاد لهم، لن يتخلى عن هذه الأمة، ولن يدع هؤلاء يزيدون إفسادا في الارض. إننا ننتظر نقمة من الله سبحانه و تعالى تنزل بهم، و ستكون على أيدينا ان شاء الله. قاتلوهم، يعذبهم الله بأيديكم و يخزهم و ينصرمك عليهم، و يشفي صدور قوم مؤمنين و يذهب غيظ قلوبهم."

"هذه رسالتي إلى اليهود الغادرين، الذين لم يفوا بحق، و لم يفوا بعهد، الذين عاهدت منهم و ينقضون عهدهم في كل مرة، و هم لا يتقون."

"ورسائلي الثانية إلى الغرب، الممالي للصهيونية، المتواطئ معها. وخصوصاً أمريكا. أمريكا المتألهة في الارض، لا تسأل عما تفعل ولا تحاسب عن ما تقول. لأنها إله في هذا الكون. أمريكا هي التي تساند اسرائيل في الحق و في الباطل، في العدل و في الظلم."

[...]

"نقول للغرب عامة ولأمريكا خاصة، ان الله سبحانه و تعالى لن يدعم تناصرون الباطل، لن يدعم تناصرون الظلم على العدل."

[...]

"وقد سقط الاتحاد السوفييتي امام اعينهم، و هو يملك ما يملك من القوة العسكرية و من الترسانة النووية و غير ذلك. ولكنه سقط، و هم جدير ان يسقطوا حسب سنن الله، اذا لم يتداركوا انفسهم و يقفوا مع العدل."

"ورسائلي الى حكام المسلمين عامة و إلى حكام العرب خاصة، أن يتقوا الله في أمتهم. الشعوب قالت كلمتها و لكن الحكام أصموا أذانهم كأنهم لا يسمعون، و غشوا على أعينهم كأنهم لا يبصرون."

[...]

"إن هذه الامة، أمة كبيرة، ولكن مشكلتها في حكامها، في زعمائها، فهم في وادي، و الأمة في وادي آخر. وإذا استمر هذا، فلا يمكن ان يستمر هؤلاء الحكام، لأنهم إنما يستمدون شرعيتهم من شعوبهم، من جماهير هذه الشعوب، فإذا تخلت عنهم الشعوب، وإذا تركتهم الجماهير، فقدوا الشرعية."

"إن هؤلاء الحكام، يانسون، عاجزون، لا يستطيعون أن يفعلوا شيئا، حتى مجرد ان يجتمعوا، أن يجتمعوا في القمة، أهذا أمر عسير؟"

"يا أيها الحكام، عار عليكم، لا أريد أن اقول حرام عليكم، لأن كثيرا منكم لا يهमे الحلال ولا الحرام، ولكن اقول عار عليكم، أن ترو إخوانكم أمامكم، يُدْمرون، ويُذبحون، و تفعل بهم الأفاعيل، و أنتم متفرجون، هذا شيء في غاية الغرابة."

[...]

"فهل هؤلاء أحفاد ابي عبيدة، و خالد ابن الوليد، و طارق ابن زياد، و الفاتحين من أمتنا طوال التاريخ. هذه رسالتي الى حكامنا، أن ينظروا إلى شعوبهم و أن يتخذوا قرارهم، وإلا فإن التاريخ سيكنسهم بمكنسته،"

[...]

"غزة، ليس لديها باب إلا مصر، ولكن اسرائيل، تحيط بها عدة دول عربية، هناك لبنان و سوريا، و هنالك الاردن و السعودية، كلهم جيران لإسرائيل، و يستطيع من يريد أن يذهب، أن يذهب من هذه المنافذ لو فتحت لهم الأبواب، لو فتحت أمامهم المنافذ، ولكن كأننا أصبنا حماة لإسرائيل."

[...]

"هنا في قطر، مركز مارك اند سبنسر هذا، الذي يجعل ارباح يوم السبت لإسرائيل دائما. هناك ستاربكس الذي يقدم القهوة، هذا أعلن، كان يعلن قديما على أبواب محلاته، 'إننا نفيد همّ شركائنا و هم إسرائيل، و نساهم في تعليم طلاب إسرائيل، و نساهم في إقامة الترسانة الدفاعية لإسرائيل،' و نساهم في كذا و كذا. و الناس يذهبون و يشربون القهوة الغالية الثمن، بدلاً من أن يشرب قهوة بريالين، يشرب قهوة بعشرين ريال. ستاربكس هذا، و هو صهيوني. فلماذا هذا، لماذا لا نعلم الأمة أن تستغني ببضائعها ما أمكن و لو كان أقل في تصنيعها. إنما لا يمكن أن ترتقي الأمة إلا بهذا. المقاطعة أيها الإخوة، فعلو المقاطعة مع أعداء الأمة. إن الريال الذي تدفعه لهذه، يتحول إلى رصاصة في صدر إخوانك في غزة و في البلاد الإسلامية الأخرى."

[...]

"اللهم عليك بأعدائك اعداء الاسلام، اللهم عليك باليهود المعتدين الغادرين، اللهم عليك بهذه الطغمة الفاجرة الماكرة المستكبرة، اللهم إنهم طغوا في البلاد فأكثرُوا فيها الفساد، فصب عليهم يا ربنا سوط عذاب، و كن لهم بالمرصاد."

"اللهم يا من اهلكت ثموداً بالطاغية، و اهلكت عادا بريح صرصر عاتية، اللهم يا من اهلكت ثموداً بالطاغية، و اهلكت عادا بريح صرصر عاتية، و اخذت فرعون و جنوده اخذة رابية، اللهم خذ هذه الطغمة الباغية الطاغية، اللهم عليك فهذه الطغمة اليهودية الصهيونية الباغية، اللهم لا تبق ليهم من باقية، اللهم أحصهم عددا، و اقتلهم بددا، و لا تبق منهم احدا."

## **Annex 17**

Video Excerpt of Muhammad Salim Al-Awa, *Al-Jazeera Television*,  
16 September 2010

**(Video not reproduced)**

Website of the Middle East Media Research Institute available at  
<https://www.memri.org/tv/muhammad-salim-al-awa-secretary-general-international-union-muslim-scholars-copts-amass-weapons>

**Transcript of Arabic:**

المدّيع: "و أن الكنيسة حسب المتعقدات الدينية لا تتدخل في السياسة، و ليس لديها شأن بالسياسة، و أن انتخاب الرئيس مبارك او نجله، او أي شخص، هو شأن سياسي، و ليس شأن كنسي. هذه الاجتماعات و هذه القرارات، و هذه الإعلانات، و هذه التصريحات، و الدور السياسي للكنيسة الآن في مصر."

محمد سليم العوا: "هذا عمل سياسي واضح ليس فيه كلام، مخالف لما يقوله انه العقيدة الكنسية. العقيدة الكنسية، اعط ما لقيصر، لقيصر، و ما لله لله؛ و لكن لما يقول الكلام ده الأب بيشوي، 'هذه بلدنا، انتو مش عايزينا نتكلم بالسياسة ببلدنا، و المسلمين ضيوف عندنا.' هذا تصريح سيكون له ما بعده، و هو تصريح خطير، خطير، منشور اليوم فقط، و لكن النيران التي ستشتعل بسببه لا يعلمها إلا الله. و أنا ادعو الأب بيشوي الى أن يكذب هذا التصريح، أو يسحبه، ..."

[...]

المدّيع: "الحوار مسجل"

محمد سليم العوا: "مسجل، لينكره أو ينفيه. ياما حوارات مسجلة نفاها رجال دين و سياسيين، و زعماء. إنما هذا التصريح إذا بقي كذلك سيشتعل النار هي البلد كلها."

المدّيع: "يبدو أن الامور أكبر من ذلك بكثير. في السادس عشر من اغسطس الماضي، قبل شهر بالضبط من اليوم، نشرت صحيفة الشروق المصرية خبرا يقول ضبطت أجهزة الامن المصرية سفينة قادمة من اسرائيل، تحمل مواد متفجرة، مخبأة في الحاويات لإدخالها الى البلاد. و لقت مباحث امن الدولة القبض على مالك السفينة و يدعى جوزيف بطرس الجبلاوي، نجل وكيل مطرانية بورسعيد، و قررت النيابة حبسه اربعة ايام على ذمة التحقيقات في القضية ...."

[...]

المدّيع: " و هناك تعليقات كثيرة على الخبر أن الأديرة مليئة بالسلاح، و أن الاديرة خارج نطاق ...، الدولة لا تستطيع أن تدخل إلى هذه الأديرة في الوقت الذي يتم فيه كل يوم بالقبض على مسلمين بتهم التطرف و السلاح."

[...]

محمد سليم العوا: "السلاح الذي يأتي به القبطي لكي يخزنه في الكنيسة، لا معنى له إلا أنه استعداد لاستعماله ضد المسلم. و التصريح الذي صدر اليوم عن الأب بيشوي، أننا سنصل الى حد الاستشهاد، الاستشهاد ده لا يكون إلا في حرب. قال إذا تكلمتم عن الكنائس، سنصل الى حد الاستشهاد، الاستشهاد لا يكون إلا في حرب. فالكنيسة و بعض رجالها يعدون لحرب ضد المسلمين."

[...]

محمد سليم العوا: "مسعى، مستمر، منظم، غير عشوائي، للتمهيد لهذا اليوم، الذي يمكن المطالبة فيه بانقسام مصر الى دولتين، دولة الى الأقباط و دولة الى المسلمين، و ربما الى عدة دول. ربما الى دولة للنوبة كما كانوا يدعون من شوية من سنين ..."





October 8, 2010

Special Dispatch No.3284

## International Union of Muslim Scholars Secretary-General Muhammad Salim Al-Awa: Copts Amassing Weapons in Egyptian Churches, 'Preparing for War Against the Muslims'

*Following are excerpts from an interview with Muhammad Salim Al-Awa, secretary-general of the International Union of Muslim Scholars. The interview aired on Al-Jazeera TV, on September 16, 2010.*

*To view this clip on MEMRI TV, visit <http://www.memri.org/legacy/clip/0/0/0/0/0/2624>.*



**Interviewer:** "Even though, according to its religious belief, the Church should not intervene in political affairs, and even though the elections of President Mubarak, his son, or anyone else is a political matter, and not a matter pertaining to the Church – all these meetings and declarations, and the political role played by the Church..."

**Muhammad Salim Al-Awa:** "This is purely political activity, no question about it. This contradicts what they claim is the principle of the Church – 'Render unto Caesar what is Caesar's, and unto God what is God's.' But when Father Bishoy says, 'This is our country. You expect us not to talk about the politics of our country? The Muslims are our guests'... This declaration will have repercussions. It is extremely dangerous. This was only published today, but only God knows the extent of the fire fanned by it. I call upon Father Bishoy to deny or retract this statement..."

**Interviewer:** "The interview was taped."

**Muhammad Salim Al-Awa:** "Yes. Let him deny it. Many religious leaders, politicians, and leaders deny things they say in taped interviews."

**Interviewer:** "It seems that we are talking about a much more serious issue. On August 16, exactly one month ago, the Egyptian *Al-Shourouq* newspaper published a report that the Egyptian security agencies had detained a ship from Israel, carrying explosives concealed in containers. The state security agency arrested the ship owner, Joseph Boutrus Al-Jabalawi, the son of the deputy head of the Coptic Church at Port Said. The prosecution decided to arrest him for four days for interrogation. [...]"

"Many people say that the monasteries are full of weapons, and that they are not controlled by the state, which cannot enter them, while Muslims are arrested every day for extremism and the possession of arms."

[...]

**Muhammad Salim Al-Awa:** "The weapons that the Copts bring and store in a church can have no purpose other than to be used in the future against the Muslims. Father Bishoy declared that they would reach the point of martyrdom, which can only mean war. He said, 'If you talk about our churches, we will reach the point of martyrdom.' This means war. The Church and some of the clergy are preparing for war against the Muslims. [...]"

"There is a continuous, organized, and systematic effort to prepare for the day when there will be a demand to split Egypt into two countries – one for Copts and the other for Muslims. Perhaps into more than two – perhaps the Nubians will want a state, as was claimed a few years ago." [...]"

## **Annex 18**

“ Hamas political leaders leave Syria for Egypt and Qatar”,  
*BBC News*, 28 February 2012

Available at <https://www.bbc.co.uk/news/world-middle-east-17192278>

## Hamas political leaders leave Syria for Egypt and Qatar

28 February 2012



**The political leadership of the Palestinian Islamist group, Hamas, has moved from Syria to Egypt and Qatar.**

Deputy political leader Moussa Abu Marzouk, now based in Cairo, said Hamas could not operate effectively due to the unrest in its long-time ally.

The political leader, Khaled Meshaal, and his aides have moved to Doha.

On Friday, the head of the Hamas government in Gaza, Ismail Haniya, declared his support for Syrian people against President Bashar al-Assad.

"I salute all people of the Arab Spring, or Islamic winter, and I salute the heroic people of Syria who are striving for freedom, democracy and reform," Ismail Haniya told worshippers at a mosque in Cairo.

The worshippers shouted back: "God is great" and "Syria! Syria!"

The remarks reflected the deepening split between Hamas and Mr Assad.

### Iranians 'not happy'

The political bureau of Hamas - which is designated a terrorist organisation by Israel, the US and EU - moved to Syria in 1999 after the Jordanian authorities accused the group of using the country as a base for illegal activities and briefly detained Mr Meshaal and a key aide.

The Syrian government welcomed the group, providing its leaders with a safe haven, and helping to supply it with weapons and money for the armed struggle against Israel, with which Syria is still technically at war.

Relations appeared to be good until anti-government protests erupted throughout Syria in March 2011, triggering a violent crackdown by security forces which activists say has left more than 7,000 people dead.

Hamas initially neither publicly endorsed the Syrian regime's handling of the uprising - reportedly much to Mr Assad's anger - nor repudiated it.

Analysts said the Sunni Islamist group was torn between risking the support of its main financial backers - Syria and its ally, Iran - and supporting Syria's majority Sunni community, which has borne the brunt of the crackdown by the Alawite-dominated security forces.

Mr Abu Marzouk told the Associated Press on Sunday that Hamas still had offices in Syria, but acknowledged that "practically, we are no longer in Syria because we could not practice our duties there".

"Our position on Syria is that we are not with the regime in its security solution, and we respect the will of the people," he added.

He said Hamas wanted to keep its ties with Iran, but stood up to the government in Tehran in refusing to publicly support President Assad.

"The Iranians are not happy with our position on Syria, and when they are not happy, they don't deal with you in the same old way."

A member of the Hamas political bureau recently said Iran had been the main financial supporter of the Hamas government in Gaza, and that without Iranian money it would not be able to pay its 45,000 employees.

Mr Abu Marzouk also said that last year's agreement between Hamas and the rival Fatah movement to form a Palestinian government of national unity ahead of parliamentary elections still faced steep obstacles.

A series of recent meetings between Mr Meshaal and Palestinian Authority President Mahmoud Abbas did not lead to any breakthrough.



## **Annex 19**

D. Sabbagh, “Al-Jazeera’s political independence questioned amid Qatar intervention”, *The Guardian*, 30 September 2012

Available at <https://www.theguardian.com/media/2012/sep/30/al-jazeera-independence-questioned-qatar>

# The Guardian



This article is more than **6 years old**

## Al-Jazeera's political independence questioned amid Qatar intervention

**Al-Jazeera English journalists protest after being ordered to re-edit UN report to focus on Qatar emir's comments on Syria**

**Dan Sabbagh**

Sun 30 Sep 2012 12.57 BST

Al-Jazeera's editorial independence has been called into question after its director of news stepped in to ensure a speech made by Qatar's emir to the UN led its English channel's coverage of the debate on Syrian intervention.

Journalists had produced a package of the UN debate, topped with excerpts of President Obama's speech, last Tuesday when a last-minute instruction came from Salah Negm, the Qatar-based news director, who ordered the video to be re-edited to lead with the comments from Sheikh Hamad bin Khalifa al-Thani.

Despite protests from staff that the emir's comments - a repetition of previous calls for Arab intervention in Syria - were not the most important aspect of the UN debate, the two-minute video was re-edited and Obama's speech was relegated to the end of the package.

There are hints at staff dissatisfaction within the film, available for viewing on al-Jazeera's website and YouTube, which notes that the emir "represents one of the smallest countries in



the Arab world ... but Qatar has been one of the loudest voices condemning Syria".

The episode left a bitter taste among staff amid complaints that this was the most heavy-handed editorial intervention at the global broadcaster, which has long described itself as operating independent of its Qatari ownership.

An al-Jazeera spokesman said the emir's speech was "a significant development" that day and the broadcaster "consequently gave it prominence".

Obama's speech had been carried live, the spokesman added, and the emir's comments were balanced with disagreement from the Egyptian president, Mohammed Morsi.

However, insiders said Morsi's contribution had to be taken from an interview with another broadcaster, because none of the world leaders speaking at the UN had, or was, intending to take notice of the emir's comments.

Al-Jazeera English was set up in 2006 by the Arabic broadcaster of the same name and both are owned by the Qatari state. The network, founded in 1996, gained credibility with audiences in the region for its seemingly independent coverage in the post 9/11 period. Its English channel was launched to offer an alternative, non-western-centric worldview.

However, in recent years, Qatar has taken steps to consolidate its control over the channel as the country seeks greater political influence in the Gulf.

In September 2011, Wadah Khanfar, a Palestinian widely seen as independent, suddenly left as director-general after eight years in the post and was replaced by a member of the royal family, Sheikh Ahmed bin Jassim al-Thani, a man with no background in journalism.

In his resignation letter, Khanfar said, after noting that the channel had been criticised by Donald Rumsfeld and hailed by Hillary Clinton, that "al-Jazeera is still independent and its integral coverage has not changed".

He added: "When we launched in 1996, media independence was a contradiction in terms", but al-Jazeera had managed "to pleasantly surprise" its critics by "exceeding all expectations".



**Annex 20**

Video Excerpt of Asim Abdul Majid, *Al-Jazeera Television*,  
25 June 2013

**(Video not reproduced)**

Archives of the State Information Service  
of the Arab Republic of Egypt

**Coverage of Speech of Muslim Brotherhood Leader Asim Abdul Majid, *Al Jazeera Mubashir Masr*, 25 June 2013**

**Transcript of Arabic**

"بدأ وقت العمل, كلنا كنا نطالب الدكتور مرسي أن يغضب و الآن نقول إن الصعيد الذي نصب الدكتور مرسي هو الذي سيغضب, أقول لدعاة الفتنة سواء من الماركسيين أو من متطرفي الأقباط أو من مجرمي الفلول الذين لم يتوبوا إلى الآن, إن الصعيد قادم وهو غاضب, سنأتيكم.. سنأتيكم بمئة ألف رجل منهم مئة ألف رجل من صعيد مصر, هم يظنون أننا سننزل يوم ثلاثين باستراتيجية دفاعية.. خستتم! نحن سنأتي باستراتيجية هجومية, بثورة اسلامية, من اقترب بهذا الكرسي بغير حق سيحرقه الصعيد حرقا. إن لحظة الحقيقة قد حانت فمن سالمنا فليعلن من الآن ومن حاربنا فلا يلوماً إلا نفسه..

{هتاف}

إسلامية.. إسلامية... رغم أنف البلطجية... إسلامية... إسلامية... رغم أنف العلمانية خير.. يا يهود.. جيش محمد هل سيعود؟ جزاكم الله خيراً يا إخوان."

**Transcript of English subtitles**

"The working time has began. we were all asking Dr. Morsi to get angry and now we say that the people who designated Dr. Morsi are the one who will get angry, I say to the advocates of sedition, whether from the Marxists or the extremists of the Copts, the criminals of fuloul who haven't repented until now that Upper Egypt is coming angry, we will bring you a hundred thousand men, including 100 thousand men from Upper Egypt, they think we will come down on the 30<sup>th</sup> day with defense strategy. You lost; we will come down with an offensive strategy of an Islamic revolution, which approached this chair without right will burn by Upper Egypt. The moment of truth has come, peace is upon us from now, and whoever fought should blame himself only, so that no one blame himself only.

{chants}

.. Islamic.. Islamic Despite bullying... Islamic... Islamic.. despite the secularism..

Kheyber .. Kheyber, Jews .. army of Muhammad will come back. May god reward you, good brothers?"

## **Annex 21**

M. Mazzetti, C. J. Chivers and E. Schmitt, “Taking Outsize Role in Syria, Qatar Funnels Arms to Rebels”, *The New York Times*, 29 June 2013

Available at  
<https://www.nytimes.com/2013/06/30/world/middleeast/sending-missiles-to-syrian-rebels-qatar-muscles-in.html>

## The New York Times

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### *Taking Outsize*

### *Role in Syria,*

### *Qatar Funnels*

### *Arms to Rebels*

By Mark Mazzetti, C. J. Chivers and Eric Schmitt

June 29, 2013

WASHINGTON — As an intermittent supply of arms to the Syrian opposition gathered momentum last year, the Obama administration repeatedly implored its Arab allies to keep one type of powerful weapon out of the rebels' hands: heat-seeking shoulder-fired missiles.

The missiles, American officials warned, could one day be used by terrorist groups, some of them affiliated with Al Qaeda, to shoot down civilian aircraft.

But one country ignored this admonition: Qatar, the tiny, oil- and gas-rich emirate that has made itself the indispensable nation to rebel forces battling calcified Arab governments and that has been shipping arms to the Syrian rebels fighting the government of President Bashar al-Assad since 2011.

Since the beginning of the year, according to four American and Middle Eastern officials with knowledge of intelligence reports on the weapons, Qatar has used a shadowy arms network to move at least two shipments of shoulder-fired missiles, one of them a batch of Chinese-made FN-6s, to Syrian rebels who have used them against Mr. Assad's air force. Deployment of the missiles comes at a time when American officials expect that President Obama's decision to begin a limited effort to arm the Syrian rebels might be interpreted by Qatar, along with other Arab countries supporting the rebels, as a green light to drastically expand arms shipments.

Qatar's aggressive effort to bolster the embattled Syrian opposition is the latest brash move by a country that has been using its wealth to elbow its way to the forefront of Middle Eastern statecraft, confounding both its allies in the region and in the West. The strategy is expected to continue even though Qatar's longtime leader, Sheik Hamad bin Khalifa al-Thani, stepped down last week, allowing his 33-year-old son to succeed him.

"They punch immensely above their weight," one senior Western diplomat said of the Qataris. "They keep everyone off balance by not being in anyone's pocket."

“Their influence comes partly from being unpredictable,” the diplomat added.

Mr. Obama, during a private meeting in Washington in April, warned Sheik Hamad about the dangers of arming Islamic radicals in Syria, though American officials for the most part have been wary of applying too much pressure on the Qatari government. “Syria is their backyard, and they have their own interests they are pursuing,” said one administration official.

Qatari officials did not respond to requests for comment.

The United States has little leverage over Qatar on the Syria issue because it needs the Qataris’ help on other fronts. Qatar is poised to host peace talks between American and Afghan officials and the Taliban, who have set up a political office in Doha, the Qatari capital. The United States Central Command’s forward base in Qatar gives the American military a command post in the heart of a strategically vital but volatile region.

Qatar’s covert efforts to back the Syrian rebels began at the same time that it was increasing its support for opposition fighters in Libya trying to overthrow the government of Col. Muammar el-Qaddafi. Its ability to be an active player in a global gray market for arms was enhanced by the C-17 military transport planes it bought from Boeing in 2008, when it became the first nation in the Middle East to have the durable, long-range aircraft.

The Obama administration quietly blessed the shipments to Libya of machine guns, automatic rifles, mortars and ammunition, but American officials later grew concerned as evidence grew that Qatar was giving the weapons to Islamic militants there.

American and Arab officials have expressed worry about something similar happening in Syria, where Islamists in the north have turned into the most capable section of the opposition, in part because of the weapons from Qatar. Saudi Arabia recently has tried to wrest control from Qatar and take a greater role in managing the weapons shipments to Syrian rebels, but officials and outside experts said the Qatari shipments continue. The greatest worry is over the shoulder-fired missiles — called man-portable air-defense systems — that Qatar has sent to Syria since the beginning of the year. Videos posted online show rebels in Syria with the weapons, including the Chinese FN-6 models provided by Qatar, and occasionally using them in battle.

The first videos surfaced in February and showed rebels wielding the Chinese missiles, which had not been seen in the conflict previously and were not known to be in Syrian government possession.

Western officials and rebels alike say these missiles were provided by Qatar, which bought them from an unknown seller and brought them to Turkey. The shipment was at least the second anti-aircraft transfer under the Qataris’ hand, they said. A previous shipment of Eastern bloc missiles had come from former Qaddafi stockpiles.

The shipments were small, the Western officials and rebels said, amounting to no more than a few dozen missiles. And rebels said the Chinese shipments have been plagued with technical problems, and sometimes fail to fire. The first FN-6s were seen in the custody of groups under the Free Syrian Army banner, suggesting that they were being distributed, at least initially, to fighters backed by the United States and not directly to extremists or groups with ties to Al Qaeda.

American and Arab officials said that Qatar's strategy was a mixture of ideology — the ruling family's belief in a prominent role for Islam in political life — and more hard-nosed calculations.

"They like to back winners," one Middle Eastern official said.

In meetings with Mr. Obama, the leaders of Jordan and the United Arab Emirates have expressed a host of grievances about the Qatari shipments and have complained that Qatar is pursuing a reckless strategy.

In Mr. Obama's meeting with Sheik Hamad at the White House on April 23, American officials said, he had warned that the weapons were making their way to radical groups like Jabhet al-Nusra, also known as the Nusra Front, a Qaeda-affiliated group that the United States has designated as a terrorist organization.

"It was very important for the Qataris to understand that Nusra is not only an organization that destabilizes the situation in Syria," said one senior Obama administration official. "It's a national security interest of ours that they not have weapons."

But Charles Lister, an analyst with the IHS Jane's Terrorism and Insurgency Center in London who follows the Syria opposition groups, said that there was evidence in recent weeks that Qatar had increased its backing of hard-line Islamic militant groups active in northern Syria.

Mr. Lister said there was no hard evidence that Qatar was arming the Nusra Front, but he said that because of existing militant dynamics, the transfer of Qatari-provided arms to certain targeted groups would result in the same practical effect.

"It's inevitable that any weapons supplied by a regional state like Qatar," he said via e-mail, "will be used at least in joint operations with Jabhet al-Nusra — if not shared with the group."

At least some extremists have already acquired heat-seeking missiles and have posted videos of them, although the sources for these arms are not apparent from videos alone. And they appear to have been made principally in the Eastern Bloc, not in China.

Erin Banco and Mark Landler contributed reporting from Washington, and Karam Shoumali from Antakya, Turkey.

A version of this article appears in print on June 30, 2013, on Page A1 of the New York edition with the headline: Sending Missiles To Syrian Rebels, Qatar Muscles In



**Annex 22**

“By the Millions, Egyptians Seek Morsi’s Ouster”,  
*The New York Times*, 30 June 2013

Available at

<https://www.nytimes.com/2013/07/01/world/middleeast/egypt.html>

## The New York Times

# *By the Millions, Egyptians Seek Morsi's Ouster*

By David D. Kirkpatrick, Kareem Fahim and Ben Hubbard

June 30, 2013

CAIRO — Millions of Egyptians streamed into the streets of cities across the country on Sunday to demand the ouster of their first elected head of state, President Mohamed Morsi, in an outpouring of anger at the political dominance of his Islamist backers in the Muslim Brotherhood.

The scale of the demonstrations, coming just one year after crowds in Tahrir Square cheered Mr. Morsi's inauguration, appeared to exceed even the massive street protests in the heady final days of the uprising that overthrew President Hosni Mubarak in 2011. At a moment when Mr. Morsi is still struggling to control the bureaucracy and just beginning to build public support for painful economic reforms, the protests have raised new hurdles to his ability to lead the country as well as new questions about Egypt's path to stability.

Clashes between Mr. Morsi's opponents and supporters broke out in several cities around the country, killing at least seven people — one in the southern town of Beni Suef, four in the southern town of Assiut and two in Cairo — and injuring hundreds. Protesters ransacked Brotherhood offices around the country. In Cairo, a mob of hundreds set fire to the almost-empty Brotherhood headquarters, pelting it with stones, Molotov cocktails and fireworks for hours. A few members hiding inside the darkened building fired bursts of birdshot at the attackers, wounding several, but the police and security forces did nothing to stop the assault or the arson.

Demonstrators said they were angry about the near total absence of public security, the desperate state of the Egyptian economy and an increase in sectarian tensions. But the common denominator across the country was the conviction that Mr. Morsi had failed to transcend his roots in the Brotherhood, an insular Islamist group officially outlawed under Mr. Mubarak that is now considered Egypt's most formidable political force. The scale of the protests across the country delivered a sharp rebuke to the group's claim that its victories in Egypt's newly open parliamentary and presidential elections gave it a mandate to speak for most Egyptians.

"Enough is enough," said Alaa al-Aswany, a prominent Egyptian writer who was among the many at the protests who had supported the president just a year ago. "It has been decided for Mr. Morsi. Now, we are waiting for him to understand."

By the Millions, Egyptians Seek Morsi's Ouster - The New York Times



Protests against President Mohamed Morsi on Sunday in Cairo. Clashes broke out in several cities around the country. Tara Todras-Whitehill for The New York Times

Shadi Hamid, a researcher at the Brookings Doha Center in Qatar who studies the Muslim Brotherhood closely, said: “The Brotherhood underestimated its opposition.” He added: “This is going to be a real moment of truth for the Brotherhood.”

Mr. Morsi and Brotherhood leaders have often ascribed much of the opposition in the streets to a conspiracy led by Mubarak-era political and financial elites determined to bring them down, and they have resisted concessions in the belief that the opposition’s only real motive is the Brotherhood’s defeat. But no conspiracy can bring millions to the streets, and by Sunday night some analysts said the protests would send a message to other Islamist groups around the region in the aftermath of the Arab Spring.

“It is a cautionary note: don’t be too eager for power, and try to think how you do it,” Mr. Hamid said, faulting the Egyptian Brotherhood for seeking to take most of the power for itself all at once. “I hear concern from Islamists around the region about how the Brotherhood is tainting Islamism.”

Mr. Morsi’s administration appeared caught by surprise. “There are protests; this is a reality,” Omar Amer, a spokesman for the president, said at a midnight news conference. “We don’t underestimate the scale of the protests, and we don’t underestimate the scale of the demands.” He said the administration was open to discussing any demands consistent with the Constitution, but he also seemed exasperated, sputtering questions back at the journalists. “Do you have a better idea? Do you have an initiative?” he asked. “Suggest a solution and we’re willing to consider it seriously.”

18/03/2019

By the Millions, Egyptians Seek Morsi's Ouster - The New York Times

Many vowed to stay in the streets until Mr. Morsi resigned. Some joked that it should be comparatively easy: just two years ago, Egyptian protesters toppled a more powerful president, even though he controlled a fearsome police state. But there is no legal mechanism to remove Mr. Morsi until the election of a new Parliament, expected later this year, and even some critics acknowledge that forcing the first democratically elected president from power would set a precedent for future instability.

Members of the Muslim Brotherhood. At least seven people died in clashes throughout Egypt. Yusuf Sayman for The New York Times

Some of the protesters called for another intervention by the military, which seized power from Mr. Mubarak and held onto it for more than a year. Chants were directed to the defense minister, Gen. Abdul-Fattah el-Sisi: "Come on Sisi, make a decision!"

General Sisi, for his part, has stayed carefully neutral, feeding the protesters' hopes. In a statement last week urging the president and his opponents to compromise, the general said the military would "intervene to keep Egypt from sliding into a dark tunnel of conflict, internal fighting, criminality, accusations of treason, sectarian discord and the collapse of state institutions."

Many in the opposition saw the statement as an indication that if Sunday's protests were disruptive enough, the military would take over once again. The military sent four helicopters flying low over a demonstration in Tahrir Square in Cairo on Sunday to reinforce its power and control, and many below cheered.

By the Millions, Egyptians Seek Morsi's Ouster - The New York Times

The Web site of the flagship state newspaper, Al Ahram, reported Sunday that soldiers had been ordered only to “protect the will of the people without bias to any side at the expense of the other, especially as the political forces have not reached any formula of consensus.”

The extrication of the military from power was the biggest achievement of Mr. Morsi's first year in office. Last August, months after his election, the generals finally went back to their barracks and allowed him to take full power as president, although the military retains considerable autonomy under Egypt's new Constitution.

But Mr. Morsi continued to battle institutions within his own government left over from Mr. Mubarak, most notably the judiciary, and some of those fights contributed to the protests that peaked Sunday. The protests began in November, when he tried to declare himself above the courts until the passage of a new Constitution, a move that reinforced the fears of his opponents and perhaps the general public that he threatened to become a new autocrat.

“He was of the revolution,” said Magdi Morsi, an airline flight planner demonstrating in front of the presidential palace who is not related to the president. He said he had voted for Brotherhood candidates for Parliament as well as for Mr. Morsi but had turned against them for failing to deliver on their promises. “I decided he was a big liar,” he said. “He must leave. The public is against him now.”

The police, another institution left intact from the Mubarak government, are in open revolt against Mr. Morsi. In anticipation of Sunday's protests, the interior minister had already announced that the police would not protect the offices of the Muslim Brotherhood from attack. And when the protests began, police officers were almost nowhere to be found.

Several officers in uniform joined the protesters in Tahrir Square calling for Mr. Morsi's ouster and asking the military to intervene. Two officers were seen in the vicinity of the attack on the Brotherhood's headquarters talking on hand-held radios, but they did nothing to intervene.

Two armored vehicles from the interior security forces later arrived but also did nothing to stop the attack. The officers listened for a while as the attackers appealed to them to arrest the few Brotherhood members trying to defend their headquarters with birdshot, and then they left.

The attackers used green pen lasers to search for figures at the windows of the Brotherhood offices, then hurled Molotov cocktails. They vowed to show no mercy on the members inside. “Their leaders have left them like sheep for the slaughter,” one said. Two people were killed in the violence at the headquarters, medics there said.

Thousands of Mr. Morsi's supporters in the Muslim Brotherhood had gathered at a rally near the presidential palace to prepare to defend it if the protesters tried to attack. Many brought batons, pipes, bats, hard hats or motorcycle helmets, even woks or scraps of metal to use as shields. They stood at attention with clubs raised and marched together. “We will sacrifice our lives for our religion,” some chanted. “Morsi's men are everywhere.”

**Correction:** June 30, 2013

By the Millions, Egyptians Seek Morsi's Ouster - The New York Times

*An earlier version of this article misstated the location of Beni Suef. It is in northern Egypt, but not as far north as the Nile Delta.*

Mayy El Sheikh contributed reporting.

A version of this article appears in print on July 1, 2013, on Page A1 of the New York edition with the headline: By the Millions, Egyptians Seek Morsi's Ouster

### **Annex 23**

“Al Jazeera staff resign after ‘biased’ Egypt coverage”,  
*Gulf News*, 8 July 2013

Available at <https://gulfnnews.com/world/mena/al-jazeera-staff-resign-after-biased-egypt-coverage-1.1206924>

# Al Jazeera staff resign after 'biased' Egypt coverage

Anchor accuses management in Doha of provoking Egyptians

Published: July 08, 2013 22:14

By **Ayman Sharaf**, Special to Gulf News



Cairo: The news channel Al Jazeera Mubasher Misr saw 22 members of staff resign on Monday in Egypt over what they alleged was coverage that was out of sync with real events in Egypt.

Anchor Karem Mahmoud announced that the staff had resigned in protest against what he called “biased coverage” of the events in Egypt by the Qatari broadcaster.

Mahmoud said that the resignations had been brought about by a perceived lack of commitment and Al Jazeera professionalism in media coverage, adding that “the management in Doha provokes sedition among the Egyptian people and has an agenda against Egypt and other Arab countries.”

Mahmoud added that the management used to instruct each staff member to favour the Muslim Brotherhood.

He said that “there are instructions to us to telecast certain news”.

Haggag Salama, a correspondent of the network in Luxor, had resigned on Sunday accusing it of “airing lies and misleading viewers”. He announced his resignation in a phone-in interview with Dream 2 channel.

Meanwhile, four Egyptian members of editorial staff at Al Jazeera’s headquarters in Doha resigned in protest against what they termed a “biased editorial policy” pertaining to the events in Egypt, Ala’a Al Aioti, a news producer, told Gulf News by phone.

— Ayman Sharaf is a journalist based in Cairo



**Annex 24**

J. Schanzer, “Confronting Qatar’s Hamas Ties”,  
*Politico*, 10 July 2013

Available at <https://www.politico.com/story/2013/07/congress-qatar-stop-funding-hamas-093965>

POLITICO



POLITICO



Al-Rumaihi is about to receive a letter that will put his diplomatic skills to the test.

## Confronting Qatar's Hamas ties

By JONATHAN SCHANZER | 07/10/2013 01:52 PM EDT

Qatar's ambassador to Washington, Mohammed Bin Abdullah al-Rumaihi, is about to receive a letter that will put his diplomatic skills to the test.

Congressmen Peter Roskam (R-IL) and John Barrow (D-GA) are circulating a "Dear Colleague" letter on Capitol Hill this week, collecting signatures to challenge the uber-wealthy Persian Gulf emirate over its financial ties to the Palestinian terrorist group Hamas.

The draft letter, addressed directly to Rumaihi, acknowledges that "longstanding, strategic bilateral relations between the United States and Qatar, including a strong defense pact, are of critical importance to both countries."

“However,” it continues, “we believe that Qatar’s relationship with Hamas empowers, legitimizes, and bolsters an organization committed to violence and hatred.”

Qatar is a valuable ally for Washington. The sprawling al-Udeid Airbase near Doha is a crucial asset for CENTCOM, particularly in the recent conflicts in Iraq and Afghanistan. More recently, Qatar has played a key role in organizing, financing, and arming the opposition to Bashar al- Assad’s regime in Syria at a time when the U.S. government has failed to reach consensus.

However, Roskam, Barrow, and a growing group of other legislators don’t believe that should absolve the Qataris of their support for a terrorist group best known for suicide bombings and firing rockets into civilian areas. Of particular concern is Qatar’s reported pledge of \$400 million in financial aid to Hamas last year, and the fact that Hamas’s leader, Khaled Meshal, now hangs his hat in Doha. Meshal recently delivered a sermon at Qatar’s Grand Mosque in which he affirmed Hamas’s commitment “to liberate Jerusalem” – a euphemism for the destruction of Israel.

The congressional letter also notes that Qatar’s recently-retired emir, Sheikh Hamad bin Khalifa al-Thani, made “the first visit by a foreign leader to Gaza since Hamas took power in 2007,” and further expresses alarm that the emir chartered a private plane in April for Hamas militants to visit Doha.

Of course, the emir recently abdicated the throne to make way for his son, Tamim. And it’s possible that Tamim will eschew his father’s Hamas policy. Rumors in the Arabic-language press even suggested that Tamim gave Meshal 48 hours to vacate Qatar after the toppling of the Muslim Brotherhood in Egypt last week.

It is clear now that these were only rumors. Qatar’s policy has not wavered. But what if congressional pressure could force Tamim to change course?

The timing of this letter is critical. It coincides with the fall of Egypt’s Muslim Brotherhood, which was one of Hamas’s most important patrons. One senior Israeli security official told me that he viewed Egypt as the “back office” for Hamas. Cairo, for example, hosted the group’s internal elections earlier this year, and allowed one of its more senior leaders, Mousa Abu Marzouk, to be based there. More importantly, underground tunnels connecting Egypt’s Sinai Peninsula to the Hamas-controlled Gaza Strip serve as a crucial lifeline for the smuggling of weapons, goods, and cash.

With Egypt’s Brotherhood down for the count, the Egyptian junta is now shutting down the Hamas tunnels. With few allies left in the region, Hamas is now clinging to Qatar for financial and political assistance. If Congress can successfully challenge that

relationship, the Israeli security official believes that it “can weaken or even destroy” the movement.

Roskam and Barrow’s letter to al-Rumaihi is expected to drop sometime this month. It will fall far short of labeling Qatar a “state sponsor of terror,” but it will undoubtedly encounter stiff resistance from the State Department, which jealously protects its alliance with this tiny but influential state.

Roskam and Barrow are apparently prepared for this battle, particularly if Secretary of State John Kerry weighs in. As they note in their letter, in 2009, then-Senator Kerry warned: “Qatar can’t continue to be an American ally on Monday that sends money to Hamas on Tuesday.” We’re about to find out if that’s true.

*Jonathan Schanzer, a former terrorism finance analyst at the U.S. Department of the Treasury, is vice president for research at Foundation for Defense of Democracies.*

## **Annex 25**

Video Excerpt of Yusuf Al-Qaradhawi, *Al-Jazeera Television*,  
27 July 2013

**(Video not reproduced)**

Website of the Middle East Media Research Institute available at  
<https://www.memri.org/tv/leading-sunni-scholar-al-qaradhawi-urges-egyptians-defy-al-sisi-says-christians-participated>

## Transcript of Arabic:

" و ظن أن الشعب أعطاه حق القتل, قطع رؤوس المصريين, عبد الفتاح السيسي و أعوانه جاءوا بجنودهم و بقضهم و بقضيضهم منهم الجنود الرسميون و منهم الجنود الذين يلبسون الملابس مدنية و منهم البلطجية و منهم أناس من النصارى و من غيرهم جندوهم ليقتلوا المسلمين العزل, كلهم مسؤولون أمام الله لا يقول أحد 'أنا مأمور'، لا, ليس هناك أحد مأمور أن يقتل إنسان مسالم. من أمرك أن تقتل إنسان مسالم فارفض رأيه و إن حاكمك و إن قال فيك ما قال و لكنك ستكون بريئاً عند الله و عند الناس. نداء آخر أوجهه إلى شيخ الأزهر. شيخ الأزهر الذي حضر من أول يوم حين ما نداه عبد الفتاح السيسي و قال له " أنت مضر لهذا .. لأن الإنسان لازم يختار أخف الضررين و اعتبر إن أخف الضررين إن الحاكم يقتل الشعب. من قال هذا يا شيخ الأزهر؟! و هل استفتيت هيئة كبار العلماء و من مع البحوث الإسلامية و هيئة الفتوى في الأزهر .. و استفتيت علماء المسلمين؟! هذا أمر خطير جداً.. لم تستفتي فيه أحداً, و لا يجوز لك أن تعمل برأيك وحدك, و لا ندري ماذا بيئت هذا الوحش البشري, عبد الفتاح السيسي, ما لا بيئت هذه الليلة لمقيمين المنتظمين.. هذا لم يُخف الذين يقيمون باستمرار.. صرلهم شهر .. النهاردة ثلاثين يوم .. الذين بيبتون في رابعة العدوية صار لهم شهر.. هم رجال و الله في عزائم الأسود, لن يتواروا أبداً و لن يعني و لن يهتمهم أن يموتوا. الذين ماتوا ليسوا خسارة لم نخسرهم بالعكس. أدعوا حكام العرب .. حكام البلاد الإسلامية .. أدعوا خادم الحرمين الشريفين أدعوا الملك عبد الله.. أدعوا الملك عبد الله و أدعوا رجاله أن يقفوا مع الحق. أنتم أعطيتموهم اثنا عشر مليار. هل أعددتكم المليارات ليقتلوا بها المصريين؟ "



July 27, 2013

Clip No. 3927

## Leading Sunni Scholar Al-Qaradhawi Urges Egyptians to Defy Al-Sisi, Says Christians Participated in the Killing of Muslims

*Following are excerpts from an address delivered by leading Sunni scholar Sheik Yousuf Al-Qaradhawi, which aired on Al-Jazeera Network on July 27, 2013:*

Yousuf Al-Qaradhawi: [Egyptian Defense Minister Al-Sisi] believes that the people gave him the right to kill Egyptians, to cut off their heads.

[...]

Abd Al-Fattah Al-Sisi and his aides brought soldiers in multitudes – among them soldiers in uniform and soldiers wearing civilian clothing, including bullies, Christians, and others. They were recruited in order to kill the defenseless Muslims.

[...]

They all bear responsibility before Allah. No one will be able to say that he was following orders. Absolutely not. Nobody should follow an order to kill peaceful people. If you are ordered to kill peaceful people, you must refuse. Even if you are placed on trial for this, you will be deemed innocent by Allah and by the people.

[...]

Another call I address to Sheik of Al-Azhar, who said to Abd Al-Fattah Al-Sisi on the very first day: "You must do this, because one must choose the lesser of two evils." He believed that the lesser of two evils was for the ruler to kill the people. Who told you this, oh Sheik of Al-Azhar? Did you ask for a fatwa from the Council of Senior Scholars, from the Islamic Research Academy, or Al-Azhar's fatwa authority? Did you ask for a fatwa from the Muslim scholars? This is a very serious matter, yet you did not consult anyone. You are not allowed to act on your own.

[...]

I don't know what that human beast, Abd Al-Fattah Al-Sisi, is scheming. I don't know what evil plans he has for the protesters tonight, but this will not intimidate those who have been protesting for a month. They have been sleeping in Rabia Al-Adawiyya Square for a month. They are real men, as resolute as lions. They will not back down. They do not fear death. Those who die are not considered losses. On the contrary.

[...]

I call upon the Arab leaders and the leaders of the Muslim countries... I call upon King Abdallah, the Custodian of the Two Holy Mosques, and his men, to stand by what is right. You gave them \$12 billion. Did you give them all these billions so they could kill Egyptians?

[...]





## **Annex 26**

Video Excerpt of Gamal Nassar, *Al-Jazeera Television*,  
17 August 2013

**(Video not reproduced)**

Website of the Middle East Media Research Institute available  
at [https://www.memri.org/tv/al-jazeera-commentator-former-  
mb-official-gamal-nassar-al-sisi-jewish-implementing-protocols](https://www.memri.org/tv/al-jazeera-commentator-former-mb-official-gamal-nassar-al-sisi-jewish-implementing-protocols)

## Transcript of Arabic:

" أنا الحقيقة بحثت بشكل أو بآخر عن أصول السبسي , أردت أن أتعرف عليه فإذا بي أجد عندنا جريدة الوطن الجزائرية تقول أن السبسي من أصول يهودية , أمه مليكة تيتاني و خاله عضو في منظمة الدفاع اليهودية, إذا أمامنا مشهد أنو هذا الرجل بكل المقاييس ينفذ خطة صهيونية لتقسيم مصر. هذا الرجل الذي هو على رأس القوات المسلحة الآن يقوم بجرم مكتمل المعالم الذي حدث هو مجازر متعددة و أنا في ظني إن لم يحدث هناك وقوف وقفة حاسمة في هذا الإطار ستتكرر المجازر هذا الرجل أتى ليقتضي على الأخضر و اليابس. هو من ضمن مخططه يريد أن يكون هناك حرب أهلية ليظهر أمام العالم أنه حاول أن يدافع عن مؤسسات الدولة وهو الذي يحرقها. حاول أن يحافظ على الأمن الوطني و الأمن القومي و هو الذي أهدره بشكل أو بآخر هذا يريد باختصار حرق الدولة المصرية هذا المخطط الصهيوني أقول لك و أتحمل هذا الكلام ومن يراجع برونكولات حكماء صهيون و من يراجع كل الأدبيات الموجودة لدى كتابهم و أيضاً من كانوا يكتبون في الولايات المتحدة الأمريكية سيجد إن هذا معد المخطط هو سلفاً."



August 20, 2013

Special Dispatch No.5413

## Al-Jazeera Commentator, Former Muslim Brotherhood Official, Gamal Nassar: Al-Sisi Is Jewish, Implementing Protocols Of Elders Of Zion In Egypt

*Following are excerpts from a statement made by Gamal Nassar, former media secretary to the General Guide of the Muslim Brotherhood, which aired on the Al-Jazeera network on August 17, 2013.*

*Click here to view this clip on MEMRI TV.*



**Gamal Nassar:** "I was trying to figure out Al-Sisi's origins. I wanted to know more about him. I was surprised to learn, from the Algerian *Al-Watan* newspaper, that Al-Sisi is of Jewish origin. His mother is called Mulaika Titani, and her brother was a member of the Jewish Haganah organization. Thus, we see that this man, by any standard, is implementing a Zionist plan to divide Egypt.

[...]

"This man, who heads the armed forces today, is committing a crime, in the full sense of the word. Many massacres have taken place. In my opinion, if decisive measures are not taken, the massacres will continue. Al-Sisi has come to destroy everything.

[...]

"Within the framework of his plot, he wants to ignite civil war, in order to portray himself as trying to protect state institutions, while he, in fact, is the one who is burning them down. He portrays himself as trying to defend national security, while he, in fact, is undermining it. In short, he wants to set the state of Egypt ablaze.

"This is a Zionist plot, and I am willing to be held responsible for what I say. Whoever reads *The Protocols of the Elders of Zion* and the writings of [the Jews], including those who were writing in the U.S., realizes that this plot was premeditated."

[...]



**Annex 27**

Video Excerpt of Mohamed El-Beltagy, *Al-Jazeera Television*,  
16 August 2014

**(Video not reproduced)**

Archives of the State Information Service  
of the Arab Republic of Egypt

**Transcription of Audio from “Coverage of Mohamed El-Beltagy, Senior Figure in the Muslim Brotherhood”, *Al Jazeera Mubashir Masr*, 16 August 2014**

**Arabic Original**

**[Reporter asks in English] “There has been a state of emergency declared in Sinai. Can you control your supporters to prevent violence?”**

[محمد البلتاجي] " نحن لسنا المتحكمين في الأرض لكن هذا الذي يحدث في سيناء رداً على هذا الانقلاب العسكري يتوقف في الثانية التي يعلن فيها عبد الفتاح السيسي أنه تراجع عن هذا الانقلاب و أنه صحح الوضع و رده إلى أهله و أن الرئيس يعود إلى سلطاته."

**English Translation**

**[Reporter asks in English] “There has been a state of emergency declared in Sinai. Can you control your supporters to prevent violence?”**

[Mohamed El Beltagy] “We are not in control of what is happening on the ground. But what is happening in Sinai is in response to this military coup; it would stop the second that Abdel Fatah Al Sisi declares that he has renounced the coup, that he has rectified the situation, that the power has been returned to the rightful people, and that President [Morsi] will be restored to power”

## **Annex 28**

“German minister accuses Qatar of funding Islamic State fighters”,  
*Reuters*, 20 August 2014

Available at <https://www.reuters.com/article/us-iraq-security-germany-qatar/german-minister-accuses-qatar-of-funding-islamic-state-fighters-idUSKBN0GK1I720140820>

WORLD NEWS

AUGUST 20, 2014 / 3:24 PM / 5 YEARS AGO

## German minister accuses Qatar of funding Islamic State fighters



BERLIN (Reuters) - German Development Minister Gerd Mueller accused Qatar on Wednesday of financing Islamic State militants who have seized wide areas of northern Iraq and have posted a video of a captive American journalist being beheaded.

“This kind of conflict, this kind of a crisis always has a history ... The ISIS troops, the weapons - these are lost sons, with some of them from Iraq,” Mueller told German public broadcaster ZDF.

“You have to ask who is arming, who is financing ISIS troops. The keyword there is Qatar - and how do we deal with these people and states politically?” said Mueller, a member of the Christian Social Union (CSU), the center-right Bavarian sister party of Angela Merkel’s Christian Democrats.

Mueller did not elaborate and presented no evidence of a Qatari link to Islamic State. A German government spokesman said he was checking whether Mueller’s remarks reflected the official view of Berlin.

Officials at the Foreign Ministry of Qatar, a wealthy Gulf Arab state, did not immediately respond to requests for comment on his accusation.

Qatar has denied that it supports Islamist insurgents in Syria and Iraq. Diplomats and opposition sources say that while Qatar supports relatively moderate rebels also backed by

Saudi Arabia and the West, it also has backed more hardline factions seeking to set up a strict Islamic state.

In March, David Cohen, the U.S. Treasury Under Secretary for Terrorism and Financial Intelligence, cited reports of Qatari backing for Islamist fighters in Syria and described this as a “permissive jurisdiction” for donors funding militants.

Qatar has also strongly backed Egypt’s Muslim Brotherhood, outlawed since the Egyptian military overthrew an elected Islamist president in 2013, and has given refuge to many foreign Islamists including from Hamas and the Taliban.



Proclaiming a “caliphate” straddling parts of Iraq and Syria, Islamic State has overrun broad swathes of Sunni Muslim-populated northern and western Iraq with little resistance. They have pushed back Kurdish regional forces allied with the Baghdad central government and driven tens of thousands of minority communities including Christians and Yazidis from their homes.

Islamic State circulated a video on Tuesday that purported to show the beheading of American journalist James Foley in revenge for U.S. air strikes against the insurgents in Iraq.

Germany’s foreign and defense ministers said on Wednesday that Germany was prepared to send arms to Kurdish security forces in northern Iraq fighting Islamic State and would immediately deliver military equipment such as helmets and security vests.

Reporting by Michelle Martin, Amena Bakr and Angus McDowall; Editing by Mark Heinrich

*Our Standards: The Thomson Reuters Trust Principles.*



## **Annex 29**

T. Ross, R. Mendick and A. Gilligan, “Charity Commission: British charities investigated for terror risks”, *The Telegraph*,  
1 November 2014

Available at <https://www.telegraph.co.uk/news/worldnews/islamic-state/11203569/Charity-Commission-British-charities-investigated-for-terror-links.html>

## Charity Commission: British charities investigated for terror risks

William Shawcross, the chair of the Charity Commission, warns that money donated by the British public may already have been sent to Islamic State fighters, as the watchdog opens cases on 86 aid groups at risk from extremists

The Charity Commission has warned that Islamic State in Iraq and Syria is a threat to charities raising money in Britain Photo: ZEIN AL-RIFAI/AFP

By Tim Ross, Robert Mendick, and Andrew Gilligan

10:00PM GMT 01 Nov 2014

The government's charity watchdog has launched a series of formal investigations into British aid organisations, amid concerns that they are at risk of being hijacked by terrorists in Syria and Iraq.

The head of the Charity Commission told The Telegraph he fears that groups distributing money and supplies donated by the public in Britain could be exploited by Islamists to smuggle cash, equipment and fighters to terrorists on the front line.

The regulator has begun scrutinising 86 British charities which it believes could be at risk from extremism, including 37 working to help victims of the Syria crisis, according to new figures released today.

It has launched full-scale investigations into four charities operating in the region, including the group that employed the murdered hostage Alan Henning when he was kidnapped, and another organisation allegedly infiltrated by a suicide bomber.

The number of terrorism-related cases that the regulator is examining has almost doubled since February, amid growing concerns that charities working in the region are potential targets for the so-called Islamic State in Iraq and the Levant (Isil, also known as Islamic State, and Isis).

William Shawcross, the chair of the Commission, said there was "a risk" that money donated by the British public had already been sent to Isil fighters, who have beheaded two British hostages, among many other victims, and are holding a third.

"It is absolutely terrifying to see these young British men going out to be trained in Syria and coming back here," Mr Shawcross said.

“Most of them are not going out under the auspices of charities but, when that happens, it is absolutely our duty to come down on it.

“Even if extremist and terrorist abuse is rare, which it is, when it happens it does huge damage to public trust in charities. That’s why I take it very seriously.”

The warning comes at a critical time for global efforts to stem the flow of money to terrorists in Iraq and Syria.

The Telegraph’s Stop the Funding of Terror campaign, which has won wide support in Parliament, the military and overseas, is calling for action to cut off terrorist finance.

The Commission, which regulates charities in England and Wales, has worked with the government of Qatar as well as Kuwait and Saudi Arabia, among others, to strengthen their systems for regulating charitable groups.

However, despite these efforts, funded by British taxpayers, America warned earlier this month that Qatar and Kuwait remain “permissive” regimes in which terrorist financiers are able to operate.

Analysts fear that millions of dollars in so-called charitable donations raised inside Qatar and Kuwait have been used to buy weapons and supplies for jihadists in Iraq and Syria. In other developments this weekend:

:: The brother of David Haines, the British hostage executed by his captors, has made an impassioned plea to Gulf States to strangle the funding to terror groups operating in Syria and Iraq. Michael Haines told The Telegraph: “We have to attack their finances. We need to fight them on every front that we can find. We have to destroy them.”

:: It has emerged that the cousin of Qatar’s foreign minister has been convicted of funding international terrorism. Abdulaziz bin Khalifa al-Attiyah was found guilty in absentia by a Lebanese court for channelling financial support to al-Qaeda.

:: Lord Lamont, the former chancellor, praised the Telegraph in Parliament for “highlighting the movement of funds to terrorist groups in the Middle East” as he pressed ministers to raise the issue with Gulf rulers.

:: Foreign Office Minister Baroness Anelay promised that Britain was having “robust” talks with Qatar and other Gulf states as she called for “much greater progress” to stop terror

financing. The minister revealed that Isil gets most of its money from selling oil, extortion, and hostage ransoms, as well as from foreign donations.

:: The government is facing new questions over the “extraordinary” inconsistencies in British action against terrorist financiers, after it emerged that terrorists whose assets have been frozen under Treasury sanctions may not be banned from travelling to the UK. Stephen Barclay, a Conservative MP, called on his own party leadership to “spell out” why Britain has a different sanctions regime against Qatari terror financiers from America, the UK’s closest intelligence ally.

Last Wednesday, David Cameron raised concerns that the wealthy Gulf state of Qatar had failed to act against rich Qatar-based fundraisers and “charities” that have sent millions of dollars to jihadists fighting in Iraq and Syria.

During a private, one-to-one discussion with Sheikh Tamim bin Hamad Al Thani, the Emir of Qatar, the Prime Minister urged the Gulf ruler to accelerate efforts to tackle terrorist financiers operating within the country.

Sources said the issue was also raised during a formal lunch in Number 10, which was also attended by Mr Cameron’s chief of staff, Ed Llewellyn, his national security adviser Sir Kim Darroch, and the Foreign Secretary, Philip Hammond.

In Britain, the Charity Commission had already taken action against charities linked to extremists, with the most serious cases going to court as part of terrorism prosecutions.

Speaking to The Telegraph, Mr Shawcross said the regulator was stepping up its assault on the abuse of charitable funds by terrorists, as well as other kinds of malpractice including fraud, mismanagement, and mistreatment of vulnerable adults and children.

An extra £8 million has been given to the watchdog, along with planned new powers, to enhance its ability to tackle abuse of charities by Islamists and others, he said.

However, he warned that it was “often very difficult” to ensure that aid and money sent to war zones to help the victims of violence does not end up in the wrong hands.

“Of course there is a risk [that funds raised here in Britain have been transported to Isil jihadists in Iraq and Syria].

“If we find any evidence of it happening through charities we will pursue it robustly in conjunction with the police and other law enforcement agencies.”

He said he was particularly concerned about the large number of small, new charities that have been set up to raise money to help victims of the Syrian crisis, while “aid convoys” delivering supplies to the region were especially vulnerable.

“I think there are 500 British charities that say they operate in Syria in one form or another and 200 of them have been registered since the conflict there began. Some of them are inexperienced and obviously more vulnerable to exploitation than bigger more established charities, the household names.”

Mr Shawcross said the regulator was concerned that “there may not be adequate controls as to where the goods and supplies were being delivered” from the aid convoys. He insisted that “most Muslim charities are run by good people”, many of whom are “more horrified than anybody else by abuse of charities by Islamists”.

Mr Shawcross insisted that “most Muslim charities are run by good people”, many of whom are “more horrified than anybody else by abuse of charities by Islamists”.

“Charities can be abused, people working along the Syrian border can be abused, for Islamist or extremist purposes, there is no question about that – sometimes knowingly, sometimes unknowingly,” he said.

New figures from the Commission show there are 86 case files currently open in which officials are reviewing the operations of charities, at least in part because there are fears that they operate in countries – or for particular causes – which could be targeted by extremists or terrorists.

The regulator’s figures showed that 37 of these 86 charities under scrutiny were working in Syria, by raising money in Britain, sending humanitarian supplies, or participating directly in aid convoys to the worst hit areas.

This workload has increased significantly since February, when the Commission was working on 48 extremism-related cases, about 10 of which involved charities that focused on Syria.

Full “statutory inquiries” – the Commission’s most serious kind of formal investigation - have begun into four British charities operating in Syria, including the Al-Fatiha Global organisation, which the beheaded hostage Alan Henning was working with when he was kidnapped.

The others are Children in Deen, Aid Convoy and Syria Aid. All four investigations are still “live”, while dozens of other charities are being monitored or scrutinised by the Commission because they are operating in Syria or raising funds for the region in Britain.

Mr Henning was driving an ambulance on behalf of Rochdale Aid 4 Syria, which raised money on behalf of Al-Fatiha Global. He was part of a convoy of 20 vehicles making the 4,000-mile journey to Idlib in north-west Syria when he was kidnapped on Boxing Day last year.

The Charity Commission launched its investigation after one of Al-Fatiha’s leaders was photographed with his arms around two hooded fighters carrying machine guns. A trustee of the charity has challenged the commission’s decision to launch the inquiry.

The investigation into Children in Deen began in April after it emerged that a participant in the Birmingham charity’s aid convoy last year, Abdul Waheed Majeed, had allegedly become Britain’s first suicide bomber in Syria.

Majeed, 41, killed dozens of civilians when he drove a truck full of explosives into the wall of Aleppo prison, enabling hundreds of prisoners to escape.

Last year, the Commission began formal inquiries into Aid Convoy, and Syria Aid, over concerns about the way their funds were being used once inside Syria.

The watchdog issued a formal warning against aid convoys to Syria and urged members of the public to donate to the larger aid agencies and major international charities to minimise the risk that their money will be stolen by extremists.

Masood Ajaib, a trustee of Children in Deen, condemned the actions of Majeed and completely dissociated himself and the charity from any links to violence. He said the commission's investigation had already hit fundraising and made its operations more difficult.

"We had nothing to do with this and do not support violence," he said. "All we want to do is help the women and children affected by the biggest humanitarian disaster we have seen for generations."



### **Annex 30**

“Islamic Council for Da’wa and Relief cancels Qaradawi’s Membership”, *Egypt Independent*, 9 December 2014

Available at <https://www.egyptindependent.com/islamic-council-da-wa-and-relief-cancels-qaradawi-s-membership/>

EGYPT INDEPENDENT

## Islamic Council for Da'wa and Relief cancels Qaradawi's membership



The International Islamic Council for Da'wah and Relief decided in its Tuesday meeting, headed by Al-Azhar Grand Sheikh Ahmed al-Tayyeb, to cancel the membership of the Islamic Relief UK, and the International Union of Muslim Scholars, headed by ardent Qatar-based supporter of the Muslim Brotherhood Yusuf al-Qaradawi.

The International Islamic Council for Da'wah and Relief said its decision came after evidence showed that the Islamic Relief UK has funded Rabaa al-Adawiya sit-in in 2013, and because the International Union of Muslim Scholars chaired by Qaradawi mixed religion with politics.

Qaradawi is being tried in absentia in Egypt over charges of plotting to storm prisons and free prisoners during the 25 January 2011 uprising. He has been placed as well on arrival watchlists.

### **Annex 31**

A. Gennarelli, “Egypt’s Request for Qatar’s Extradition of Sheikh Yusuf Al-Qaradawi”, *Center for Security Policy*, 27 May 2015

Available at

<https://www.centerforsecuritypolicy.org/2015/05/27/egypts-request-for-qatars-extradition-of-sheikh-yusuf-al-qaradawi/>



# Egypt's Request for Qatar's Extradition of Sheikh Yusuf Al- Qaradawi

🕒 May 27, 2015    👤 Alessandra Gennarelli

Sheikh Yusuf Al- Qaradawi, the Muslim Brotherhood chief jurist, has resided in Qatar for decades. However on May 26, 2015 Egyptian authorities requested Qatar extradite Qaradawi back to Egypt. Yusuf Qaradawi, followed by as many as 41 other Muslim Brotherhood officials, such as the former President of Egypt Mohammad Morsi, are awaiting the death penalty in Egypt. Following the ouster of the Muslim Brotherhood government, Qaradawi issued a [call for jihad](#) in Egypt. Their convictions include, but are not limited to, murder, violence, inciting violence, theft, insulting the judiciary and escaping from jail. The Egyptian court will have their final decision on the matter June 2, 2015.

Yusuf Al- Qaradawi's background is far from clean, as his membership to the Muslim Brotherhood has led to multiple arrests. The Muslim Brotherhood has been the cause of many Egyptian crackdowns, such as the ones in 1949, 1954 and 1981. In [Qaradawi's autobiography](#), each arrest and imprisonment experience is discussed with a sense of dignity and positivity, even comparing himself to the Quaranic story of Joseph. A similar sense of comfortableness is seen in Qaradawi's comments on the current charges he is facing, saying they are "worthless and undeserving of attention."

Yusuf Al- Qaradawi along with the other 41 Muslim Brotherhood Organization members facing charges can all be found on the Interpol, or the International Criminal Police Organization, [wanted list](#). The addition of all these men to the wanted list is a good sign for Egypt. Leaders like the Chief of the Egyptian Police Interpol, Gamal Abdel Bary, commented saying this is "an important change in the international communities' view to the banned groups members."

Qatar is a member of Interpol, and therefore should comply with the request of Qaradawi's extradition.

However, since Egypt's request was made Qatar has not been inclined to comply. The Assistant to the Minister of Justice Adel Fahmy [tells a local Egyptian newspaper](#), "Qatar did not previously accept the Interpol calls to arrest the defendants although both countries, Egypt and Qatar, are signatories to an agreement of exchange of prisoners." Egypt contacted Qatar earlier this year regarding Qaradawi, requesting Qatar to freeze all assets of his on the basis that they go to fund terrorism. Qaradawi is the head of the [Union of the Good](#) a network of Muslim Brotherhood-linked charities which finances Hamas.

Egypt and Qatar's have a long history of a rocky relationship. And to make matters worse, recently the Egyptian delegate to the Arab League, Tariq Adel, [accused Qatar of supporting terrorism](#) earlier this year. Qatar responded by recalling its ambassador to Egypt, and their relationship has yet to improve. [Qatar's financing of terrorism](#) has also been a source of tension between Qatar and several states, [including the U.S., Germany, Iraq and Israel](#).

Since Egypt's declaration of the Muslim Brotherhood as a terrorist organization, steps have been made to detain Brotherhood members. This move by Egyptian authorities to indict Qaradawi for his role in calling for violence is a painful but necessary step to expose the nature of the Muslim Brotherhood, and their anti-democratic ways.

Reconciliation between Egypt and Qatar seems unlikely, and Qaradawi's return to Egypt is not imminent.

**Annex 32**

“Voting”, *Al Jazeera*, 28 May 2015

Available at <http://www.aljazeera.net/votes/pages?voteid=5270>



## التصويت

هل تعتبر تقدم تنظيم الدولة الإسلامية في العراق وسوريا لصالح المنطقة؟

نتيجة التصويت:

مدة التصويت: من 22/5/2015 إلى 28/5/2015



رجوع للتصويت

\* نتيجة التصويت لا تعبر عن رأي الجزيرة وإنما تعبر عن رأي الأعضاء المشاركين فيه.

تصويتات أخرى

[TRANSLATION]

[Al-Jazeera Logo]

Live broadcast

## Voting

**Do you consider that the expansion of the Islamic State organization in Iraq and Syria is in the interest of the region?**

Voting results:

Voting period: from 22/5/2015 to 28/5/2015

Yes

81% / 46060

No

19% / 10821

**Total number of voters: 56881**

- The voting results do not represent the opinion of Al-Jazeera – it rather represents the opinion of participating voters.





### **Annex 33**

“How Qatar Used and Abused Its Al Jazeera Journalists”,  
*The New York Times*, 2 June 2015

Available at <https://www.nytimes.com/2015/06/03/opinion/mohamed-fahy-how-qatar-used-and-abused-its-al-jazeera-journalists.html>

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**The New York Times**

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OP-ED CONTRIBUTOR

# How Qatar Used and Abused Its Al Jazeera Journalists

By Mohamed Fahmy

June 2, 2015

CAIRO — This week, I am back in court in an effort to prove my innocence at a retrial on charges that I was a member of the banned Muslim Brotherhood, designated a terrorist organization in Egypt since December 2013, and that I sought to harm the country's reputation and security. I already spent 412 days in detention before my conviction in the first trial was overturned on appeal earlier this year.

The terrorism charges against me and my colleague Baher Mohamed are unfounded and have been widely discredited. The other charges relate to our employment by the Al Jazeera media network, which is owned by the state of Qatar.

Following the ouster of the Muslim Brotherhood-backed president, Mohamed Morsi, in 2013, Egypt moved to ban Al Jazeera's Arabic service in the country, known as Mubasher Misr, because it was perceived as a Qatari-sponsored propaganda mouthpiece for the Brotherhood. I was the bureau chief of the Al Jazeera English service, a separate operation that adhered to higher journalistic standards, which, we assumed, would inoculate us against accusations of bias. We were mistaken.

Now, Baher and I find ourselves once again in the soundproof defendants' cage, fighting to avoid long prison terms. Our friend and fellow Jazeera journalist, Peter Greste, will not be with us. Thanks to his government's work to win his release, Peter is home in Australia.

At the retrial, we will argue that we continued to work despite the broadcast ban because we believed the English service was exempt and Al Jazeera failed to obtain legal clarification from the Egyptian authorities. If, as a result, there were violations of licensing laws, which in any case would be merely misdemeanors, it is the network's executives from Qatar who should pay, not us. A final ruling from the Egyptian court could come later this month.

My 18-month ordeal may be close to an end, yet I find myself increasingly angry at how my life and the lives of my family and loved ones have been turned upside down. My anger, however, is not directed primarily at the prosecutor, the judiciary or the government of President Abdel Fattah el-Sisi. It is aimed at my employer, Al Jazeera.

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SUBSCRIBE TO THE TIMES

The network knowingly antagonized the Egyptian authorities by defying a court-ordered ban on its Arabic-language service. Behind that, I believe, was the desire of the Qatari royal family to meddle in Egypt's internal affairs. While Al Jazeera's Doha executives used the Cairo bureau of Al Jazeera English to give their scheme a veneer of international respectability, they made us unwitting pawns in Qatar's geopolitical game.

Midway through our first trial, last year, Al Jazeera undermined our defense when it sued Egypt for \$150 million in compensation for business losses in Egypt. The network's own lawyer in our case criticized the lawsuit and quit the case. "Al Jazeera is using my clients," he told the court, according to Agence France-Presse. "I have emails from (the channel) telling me they don't care about the defendants and care about insulting Egypt."

This is why in May I filed a lawsuit in Canada, where I hold citizenship as well as in Egypt, against Al Jazeera. I intend to hold the network accountable for its negligent conduct, and I am seeking \$83 million in compensation for my ordeal.



Mohamed Fahmy at his retrial on Monday.  
Amr Nabil/Associated Press

When Al Jazeera was started in 1996, Qatar was widely praised for its enlightened thinking. The network's 24-hour rolling news coverage was a breath of fresh air in the Middle East's torpid media scene. The international services, like Al Jazeera English, recruited some of the best names in journalism.

Like many young Arabs, I was impressed. Al Jazeera seemed a model of courageous broadcasting in a region not known for upholding freedom of speech. That was still my view when I became Cairo bureau chief in September 2013.

I have since realized how deeply I, like the viewing public, was duped. I came to see how Qatar used Al Jazeera as a pernicious, if effective, tool of its foreign policy.

A court order shut down Mubasher Misr the same month I joined Al Jazeera English, but the channel continued to broadcast by satellite and Internet from studios in Doha. I soon had concerns that Qatar was compromising our journalism. Against my objections, the Arabic

station redubbed our English-language news packages with inflammatory commentary.

I frequently complained to the Doha bosses that broadcasting our reports on the banned Mubasher Misr, which was officially classified as “a national security threat,” put our lives at risk. They told me to get on with the job, but the practice continued — even after Egypt declared the Brotherhood a terrorist group, days before our arrest. When we came to trial, the network’s actions made it much harder to disprove the testimony of the prosecution’s lead national security witness that I had worked for Mubasher Misr, inaccurate though it was.

The Doha management also neglected to tell me that it was providing Brotherhood activists in Egypt with video cameras and paying them for footage, which it then broadcast, without explaining its political provenance, on the banned Arabic channel. During my detention, I met a number of prisoners who told me how this worked, and I have seen court documents confirming it.

Al Jazeera’s managers crossed an ethical red line. By attempting to manipulate Egypt’s domestic politics, they were endangering their employees.

Qatar and Al Jazeera will continue to talk about Doha’s progressive values and support for freedom of speech in the region. Just days ago, Qatar’s ambassador to the United Nations piously told the Security Council that her country supported efforts to enhance the safety of journalists and voted for a resolution calling for “a safe and enabling environment for journalists, media professionals and associated personnel to perform their work independently and without undue interference.”

I wonder how the Qatari poet Mohammed al-Ajami feels as he languishes in Doha’s central prison, serving a life sentence for “criticizing the emir” in a poem. You won’t find his plight highlighted on Al Jazeera’s outlets anytime soon.

I have come to understand that Al Jazeera’s noble-sounding claims are nothing but a glossy whitewash.

Mohamed Fahmy, an Egyptian-Canadian journalist who was the Cairo bureau chief for Al Jazeera English, is the author of “Baghdad Bound: An Interpreter’s Chronicles of the Iraq War.”

*Follow The New York Times Opinion section on Facebook and Twitter, and sign up for the Opinion Today newsletter.*

A version of this article appears in print on June 3, 2015 in The International New York Times

### **Annex 34**

M. Fahmy, “The Price of Aljazeera’s Politics”, *The Washington Institute for Near East Policy*, 26 June 2015

Available at <https://www.washingtoninstitute.org/policy-analysis/view/the-price-of-aljazeeras-politics>

Articles & Op-Eds

## The Price of Aljazeera's Politics

*Mohamed Fahmy*

*Fikra Forum*

June 26, 2015

The network's leadership has manipulated the truth and revealed itself as a mouthpiece for extremism, rather than providing a much-needed forum for the region's many independent voices.

As a journalist, it has always been my preference to remain behind the headlines rather than make them. However, the past eighteen months have seen a reversal of roles as we three Aljazeera journalists -- Baher Mohamed, Peter Greste, and I -- face high-profile charges in Egypt. We stand accused of belonging to the Muslim Brotherhood, a banned terrorist organization in Egypt, Saudi Arabia, and the United Arab Emirates.

The three of us have endured two separate trials sandwiched around an appeals court ruling, which overturned an initial seven-year sentence. And as I await another verdict, I'm confident that on the basis of the evidence -- or lack thereof -- we should be acquitted. I hope that soon my long ordeal will be over and I can get on with my life.

But I am also aware that this trial is influenced by factors other than personal evidence against us. So I am deeply worried that my colleagues and I will take the fall for violations committed by Aljazeera. We may pay a heavy price for Qatar, the network's owner, meddling in Egypt's domestic affairs.

As the most organized and politically cunning opposition in Egypt during the Arab Spring, the Muslim Brotherhood was able to hijack the Egyptian people's aspirations at a time of great upheaval. Now, Egyptian president Abdul Fattah al-Sisi faces a turbulent road to restore an effective and representative Egyptian government, but the pro-Brotherhood aspects of Aljazeera have little interest in supporting Sisi.

From my research during my incarceration -- where I spent more than four hundred days -- interviewing incarcerated activists, I have come to understand better the murky Masonic-style modus operandi of the Muslim Brotherhood.

This research began to provide me with some understanding of how I arrived in court. And while I strongly oppose the Egyptian state's increasing limits on reporters and freedom of speech, I now understand how Egyptian authorities could conceivably link Aljazeera with the Muslim Brotherhood.

In a recent interview with the Canadian Broadcasting Corporation (CBC) on my predicament, Aljazeera America's new CEO, Al Anstey, spoke repeatedly about how Aljazeera's different channels reach "different demographics." He also discussed how Aljazeera shares content between the different stations, which he described as "normal practice." Those different demographics, I have come to learn, go to the heart of the chameleon that is Aljazeera.

When I agreed to become its Cairo bureau chief in September 2013, I relied on Aljazeera English's strong reputation for journalistic independence and integrity to make my decision. The network repeatedly assured me that our legitimate journalism wouldn't be undermined or tainted by Aljazeera's other channels. I expected the network to honor that commitment. It didn't.

I had not realized the depths to which other Aljazeera stations would stoop to reach those demographics so different from Aljazeera English. I soon learned that branches of Aljazeera employed spectacularly different approaches for gathering and making editorial decisions on the news. Aljazeera English provided true news while other channels operated as broadcast networks dedicated to the Muslim Brotherhood. As one former Aljazeera journalist admitted, "In Egypt, we have become the palace broadcaster" for the Brotherhood.

Aljazeera's Mubasher Misr channel is emblematic of this issue. Although Egyptian authorities banned this channel, Mubasher Misr continued broadcasting antigovernment programming into Egypt with the Muslim Brotherhood's political messaging. This channel had a strong political slant without an impartial editorial line. I was horrified to see our English-language packages, dubbed into Arabic and altered with an aggressive pro-Muslim Brotherhood slant, rebroadcast time and again on the banned channel.

I repeatedly asked my bosses in Doha to stop, knowing that this practice put us, the journalists, at great risk. Each time, the network told me not to worry and that it would not happen again. But the network did not honor those promises. Because Aljazeera continued to repurpose our English-language content for illegal broadcasts, I ended up in jail.

In court, these broken promises allowed the prosecution's lead national security witness to testify that I had "worked for the banned Aljazeera Mubasher," even though this testimony was inaccurate.

A steely faced Anstey denied to the CBC that our packages had been aired in full by Mubasher Misr. When pressed, he claimed he would have to see "the package to answer that in detail." But Aljazeera's own press office contradicted Anstey by acknowledging that the sharing of our English-language packages "may have happened on a very small number of occasions."

Anstey, who was managing director of Aljazeera English at the time of my arrest, was ultimately responsible for ensuring that proper operational licenses were in place to meet Egyptian legal requirements. However, the network's own lawyer warned executives that the network was not properly licensed for us to operate legally, a warning these executives ignored. While sitting in the courtroom prisoners' cage, we learned that the prosecutor was alleging that Aljazeera's broadcast licenses were not in place despite documented management assurances to me that all the legalities were in order.

Surely, if Aljazeera executives like Al Anstey broke the law, they should face the penalties in the Egyptian courts -- one to three years in jail and/or fines -- not Aljazeera's journalists.

The transgressions by Aljazeera also dictated that our legal strategy for the retrial meant distancing ourselves from the negligent actions of the network. The intent was to show that we journalists in the dock were just doing our jobs. The Aljazeera lawyer representing Baher Mohamed in the retrial weeks back highlighted that during interrogations, Baher stated that he correctly translated a televised speech by President Sisi. Then, the network presented cuts of Baher's translation out of context in order to depict Sisi calling for civil strife between the Egyptian people and the Brotherhood. Baher's testimony was cited in the charge sheet, the prosecutor's case, and in the judgment giving reasons for the seven-year sentence handed down to us three journalists during our first trial in June of 2013.

My bosses also neglected to tell me that they had commissioned Muslim Brotherhood members to cover the Brotherhood's own antigovernment protests and sell the footage to the banned Arabic arms of the Aljazeera network. While in prison, I interviewed some of these activists who were caught and jailed. They openly acknowledged receiving cameras and broadcast equipment from Aljazeera. Some of those activists also informed me that they used the money they received in return for their work to print posters for their rallies and provide food for protestors. Upon my release on bail, I reviewed their official interrogation records and confirmed this.

Their families also shared with me their fury at Aljazeera for using their sons without explaining to them that their actions would break the law. This is not citizen journalism. We three journalists and our colleagues Sue Turton, Dominic Kane, and Mohamed Fawzy, who were sentenced to ten years in absentia, would have not accepted this nonsense. My team was kept in the dark by a network that has opted to become part of the struggle -- an agent of change rather than a recorder and interpreter of events.

As I wait in these final days before the judge hands down a verdict, I am struck by how Anstey can coolly talk about "different demographics" as if Aljazeera presents the same so-called media integrity across all its outlets. It clearly doesn't.

It has become clear to me now how much emphasis Aljazeera places on framing and distributing a potentially dangerous and biased point of view, created by Aljazeera's owners and backers in Qatar.

Recently, Qatar's role internationally has been subject to increased scrutiny. Qatar flatters Western governments and invests in eye-catching global projects in Paris, London, and New York. At the same time, it gives voice to terrorist organizations such as Jabhat al-Nusra in Syria and other extreme Islamist groups across the Middle East. Doha's appetite for keeping dubious company runs deep, and Aljazeera plays a central role.

In 2003, senior Aljazeera journalist Taysir Allouni was sentenced to prison in Spain for helping al-Qaeda transfer money to key operatives in Spain as he reported on their activities. Allouni is famous for interviewing Osama bin Laden in October 2001, shortly after the September 11 attacks. Upon his release from prison, Allouni returned to Qatar, where he was welcomed back by then Aljazeera director-general Ahmed bin Jassim al-Thani.

Last month, Aljazeera aired an extended interview with Abu Muhammad al-Julani, the emir of Jabhat al-Nusra. It was the leader's second interview on Aljazeera since 2013, when the militant Islamist group split from what is now known as ISIS. Senior Aljazeera Arabic presenter Ahmed Mansour conducted the hour-long interview from an undisclosed location with Julani, who did not show his face as he sat on an ornate armchair. "Our options are open when it comes to targeting the Americans if they will continue their attacks against us in Syria. Everyone has the right to defend themselves," Julani warned. The program was so deferential to the terrorist leader that it has been described as Qatar's "infomercial" for al-Qaeda's Syrian affiliate. The network labeled him as the head of a "rebel" group.

Three weeks after the interview, German authorities detained, then released Ahmed Mansour, who holds dual Egyptian and British citizenship, as the Cairo Criminal Court had convicted the veteran in absentia with a fifteen-year sentence. This sentence emerged from charges that he participated in the torture and questioning of lawyer Osama Kamal in Tahrir Square during the uprising against President Hosni Mubarak in 2011. Aljazeera has even covered the hotel bills for exiled Muslim Brotherhood leaders staying in Doha.

It is clear that Qatar uses Aljazeera as a tool of influence to advance the cause of the Muslim Brotherhood. Senior

Qatari leaders including former prime minister Hamad bin Jassim al-Thani have even suggested to foreign officials that Aljazeera's coverage can be altered in exchange for actions that complement Qatar's state interests.

Current and former Aljazeera employees have repeatedly argued that the broadcasting network lacks impartiality and promotes a pro-Islamist narrative. The former Aljazeera director-general from 2006 to 2011, Wadah Khanfar, who recently signed on with Arianna Huffington for her new HuffPost Arabi, was described on the Muslim Brotherhood's own website in 2007 as having been "one of the most prominent leaders in the Hamas Office in Sudan."

The same year, Aljazeera Arabic's Washington bureau chief, Hafez al-Mirazi, resigned in protest over the station's "Islamic drift," stating that "from the first day of the Wadah Khanfar era, there was a dramatic change especially because of him selecting assistants who are hardline Islamists."

In 2012, Aktham Suliman, Aljazeera Arabic's Berlin bureau chief for ten years, resigned in protest over Qatar's influence over the channel. He explained that "it's not a good feeling when you have the impression that you're no longer a journalist, you're basically just a guard dog responding to your owner's whistle when he tells you to go after this state or that government...with the Qatari ruler always the one calling the tune."

I started with the best of intentions at Aljazeera English -- objectively reporting on the Arab Spring, one of the biggest stories of our time, with an Arab voice to the Arab world and beyond. However, Aljazeera has used my work to support the extremist and inflammatory narrative of the Muslim Brotherhood.

It was a lost opportunity. The network's slogan, "The opinion and the other opinion," represents a mirage, as the coverage fails to give voice to Qatar's opposition, which calls for the right to protest and form political parties and labor unions. More than ever, the region needs independent voices and reporting to make sense of the forces of change and the possibilities for a better, more peaceful future. Aljazeera had that potential. Sadly, its leadership has instead manipulated the truth and has revealed itself as a mouthpiece for extremism.

*Mohamed Fahmy, an award-winning journalist and author, is the former Aljazeera English Egypt bureau chief.*



**Annex 35**

“Abadi: Iraqi government is ‘holding’ Qatari ransom money”,  
*Al Araby*, 25 April 2017

Available at

<https://www.alaraby.co.uk/english/news/2017/4/25/abadi-iraqi-government-is-holding-qatari-ransom-money>



The New Arab

## Abadi: Iraqi government is 'holding' Qatari ransom money

Abadi has responded to the Qatar hostage deal [Getty]

Date of publication: 25 April, 2017

**Haider al-Abadi has issued a furious response to the Qatar hostage deal which took place in Iraq, saying the Baghdad government has seized the hundreds of millions in ransom cash.**

i Prime Minister Haider al-Abadi has said his government is holding the hundreds of millions of dollars involved in a ransom deal between Qatar and a Shia militia. Iraq

Qatari negotiators brought the ransom money to Baghdad in return for the freedom of [24 Qataris](#) and two Saudis kidnapped by an Iraqi militia in southern Iraq late 2015 during a hunting trip.

After long negotiations - and complicated arrangements involving rebel and regime forces in Syria - the men flew back to the Gulf on Friday. Yet questions remained about the whereabouts of the [ransom money](#).

Abadi told a news conference that Iraqi authorities seized the cash - which amounted to hundreds of millions of dollars - and was angered

 **Tags:** Abadi, Iraq, Baghdad, Qatar hostage deal, Qatari hunters, Hizballah Iraq, Kataib Hizballah, Iraqi Hizballah

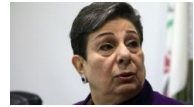
that Baghdad was not consulted on this issue.

"The Qatari government sent its envoy to Iraq and asked to bring a private plane," Abadi said.

"We were surprised that there were big bags, so we seized them and they contained hundreds of millions of dollars. This money was brought in without the approval of the Iraqi government. We have a central bank and a judiciary."

He said the Iraqi government would follow correct legal protocol in regards to the cash.

"Hundreds of millions to armed groups? Is this acceptable?"



which :

Sources told *AFP* that the so-called evacuation deal and ransom money also included [prisoner exchanges](#).

Qatar is believed to be backing Idlib-based rebel groups in the Syria war.

Iran is supporting Bashar al-Assad's regime through Revolutionary Guard advisers and recruiting thousands of Shia militants who have poured into Syria from Iraq, Afghanistan and elsewhere.



### **Annex 36**

E. Solomon, “The \$1bn hostage deal that enraged Qatar’s Gulf rivals”, *The Financial Times*, 5 June 2017

Available at <https://www.ft.com/content/dd033082-49e9-11e7-a3f4-c742b9791d43?mhq5j=e2>

**News review: exclusives of the year****Qatar****The \$1bn hostage deal that enraged Qatar's Gulf rivals**

Doha reportedly paid al-Qaeda affiliate and Iran to win release of royal hunting party



Members of Iran-backed militia Kata'eb Hezbollah, which kidnapped the Qataris in 2015, on parade in Baghdad © Reuters

Erika Solomon in Beirut JUNE 5, 2017

[Qatar](#) paid up to \$1bn to release members of its royal family who were kidnapped in Iraq while on a hunting trip, according to people involved in the hostage deal — one of the triggers behind Arab states' dramatic decision to cut ties with the government in Doha.

Commanders of militant groups and government officials in the region told the Financial Times that Doha spent the money in a transaction that secured the release of 26 members of a Qatari falconry party in southern Iraq and about 50 militants captured by jihadis in [Syria](#). By their telling, Qatar paid off two of the most frequently blacklisted forces of the Middle East in one fell swoop: an al-Qaeda affiliate fighting in Syria and Iranian security officials.

The deal, which was concluded in April, heightened concerns among Qatar's neighbours about the small gas-rich state's role in a region plagued by conflict and bitter rivalries. And on Monday, [Saudi Arabia, Egypt, the United Arab Emirates and Bahrain](#) took the extraordinary step of cutting off diplomatic ties and transport links to Qatar, alleging the country fuels extremism and terrorism.

"The ransom payments are the straw that broke the camel's back," said one Gulf observer.

Doha denies it backs terrorist groups and dismissed the blockade by its neighbours as "founded on allegations that have no basis in fact". It said it could not immediately respond to a request for comment on the hostage deal. But a person close to the Qatari government acknowledged that "payments" were made. The person was unaware of the amounts or where the money went.



Qatar, a US ally that hosts an American military base, has long drawn the ire of its neighbours, who consider Doha an irritating regional maverick. The world's top exporter of liquefied natural gas, it has used its immense wealth to court relations from London to Washington and Tokyo.

But critics accuse it of seeking to punch above its weight diplomatically, meddling in regional affairs and using the Arabic channel of Al Jazeera, the satellite television network it set up, as a propaganda tool.

Doha has a history of reaching out to all kinds of controversial groups, from rebels in Sudan's Darfur region to the Taliban in Afghanistan and Hamas in Gaza. Qatar touts itself as a neutral player that can act as an intermediary in regional conflicts. But its critics, notably Saudi Arabia and the UAE, allege it also uses such interventions to play both sides and fund radical Islamist groups, most recently in Libya and Syria. And to Doha's critics, the hostage deal was further evidence of that role.

"If you want to know how Qatar funds jihadis, look no further than the hostage deal," said a Syrian opposition figure who has worked with an al-Qaeda mediator on hostage swaps in Syria. "And this isn't the first — it is one of a series since the beginning of the war."

The Financial Times spoke to people involved on both sides of the hostage swap deal, including two government officials in the region, three Iraqi Shia militia leaders and two Syrian opposition figures.

Around \$700m was paid both to Iranian figures and the regional Shia militias they support, according to regional government officials. They added that \$200m to \$300m went to Islamist groups in Syria, most of that to Tahrir al-Sham, a group with links to al-Qaeda.

Those who spoke to the FT said the deal highlighted how Qatar has allegedly used

hostage payments to bankroll jihadis in Syria. But to its Gulf neighbours, the biggest issue is likely to be the fact that Doha could have paid off their main regional rival, Iran, which they accuse of fuelling conflicts in the Arab world.

This particular saga began when an Iranian-backed Iraqi Shia militia, known as Kata'eb Hezbollah, kidnapped the Qataris in December 2015. Three Iraqi militia leaders say the hostages were held in Iran.

Kata'eb Hezbollah is an Iraqi group but it is seen as having links with Iran's main regional proxy, Hezbollah, the Lebanese militant group. The latter is helping Iran back Bashar al-Assad, the Syrian president, in his country's six-year conflict.

Two regional diplomats said they believed one of the Iraqi group's motives for the kidnapping was to give Hezbollah and Iran leverage to negotiate the release of Shia fighters kidnapped by the radical Sunni group Tahrir al-Sham in Syria.

Tahrir al-Sham, in previous iterations, was an al-Qaeda branch. It claims it has broken the connection, but the international community still views it as an affiliate.

The hostage transaction was also linked to a separate agreement to facilitate the evacuation of four towns in Syria, two surrounded by jihadi forces and two besieged by Shia militias, say Syrian rebels and diplomats.

One western diplomat said the arrangement provided Qatar the "cover" to finance the hostage deal. "Iran and Qatar had long been looking for a cover to do this [hostage] deal, and they finally found it," he said.

According to two opposition figures with close contact with the groups paid, Qatar used the evacuation arrangement to pay \$120m-\$140m to Tahrir al-Sham. Another \$80m, they said, went to the Islamist group Ahrar al-Sham.

"The Qataris pay anyone and everyone, to what end? They have only brought about our ruin," said a Syrian rebel commander, who gave details of the payments but asked not to be identified.

A regional Arab official said the total paid to jihadi groups was closer to \$300m.

"So, if you add that up to the other \$700m they paid to Iran and its proxies, that means Qatar actually spent about a billion dollars on this crazy deal," he said.

The Iraqi Shia militia commanders in Iraq, all from hardline Iranian-backed groups, said that, to their knowledge, Iran had obtained around \$400m after giving them a payment they would not disclose. They agreed to share some details because they were unhappy about their share of the payment.



The \$1bn hostage deal that enraged Qatar's Gulf rivals | Financial Times

“They [the Iranians] took the lion’s share,” said a member of one of the Iranian-backed Shia militias in Iraq. “That’s caused some of us to be frustrated, because that was not the deal.”

“The hostage deal was perhaps a miscalculation,” said Gerd Nonneman, professor of international relations at Georgetown University in Qatar. “This would have been done in good faith in order to return hostages — there would have been no intention to funnel money to Iran.”

Another confusing chapter of the deal is that Haidar al-Abadi, the Iraqi prime minister, said in April his government had seized hundreds of millions of dollars, which Iraqi officials said arrived on Qatari planes “illegally”. It is not clear if this is money is part of the sums mentioned above or an additional amount.

“The money all came in suitcases. Can you imagine this?” said one senior official.

*Additional reporting by Simeon Kerr in Dubai and Mouataz Majid in Baghdad*

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### **Annex 37**

J. S. Block, “Qatar is a financier of terrorism. Why does the U.S. tolerate it?”, *Los Angeles Times*, 9 June 2017

Available at <https://www.latimes.com/opinion/op-ed/la-oe-block-qatar-terrorism-syria-20170609-story.html>

# Qatar is a financier of terrorism. Why does the U.S. tolerate it?

By JOSHUA S. BLOCK  
JUN 09, 2017 | 4:00 AM



President Donald Trump holds a bilateral meeting with Qatar's Emir Sheikh Tamim Bin Hamad Al-Thani, in Riyadh, Saudi Arabia on May 21. (Evan Vucci / Associated Press)

Five Arab countries cut ties to Qatar on Monday, deepening a rift among Persian Gulf nations over that country's support for radical Islamist groups. The United Arab Emirates, Egypt, Saudi Arabia, Bahrain and Yemen all announced they would withdraw their diplomatic staff from Qatar and cut air and sea traffic to the country.

As part of what former U.S. Secretary of State Condoleezza Rice termed the "New Middle East," Qatar has emerged as one of the region's most consequential players and one of the richest countries in the world. It has also positioned itself as one of the strongest supporters of the Arab Spring, preaching democracy abroad. But behind the polished façade of skyscrapers and luxury shopping malls lies a dark reality. Ruled by the Al-Thani clan, the onetime British protectorate has become a financier of terrorism.

One week after welcoming U.S. Defense Secretary Jim Mattis in April, Qatar hosted a conference by Hamas. The Al-Thani family is a major backer of the terrorist organization, pouring millions every year into the Gaza Strip to cement Hamas' grip on power. Last year alone, Qatar transferred \$31 million to Hamas, and the country is expected to pledge an additional \$100 million to Gaza.

Western leaders have largely turned a blind eye to Qatar's abysmal human rights record at home and malevolent behavior abroad.

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Also on the list of Qatar's beneficiaries is the radical Muslim Brotherhood, the parent organization of Hamas. The Qatari government has bankrolled the Muslim Brotherhood and affiliated groups with billions of dollars across the Middle East. Qatar was a key supporter of the Mohamed Morsi-led regime in Egypt, and members of the Egyptian Brotherhood have lived in Doha for decades. Brotherhood figures are frequently featured on the Qatari-owned Al Jazeera network, spreading their anti-Western world view to more than 60 million people.

Qatar has emerged as a key financier of the Syrian opposition, including Salafi jihadist groups as well as Sunni Islamist organizations. Diplomatic sources estimate that Qatar has invested at least \$1 billion in anti-Bashar Assad forces, with people close to the Qatari government putting the number as high as \$3 billion. Qatar has channeled weapons and money to Islamist rebels, notably to the notorious organization Ahrar al-Sham, which has known ties to Al Qaeda. Far from being a force of moderation, Ahrar al-Sham has fought alongside

Jabhat al-Nusra, also known as Al Qaeda in Syria. Qatar's ruling emir, Sheikh Tamim bin Hamad Al Thani, has been trying to get Jabhat al-Nusra off America's terror list by championing a cosmetic separation between the group and the umbrella Al Qaeda branch. It now operates under the banner of Fateh al-Sham.

In a smart PR move, the government in Doha has financed Western research institutions and think thanks with hundreds of millions of dollars to push the myth of moderate Islamist groups in Syria. Qatar cites Ahrar al-Sham and Jabhat al-Nusra as examples, claiming that their sole purpose is to remove Assad. Too many Western leaders accept this rhetoric. One exception is Germany, which has gone so far as to implicate Qatar as a sponsor of Islamic State.

Qatar's close cooperation with Iran puts the country at odds with Gulf powers that are firmly aligned against the theocratic regime in Tehran. "Iran represents a regional and Islamic power that cannot be ignored and it is unwise to face up against it," Sheikh Tamim Bin Hamad Al Thani reportedly said at a military ceremony in May. "It is a big power in the stabilization of the region." He also reportedly described Hamas and Hezbollah as a resistance movement, calling Hamas "the legitimate representative of the Palestinian people." (The Qatari government later claimed that the Qatar News Agency's website was hacked.)

Western leaders have largely turned a blind eye to Qatar's abysmal human rights record at home and malevolent behavior abroad. This is partly due to the significance of the al-Udeid air base, from which nearly all coalition airstrikes against Islamic State are being conducted. But there may be more costs to our ongoing partnership with Qatar than benefits. Now that our allies are publicly breaking with the Gulf state, Washington should put pressure on the government in Doha to pick a side. Qatar has gotten away with its opportunistic, two-faced foreign policy for too long.

*Joshua S. Block is president and CEO of the Israel Project.*

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**Annex 38**

“Al-Nosra, the Qatari Terrorist Arm in Syria”, *Sky News Arabia*,  
17 June 2017

**(Video not reproduced)**

Available at <https://www.skynewsarabia.com/video/957485>

**Arabic Transcription of Titles and Audio from Al-Nosra, the Qatari Terrorist Arm in Syria”, *Sky News Arabia*, available at:**

<https://www.skynewsarabia.com/video/957485>

النصرة.. ذراع قطر المتطرف في سوريا

تمويل، تسليح، دعم اعلامي

**تمويل**

64.2 مليار دولار من التمويل للجماعات الارهابية بين 2010-2015

30 مليون دولار فدية الصحفي الامريكي

16 مليون دولار دفعة على الهواء من الدوحة فدية لراهبات "معلولا"

**تسليح**

[يقول شخص مسلح]: تم بحمد الله شراء هذا المدفع مضاد الطيران بفضل الله ثم بمساعدة اخواتنا الخيرين في حملة مدد اهل الشام من قطر

[يقول شخص مسلح]: تم بعون الله تعالى شراء عدد من الاسلحة و كمية من الذخائر لإعداد الاخوة في المعسكر... عن طريق حملة مدد اهل قطر لأهلنا في الشام

**دعم اعلامي**

لم تتأخر قطر عن دعمهم اعلاميا

يظهر "اميرهم الجولاني" في وسائل اعلامها [قناة الجزيرة]

[الجولاني للجزيرة: لا نطمح للانفراد بصياغة مستقبل سوريا]

[مقابلة مع ابو محمد الجولاني، امير جبهة النصرة]

**قطر.. نصرة الجبهة**



**ENGLISH TRANSLATION**  
**(FROM ARABIC)**

**Al-Nusra, The Extremist Arm of Qatar in Syria**

Financing...Arming .... Providing Media Support

**Financing**

64.2 Billion Dollars as funding to the terrorist groups between 2010-2015

30 Million Dollars as a ransom for the American journalist

16 Million Dollars as a payment on live T.V. from Doha, as a ransom for the nuns “of Maaloula [an ancient city in Syria]”

**Arming**

[An armed man speaking]: Thanks to Allah [God], we bought this anti-aircraft gun with the help of Allah [God] and then with the help of our good brothers from the ‘Maded Ahel al Sham’ campaign for the support of the Levant [Syrian] people from Qatar.

[An armed man speaking]: With the help of Allah, we bought a number of weapons and a quantity of ammunition to prepare the brothers in the camp ... through the Maded campaign of the Qatari people to support our people in the Levant [Syria].

**Providing Media Support**

Qatar did not hold back by supporting them through media

“Their Prince Al-Jolani”, was shown in their media [Al-Jazeera Channel]

[Al-Jolani to Aljazeera: “We do not intend to be alone in shaping the future of Syria”]

[Clip of an interview with Abo Muhammad Al-Jolani, the prince of Jabhat Al-Nusra]

**Qatar.. Supports the Jabhat [Al-Nusra]**



### **Annex 39**

E. Lake, “Al-Jazeera and the Muslim Brotherhood”, *Asharq Al-Awsat*,  
25 June 2017

Available at <https://eng-archive.aawsat.com/eli-lake/opinion/al-jazeera-muslim-brotherhood>



## Al-Jazeera and the Muslim Brotherhood

by Eli Lake | Jun 25, 2017 | Opinion |

In 2014, Mohamed Fahmy, the former Cairo bureau chief for the Qatar-funded television network began a 438-day sentence in an Egyptian prison on terrorism charges and practicing unlicensed journalism.

Today Fahmy is preparing a lawsuit against his former employers. And while he is still highly critical of the regime that imprisoned him, he also says the Egyptian government is correct when it says al-Jazeera is really a propaganda channel for Islamists and an arm of Qatari foreign policy.

“The more the network coordinates and takes directions from the government, the more it becomes a mouthpiece for Qatari intelligence,” he told me in an interview Thursday. “There are many channels who are biased, but this is past bias. Now al-Jazeera is a voice for terrorists.”

Fahmy's testimony is particularly important now. Al-Jazeera is at the center of a crisis ripping apart the Arab Gulf states. Earlier this month Saudi Arabia, the United Arab Emirates, Egypt and Bahrain imposed a political and diplomatic blockade on Qatar. As part of that blockade, al-Jazeera has been kicked out of those countries.

Al-Jazeera's Arabic broadcasts have not met professional standards in recent years. To start, the network still airs a weekly talk show from Muslim Brotherhood theologian Yusuf al-Qaradawi. He has used his platform to argue that Islamic law justifies terrorist attacks against Israelis and US soldiers. US military leaders, such as retired Lt. General Ricardo Sanchez, who commanded forces in the initial campaign to stabilize Iraq, have said publicly that al-Jazeera reporters appeared to have advance knowledge of terrorist attacks. Fahmy told me that in his research he has learned that instructions were given to journalists not to refer to al Qaeda's affiliate in Syria, al-Nusra, as a terrorist organization.

He said Qatar's neighbors were justified in banning al-Jazeera. "Al-Jazeera has breached the true meaning of press freedom that I advocate and respect by sponsoring these voices of terror like Yusuf al Qaradawi," he said. "If al-Jazeera continues to do that, they are directly responsible for many of these lone wolves, many of these youth that are brain washed."

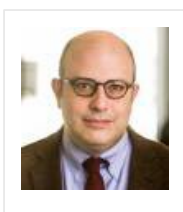
Fahmy didn't always have this opinion of his former employer. He began to change his views while serving time. It started in the "scorpion block" of Egypt's notorious Tora prison. During his stay, he came to know some of Egypt's most notorious Islamists.

"When I started meeting and interviewing members of the Muslim Brotherhood and their sympathizers, they specifically told me they had been filming protests and selling it to al-Jazeera and dealing fluidly with the network and production companies in Egypt associated with the network," he said.

One example of al-Jazeera's coordination with the Muslim Brotherhood revolves around Muslim Brotherhood sit-ins in the summer of 2013, following the military coup that unseated Mohammed Morsi, the Muslim Brotherhood-affiliated president. As part of Fahmy's case against al-Jazeera, he took testimony from a former security guard for the network and the head of the board of trustees for Egyptian state television. Both testified that members of the Muslim Brotherhood seized the broadcast truck al-Jazeera used to air the sit-ins that summer. In other words, al-Jazeera allowed the Muslim Brotherhood to broadcast its own protests.

#### Al-Jazeera and the Muslim Brotherhood - ASHARQ AL-AWSAT English Archive

(Bloomberg)



Eli Lake



**Annex 40**

“Egypt: Qatar is the main funder of terrorism in Libya”,  
*Asharq Al-Awsat*, 28 June 2017

Available at <https://aawsat.com/print/962246>

Egypt: Qatar is the main funder of Terrorism in Libya

[Translation]

Asharq Al-Awsat [Newspaper LOGO]

**Egypt: Qatar is the main funder of terrorism in Libya**

**During a meeting attended by all UN Members**

**Wednesday – 3 Shawal 1438 – 28 June 2017**

**[Photo – members of Daesh in Libya (Reuters)**

**New York: “Asharq Al-Awsat Online”]**

Ambassador Tariq Al-Kouni, Deputy Foreign Minister for Arab Affairs, said that Qatar is the main financier to terrorist groups and organizations in Libya, and in other States in the region which he did not name.

During a meeting that was held yesterday (Tuesday) in New York, in furtherance of an Egyptian initiative and with the participation of all UN Member States, Al-Kouni outlined the forms of support that Qatar granted to terrorism in Libya, and pointed out the impact of terrorism on the situation in Libya which has become a safe haven for terrorism.

The Egyptian report affirmed that there are ties between terrorist groups and organizations in Libya, and that they all work under the umbrella of the Muslim Brotherhood and get their ideas from its extremist ideologies.

Al-Kouni added that Egypt faced terrorist operations originating from Libya, including those [operations] that targeted a number of Coptic Christians in Upper Egypt in May 2017. He further referred to the announcement made by the Armed Forces’ Spokesman regarding the destruction by the Armed Forces, yesterday morning, of 12 vehicles loaded with arms, which sneaked into Egypt through the western borders with Libya.

According to the Asharq Al-Awsat News Agency, Al-Kouni affirmed that Egypt stresses the necessity of taking a number of measures with regard to the situation in Libya; the first of which is to reach a political settlement in the country; second, that the UN Support Mission in Libya (UNSMIL) intensifies its efforts in supervising and implementing the political agreement; third, that the Security Council and its relevant committees make a documentation of the repeated violations committed by certain States, and in particular Qatar, with regard to the sanctions imposed on Libya, especially by funding and arming terrorist groups and organizations in Libya, and take the necessary measures against the violations committed by the said States; fourth, the need to promote cooperation and coordination between the committee of sanctions of Libya and the committee of sanctions of “Daesh” and “Al-Qaeda”; and finally, the necessity of lifting the arms embargo imposed on the Libyan national army, which restricts the ability of the Libyan army in its fight against terrorism.

For his part, Ambassador Amr Abou Al-Atta, the Egyptian delegate to the UN and President of the Counter-terrorism Committee at the Security Council, who presided the meeting, pointed out that terrorism constitutes one of the most important challenges that have an impact on the stability in Libya, and that such an impact in Libya is extending to the neighboring States and to the entire region. He added that the danger of terrorism is increasing in Libya, especially after that “Abu Bakr Al-Baghdadi”, the leader of the extremist Daesh organization, invited the terrorist fighters, who wish to join “Daesh”, to move to Libya instead of Syria and Iraq.

For its part, the Libyan delegation affirmed in its report that the state of instability in Libya provides an incubator environment for terrorist groups, and that the international community must undertake a number of measures; including supporting the Libyan organs and fulfilling their need for arms which would allow them to fight terrorism in furtherance of the UN Resolution No. 2214; providing them with equipment to control the borders and outlets and track the foreign terrorist fighters; implementing the UN Resolution No. 2178 in order to prevent foreign terrorist fighters from reaching Libya and to prevent arms from reaching the terrorist groups; and increasing the coordination between Libya and the other States, and in particular, its neighboring States, in order to monitor the arms trade and



### Egypt: Qatar is the main funder of Terrorism in Libya

prepare reports regarding the country of origin, the serial number and the destination thereof. Additionally, States must put in place a strict supervision of media channels that promote a culture of violence, hatred and terrorism, and must close these channels and pursue those who fund and facilitate their operation. The States from which the said channels are broadcasted must take stringent measures in this regard.

For his part, the representative of Qatar said that his country is worried of the threat of terrorism and that it is keen to participate in the efforts to eradicate terrorism, alleging that the reports of the different experts teams do not refer to the involvement of Qatar in any violation of UN Resolutions or in any activity that would undermine the stability of Libya. He further pointed out that what he mentioned is enough to respond to what he called “the allegations” made by Egypt which come in the “context of media propaganda that attacks Qatar, and which is based on militias that operate without any legitimacy...”.

Further to the intervention of the Qatari delegation – which was largely expected, the Egyptian delegation distributed on the meeting attendees a list that shows the various violations committed by Qatar in Libya, in light of what was officially transmitted in the reports prepared by the UN teams of experts.

The [Egyptian] delegation affirmed that Egypt did not refer to Qatar in this discussion and that, conversely, Qatar was the one that involved itself by its activities and because it is the main funder of terrorism in Libya. It further explained that the role played by Egypt contributes to the stability in Libya – something that everyone knows – while pointing out that the intervention of the Egyptian delegation silenced the Qatari delegation who did not reply.

The participation of the Ambassador, Deputy Foreign Minister for Arab Affairs, in the meeting proves that Egypt is highly concerned by this subject and that it considers the situation in Libya and the achievement of stability as a top priority.

مصر: قطر الممول الرئيسي للإرهاب في ليبيا

## الشرق الأوسط

جريدة الصبر الدولية

الرئيسية • العالم العربي • مصر: قطر الممول الرئيسي للإرهاب في ليبيا

رابط المصدر: <https://aawsat.com/node/962246>

### مصر: قطر الممول الرئيسي للإرهاب في ليبيا

خلال اجتماع شارك فيه جميع أعضاء الأمم المتحدة

الأربعاء - 3 شوال 1438 هـ - 28 يونيو 2017 م



عناصر داعش في ليبيا (رويترز)

نيويورك، «الشرق الأوسط أونلاين»

كد السفير طارق القوني مساعد وزير الخارجية المصري للشؤون العربية، أن قطر هي الممول الرئيسي للجماعات والتنظيمات الإرهابية في ليبيا، بالإضافة إلى دولة أخرى في المنطقة لم يستهأ.

خلال اجتماع عقد أمس (الثلاثاء) بمبادرة مصرية وبمشاركة جميع الدول الأعضاء، بالأمم المتحدة في نيويورك، استعرض القوني أوجه الدعم الذي قدمته قطر للإرهاب في ليبيا، مشيراً إلى تأثير الإرهاب على الوضع في ليبيا وأنها قد أصبحت ملاذاً آمناً للإرهاب.

أكد البيان المصري أنه توجد روابط بين الجماعات والتنظيمات الإرهابية في ليبيا وأنها تعمل تحت مظلة وتستقي أفكارها من الأيديولوجيات المتطرفة لجماعة الإخوان المسلمين.

وأضاف القوني أن مصر واجهت عمليات إرهابية مصدرها ليبيا بما في ذلك تلك التي تعرض لها عدد من الأقباط بصعيد مصر خلال شهر مايو (أيار) 2017 مشيراً إلى ما أعلنه المتحدث الرسمي باسم القوات المسلحة من تدمير القوات المسلحة صباح أمس لعدد 12 من السيارات المحملة بالأسلحة، وذلك بعد تسللها إلى مصر من الحدود الغربية مع ليبيا.

شدد القوني على أن مصر تطالب بضرورة تطبيق عدد من التدابير بشأن الوضع في ليبيا أولها ضرورة التوصل إلى مصالحة سياسية في البلاد، وثانيها ضرورة تكثيف بعثة الأمم المتحدة لدعم في ليبيا UNSMIL لجهودها لمراقبة وتنفيذ الاتفاق السياسي، وثالثها ضرورة قيام مجلس الأمن ولجانته ذات الصلة بتوثيق الانتهاكات المتكررة من جانب بعض الدول وبصفة خاصة طر للعقوبات المفروضة على ليبيا وبشكل أخص عن طريق تسليح وتمويل تلك الدول للجماعات والتنظيمات الإرهابية في ليبيا والتصرف إزاء تلك الانتهاكات من جانب هذه الدول... وابعها حاجة إلى تعزيز التعاون والتنسيق بين لجنة عقوبات ليبيا ولجنة عقوبات «داعش» و«القاعدة»... وأخيراً ضرورة رفع حظر السلاح المفروض على الجيش الوطني الليبي وهو الحظر الذي يقوض من قدرة الجيش الليبي على مكافحة الإرهاب، بحسب وكالة أنباء الشرق الأوسط الرسمية.

من جهته، أشار السفير عمرو أبو العطا مندوب مصر لدى الأمم المتحدة ورئيس لجنة مكافحة الإرهاب بمجلس الأمن والذي ترأس الاجتماع، إلى أن الإرهاب يشكل أحد أهم التحديات المؤثرة على تحقيق الاستقرار في ليبيا وأن التأثير السلبي للإرهاب في ليبيا يمتد إلى دول الجوار والمنطقة بأسرها. وأضاف أن خطورة الإرهاب تتزايد في ليبيا خاصة مع دعوة «أبو بكر البغدادي» زعيم تنظيم داعش المتطرف المقاتلين الإرهابيين الأجانب الراغبين في الانضمام إلى «داعش» إلى التوجه إلى ليبيا بدلاً من سوريا والعراق.

من جانبه، أكد وفد ليبيا في بيانه على أن حالة عدم الاستقرار التي تشهدها ليبيا توفر بيئة حاضنة للجماعات الإرهابية وأنه لا بد من قيام المجتمع الدولي بعدد من التدابير تشمل دعم قدرة الأجهزة الليبية وموافاتها باحتياجاتها من السلاح التي تمكنها من مكافحة الإرهاب وفقاً لقرار مجلس الأمن رقم 2214 وموافاتها بمعدات لمراقبة الحدود والمنافذ وتتبع المقاتلين الإرهابيين لأجانب وتنفيذ قرار مجلس الأمن رقم 2178 لمنع وصول المقاتلين الإرهابيين الأجانب إلى ليبيا ومنع وصول الأسلحة إلى الجماعات الإرهابية وزيادة التنسيق فيما بين ليبيا والدول الأخرى

مصر: قطر الممول الرئيسي للإرهاب في ليبيا

خاصة دول الجوار الليبي لمتابعة تجارة الأسلحة وإعداد تقارير تبين بلد المنشأ وأرقامها التسلسلية ومصدر الأسلحة ووجهتها، فضلاً عن وضع الدول رقابة صارمة على القنوات الفضائية التي تدعو إلى ثقافة العنف والكراهية والإرهاب والعمل على إغلاق هذه القنوات وملاحقة من يقوم بتمويل وتسهيل عملها وقيام الدول التي تُتُّ منها تلك القنوات باتخاذ إجراءات صارمة في هذا الصدد.

من جانبه، قال ممثل قطر إن تهديد الإرهاب يشغل بلاده التي تحرص على المشاركة في جهود القضاء عليه، زاعماً أن تقارير فرق الخبراء المختلفة لا تشير إلى تورط قطر في أي خرق لقرارات مجلس الأمن أو أي أنشطة تهدد استقرار ليبيا. وأوضح أن ما ذكره يعتبر كافياً للرد على ما سماها «الادعاءات» الواردة في مداخلة مصر والتي ذكر أنها تأتي في «سياق الحملة الإعلامية التي تتهاجم قطر والتي تستند إلى ميليشيات تعمل خارج الشرعية...».

على أثر مداخلة وفد قطر والتي كانت متوقعة إلى حد كبير قام الوفد المصري بتعميم قائمة على المشاركين في الاجتماع تعكس الانتهاكات القطرية المختلفة في ليبيا وفقاً لما ورد رسمياً في تقارير فرق خبراء الأمم المتحدة.

أكد الوفد أن مصر لم تزج باسم قطر في هذا النقاش بل إن قطر من خلال أنشطتها وكونها الممول الرئيسي للإرهاب في ليبيا هي التي ورطت نفسها في ذلك. وأضاف أن الدور الذي تقوم به مصر يعمل على تحقيق الاستقرار في ليبيا وهو معروف للجميع، مشيراً إلى أن التحرك من جانب وفد مصر هو الذي أفحم وفد قطر والذي لم يرق بالرد على وفد مصر.

بمدير بالذكر أن الرئاسة المصرية للجنة مكافحة الإرهاب حرصت على تنظيم هذا الاجتماع لإلقاء الضوء على تحديات مكافحة الإرهاب في ليبيا والتأكيد على ضرورة تعزيز التعاون والتنسيق بين لجان مجلس الأمن ذات الصلة بمكافحة الإرهاب وفضح ممارسات قطر والدول الأخرى التي تدعم الإرهاب في ليبيا، وقد كان الاجتماع فرصة جيدة لقيام مصر بإبراز موقفها إزاء الوضع في ليبيا.

جاءت مشاركة السفير مساعد وزير الخارجية للشؤون العربية في الاجتماع كدليل على اهتمام مصر البالغ بالموضوع واعتبار مصر للوضع في ليبيا وتحقيق الاستقرار فيها كأولوية قصوى.

## أخبار ذات صلة

اضغط [هنا](#) للطباعة.



#### **Annex 41**

“Egypt: Qaradawi’s Daughter, Son-in-Law Jailed for Financing ‘Brotherhood’”, *Asharq Al-Awsat*, 4 July 2017

Available at <https://eng-archive.aawsat.com/waleed-abdul-rahman/news-middle-east/egypt-qaradawis-daughter-son-law-jailed-financing-brotherhood>



## Egypt: Qaradawi's Daughter, Son-In-Law Jailed for Financing "Brotherhood"

by Waleed Abdul Rahman | Jul 4, 2017 | Middle East |



Cairo- Egyptian authorities accused on Monday Ola el-Qaradawi, daughter of the spiritual leader of the Muslim Brotherhood, and her husband Hossam Khalaf, a leading member of the Islamist Wasat Party, of providing the Brotherhood with resources from foreign parties, in a reference to Qatar, to finance terrorist operations in Egypt.

Egyptian police detained Ola and her husband for 15 days on Sunday pending investigations on charges of planning terrorist attacks that target security forces.

The Muslim Brotherhood was designated by Egypt as a terrorist group in 2013.

On June 5, Saudi Arabia, Egypt, Bahrain and the UAE cut ties with Qatar and accused it of supporting terrorism. The four countries also said 59 individuals and 12 entities linked to Qatar have been added to their updated respective lists of designated terrorist organizations and individuals.

The list included Yusuf Qaradawi, chairman of the International Union of Muslim Scholars, who lives in exile in Qatar and is accused by Egypt for his role in instigating people against some Arab and Gulf countries.

Egyptian judicial sources said on Monday that Qaradawi's daughter holds the Qatari nationality, in addition to the Egyptian passport. She also works at the Qatari embassy in Cairo since several years.

Qaradawi has four daughters and three sons. Ola studied at the University of Texas in the city of Austin in the US.

According to the judicial sources, Ola and her husband are accused of being "members of an illegal organization," in reference to the Muslim Brotherhood, which is banned in Egypt and for "planning terrorist acts against the security of public institutions."

The Muslim Brotherhood in Egypt considers the Army as the main obstacle facing its chances to return to power and control the country, which explains the continuous attacks launched by members of the Brotherhood against Egypt's military institutions.



Waleed Abdul Rahman





## **Annex 42**

“New human rights report accuses Qatar of sponsoring terrorism in  
Libya”, *Asharq Al-Awsat*, 24 August 2017

Available at <https://aawsat.com/print/1006966>



## الرئيسية • الخليج • تقرير حقوقي جديد يتهم قطر بـ«رعاية الإرهاب في ليبيا»

رابط المصدر: <https://aawsat.com/node/1006966>

### تقرير حقوقي جديد يتهم قطر بـ«رعاية الإرهاب في ليبيا»

الخميس - 1 ذوالحجة 1438 هـ - 24 أغسطس 2017 مرقم العدد [14149]

القاهرة: عبد الستار حتيبة

تهم أحدث تقرير حقوقي ليبي، دولة قطر، برعاية الإرهاب. وقال التقرير الذي أعدته مؤسسة «العدالة أولا» الليبية، ومقرها الرئيسي في القاهرة، إنها تضع كل ما لديها من تقارير ومعلومات عن الكيانات والأفراد الليبيين المدرجين في قائمتي الدول العربية، تحت تصرف الجهات المعنية بمكافحة الإرهاب. ودعت المؤسسة، لعالم، بالتعاون مع «الرباعي العربي» الذي أصدر لائحته عن الشخصيات والكيانات الإرهابية المرتبطة بقطر خلال الشهرين الماضيين، من بينهم سبعة ليبيين، بالإضافة إلى سبع منظمات ليبية. وقال حسن طاطانكي، رئيس المؤسسة التي أصدرت التقرير، «لالتشرق الأوسط»: «نطالب دول العالم بالانضمام إلى الدول العربية الأربع، فيما ذهبت إليه بشأن تصنيفها للكيانات والأفراد المتورطين والمرتبطون بالإرهاب، نشاطا وتمويلا وتحريضا». وفي مطلع شهر يونيو (حزيران) الماضي، أعلن الرباعي العربي (السعودية ومصر والإمارات وقطر) تصنيف 59 فردا في 13 كيانا في لائحة الإرهاب، كان من ضمنها خمسة ليبيين، هم علي الصلابي، وعبد الحكيم بلحاج، والمهدي الحارثي، وإسماعيل الصلابي، والصادق الغرياني، بالإضافة إلى تنظيم «سرايا الدفاع عن بنغازي».

كما أصدرت الدول الأربع لائحة ثانية، أواخر الشهر الماضي، أضافت إليها تسع شخصيات وكيانات قالت إنها إرهابية، كان من بينها شخصيتان ليبيتان، هما إبراهيم بوخزيم، وأحمد الحسنواوي، إلى جانب ستة كيانات ليبية هي «مجلس شورى ثوار بنغازي»، و«مركز السرايا للإعلام»، و«وكالة بشرى الإخبارية»، و«كتيبة راف الله السحاتي»، و«قناة النبأ»، و«مؤسسة التناصح للدعوة والثقافة والإعلام».

من جانبه، قال طاطانكي إن الحرب على الإرهاب «ليست عسكرية وأمنية فقط، وإنما هي حروب قانونية، واستخباراتية، واقتصادية، وفكرية». وفيما يتعلق «بقناة النبأ» التي ورد اسمها في اللائحة الثانية للكيانات الإرهابية من الدول الأربع المشار إليها، فقد قال التقرير إن القناة ظهرت قبل أربع سنوات «في صورة تكاد تطابق فضائية الجزيرة القطرية، خصوصا في سياستها التحريرية»، وإن «الراصد لما تبثه القناة سيكتشف بسهولة أنها تروج للأيديولوجية التي تحملها (الجماعة) الليبية المقاتلة، والأفكار المتطرفة»، و«الدفاع عن الجماعات المصنفة إرهابية، كسرايا الدفاع عن بنغازي، ومجلس شورى ثوار بنغازي، وأنصار الشريعة».

وأفرد التقرير مجالا للحديث عن الفتاوى التي أصدرتها إحدى الشخصيات التي ورد اسمها في لائحة الإرهاب، وقال إنها فتاوى يجري بثها على قناة التناصح الفضائية، و«تعرض على العنف والافتتال والدم». وقال التقرير إن هذه القناة تتبع «مؤسسة التناصح للدعوة والثقافة والإعلام (ورد اسمها في لائحة الإرهاب الثانية)». وتابع أن هذه المؤسسة «تتلقى دعما مباشرا من دولة قطر»، وأن «قيد يديرها عمليا، عضو في دار الإفتاء، ومعروف بنشاطه الدعوي المحرص على الإرهاب».

وحول ما يتعلق بـ«وكالة بشرى الإخبارية»، قال التقرير إنها تعدّ الذراع الإعلامية لسرايا الدفاع عن بنغازي» الإرهابية، وقد برز دورها بشكل كبير بعد اندماج عدد من المنظمات والمجموعات الإرهابية في بنغازي، لتصبح الوكالة، فيما بعد، وسيلتها الإعلامية، وأضاف: «تشير عدة قرائن إلى أن وكالة بشرى تتلقى دعما ماليا ولوجيستيا من قطر، ولعل ارتباط شعارها وشعار قناة الجزيرة القطرية في تغطيتها لبعض عمليات السرايا يؤكد هذه الفرضية».

وحول ما يتعلق بتفاصيل المنظمات المنضوية تحت راية «سرايا الدفاع عن بنغازي»، أوضح تقرير مؤسسة «العدالة أولا»، أن هذه السرايا «تكونت من مزيج بين المجموعات التابعة للقاعدة، وتيار الإخوان، حيث تشكلت بشكل أساسي من مجالس شورى ثوار بنغازي، وإجدابيا، ومجلس مجاهدي درنة، وتنظيم أنصار الشريعة، المصنف من قبل مجلس الأمن كجماعة إرهابية»، إضافة إلى ميليشيا أخرى كانت تستغل اسم حرس المنشآت النفطية، في غرب بنغازي، وكذا الاستعانة بمرتزقة من أفريقيا. وقال التقرير إن «سرايا الدفاع عن بنغازي» مسؤولة عن تنفيذ عدة هجمات وعمليات إرهابية على القوات المسلحة الليبية في منطقة الحقول والموانئ النفطية، وتنفيذ عملية في قاعدة براك الشاطئ الجوية بالجنوب الليبي. وعن «مركز السرايا للإعلام»، أوضح التقرير أنه «مؤسسة إعلامية تحريضية ذات مرجعية تكفيرية مرتبطة بأجندات المشروع القطري لدعم الإرهاب في ليبيا والمنطقة، ويعتبر من بين أبرز الأجنحة التي يعتمد عليها مجلس شورى ثوار بنغازي الإرهابي».

وحول ما يتعلق بكتيبة راف الله السحاتي»، فقد قال التقرير إنها متهمه بتصفية المئات من الجنود والضباط، وبإطلاق النار على المتظاهرين السلميين، وإنشاء سجن سري لتعذيب المواطنين.

### أخبار ذات صلة

اضغط هنا للطباعة.

[Translation]

## Middle East [Newspaper LOGO]

**New human rights report accuses Qatar of sponsoring terrorism in Libya****Thursday – 1 Thu Al-Hegga 1438 – 24 August 2017, issue [14149]****Cairo: Abdel Sattar Heteita**

A recent Libyan human rights report accused the State of Qatar of sponsoring terrorism. The report, which was prepared by the Libyan institution “Justice First”, headquartered in Cairo, affirmed that it provides the relevant counter-terrorism authorities with reports and information it obtains with regard to Libyan entities and individuals who appear on the two lists of the Arab States. The institution invited the world to cooperate with the “Arab quartet” which issued two lists regarding the terrorist persons and entities who were linked to Qatar during the last two months, including seven Libyans, and seven Libyan organizations. Hassan Tatanaki, President of the institution that issued the report, affirmed to the “Middle East”: “we urge all the countries of the world to join the four Arab countries in their categorization of entities and individuals who are involved in and linked to an activity of terrorism, or to the funding or encouragement thereof”. At the beginning of last June, the Arab quartet (Saudi Arabia, Egypt, the United Arab Emirates and Qatar) announced that they added 59 individuals and 12 entities to the list of terrorism, including five Libyans, Ali Al-Salabi, Abdel Hakim Belhag, Al-Mahdi Al-Harati, Ismail Al-Salabi, Al-Sadek Al-Gharyani, in addition to the “Benghazi Defense Brigades” group.

The four States issued a second list by the end of last month, to which they added nine individuals and entities which are reported to be terrorists, and which included two Libyan individuals, Ibrahim Boukhozaim and Ahmed Al-Hassanawi, along with six Libyan entities, “Shura Council of Benghazi Revolutionaries”, “Al-Saraya Media Centre”, “Boshra News Agency”, “Raffalah Al-Sahati Brigade”, “Al-Naba’a Channel” and “Tanasuh Institution for Preaching Culture and Media”.

For his part, Tatanaki said that the war on terrorism “is not only a military or a security [war], but it is a legal, intelligence, economic and intellectual war”. With regard to the “Naba’a Channel” which appeared on the second list of terrorist entities, the report said that the channel appeared four years ago “in a form that is almost identical to the Qatari Al-Jazeera, especially in its editorial policy”. “Any follower of this channel would easily discover that it promotes the ideology of the fighter Libyan (group) and its extremist ideas”, and that “it defends those groups that are classified as terrorist groups, such as the Benghazi Defense Brigades, the Shura Council of Benghazi Revolutionaries, and Ansar Al-Shari’a”.

The report examined the advisory opinions [“Fatwas”] that were issued by one of the persons who appeared on the terrorism list, and affirmed that these opinions are being disseminated through the Tanasuh satellite channel and that they “incite violence, fighting and blood”. The report stated that this channel belongs to the “Tanasuh Institution for Preaching Culture and Media (which appears on the second terrorism list)”. The report added that the said institution “receives direct support from the State of Qatar”, and that it is practically managed by a member of the Fatwa Institution who is known by his preaching activity that instigates terrorism.

As to the “Boshra News Agency”, the report stated that it represents the media arm of the terrorist “Benghazi Defense Brigades”, and that its role significantly emerged after the merger between a number of terrorist groups and organizations in Benghazi, to later become their media vehicle. [The report] added that “various pieces of evidence show that Boshra Agency receives financial and logistical support from Qatar, and that this theory is supported by the fact that its logo was linked to the Qatari Al-Jazeera logo during the coverage of certain operations carried out by the Brigades”.

With regard to organizations that operate under the flagship of the “Benghazi Defense Brigades”, the report of the “Justice First” institution clarified that these brigades were “composed of a mixture between groups affiliated to Al-Qaeda and the Muslim Brotherhood, and that they were mainly constituted of the Shura Council of Benghazi Revolutionaries, Igdabia, the Council of Mujahideen in Derna, and the Ansar Al-Shari’a organization which is classified by the Security Council as a terrorist organization”, in addition to another militia that used the name of the Petroleum Facilities Guard in west Benghazi, as well as the use of some mercenaries from Africa. The report stated that the “Benghazi Defense Brigades” is responsible for several terrorist attacks and operations against the Libyan Armed Forces in the region of petroleum fields and ports, as well as an operation in the Barak Al-Shati air base in the south of Libya. With regard to “Al-Saraya Media Centre”, the report stated that it is “a media institution with an exculpatory background connected to the agendas of the Qatari project for the support of terrorism in Libya and in the region, and it is considered to be one of the most important wings of the terrorist Shura Council of Benghazi Revolutionaries”.

With regard to the “Raffalah Al-Sahati Brigade”, the report stated that it is accused of slaughtering hundreds of soldiers and officers, the shooting of peaceful protestors, and the establishment of a secret prison for the torture of citizens.



### **Annex 43**

“Qatar accused of financing Muslim Brotherhood activities in Europe”, *The Arab Weekly*, 29 October 2017

Available at <https://thearabweekly.com/qatar-accused-financing-muslim-brotherhood-activities-europe>

# The Arab Weekly

## Qatar accused of financing Muslim Brotherhood activities in Europe

Sunday 29/10/2017



Emir of Qatar Sheikh Tamim bin Hamad Al Thani talks in a televised speech on July 21. (AP)

Madrid- A Belgian parliamentarian, speaking at a roundtable forum at the European Commission office in Madrid, accused Qatar of allocating millions of dollars to Muslim Brotherhood activities in Europe.

Citing "European financial and security reports," Koen Metsu, a member of the Belgian parliament and president of the Belgian Temporary Parliamentary Committee for the Fight Against Terrorism, asserted that Qatar has for a decade financially supported the Muslim Brotherhood in France, the United Kingdom, Italy and Denmark, with more than \$175 million. Qatar was said to have also provided "ideological support."

Metsu said any discussion on terrorist financing would not be reasonable if the role of the Qatari funds in supporting Muslim Brotherhood-affiliated organisations was not examined.

"The world has entered a stage of cheap terrorism in which anybody can get hold of a kitchen knife and use it for stupid acts," he said at the "Financing Terrorist Groups in Europe: Purposes, Results and Future" forum, which was hosted by the European Press Association for the Arab World.

"The problem of financing is no longer limited to these extremist acts but extends to financing extremist ideas and that's the battle we have to win," Metsu said.

Participants at the forum reflected a heightened understanding in Europe of the objectives of Islamist groups to control the Muslim communities in Europe and use them for political gain.

They pointed out the need to eradicate terrorist groups in Europe by targeting their financing. Extremist organisations survive on donations from foreign countries and charities and on revenues generated by drug sales and money laundering.

French MP Jacques Myard, a former member of the French National Assembly's International Affairs Committee, said: "Terrorism started with the emergence of the Muslim Brotherhood in Egypt."

He said French intelligence services assembled a list of 30,000 names of radicalised individuals who could potentially turn into terrorists.

Myard added: "Europeans ended up having a big problem with the Americans regarding [the Islamic State] using the internet to advertise because the Americans refuse to amend laws so as to make it possible for courts to go after social media companies like Facebook, Twitter, WhatsApp and others if they fail to curb this advertisement."

Some forum participants contended that the European effort has not focused enough on terrorism financing. European security agencies often focus on side activities, such as drug dealing and money laundering, and ignore the lion's share of financing Islamist groups, namely big donations from some countries, they argued.

Metsu told The Arab Weekly that Doha was trying "to use Muslim Brotherhood groups in Europe as its own pressure groups to increase its power and influence among the Arab and Muslim communities and also to influence decision-makers in political and academic circles."

"Security and financial reports in Europe show the Muslim Brotherhood controls many of the Islamic organisations that are supposed to defend Muslim communities," Metsu noted.

Karim Ifrak, a founding member of the Federation of Muslim Republicans in France, said that in the eyes of French legislation, Islamist financial backers "were not donating money to support terrorists because, in the end, they were supporting Muslim citizens. The Islamists have obviously abused the system." "There are certain Gulf and Arab countries (that) have finally realised that, by backing extremist Islamists, they were, in fact, on the wrong path. Qatar is not among these countries. It continues to protect Yusuf al-Qaradawi (head of the International Union of Muslim Scholars) and to send money to the Muslim Brothers," Ifrak said.

"We are willing to help Qatar come to its senses if it so desires," he added.

Metsu, citing undisclosed European statistical data, said: "Qatar Charity is one of the main supporters of Islamic groups in Europe, donating money to 60% of Islamic institutions, including charities, relief programmes, Quranic schools and mosques."

Mohamed Ahsissene, secretary-general of the Communication Commission of the Socialists Party of Catalonia, pointed out that "many European governments refuse to finance mosques and are tough about authorising them and this creates a crack through which foreign powers can present themselves as patrons of mosques in Europe."

Ahsissene said such a situation presents an opportunity for Islamist groups to launch long-term "blackmailing operations."

"These groups get funds for a specific goal, which is usually to finish building a mosque, but the construction may take 20 years to finish," he said.

Islamist agendas have often been suspected of being a factor in preventing many Muslims from blending in European societies and while Islamists have always blamed European governments for not helping Muslims assimilate, Ahsissene challenged Muslims to stop complaining. "The doors are open to Muslims to become part of the society," he said.



#### **Annex 44**

“Egypt attack: IS flags carried by gunmen, say officials”, *BBC*,  
25 November 2017

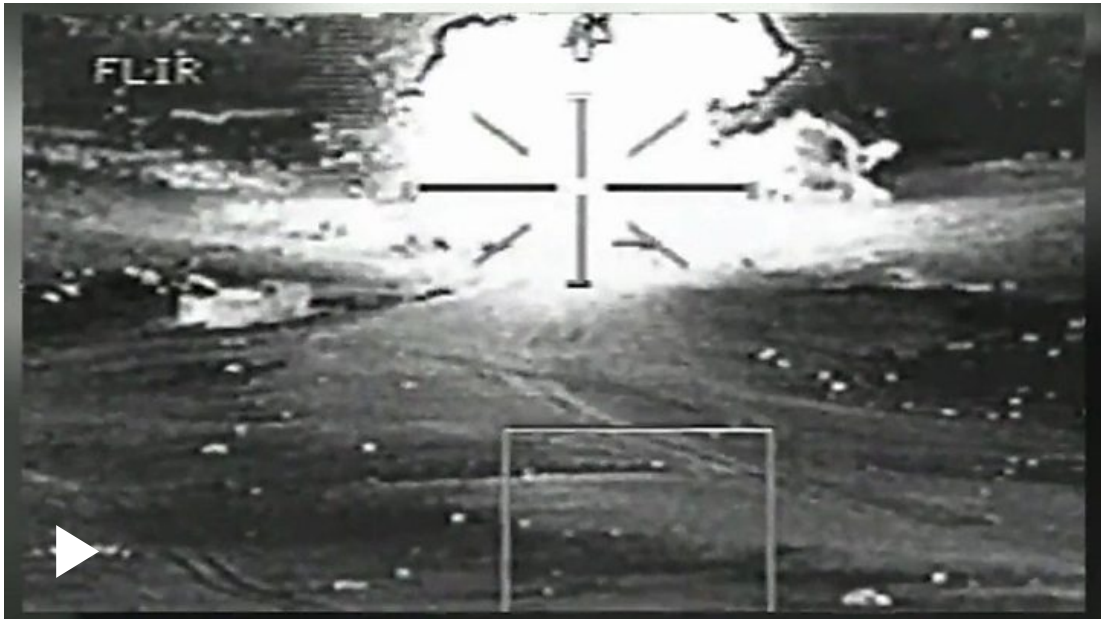
Available at <https://www.bbc.co.uk/news/world-middle-east-42122809>

## Egypt attack: IS flags carried by gunmen, say officials

25 November 2017



Egypt mosque attack



The Egyptian military released footage of air strikes on "terrorist targets"

**Egyptian officials investigating the massacre of worshippers at a mosque in Sinai say the attackers were carrying the flag of the Islamic State group.**

At least 305 people died in the assault, which was launched during Friday prayers and has not yet been claimed by any group.

Egypt's public prosecutor said there were up to 30 attackers at the scene.

President Abdul Fattah al-Sisi has vowed to respond with "the utmost force".

The Egyptian military says it has already conducted air strikes on "terrorist" targets.

Egyptian security forces have for years been fighting an Islamist insurgency in the Sinai peninsula, and militants affiliated with so-called Islamic State (IS) have been behind scores of deadly attacks in the desert region.

Friday's attack in the town of Bir al-Abed is the country's deadliest in recent memory.

- **The IS affiliate in Sinai**
- **Horror of attack will work against extremists**
- **Egypt's militant groups explained**
- **Sisi the strongman**

Al-Rawda mosque was bombed and then dozens of gunmen, waiting outside, opened fire on those trying to escape. Some attackers wore masks and military-style uniforms.

The assailants reportedly set parked vehicles on fire in the vicinity to block off access to the building, and fired on ambulances trying to help victims.

Thirty children are among the dead and more than 100 people have been wounded.

"What is happening is an attempt to stop us from our efforts in the fight against terrorism," Mr Sisi said in a televised address hours after the attack.

"The armed forces and the police will avenge our martyrs and restore security and stability with the utmost force."

## Defying local dynamics

**By Dr HA Hellyer, regional expert**

What is particular about this attack is that this is not only the first on such a scale, but it was also carried out with such a lack of interest in local dynamics.

Until now, radical groups have been trying to recruit in Egypt, from among local Egyptians.

It is very difficult to see how that will be remotely possible following this attack - irrespective of local grievances vis-à-vis the state. If anything, this will only intensify local opposition to any group that claims the slightest bit of sympathy for attacks of this nature.

## Which militants operate in the area?

Militant Islamists stepped up attacks in Sinai after Egypt's military overthrew Islamist President Mohammed Morsi following mass anti-government protests in July 2013.

Hundreds of police, soldiers and civilians have been killed since then, mostly in attacks carried out by the Sinai Province group, which is affiliated to IS.

- **Fake attack photos circulate on social media**
- **Egypt vows forceful response after massacre**

Sinai Province has also carried out deadly attacks against Egypt's Coptic Christian minority elsewhere in the country, and said it was behind **the bombing of a Russian plane** carrying tourists in Sinai in 2015, killing 224 people on board.

It has been operating mainly in North Sinai, which has been under a state of emergency since October 2014, when 33 security personnel were killed in an attack claimed by the group.

Sinai Province is thought to want to take control of the Sinai peninsula in order to turn it into an Islamist province run by IS.

**Annex 45**

“‘Wanted Terrorist’ finished second in Qatar triathlon”, *The Week*,  
28 March 2018

Available at <https://www.theweek.co.uk/odd-news/92582/wanted-terrorist-finishes-second-in-qatar-triathlon>

ODD NEWS

# 'Wanted terrorist' finishes second in Qatar triathlon

Mar 28, 2018

And other stories from the stranger side of life



Source: Twitter/@DohaTriathlon

Qatari officials have come under fire after a man named on a list of wanted terrorists finished second in a government-sponsored triathlon. Mubarak al-Ajji was photographed on the podium receiving a silver medal and prize money just a week after Qatari officials promised the US they would crack down on terrorists.

## **Annex 46**

C. Coughlin, “White House calls on Qatar to stop funding pro-Iranian militias”, *The Telegraph*, 12 May 2018

Available at <https://www.telegraph.co.uk/news/2018/05/12/white-house-calls-qatar-stop-funding-pro-iranian-militias>

🏠 > News

## White House calls on Qatar to stop funding pro-Iranian militias



Emails said to be from senior officials in the Qatari government were sent to leading members of groups such as Hizbollah CREDIT: REUTERS/AZIZ TAHER

Follow

By **Con Coughlin**, DEFENCE EDITOR

12 MAY 2018 • 4:32PM



The Trump administration has called on Qatar to stop funding pro-Iranian militias following revelations about the Gulf state's dealings with terror groups in the Middle East.

US security officials have expressed concern about Qatar's links to a number of Iranian-sponsored militias, many of them regarded as terrorist organisations by Washington.

It follows the disclosure of a number of emails said to be from senior officials in the Qatari government to leading members of groups such as Hizbollah, the Iranian-backed Shia militia that operates in southern Lebanon, as well as senior commanders in Iran's Revolutionary Guard (<https://www.telegraph.co.uk/news/2018/05/10/russia-israel-iran-trapped-deadly-dance-future-middle-east/>).

The emails, transcripts of which have been seen by the Sunday Telegraph, show that senior members of the Qatari government are on friendly terms with key figures in Iran's Revolutionary Guard such as Qasem Soleimani, the influential head of of the Iranian Quds Force, and Hassan Nasrallah, the head of Hizbollah.

Details of these previously undisclosed conversations between Qatari officials and the heads of several Iranian-backed terror groups show that Doha paid hundreds of millions of dollars - one report puts the figure as high as \$1 billion - as part of ransom payments to secure the release of hostages held by Shia militias in southern Iraq.



Hassan Nasrallah, the leader of Hizbollah, reportedly has ties to Qatar

Such payments are in direct contravention to Washington's long-standing policy of not paying ransom demands to terrorist organisations.

Following US President Donald Trump's decision last week to pull out the nuclear deal with Iran, the administration is now calling on Qatar to review its relations with Iran, as well as its ties with Iranian-sponsored terrorist groups.

"What these emails show is that a number of senior Qatari government officials have developed cordial relations with senior figures in Iran's Revolutionary Guard, as well as a number of Iranian-sponsored terrorist organisations," said a senior US security official.

"At a time when the US government is trying to persuade Iran to end its support for terror groups in the Middle East, we do not believe it is helpful that Qatar continues to have ties with such organisations."

Washington regards Qatar as an important ally in the war against Islamist-inspired terrorism, and the US based its command headquarters for the recent military campaign to defeat Islamic State (Isil) at Qatar's Al Udaid air base.

The Qataris say they opened communications with Iran and a number of the terror organisations Tehran supports to secure the release of members of the Qatari royal family who were kidnapped while on a hunting expedition in southern Iraq.

In one of the emails, that are believed to have been intercepted by foreign governments, a senior Qatari official reports that £50 million was paid to Mr Soleimani in April 2017, while another £25 million was paid to an Iraqi Shia terror organisation that is accused of killing scores of American troops in southern Iraq.

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**Annex 47**

Video Excerpt “Zero Distance”, *Al-Jazeera Television*, 29 July 2018  
and 5 August 2018

**(Video not reproduced)**

Archives of the State Information Service of  
the Arab Republic of Egypt

## Transcript of Arabic original:

" أثناء الاشتباكات الدائرة في بعض المواقع الحدودية، كانت عدساتنا ترصد من حين لآخر مروحيات قوات حفظ السلام الدولية على علو منخفض في عمليات تنشيط و مراقبة، بينما غابت المروحيات المصرية بسبب استهداف تنظيم الدولة لها أكثر من مرة. تتخذ القوات من منطقة الجورا جنوب الشيخ زويد قاعدة عسكرية لها وفقاً لاتفاقية السلام بين مصر و إسرائيل، كما رصد فريقنا الميداني طائرات أخرى صغيرة نسبياً لكنها لا تبدو من فئة المسيرة، وثقنا أيضاً وجود نوعين مختلفين من طائرات دون طيار تحلق في مناطق العمليات و فوق الأحياء السكنية و على فترات زمنية متباعدة. تقارير إسرائيلية أشارت إلى أن إسرائيل تشارك بالطائرات المسييرة في العمليات العسكرية في سيناء بالتنسيق مع مصر و إنها نفذت بالفعل ضربات ضد مسلحين منذ 2013.

لم تعلق مصر رسمياً على التقارير الإسرائيلية لكنها في وقت لاحق بثت عبر وزارة دفاعها لقطات لطائرات بدون طيار صينية الصنع من نوع وينغ لونغ قالت أنها انضمت حديثاً إلى أسطول الطائرات القوات الجوية لكن هذا النوع من الطائرات المسييرة لن يكن مطابقاً للطائرات التي رصدناها في سيناء، أثار ذلك فضولنا حول هوية هذه الطائرات خاصة بعد تزايد حالات استهداف المدنيين هناك. في مسار البحث عن حقيقة هويات الطائرات المسييرة في سيناء ومن يقف وراء ضربات الخاطئة للمدنيين، رصد فريقنا الميداني نوعاً ثالثاً من تلك الطائرات يختلف عن النوعين السابقين. كما حصلنا على صور عبر الأقمار الصناعية لمقار عسكرية في سيناء بحثاً عن طائرات مسيرة تربص فيها. أبرز هذه المقار الكتيبة 101 التي تدار منها العمليات العسكرية في شمال سيناء بالإضافة إلى مطار العريش و قاعدة جفجافة الجوية التي تقع في مركز الحسنة بوسط سيناء. عثر فريق تحليل الصور الأقمار الصناعية على اثنتين من الطائرات المسييرة في قاعدة جفجافة الجوية. إحدى طائرتين كانت في وضع الهبوط عند التقاط الصورة في تمام الساعة ثمانى و أربعين دقيقة صباحاً فيما يبدو أنها بعد العودة من مهمة، أما الطائرة الأخرى فكانت رابضة في المربع المخصص للطائرات دون طيار وهو من طراز وينغ لونغ الصينية الهجومية التي عرضها الجيش في إحدى بياناته.

اكتشفنا أيضاً في نفس القاعدة طائرات أخرى من نوع و هي طائرات أمريكية الصنع لكنها تعود لدولة الإمارات التي سلمتها إلى مصر في عام 2016 استناداً إلى مصدر عسكري مصري رفض الكشف عن هويته و اتضح لنا أيضاً أنها ذات الطائرات التي رصدناها أثناء قيامها بعمليات في سيناء. يستخدم هذا النوع من الطائرات لمكافحة مجموعات التمرد لقدرتها على رصد التحركات و القيام بأعمال استخبارية كما يمكنها حمل أكثر من 3600 كيلو غرام من المتفجرات. أما الطائرات الدون طيار التي رصدناها في سيناء فبعد البحث في قاعدة البيانات الطائرات المسييرة حول العالم و بعد مقارنة ما لدينا من طائرات بالتعاون مع مركز دراسات الطائرات المسييرة العسكرية والمدنية بواشنطن، تبين أن هذه الطائرة من نوع AT-802 و هي طائرات أمريكية الصنع لكنها تعود لدولة الإمارات التي سلمتها إلى مصر في عام 2016 استناداً إلى مصدر عسكري مصري رفض الكشف عن هويته و اتضح لنا أيضاً أنها ذات الطائرات التي رصدناها أثناء قيامها بعمليات في سيناء. يستخدم هذا النوع من الطائرات لمكافحة مجموعات التمرد لقدرتها على رصد التحركات و القيام بأعمال استخبارية كما يمكنها حمل أكثر من 3600 كيلو غرام من المتفجرات. أما الطائرات الدون طيار التي رصدناها في سيناء فبعد البحث في قاعدة البيانات الطائرات المسييرة حول العالم و بعد مقارنة ما لدينا من طائرات بالتعاون مع مركز دراسات الطائرات المسييرة العسكرية و المدنية بواشنطن، تبين أن هذه الطائرة من نوع Hermes 450 و هذه من طراز IAI Heron أما هذه فيعتقد إلى حد كبير أنها من نوع Hermes 900 وجميعها طائرات قتال و استطلاع تتبع القوات الجوية الإسرائيلية. "

**Transcription of Arabic original and English subtitles, “Zero Distance”, *Al Jazeera* television, 29 July 2018 and 5 August 2018**

Transcript of English subtitles:

“During the ongoing clashes in some border locations lenses of our cameras were occasionally monitoring from time to time helicopters of the international peacekeeping forces at low altitude, while Egyptian helicopters were absent because of targeting them by ISIS more than once. The international forces from the Joura area south of Sheik Zuwaid have a military base for them according to Egypt-Israel treaty. Also, our field team observed other relatively small aircrafts but they don’t appear to be of drone category. We also documented existence of two different types of drones, flying over the operations and inhabitants areas at different periods. Israeli reports argued that it participates by drones with Egypt and it actually carried out strikes against militants since 2013.

Egypt didn’t officially elaborate on the Israeli reports but late on through its ministry of defense aired footage of Chinese-made drones the Egyptian Air Forces fleet of aircraft but this type of drones was not typically identical to the drones we observed in Sinai. This matter raised our curiosity about the identity of these aircrafts, especially after increasing in cases of targeting of civilians there. In the course of search for the truth about the identity of the drones in Sinai and who are behind the wrong strikes on civilians our field team observed a third type of aircrafts, which is different from the two previous types. Moreover, we got satellite images of military headquarters in Sinai searching for landing drones. the most prominent headquarters are the Battalion 101 where the military operations in North Sinai run from. In addition, to Alarish Airport and the Jafjaf air base in the Al Hasana center at the middle of Sinai. The analysis team of satellite images found two drones at Jafjaf airbase, one of the two planes was in a landing position when the image was taken at 8:40 am apparently after returning from a mission, the other plane was asleep in the square specified for the drones, they were of Chinese Long- Wing drones type presented by one of the Egyptian army’s statements.

We also discovered in the same base other US- made aircrafts type AT-802, which belong to the UAE and were delivered to Egypt in 2016 according to any Egyptian military source who declined to be identify. Also, it became clear to us that the drones are the same like we observed while carrying on operations in Sinai. This kind of aircrafts is used to combat insurgent groups for their ability to observe movements and running out intelligence works as it can carry more than 3600 K.g. of explosives. But the drones we observed in Sinai after searching at the military aircraft database around the world and comparing the aircrafts we have in cooperation with the Center for Studies of Military and Civil drones in Washington, it was found that types of these three planes are “Hermes 450” “IAI Heron” and the third is largely believed to be “Hermes 900”. All are fighter aircrafts and surveillance related to Israeli Air Force”.



**Annex 48**

“Egypt remands dissident cleric’s daughter for 45 days”,

*BBC Monitoring*, 18 March 2019

Available at <https://monitoring.bbc.co.uk/>

1 of 1 DOCUMENT



BBC Monitoring Middle East - Political  
Supplied by BBC Worldwide Monitoring

March 18, 2019 Monday

## Egypt remands dissident cleric's daughter for 45 days

**LENGTH:** 204 words

By BBC Monitoring

An Egyptian court has remanded in custody Ola al-Qaradawi, daughter of exiled Islamist cleric Yusuf al-Qaradawi, for 45 days pending investigations into charges of "financing terrorism".

The Giza Criminal Court remanded Ola al-Qaradawi and her husband Hossam Ali, as well as others, the state-run news agency MENA reported on 18 March.

Ola al-Qaradawi and her husband have been held in pre-trial detention since their arrest in July 2017.

They face charges including "joining the terrorist Muslim Brotherhood group which incites changing the regime, attacking state institutions, targeting public facilities and endangering society", MENA reported.

The charges also include receiving funding from abroad to finance terrorist attacks.

Yusuf al-Qaradawi, who resides in Qatar, received a life sentence in Egypt in January 2018 over charges of involvement in the assassination of an interior ministry officer.

Qatar rejected a request to extradite the cleric back to Egypt in September 2017, amid a diplomatic crisis involving the two countries, as well as Saudi Arabia, the UAE and Bahrain, since June of that year. See: <https://monitoring.bbc.co.uk/product/c1dmc7x4>

Source: MENA news agency in English 1357 gmt 18 Mar 19

**LANGUAGE:** ENGLISH

**PUBLICATION-TYPE:** Transcript

**SUBJECT:** NEGATIVE PERSONAL NEWS (90%); MUSLIMS & ISLAM (90%); TERRORISM (90%); INVESTIGATIONS (90%); ARRESTS (90%); LITIGATION (90%); EXTRADITION (90%); MUSLIM



Egypt remands dissident cleric's daughter for 45 days BBC Monitoring Middle East - Political Supplied by  
BBC Worldwide Monitoring March 18, 2019 Monday

BROTHERHOOD (78%); PRELIMINARY COURT PROCEEDINGS (78%); TERRORIST ATTACKS (77%);  
SENTENCING (73%); INTERNATIONAL RELATIONS (66%)

**COUNTRY:** EGYPT (95%); QATAR (92%); SAUDI ARABIA (79%)

**LOAD-DATE:** March 18, 2019

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## **Annex 49**

“How Qatar funds Muslim Brotherhood expansion in Europe”,  
*Gulf News*, 17 April 2019

Available at <https://gulfnews.com/world/gulf/qatar/how-qatar-funds-muslim-brotherhood-expansion-in-europe-1.63386835>

EXCLUSIVE

# How Qatar funds Muslim Brotherhood expansion in Europe

Gulf News interviews French author George Malbrunot on his recent book *Qatar Papers*

Published: April 17, 2019 11:53

Sami Moubayed, Correspondent

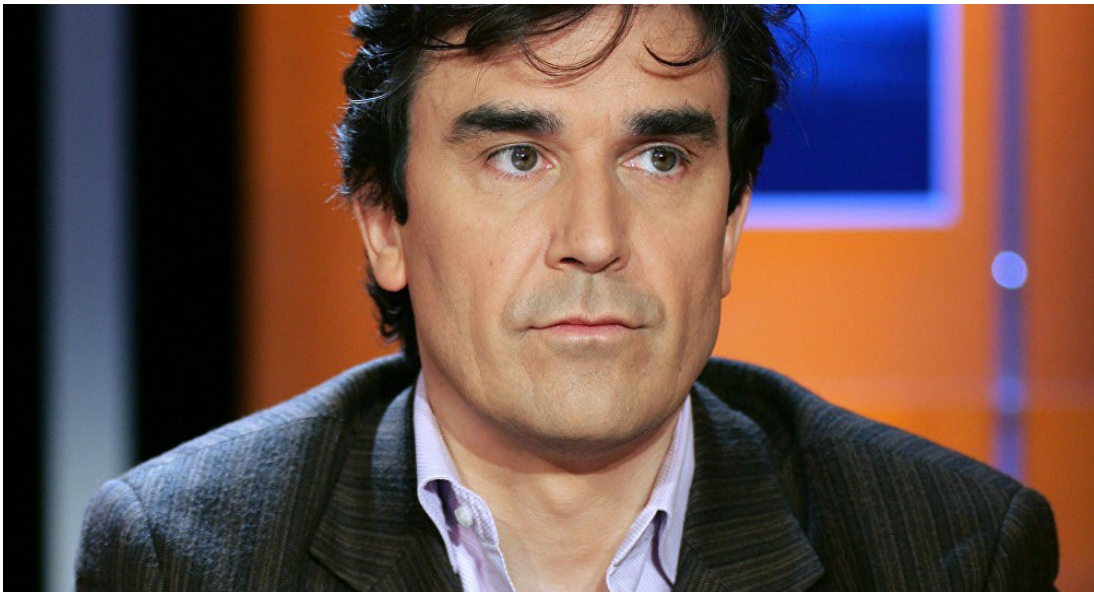


Image Credit:

Beirut: Ninety per cent of Qatari funds to the EU were channeled to Muslim Brotherhood-affiliated projects, two French authors have confirmed, supporting claims made since the summer of 2017 by Saudi Arabia and the UAE.

One of the authors—prominent investigative journalist George Malbrunot—spoke to Gulf News about his new book *Qatar Papers: How the State Finances Islam in France and Europe*.

It has been co-authored with his colleague Christian Chesnot, a ranking expert on the Arab World.

“This is not fantasy,” Malbrunot said in an exclusive interview.

“The evidence we published was based on bank transfers, cheques, and official letters. It is evidence that they simply cannot contest.”

**A total of 140 projects spread in Europe—mainly mosques and Islamic centers—were directly funded by Qatar over the past eight years.**

- George Malbrunot, journalist

### How Qatar funds Muslim Brotherhood expansion in Europe

The two journalists started working on their 295-page book in late 2016, after receiving an information-packed USB from a whistleblower, filled with documents from database of the Qatar Foundation, headed by Shaikha Moza Bint Nasser Al Misned, and Qatar Charity, headed by a relative of her son, the Emir, Sheikh Hamad Bin Nasser Al Thani.

Much of the funding came from Qatar Charity, an NGO that was set up in 1992 originally to help orphans from the Afghan War, then expanded horizontally and vertically across the globe, with the lion's share of its activities focused on Europe.

"A total of 140 projects spread in Europe—mainly mosques and Islamic centers—were directly funded by Qatar over the past eight years," he said.

Their activities spread across territory from north of Norway to the coast of Normandy, France, totaling 90 million Euros.

"Ninety per cent of that activity was linked to Muslim Brotherhood-affiliated organisations through a system that is very efficient, sophisticated — and legal," he added.

"Much of the funding came from three sources: the Diwani Al Amiri, office of the former emir, Hamad Bin Khalifa Al Thani, and the Qatar Charity."

"Qatar wants to buy influence in Europe," explained Malbrunot, making use of its excessive wealth, which transformed it from a "country of fishermen" into a world influencer.

Ultimately, Doha would like to control and influence Islamic societies across the European continent, "a task previously handled by Morocco, Algeria, Turkey, or Saudi Arabia."

#### **Stunning revelations**

An ever-present thread in the book's revelations are links to the Brotherhood—outlawed throughout most of the world for its links to global jihad and terrorism.

"One document shows that the Qatar Foundation pays Tarek Ramadan (grandson of the Brotherhood's founder Hasan Al Banna) a monthly salary of 35,000 euros (Dh145,521)."

The amount was allocated to help Ramadan ward off accusations of rape and sexual misconduct, levied against him in November 2017.

They prompted him to leave his academic job as professor at the University of Oxford, relocating to Doha where he now teaches at the Hamad Bin Khalifa Al Thani University and chairs the Research Center of Islamic Legislation in Qatar.

Before his trial, Ramadan withdrew 590,000 euros from Qatari banks, allegedly for his defense team.

Research for the book took Malbrunot and Chesnot to Switzerland, the UK, Germany, Kosovo, France — and Qatar of course.

In the island of Jersey in the English canal, Qatar set up a mosque, "although there are no more than 400 people living there".

In northern France, they donated hefty sums to the Ibn Rushd School in the city of Lille, and also to another private school in the southern city of Bordeaux.

They also financed 50 similar projects in Italy, and channeled 3.6 million euros to Switzerland between the years 2011-2014.

“They were used to fund the Muslim Cultural Complex of Lausanne, the Museum of Islamic Civilisation in La Chaux-de-Fonds in the canton of Neuchâtel, and the Saladine Mosque in Bienne (canton of Bern).

“The Muslim Brotherhood philosophy is to encompass people’s lives from birth to death. All of the Qatar-financed projects tried to do just that, surrounding mosques with schools, swimming pools, restaurants, and even morgues.”

“When we spoke with people administering these centers, they would say: ‘We are not members of the Brotherhood. All of our funding is 100 per cent legal.’”

“Yet, when we entered the libraries of these mosques and schools, we found the books of Shaikh Yousuf Al Qaradawi (the Doha-based Egyptian mentor of the Brotherhood). His books were everywhere, and so were those of Sayyid Qutob (one of the historic leaders of the Egyptian Brotherhood).”

### **International pressure on Doha**

“After years of (presidents) Sarkozy and Holland, Emanuel Macron said that he has had enough. When Emir Tamim called him to congratulate him on his election, the French President said: ‘I will keep the partnership with Qatar, but I don’t want financing of any future project without my knowledge.’”

Qatar, he notes, came under immense pressure to change its behaviour after its standoff with GCC countries in mid-2017.

Saudi Arabia, the UAE, Bahrain and Egypt severed ties with the country on June 5, accusing it of backing the Muslim Brotherhood and promoting extremist ideology.

“In some cases, it complied, but in others, it tried to play a double game, like closing the London headquarters of Qatar Charity, then re-opened with a rebrand, being Nectar Trust. It just dropped the word ‘Qatar’ from its name.”

Mabrlunot and Chesnot rose to global fame in 2004, when they were held captive for five months in Iraq by the Islamic Army. It is their third book on Qatar after *Les secrets du coffre-fort* (Secrets of the Safe, 2013) and *Nos tres chers emirs* (Our Very Dear Emirs, 2016). Next September, they will be releasing a documentary about their new book, providing a visual aid to Qatar Papers. It will be aired on Russia Today.

## **Annex 50**

E. Chorin, “Libya’s Perpetual Chaos”, *Foreign Affairs*, 19 April 2019

Available at <https://www.foreignaffairs.com/articles/libya/2019-04-19/libyas-perpetual-chaos>

SNAPSHOT April 19, 2019

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## Libya's Perpetual Chaos

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Why Haftar's Tripoli Offensive Could Break the Country's Deadlock

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*By Ethan Chorin*

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Earlier this month, as the United Nations prepared for yet another conference to end Libya's nearly eight-year-long conflict, General Khalifa Haftar, the leader of the eastern-based Libyan National Army (LNA), ordered an assault on the capital, Tripoli. Whether Haftar's forces will succeed in taking the city is still unclear. But a decisive victory for the general would likely bring relative order to Libya, at least for the time being.

The international community has sporadically condemned the LNA's offensive, asking on "all parties" to adhere to the UN process and support Haftar's rival, the Tripoli-based Government of National Accord (GNA). Last week, U.S. Secretary of State Mike Pompeo joined the chorus, calling on Haftar to "halt" his advance. Despite these condemnations, it is clear that some countries, including France and the United Arab Emirates, are saying one thing publicly while privately hoping that Haftar's actions will jolt Libya out of its deep political malaise.

For four years, many in the Western media have cast Haftar as an aspiring dictator undermining the UN's patient efforts to bring the country's warring factions together. Yet many Libyans have lost patience with the GNA and support the LNA's efforts—not out of any great sympathy with Haftar but because they feel that he is the only actor in the country actively addressing Libya's massive security needs.

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*Many Libyans have lost patience with the GNA.*

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## DEMOCRACY DERAILED

Few informed observers expected that the fall of Libyan dictator Muammar al-Qaddafi in 2011 would quickly or easily lead to democracy. Yet the early achievements of the Libyan revolutionaries were quite remarkable: within two years of Qaddafi's ouster, Libya held largely free and fair national elections, saw a peaceful transfer of power from an unelected transitional body to an elected government (the General National Congress), and witnessed the rapid growth of civil society and a free press. But as former President Barack Obama [lamented](#) in 2014, the United States had failed to prepare for what came after Qaddafi's fall.

Another U.S. misstep has gone largely unnoticed: as part of its “war on terror,” the administration of former President George W. Bush had “rendered” some of Qaddafi's most feared Islamist foes back to Libya for torture and interrogation—both a reprehensible and counterproductive move. When the revolution broke out in 2011, Qatar and Turkey financed and armed these Islamists and their allies, many of whom went on to fight moderate rebels in Libya and Syria. Some have been linked to the September 11, 2012 attack on the U.S. mission in Benghazi, which resulted in the death of U.S. Ambassador Christopher Stevens and the end of the Obama administration's appetite for American action in Libya.

After the United Nations Security Council unfroze some of the former Qaddafi regime's foreign assets in late 2011, billions of dollars flowed into Libya's Central Bank and were paid out indiscriminately to all those claiming “revolutionary” status. This turned Tripoli into a feeding ground for rebels, radicals, and criminals seeking to get onto the government dole while undermining the fledgling government. The chaos became worse after the attack on the U.S. mission in Benghazi, which drove Western powers out of Libya and facilitated the placement of radicals in key positions in, for example, the Ministry of Defense. There, they facilitated the transfer of arms and patronage to their allies—mainly Islamists and militias from the powerful coastal city of Misrata. Within months, Benghazi fell to al Qaeda-allied militant groups.



*French President Emmanuel Macron with Haftar (R) and GNA Prime Minister Fayez al-Sarraj in La Courneuve, France.*

Shortly thereafter, in June 2014, Libya held its second national elections, in which Islamist parties once again did poorly. The Islamists, supported heavily by Qatar and Turkey, rejected the results and, along with their militia allies from the coastal city of Misrata, launched an attack on the Tripoli airport, which caused fighting to spill over into residential areas, including the diplomatic quarter. The United States pulled out its remaining diplomats, and the House of Representatives relocated to the eastern city of Tobruk, where its leadership formally appointed Haftar—a Qaddafi-era general who had returned from his U.S. exile in 2011—as commander of the LNA. In Tripoli, members of the Islamist-Misrata alliance refused to recognize the elected government and brought other, non-elected members into a rump General National Congress (GNC). The General National Congress (GNC) limped along from the fall of 2012 until August 2014, when it was formally replaced by the House of Representatives.

## **LOOKING FOR A QUICK FIX**

In the summer of 2014, the UN hosted a reconciliation dialogue in Morocco. The talks produced a document titled the Libyan Political Agreement (LPA), which was signed by representatives of both the Tripoli and the Tobruk governments in

December 2015. The LPA was meant to bridge the differences between the House of Representatives and the rump GNC by creating a hybrid of the two—the Government of National Accord. The result was an unqualified mess.

In December 2015, executive power was vested in a nine-person Presidency Council made up of a president, five vice presidents, and three ministers. A consultative body, the State Council, was drawn from representatives of the both governments. But there was a legal catch: by the terms of the LPA, the GNA had to be ratified by a vote of the House of Representatives, which would then be subsumed into the GNA as its legislature. A major sticking point to the House of Representatives' ratification was an article in the LPA engineered to sideline Haftar, whom the Islamist-Misrata coalition saw as the biggest threat.

Initially both the House of Representatives and the GNC refused to participate in the LPA. The GNA convened in Tunisia for the first time in January, 2016 and was then transferred to an enclave in Tripoli, while the House continued its claim to govern Libya from the east. And as the GNA sat deadlocked and isolated in Tripoli, Haftar racked up battlefield victories. By 2017, he had succeeded in expelling al Qaeda, the Islamic State (ISIS), and other extremists from Benghazi, boosting his popularity across the country. One 2018 study published by the Netherlands Institute of Foreign Relations, for instance, found that the Libyan public had significantly [greater confidence](#) in the “protective capacity” of Haftar's LNA than in that of the GNA.

Although the United States and its European allies had enthusiastically helped topple Qaddafi, following the 2012 Benghazi attack, the West had once again lost interest in Libya. This began to change only in 2016 when the consequences of Libya's political dysfunction arrived on European shores: African immigration toward Europe via Libya surged, even as ISIS expanded rapidly in Libya and North Africa. European leaders feared that terrorists would enter their countries disguised as refugees and asylum seekers. Indeed, Tripoli's hinterlands became a training ground for suicide bombers in Europe and Tunisia—including one who killed 22 at a concert in Manchester, England in 2017.

Faced with this crisis, the international community chose expediency over long-term stability. In early 2016, the West had suddenly shifted its recognition from the House of Representatives to the not-yet-ratified GNA. With GNA permission, the United States began bombing ISIS at its hub in Sirte, while Italy struck deals with the Tripoli militias to keep African asylum seekers languishing in Libya. This

not only infuriated Libyans but subjected the world-be-emigrants to [atrocities](#) at the hands of their traffickers. By the end of 2016, however, Haftar had become too strong to ignore, and the distance between him and the GNA became harder to bridge. Finding little public support in the West, Haftar alternately courted Russia, Egypt, and several Gulf states, while arguing that he and the LNA answered to the House of Representatives, not the GNA, which according to the LPA process still did not exist.

With the LPA stuck in the mud once again, in June 2017 the UN appointed its fourth Libya envoy, Ghassan Salame, who tried to resuscitate the LPA by engaging the State Council and the House of Representatives to [simplify](#) the GNA's leadership structure. Stymied, Salame announced last winter that he would move straight to a comprehensive [national conference](#) that would cover all outstanding issues at once. The conference, planned for earlier this month, was put on hold after Haftar began his offensive.



*At a pro-LNA rally in Benghazi, April 2019*

## AN END TO THE FIGHTING?

Most Libyans today simply want order and an end to the country's fighting. As the international community is not willing to accept the responsibilities and costs of intervention itself, Haftar's current moves may be the chance to shift the status quo, just as a sudden rebel push in 2011 broke the de facto partition of the country between the rebels and the Qaddafi regime.

Haftar's offensive is a dangerous gamble: a swift and radical change on the ground could potentially lead to a cease-fire that would break the militias' hold over the capital and, by extension, the GNA. It could also be the precursor to an attempt by Haftar to establish authoritarian rule over the country. And if there is a long stalemate, the country could see the dramatic escalation of a proxy war, with Qatar and the Muslim Brotherhood supporting the GNA and Saudi Arabia, Egypt, and the United Arab Emirates supporting Haftar. Over the last few days, Haftar's siege has revealed splits within GNA-linked militias, themselves divided on the role of ISIS and al Qaeda-linked jihadists in the current fight. It has also split the international community: the European Union is calling on Haftar to halt his advance, but the UN Security Council failed to pass a draft resolution condemning the offensive.

Assuming that the LNA does manage to take Tripoli—and that the international community accepts this outcome—how can a Libyan government secure political legitimacy? First, the UN should introduce a peacekeeping force that would monitor the LNA, help disband and disarm the country's remaining militias, and assist with post-conflict stabilization.

The Libyan legal expert Azza Maghur has convincingly argued that any legal resolution to Libya's crisis will have to come from the House of Representatives, which is the last legally elected body in the country. In this scenario, the House of Representatives would serve simply as a ratifying body for a new electoral law and a streamlined, technocratic interim government that could guide the country until it is ready for national elections. Such an approach would be close to what the first post-Qaddafi government, the National Transitional Council, had envisioned before the Islamists and the United States pressured it to rush to elections. After elections, the process of completing the draft constitution would begin again.

If Haftar believes the international community will neither prop up the GNA nor allow a military dictatorship, he can probably be convinced to continue in his role

as the head of the LNA, reporting to a legitimate government. Alternately, he might participate in the political process as one of many candidates for civilian office.

The United States doesn't have to do much to help. The Trump administration can avoid falling into the same trap as its predecessor by not joining the hysteria over Haftar and the LNA, but also by making it painfully clear to Haftar that he should limit himself to securing the country, not persecuting rivals and consolidating power.

## **Annex 51**

C. Rousseau, “Mesures prises par les Puissances occidentales à l’égard de la Pologne et de l’U.R.S.S. à la suite de l’établissement de l’état de guerre en Pologne le 13 décembre 1981”,  
(1982) 86 *Revue Générale de Droit International Public* 603

# Revue Générale de **Droit** **International** **Public**

**Charles Rousseau**  
**Michel Virally**

Revue publiée avec le concours du C.N.R.S.

**A.Pedone. 13, rue Soufflot. Paris**      **Tome 86/1982/3**



Dans une déclaration distribuée le 12 février 32 organisations non gouvernementales ont exprimé leur inquiétude à la suite des circonstances et des pressions qui ont entraîné le départ de M. van Boven. Le 18 février M. Kurt Herndl, ancien membre du Secrétariat de l'O.N.U. de 1969 à 1977, directeur du Département de droit international au ministère autrichien des Affaires étrangères, diplômé de l'Institut des hautes études internationales de l'Université de Paris, âgé de 49 ans, a été nommé directeur de la Division des droits de l'homme.

Lors d'une interview accordée le 23 mars 1982 au *Journal de Genève* M. van Boven a déclaré qu'il n'avait de comptes à rendre qu'aux peuples qu'il servait et s'est élevé contre les campagnes orchestrées contre lui par le gouvernement de la République argentine. Il devait revenir à la charge le 28 avril suivant dans une conférence de presse où il affirma qu'il avait été victime depuis son entrée en fonctions en 1977 de pressions incessantes de la part de l'Argentine et de certains autres gouvernements sud-américains proches de ce dernier Etat, qui lui reprochaient de recueillir le témoignage de réfugiés politiques.

Pour sa part le Secrétaire général des Nations Unies a confié au *Journal de Genève* le 23 mars 1982 que « pour être efficace, l'activité de l'O.N.U. devait être discrète » et que son désaccord avec M. van Boven portait « non pas sur le fond, mais sur un problème de discipline », l'intéressé ayant nommément pris à partie à diverses reprises, dans des interviews accordés à la presse, certains Etats de l'Amérique latine en dépit de plusieurs rappels à l'ordre de ses supérieurs hiérarchiques (94). Mais le problème fondamental de l'indépendance des hauts fonctionnaires internationaux à l'égard des Etats membres des Organisations n'est pas résolu pour autant et l'on peut estimer en l'espèce que le Secrétaire général a cédé trop facilement à des pressions peu excusables.

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## POLOGNE

### Mesures prises par les Puissances occidentales à l'égard de la Pologne et de l'U.R.S.S. à la suite de l'établissement de l'état de guerre en Pologne le 13 décembre 1981

La proclamation de l'état de guerre (état de siège ou loi martiale) en Pologne par le gouvernement du général Jaruzelski le 13 décembre 1981, avec la suspension de la plupart des libertés individuelles (95), a provoqué une grande émotion en Europe occidentale. Un Conseil

(94) *Journal de Genève* des 9, 11, 12, 13 février, 23 mars et 29 avril ; *Monde* des 10, 12 et 20 février 1982.

(95) La Diète a approuvé l'état de guerre à l'unanimité moins une voix et six abstentions le 26 janvier 1982. Sur l'ensemble des problèmes examinés dans cette chronique voir les journaux de langue française et anglaise depuis le 15 décembre 1981.

militaire de salut national a été mis en place et un véritable régime de dictature militaire a été institué, le pouvoir politique étant désormais exercé par un organe collégial de vingt officiers (seize généraux et quatre colonels). Il n'est pas facile d'évaluer avec certitude le nombre des arrestations qui ont été opérées. Le gouvernement de Varsovie a donné successivement les chiffres de 6.649 personnes internées (dont 2.552 avaient été libérées à la date du 1<sup>er</sup> mars 1982, ce qui laissait à ce moment 4.095 personnes encore détenues) (96), puis de 3.593 personnes encore détenues dans 25 camps d'internement (97). Depuis cette date un millier de détenus ont été libérés le 2 mai et le couvre-feu a été levé le même jour, mais pour le reste l'état de siège est resté en vigueur. D'autre part 1.372 personnes ont été arrêtées le 3 mai 1982 à la suite de violents affrontements entre les manifestants et les forces de l'ordre à Varsovie, Gdansk et Szczecin, et 679 personnes ont encore été arrêtées et internées après de nouvelles manifestations anti-gouvernementales le 13 mai suivant. Pour sa part la Commission internationale de juristes évaluait dans un communiqué du 5 janvier 1982 le nombre total des personnes arrêtées à un chiffre compris entre 5.000 et 12.500. Le fondateur de « Solidarité », Lech Walesa, reste le plus illustre de ces détenus. On relèvera incidemment que le Comité international de la Croix-Rouge, a été autorisé le 21 janvier 1982 à visiter les internés ; 257 libérations sont encore intervenues le 12 juin.

A) RÉACTION DES ETATS TIERS. — Les ministres des Affaires étrangères des dix Etats membres de la C.E.E., réunis à Londres les 14 et 15 décembre 1981, ont publié en fin de matinée le 15 décembre la déclaration suivante :

« Les ministres des Affaires étrangères des Etats membres de la Communauté européenne sont inquiets du développement de la situation en Pologne et de l'imposition de la loi martiale et de la détention des syndicalistes. Ils éprouvent une profonde sympathie pour le peuple polonais dans ces temps de tension et de difficultés. Ils attendent de tous les Etats signataires de l'acte final d'Helsinki qu'ils s'abstiennent de toute ingérence dans les affaires intérieures de la République populaire de Pologne. Ils attendent que la Pologne résolve ses problèmes elle-même et sans usage de la force, de sorte que le processus de réforme et de renouveau puisse continuer. Les ministres des Affaires étrangères des Dix continueront de suivre les événements de Pologne avec une attention particulière et sont d'accord pour maintenir une étroite consultation sur cette question. »

Les représentants des mêmes Etats ont fait une démarche commune le 22 décembre auprès du ministre polonais des Affaires étrangères pour dénoncer les graves atteintes aux droits civils et humains du peuple polonais et la violation des principes fondamentaux de l'acte final d'Helsinki. Une nouvelle déclaration commune fut adoptée le 4 jan-

(96) Déclaration du général Jaruzelski (*Monde* du 2 mars 1982). Au dire d'un porte-parole du gouvernement polonais (*Monde* du 16 janvier 1982) 5.906 personnes avaient été internées en décembre 1981, sur lesquelles 1.056 auraient été relâchées le mois suivant.

(97) Déclaration de M. Zawalski (*Journal de Genève* du 9 mars 1982).

vier 1982 à Bruxelles par les ministres des Affaires étrangères des Dix, où il était affirmé que « l'évolution de la situation en Pologne suscite la totale réprobation des Dix » et que les mêmes Etats lançaient un appel pressant « pour que les autorités polonaises, dans les plus brefs délais, lèvent la loi martiale, libèrent les personnes arrêtées et restaurent un dialogue réel avec l'Eglise et Solidarité ».

D'autre part le président Reagan déclarait le 17 décembre dans sa conférence de presse :

« Nous considérons avec la plus grande gravité la situation présente en Pologne, et particulièrement le recours croissant à la force contre une population désarmée ainsi que les violations des droits civiques élémentaires du peuple polonais.

« La violence appelle la violence et menace de plonger la Pologne dans le chaos. Nous appelons tous les peuples libres à se rassembler pour presser le gouvernement polonais de rétablir les conditions qui rendront possibles des négociations constructives et le compromis.

« Il nous sera certainement impossible de continuer à tenter d'aider la Pologne à résoudre ses problèmes économiques tant que la loi martiale est imposée au peuple polonais, que des milliers de personnes sont emprisonnées et que les droits légaux des syndicats libres, concédés antérieurement par le gouvernement, sont désormais déniés. »

Le même jour 17 décembre le Parlement européen adoptait par 180 voix contre 2 et 4 abstentions une résolution demandant l'abrogation de l'état d'urgence et la mise en liberté immédiate des personnes emprisonnées.

Le Secrétaire général des Nations Unies, M. Kurt Waldheim, adressait le 21 décembre un appel à « tous les intéressés » en Pologne pour qu'ils fassent preuve de la plus grande modération et recherchent immédiatement une solution à la crise qui respecte les droits de l'homme. Enfin la Commission internationale des droits de l'homme des Nations Unies adoptait le 11 mars 1982 à la faible majorité de 19 voix contre 13 et 10 abstentions une résolution demandant au Secrétaire général des Nations Unies ou à toute personne désignée par lui d'entreprendre une étude appropriée sur la situation des droits de l'homme en Pologne.

B) MESURES ADOPTÉES PAR LES ETATS OCCIDENTAUX A L'ÉGARD DE LA POLOGNE. — Mais des protestations, même énergiques, étaient destinées à rester platoniques si elles n'étaient pas assorties de mesures concrètes contre le gouvernement polonais. A ce point de vue les circonstances se prêtaient mal à une action concertée. Il ne pouvait être question de prendre en l'espèce des « sanctions », celles-ci ne pouvant émaner que des Nations Unies et aucune action n'ayant été introduite par les Etats occidentaux devant le Conseil de sécurité dans la crainte d'un veto soviétique trop aisément prévisible. On ne voit pas d'ailleurs sur quelle base des « sanctions » auraient pu être édictées en dehors du grief d'une violation des droits de l'homme imputable au gouvernement polonais à l'égard de ses ressortissants — domaine dans lequel aucune procédure de ce genre n'a été instituée jusqu'ici. Les seules

mesures appliquées ont été des mesures économiques — et encore, comme on le verra plus loin, elles ont été individuelles, sont intervenues de manière purement facultative et visiblement sans grande conviction de la part des Etats intéressés.

Il ne pouvait être question de frapper les ressortissants polonais eux-mêmes. Le Haut-Commissariat des Nations Unies pour les réfugiés a indiqué le 29 janvier 1982 que 150.000 à 200.000 Polonais se trouvaient alors en Europe occidentale, dont un quart avait demandé l'asile politique. Le gouvernement français avait fait savoir pour sa part qu'il avait assoupli les formalités de visa d'entrée et de séjour pour les réfugiés polonais. Quant au gouvernement britannique il a indiqué le 4 mars qu'il n'accepterait aucun réfugié polonais contraint à s'exiler par les autorités de son pays, mais qu'il accepterait tous les Polonais quittant leur pays de leur plein gré.

Les relations diplomatiques des Etats occidentaux avec le gouvernement polonais sont restées normales. Seuls deux ambassadeurs de Pologne à l'étranger ont donné leur démission en demandant et obtenant l'asile politique dans le pays où ils étaient accrédités. Tel a été le cas pour M. Romuald Spasowski, ambassadeur à Washington depuis avril 1978 et jusqu'à cette date numéro 2 du ministère polonais des Affaires étrangères, dont la décision est intervenue le 20 décembre 1981. Même attitude de la part de l'ambassadeur de Pologne à Tokyo, M. Z. Rurarz, le 24 décembre. Aucun incident n'a eu lieu en dehors de l'occupation du consulat de Pologne à Lyon par une cinquantaine de manifestants de 11 h. 30 à 15 heures le 21 décembre, lesquels ont été expulsés par la police. Le ministre polonais des Affaires étrangères, M. Jozef Czyrek, s'est rendu en visite privée à Paris du 31 janvier au 5 février 1982 pour assister au 24<sup>e</sup> congrès du parti communiste français et a rencontré à cette occasion son homologue français, M. Claude Cheysson, le 3 février.

Les premières *mesures économiques* sont venues des Etats-Unis. Annoncées le 25 décembre, elles impliquaient l'interruption des livraisons de produits alimentaires (à l'exception des envois privés), le refus des crédits à l'exportation, l'interdiction de l'atterrissage des avions polonais sur le territoire des Etats-Unis et l'exclusion des chalutiers polonais de la zone économique de pêche des Etats-Unis.

Pour leur part les Etats européens n'agirent qu'avec beaucoup de réticences, l'autonomie de l'action des Etats occidentaux membres d'une organisation régionale restant la règle. Particulièrement typique à ce point de vue est la rédaction des paragraphes 11 à 18 de la déclaration adoptée le 11 janvier 1982 par le Conseil atlantique, réuni au niveau des ministres des Affaires étrangères :

« 11) Chacun des Alliés déterminera, selon sa situation et sa législation propres, les possibilités d'action nationale appropriées dans les domaines suivants : A) Imposition de nouvelles restrictions aux déplacements des diplomates soviétiques et polonais, ainsi que d'autres restrictions aux missions diplomatiques et aux organisations soviétiques et polonaises ; B) Réduction des activités scientifiques et techniques ou non renouvellement des accords d'échanges (...).

« 12) Les Alliés reconnaissent l'importance de mesures économiques destinées à démontrer aux autorités polonaises et à l'Union soviétique la profonde réalité de la préoccupation occidentale devant les événements de Pologne, et ils soulignent l'intérêt des mesures déjà annoncées par le président Reagan (réserve de la Grèce).

« 13) S'agissant des relations économiques avec la Pologne, les Alliés :

— Ont noté que les crédits commerciaux futurs concernant d'autres marchandises que les produits alimentaires seront mis en suspens ;

— Ont noté que la question de la tenue de négociations relatives aux paiements dus en 1982 sur la dette publique polonaise devrait pour le moment être tenue en suspens ;

— Ont affirmé qu'ils étaient prêts à poursuivre et à accroître l'aide humanitaire au peuple polonais, la distribution de cette aide devant être assurée et suivie par des organisations non gouvernementales chargées de veiller à ce qu'elle parvienne aux personnes auxquelles elle est destinée ;

— Ont noté que les pays alliés qui vendent des denrées alimentaires à la Pologne chercheront à obtenir des autorités polonaises les engagements les plus clairs possibles sur l'utilisation de ces denrées (réserve de la Grèce).

« 14) (...) Etant admis que chacun d'eux agira selon sa situation et sa législation propres, les Alliés examineront des mesures pouvant s'appliquer aux importations en provenance d'Union soviétique, aux accords maritimes, aux accords sur les services aériens, à l'effectif des représentations commerciales soviétiques et aux conditions touchant les crédits à l'exportation (réserve de la Grèce).

« 15) Les Alliés resteront en étroite consultation sur la mise en pratique de leur résolution afin de ne pas contrarier l'effet des mesures prises individuellement par leurs partenaires.

« 16) Etant ainsi convenus de se consulter sur des dispositions à prendre dans le proche avenir, les Alliés réfléchiront aussi aux relations économiques à long terme entre l'Est et l'Ouest, particulièrement en ce qui concerne l'énergie, les produits agricoles et autres, et l'exportation de technologies, compte tenu du changement de situation et de la nécessité de protéger leur compétitivité dans le domaine des capacités militaires et technologiques (réserve de la Grèce). »

Dans une interview accordée à l'hebdomadaire ouest-allemand *Stern* et publiée le 28 janvier 1982 le Premier Ministre français, M. Pierre Mauroy, s'est expliqué sans ambages sur l'attitude des Etats européens :

« Les Américains n'ont pas le droit d'exiger des Européens qu'ils prennent dans l'affaire polonaise des sanctions qui pèseraient gravement sur eux socialement et économiquement, tant qu'ils ne sont pas prêts eux-mêmes à de tels sacrifices.

« L'histoire a montré que la politique des sanctions a obtenu des résultats douteux et en tout cas peu efficaces. Paris honorera les accords déjà passés, mais il n'en souscrira provisoirement pas de nouveaux. »

Même les mesures les plus énergiques — comme l'interdiction faite aux avions polonais de la compagnie Lot de se poser sur les aéroports de six pays européens (France, R.F.A., Autriche, Grande-Bretagne, Pays-Bas, Suisse) — n'ont pas tenu longtemps. Une telle interdiction fut en effet rapportée par la Grande-Bretagne le 19 février 1982 et par la Suisse le 1<sup>er</sup> mars suivant.

Ce dernier Etat avait d'ailleurs invoqué son statut de neutralité perpétuelle pour se soustraire à l'application des mesures économiques. Le 13 janvier 1982 le Conseil fédéral décidait de ne pas participer aux mesures décidées par les Etats-Unis contre la Pologne, mais en même temps de ne pas agir de manière à atténuer les effets des restrictions américaines, c'est-à-dire de ne pas profiter de l'occasion pour prendre la place laissée vacante par l'industrie américaine dans certains échanges commerciaux : position somme toute assez voisine de l'attitude observée par la Confédération helvétique en 1935-36 lors des sanctions appliquées à l'Italie au moment de la guerre d'Ethiopie et après 1975 dans l'affaire de la Rhodésie.

En dehors des Etats-Unis et des pays européens, peu d'Etats se sont associés aux mesures dirigées contre le gouvernement polonais. Le gouvernement japonais a pris pour sa part le 17 et le 23 février 1982 une série de mesures à l'encontre des gouvernements polonais et soviétique (restrictions aux mouvements des agents diplomatiques, refus de crédits supplémentaires, ajournement de la coopération technologique et scientifique, etc.).

Les Etats du bloc socialiste n'ont pris aucune mesure de rétorsion contre les Etats occidentaux. Toutefois le secrétaire général du COMECON, M. Nicolai Fadeiev, a confirmé le 11 juin 1982 lors de la réunion de cet organisme à Budapest la nécessité de renforcer les tendances autarciques du COMECON à la suite des « mesures discriminatoires » prises par l'Occident.

Sur le plan spécifique des Organisations internationales on notera que M. Nicolas Valticos, ancien sous-directeur général du Bureau international du Travail et secrétaire général de l'Institut de droit international, s'est rendu du 9 au 16 mai 1982 en Pologne, où il a rencontré des représentants du gouvernement et des syndicalistes dont les activités ont été suspendues depuis la proclamation de l'état de guerre. Réunie à Genève dans le cadre de la 68<sup>e</sup> Conférence internationale du travail, la Commission de l'application des normes a adopté le 11 juin suivant ses conclusions concernant le cas de la Pologne et constaté que la suspension générale des activités syndicales dans ce pays constituait « une grave atteinte » aux principes de la convention n° 87 sur la liberté syndicale (97 bis).

C) MESURES ADOPTÉES PAR LES ETATS OCCIDENTAUX A L'ÉGARD DE L'U.R.S.S. — Mais il convenait de ne pas perdre de vue la réalité et de ne pas oublier que le grand inspirateur des décisions adoptées par le gouvernement polonais était son voisin de l'Est, dont les interventions militaires répétées en 1956 et en 1968 avaient montré le cas qu'il faisait de l'indépendance de la Hongrie et de la Tchécoslovaquie. Pour être pleinement efficaces, les mesures envisagées devaient aussi atteindre l'U.R.S.S.

Tel était le sens des décisions annoncées dès le 29 décembre 1981 par le président Reagan — mesures qui n'avaient d'ailleurs été précédées d'aucune consultation des alliés des Etats-Unis : suspension des

(97 bis) Mais la Conférence elle-même a refusé de suivre la Commission le 22 juin.

licences d'exportation du matériel d'équipement pétrolier destiné à l'U.R.S.S., ajournement des négociations sur le renouvellement d'un accord à long terme pour la vente de céréales à l'U.R.S.S., suspension de tous les services de la compagnie d'aviation civile soviétique Aeroflot aux Etats-Unis, suspension de toutes les licences d'exportation de matériel électrique et technologique de pointe vers l'U.R.S.S., fermeture de la centrale d'achats soviétiques aux Etats-Unis, suspension des négociations pour le renouvellement de l'accord réglementant l'accès des navires soviétiques aux ports américains (337 visites en 1981), non renouvellement des accords d'échange sur l'énergie, la science et la technologie, réexamen des autres accords existant entre les deux pays.

Les Etats européens étaient invités à adopter des mesures analogues, mais ils répugnaient à s'aligner sur les Etats-Unis. Le 2 janvier 1982, dans une interview accordée au *New York Times*, le chancelier Helmut Schmidt indiquait que la R.F.A. ne se joindrait pas aux efforts du président Reagan « pour punir les responsables de la répression en Pologne ».

Particulièrement révélateurs des réticences ou des hésitations européennes étaient les paragraphes 6 à 10 de la déclaration adoptée à Bruxelles le 4 janvier 1982 par les dix gouvernements de la C.E.E. :

« 6) Les Dix sont solidaires du peuple polonais et sont prêts à continuer leur aide humanitaire directe en sa faveur ;

« 7) Ils ont pris note des mesures économiques décidées par le gouvernement des Etats-Unis à l'encontre de l'U.R.S.S. Les Dix procéderont à cet égard à des concertations étroites et positives avec le gouvernement des Etats-Unis et les gouvernements des autres Etats occidentaux afin de préciser quelles sont les décisions qui servent le mieux leurs objectifs communs et d'éviter tout ce qui serait de nature à compromettre leurs actions respectives ;

« 8) L'évolution en Pologne constitue une violation grave des principes de l'Acte final d'Helsinki. Les Dix considèrent dès lors que la Conférence de Madrid doit s'en saisir le plus tôt possible, au niveau ministériel. Les Dix approcheront les neutres et les pays non alignés pour leur proposer une reprise anticipée de la réunion de Madrid ;

« 9) Les Dix agiront au sein des Nations Unies et des institutions spécialisées pour dénoncer les violations des libertés humaines et les actes de violence ;

« 10) D'autres mesures seront envisagées en fonction de l'évolution de la situation en Pologne, notamment s'agissant des mesures de crédit et des mesures d'aide économique pour la Pologne et en ce qui concerne la politique commerciale communautaire vis-à-vis de l'U.R.S.S. De surcroît les Dix examineront la poursuite de l'aide alimentaire à la Pologne. »

Le 11 janvier le Conseil atlantique réuni au niveau des ministres des Affaires étrangères mettait en garde l'U.R.S.S. contre toute velléité d'intervention dans les termes suivants (sixième point de la déclaration) :

« 6) Les Alliés appellent l'Union soviétique à respecter le droit fondamental de la Pologne à résoudre elle-même ses problèmes hors de toute ingérence extérieure. Les pressions, directes ou indirectes, exercées par l'U.R.S.S. en vue d'empêcher la réalisation de ce désir, doivent cesser. Les Alliés adressent aussi une mise en garde, soulignant que, si une intervention armée étrangère devait se produire, une telle intervention aurait les plus profondes conséquences pour les relations internationales. »

En réalité, comme l'a très bien vu l'ancien secrétaire d'Etat américain Henry Kissinger dans ses deux articles du *New York Times* (numéros des 21 et 22 janvier 1982), alors que les Etats-Unis voulaient des sanctions, l'Europe n'en voulait pas. Et encore le gouvernement de Washington s'est-il abstenu de prendre les mesures qui auraient été véritablement efficaces, comme l'arrêt total des livraisons de blé (98).

Un événement imprévu devait d'ailleurs donner la mesure de l'état d'esprit des Européens : la signature dans la nuit du 22 au 23 janvier du contrat de fourniture de gaz soviétique à la France, dont il a été parlé antérieurement (*supra*) et qui a « consterné » l'Administration américaine, suivant les propres termes du secrétaire d'Etat Alexander Haig. Décision d'une rare inopportunité et qui devait fournir au Premier Ministre français l'occasion de faire un commentaire pour le moins inattendu (99).

Malgré la réduction de moitié des importations de produits manufacturés en provenance d'U.R.S.S. (décisions de la Commission européenne des 22 février et 15 mars 1982), les « sanctions » décidées par les Etats occidentaux contre l'Union soviétique se sont progressivement amenuisées, chacun arguant de sa situation particulière pour ouvrir une brèche dans le système. Sur la valeur d'importations de 5 milliard F proposée par la Communauté européenne, la somme des produits retenus n'était plus finalement que de 2 milliards 700 millions F. L'Italie demanda le retrait de l'ammoniac, la France celle du crabe, la Grande-Bretagne et la R.F.A. l'exclusion du champ des sanctions des peaux de vison, de loutre, de castor et d'astrakan. On s'est bien gardé en tout cas de frapper les achats de pétrole et les ventes de céréales à l'U.R.S.S. Le caractère dérisoire de ces réactions permet d'apprécier la valeur de l'alliance occidentale.

**D) PROBLÈME DU RÈGLEMENT DE LA DETTE EXTÉRIEURE POLONAISE.** — L'Ouest avait à sa disposition un instrument encore plus précieux que le commerce — l'énorme dette de la Pologne envers les banques occidentales et son besoin pressant d'un nouveau capital d'un milliard et demi de dollars par trimestre pour 1982 afin de ne pas sombrer. Ce n'était d'ailleurs là que l'aspect particulier d'un problème plus général. La dette extérieure des Etats socialistes de l'Europe orientale envers l'Occident s'élevait en milliards de dollars aux chiffres suivants pour 1981 : 26,5 pour la Pologne, dont la moitié à terme échu ou à court terme ; 12,8 pour la République démocratique allemande ; 10,2 pour l'U.R.S.S. ; 10,1 pour la Roumanie ; 7,2 pour la Hongrie ; 3,4 pour la Tchécoslovaquie et 2,2 pour la Bulgarie (100).

(98) Le 18 janvier 1982 le secrétaire américain à l'Agriculture, M. John Block, annonçait la vente à l'U.R.S.S. par les Etats-Unis de 100.000 tonnes de céréales après deux mois d'interruption de livraisons. Cette acquisition portait à 11.500.000 tonnes les achats soviétiques de céréales aux Etats-Unis en 1981.

(99) « Il ne servirait à rien d'ajouter au drame des Polonais le drame supplémentaire pour les Français de ne pas être approvisionnés en gaz. »

(100) *New York Times* du 31 mai 1982.



Dès le lendemain du coup de force militaire la banque Handlowy (Banque polonaise du commerce extérieur), spécialisée dans les relations avec l'étranger, présentait une demande qui pouvait paraître insolite — ou cynique —, étant donné les circonstances dans lesquelles elle était formulée. S'adressant à vingt-deux banques allemandes, américaines, britanniques et françaises, elle sollicitait de leur part un crédit supplémentaire de 350 millions de dollars pour lui permettre d'acquitter les intérêts que leur devait la Pologne pour les dettes échues au cours des trois derniers trimestres de 1981. Passé le premier moment d'étonnement, les créanciers ne virent dans cette demande que la confirmation de ce qu'ils étaient bien placés pour savoir : le fait que la République socialiste de Pologne — l'une des nations les plus endettées du monde — était depuis deux ans en état de cessation de paiement. A la fin d'avril 1981 les Etats prêteurs avaient consenti des conditions particulièrement généreuses de paiement pour quelque 2.500.000 dollars qui auraient dû leur être remboursés en 1981. Mais, à la suite du coup de force du 13 décembre 1981, la conclusion de l'accord fut ajournée. Le gouvernement de Varsovie ayant fait connaître le 16 décembre qu'il n'était pas en mesure de verser les intérêts de ses emprunts dont le paiement était arrivé à échéance et les banques occidentales répugnant à consentir de nouveaux prêts, le montant de la dette arrivant à échéance en 1982 s'élevait pour les seuls pays de l'O.C.D.E. à un peu plus de 5 milliards de dollars. Dans ces conditions les banques occidentales refusèrent purement et simplement le 22 décembre d'accorder à la Pologne le prêt supplémentaire de 350 millions de dollars qu'elle réclamait.

Le gouvernement polonais cherchait néanmoins toujours à conclure un accord sur la consolidation de sa dette privée, mais les seize Etats occidentaux réunis à Paris décidaient le 14 janvier 1982 de suspendre les négociations jusqu'à nouvel ordre. Pour faciliter un règlement éventuel le gouvernement des Etats-Unis décidait le 1<sup>er</sup> février de prendre à sa charge une partie de la dette polonaise à l'égard des banques américaines (71.300.000 dollars), sans déclarer pour autant la Pologne en défaut, cependant qu'un groupe de vingt banques occidentales représentant l'ensemble des créanciers privés de la Pologne acceptait au début du mois suivant de repousser au 31 mars 1982 le paiement du solde des intérêts dus par ce pays au titre de l'année 1981 (50 à 75 millions de dollars).

Finalement l'accord sur le rééchelonnement de la dette polonaise envers les banques occidentales fut signé le 6 avril 1982 au siège de la Dresdner Bank en présence du ministre adjoint polonais des Finances, M. Biezn, du président de la Banque Handlowy, M. Minkiewicz, et des représentants de vingt banques occidentales stipulant au nom des 501 banques intéressées. L'accord avait été signé l'avant-veille par le ministre polonais des Finances, M. Krzak. Portant sur les dettes venues à échéance pendant les trois derniers trimestres de 1981 et ne portant pas la garantie des Etats, d'un montant de 2 milliards 400 millions de dollars, l'accord dispose que les échéances bénéficieront d'un moratoire à concurrence de 95 % de leur montant, les 5 % restants étant exigibles

en 1982 et leur remboursement différé s'effectuant après une période de grâce de quatre ans en sept tranches trimestrielles à compter du 1<sup>er</sup> janvier 1986. L'accord est entré en vigueur le 10 avril suivant.

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## PORTO-RICO

### Déclarations du président Reagan au sujet du futur statut de Porto-Rico (12 janvier 1982)

Le président Reagan s'est prononcé le 12 janvier 1982 pour le droit à l'autodétermination de Porto-Rico, tout en rappelant qu'il était lui-même en faveur d'un rattachement intégral de l'île aux Etats-Unis (sur l'évolution et le statut actuel de Porto-Rico voir cette *Revue*, 1974, pp. 1182-1187). Si les Portoricains, au cours d'élections « libres et démocratiques », choisissent que leur île devienne le 51<sup>e</sup> Etat de l'Union, a déclaré le président dans un communiqué, « je crois que le Congrès et que le peuple de ce pays accueilleront favorablement cette demande ». M. Reagan a cependant déclaré que son gouvernement acceptera le choix qui sera fait par le peuple de Porto-Rico, « quel qu'il soit ». Faisait allusion à Cuba, le président a mis en garde contre toute ingérence étrangère, précisant : « Le statut de Porto-Rico est un problème qui doit être résolu par les peuples de Porto-Rico et des Etats-Unis. Il ne doit pas y avoir d'ingérence dans ce processus démocratique ». Le président Reagan a publié cette déclaration à l'occasion d'une visite à la Maison Blanche du gouverneur de Porto-Rico, M. Carlos Romero Barcelo, qui était accompagné du maire de San Juan, M. Herman Padillo, de l'ancien gouverneur Luis A. Ferre et du Commissaire de l'île, M. Baltazar Corada.

Deux ans plus tôt, dans un éditorial du *Wall Street Journal*, M. Reagan avait écrit :

« Lorsque j'ai formellement annoncé ma candidature à l'élection présidentielle de 1980, mon allocution télévisée à la nation ne comprenait pas seulement un appui en faveur de l'incorporation de Porto-Rico aux Etats-Unis si tel était le désir du peuple de l'île. Elle impliquait aussi l'engagement de proposer la législation nécessaire pour faire de Porto-Rico le 51<sup>e</sup> Etat de l'Union, de manière à ce qu'il soit une tête de pont entre les Caraïbes, l'Amérique latine et les Etats en voie de développement. »

Le président a réaffirmé ce point de vue le 13 janvier. Le 31 décembre 1976 le président Gerald Ford avait déposé un projet en ce

(101) *International Herald Tribune* des 11 et 14 janvier, *Monde* du 14 janvier 1982. En 1980 la population de Porto-Rico s'élevait à 3.187.570 habitants.

**Annex 52**

E. Malamut, “Aviation Suspension of Landing Rights of Polish  
Airlines in the United States”,  
(1983) 24 *Harvard International Law Journal* 190

AVIATION: SUSPENSION OF LANDING RIGHTS OF POLISH  
AIRLINES IN THE UNITED STATES — 93 CAB REPORTS  
479 (1981)

On December 31, 1981, the United States Civil Aeronautics Board banned all flights into the United States by the Polish airline, Lot. This ban was part of the United States effort to impose sanctions on Poland as a response to the Polish government's December 13, 1981 declaration of martial law. The suspension occurred in spite of a 1972 United States-Polish agreement on civil aviation which required one year's notice to the other party if one party intended to terminate or suspend any of the agreement's provisions. The Polish government has demanded that the United States enter into arbitration to adjudicate the damages suffered by Lot as a result of the suspension of landing rights in the United States. The Polish reaction to the suspension is significant because it will test the willingness of the United States to institute sanctions against foreign states, especially human rights violators, in contradiction to express international agreements.

With the warming of East-West relations in the early 1970s, travel between the United States and Poland became more frequent. As part of this general trend, Poland allowed Pan American World Airways flights entry and landing rights at Polish airports beginning in 1971.<sup>1</sup> In May, 1972, the United States and Poland successfully negotiated an agreement which allowed Lot, the Polish state airline, landing

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1. 67 DEP'T ST. BULL. 218 (1972).

rights in the United States. The Air Transport Agreement (Agreement)<sup>2</sup> is designed to govern relations between United States and Polish airlines and between the United States and Polish government authorities responsible for the regulation of international air transportation.

Several provisions of the Agreement are important to an understanding of the United States-Polish arbitration. Article II(3) states that airlines designated by the parties to the Agreement may make scheduled stops at air facilities in the other state in order to discharge or take on passengers, cargo or mail.<sup>3</sup>

Article IV provides that operating permission for the airlines designated by the parties may be withheld, suspended or revoked by either party during the Agreement's existence under any one of three circumstances: (1) the airline does not qualify for operating permission according to the standard procedures of the suspending party's aeronautical authorities; (2) the airline fails to comply with the regulations of the suspending party concerning admission and departure of air passengers, crew, cargo and mail; or (3) the suspending party believes that the other party's designated airlines are not substantially owned by or under the control of that party or its nationals.<sup>4</sup> The article also

2. Air Transport Agreement, July 19, 1972, United States-Poland, 23 U.S.T. 4269, T.I.A.S. No. 7535. United States Ambassador to Poland Walter J. Stoessel, Jr. and Polish Minister of Transportation Mieczyslaw Zajfryd signed the Agreement and exchanged notes on July 19, 1972. 67 DEP'T ST. BULL. 218 (1972). The Agreement provisionally went into effect on the date of signing, and definitively entered into force on December 8, 1972 upon written notification by Poland that the Agreement had been approved by the Polish Council of Ministers. *Id.* In the Preamble to the Agreement, the parties cited their accession to the Chicago Convention on International Civil Aviation, Dec. 7, 1944, 8 U.S.T. 179, T.I.A.S. No. 1591, 15 U.N.T.S. 295, which established the International Civil Aviation Organization ("ICAO") headquartered in Montreal. The Agreement is an executive agreement having all the effect given to such agreements by United States municipal law and by international law. See generally L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 173-186 (1972); I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 602 (3d ed. 1979); Lissitzyn, *Legal Status of Executive Agreements on Air Transportation*, 17 J. AIR L. & COM. 436.

3. "Each Contracting Party grants to the other Contracting Party rights for the conduct of air services by the designated airline or airlines, as follows: . . . (3) To make stops at the points in the territory of the other Contracting Party named on each of the routes specified in the appropriate paragraph of the Schedule of this Agreement for the purpose of taking on and discharging international traffic in passengers, cargo, and mail, separately or in combination." Air Transport Agreement, July 19, 1972, United States-Poland, art. II, 23 U.S.T. 4269, 4270, T.I.A.S. No. 7535, at 2.

4. "Each Contracting Party reserves the right to withhold, suspend, or revoke the operating permission referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event that: (1) Such airline fails to qualify under the laws and regulations normally applied by the aeronautical authorities of that Contracting Party; (2) Such airline fails to comply with the laws and regulations referred to in Article 5 of this Agreement; or (3) That Contracting Party is not satisfied that substantial ownership and effective control of such airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party." Air Transport

states that unless immediate action is necessary to prevent the infringement of the admission or departure regulations of the suspending party, that party may not exercise its right of suspension or revocation without first consulting with the other party.<sup>5</sup>

Article VI provides that if, after long and detailed consultations, one party is still unsatisfied with the safety standards of the other party, the unsatisfied party may withhold, suspend or revoke technical permission for the airlines of the other party to operate.<sup>6</sup> If, after similar consultations, one party continues to be unsatisfied with the fares charged by the other party's designated airlines, Article X(G) allows that party to take the steps necessary to prevent service at the offending rate.<sup>7</sup>

Articles XII and XIII are the provisions designed to address disputes under the Agreement. Article XII allows either party to request consultation with the other party at any time on the subject of the interpretation, application or amendment of the Agreement.<sup>8</sup> Article XIII provides that any disputes not settled through consultation may

Agreement, July 19, 1972, United States-Poland, art. IV(A), 23 U.S.T. 4269, 4270-71, T.I.A.S. No. 7535, at 2-3.

5. "Unless immediate action is essential to prevent infringement of the laws and regulations referred to in Article 5 of this Agreement, the right to suspend or revoke such permission shall be exercised only after consultation with the other Contracting Party." Air Transport Agreement, July 19, 1972, United States-Poland, art. IV(B), 23 U.S.T. 4269, 4271, T.I.A.S. No. 7535, at 3.

6. "If, following such consultations, the competent aeronautical authorities of either Contracting Party find that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that are equal to or above the minimum standards which may be established according to the Convention, they will notify the other Contracting Party of such findings and the steps considered necessary to bring the safety standards and requirements of the other Contracting Party to standards at least equal to the minimum standards which may be established pursuant to said Convention, and the other Contracting Party will take appropriate action. Each Contracting Party reserves the right to withhold, suspend or revoke the technical permission referred to in Article 3 of this Agreement with respect to an airline designated by the other Contracting Party, or to impose conditions on such permission, in the event the other Contracting Party does not take such appropriate action within a reasonable time." Air Transport Agreement, July 19, 1972, United States-Poland, art. VI(B), 23 U.S.T. 4269, 4272, T.I.A.S. No. 7535, at 4.

7. "[T]he aeronautical authorities of the Contracting Party raising the objection to the rate may take such steps as are necessary to prevent the inauguration or the continuation of the service in question at the rate complained of; provided, however, that the aeronautical authorities of the Contracting Party raising the objection shall not require the charging of a rate higher than the lowest rate charged by its own airline or airlines for comparable service between the same points." Air Transport Agreement, July 19, 1972, United States-Poland, art. X(G), 23 U.S.T. 4269, 4275, T.I.A.S. No. 7535, at 7.

8. "Either Contracting Party may at any time request consultations on the interpretation, application or amendment of this Agreement. Such consultations shall begin within a period of sixty (60) days from the date the other Contracting Party receives the request." Air Transport Agreement, July 19, 1972, United States-Poland, art. XII, 23 U.S.T. 4269, 4276, T.I.A.S. No. 7535, at 8.

be settled by arbitration.<sup>9</sup> The arbitral tribunal in such a situation shall consist of one arbitrator chosen by each party and a third arbitrator, not a national of either party, chosen by the first two arbitrators.<sup>10</sup> If the two designated arbitrators cannot reach agreement on a third arbitrator, either party may request that the President of the Council of the International Civil Aviation Organization<sup>11</sup> designate a third arbitrator.

Finally, Article XV permits either party to terminate the Agreement provided that it notifies the other party first.<sup>12</sup> Such termination takes effect one year from the final day of the month in which the non-terminating party receives notification of the terminating party's intent.

The United States and Polish governments provided in an exchange of notes on the day the Agreement was signed that consultations on the continuation of the Agreement would be initiated no later than December 31, 1975.<sup>13</sup> The notes also stated that if the parties had not extended the Agreement by October 31, 1976, it would terminate on that date.<sup>14</sup>

9. "Any dispute with respect to matters covered by this Agreement not satisfactorily adjusted through consultation shall, upon request of either Contracting Party, be submitted to arbitration in accordance with the procedures set forth herein." Air Transport Agreement, July 19, 1972, United States-Poland, art. XIII(A), 23 U.S.T. 4269, 4276, T.I.A.S. No. 7535, at 8.

10. "One arbitrator shall be named by each Contracting Party within sixty (60) days of the date of delivery by either Contracting Party to the other of a request for arbitration. Within thirty (30) days after such period of sixty (60) days, the two arbitrators so designated shall by agreement designate a third arbitrator, who shall not be a national of either Contracting Party." Air Transport Agreement, July 19, 1972, United States-Poland, art. XIII(B)(1), 23 U.S.T. 4269, 4276, T.I.A.S. No. 7535, at 8.

11. "If either Contracting Party fails to name an arbitrator, or if the third arbitrator is not agreed upon in accordance with paragraph (1), either Contracting Party may request the President of the Council of the International Civil Aviation Organization to designate the necessary arbitrator or arbitrators." Air Transport Agreement, July 19, 1972, United States-Poland, art. XIII(B)(2), 23 U.S.T. 4269, 4277, T.I.A.S. No. 7535, at 9. The current President of the Council of ICAO is Assad Kotaite of Lebanon. He has held the position since 1976. He served as Secretary-General of ICAO from 1970 to 1976 and was Representative of Lebanon to the Council of the ICAO from 1956 to 1970. EUROPA PUBLICATIONS, LTD., *THE INTERNATIONAL WHO'S WHO* 1982-83, at 717 (46th ed. 1982).

12. "Either Contracting Party may at any time notify the other of its intention to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate one year from the last day of the month in which the notice of termination is received by the other Contracting Party, unless withdrawn before the end of this period by agreement between the Contracting Parties." Air Transport Agreement, July 19, 1972, United States-Poland, art XV, 23 U.S.T. 4269, 4277, T.I.A.S. No. 7535, at 9.

13. Air Transport Agreement, July 19, 1972, United States-Poland, 23 U.S.T. 4269, 4296; T.I.A.S. No. 7535, at 38.

14. *Id.*

The Agreement was extended, with minor modifications,<sup>15</sup> and it was in effect when the Polish government declared martial law on December 13, 1981. As part of the martial law regulations, Poland stopped all international air travel.<sup>16</sup> Limited service to the United States was resumed on December 17,<sup>17</sup> when Lot flew a number of charter flights to foreign destinations, including New York City.<sup>18</sup>

On December 23, 1981, President Reagan made a speech outlining the sanctions he intended to impose on Poland as a result of the martial law declaration. One of these sanctions was the suspension of Polish civil aviation privileges in the United States.<sup>19</sup> On December 30, 1981, the Civil Aeronautics Board formally banned all flights into the United States by Lot.<sup>20</sup> On that day, Lot and its attorneys denounced the suspension as punitive and a violation of the Agreement.<sup>21</sup>

Polish officials asserted that they had been losing money on Lot service for several months and that the punitive measures would have no effect.<sup>22</sup> However, Polish tourism officials claimed that the suspen-

15. The Agreement was extended by exchange of notes between United States Ambassador to Poland Richard T. Davies and Polish First Deputy Minister of Transport Romuald Pietraszek, in Warsaw, on August 26, 1976. Air Transport Services, Aug. 26, 1976, United States-Poland, 28 U.S.T. 242, T.I.A.S. No. 8469. The understandings contained in the notes went into effect on November 1, 1976. Notes concerning lower airfares were exchanged by the American Embassy in Warsaw and the Polish Ministry of Foreign Affairs on December 13 and 16, 1977, and took effect on the latter date. Air Transport Services: Low Cost Fares, Dec. 16, 1977, United States-Poland, 29 U.S.T. 3886, T.I.A.S. No. 9042. An exchange of notes modifying fares under Article X of the Agreement and extending the Agreement to March 31, 1982 took place on December 14 and 29, 1978 and January 15 and 30, 1979 between American Ambassador to Poland William E. Schaefele and the United States Embassy in Warsaw, and Polish Minister of Transportation Mieczyslaw Zajfyd and the Polish Ministry of Foreign Affairs. The understandings contained in the notes entered into force provisionally on January 1, 1979 and unconditionally on January 30, 1979. Air Transport Services, Jan. 30, 1979, United States-Poland, 30 U.S.T. 902, T.I.A.S. No. 9225. Pan American World Airways cancelled its service to Warsaw in Fall, 1981, because of decreasing profitability of the route. *L.A. Times*, July 12, 1982, § 4, at 1, col. 2. On December 4, 1981, United States and Polish delegations agreed to extend the Agreement from April 1, 1982 to March 31, 1983. U.S. Dept. of State, Press Release No. 413 (Dec. 4, 1981).

16. *N.Y. Times*, Dec. 14, 1981, at A1, col. 1.

17. *N.Y. Times*, Dec. 31, 1981, at A5, col. 1.

18. *N.Y. Times*, Dec. 17, 1981, at A18, col. 6; *N.Y. Times*, Dec. 18, 1981, at A17, col. 6.

19. *N.Y. Times*, Dec. 24, 1981, at A1, col. 6. On December 29, 1981, as a sanction against the Soviet Union its role in the Polish declaration of martial law, President Reagan also announced that he would suspend all service of Aeroflot, the Soviet airline, to the United States. *N.Y. Times*, Dec. 30, 1981, at A6, col. 1.

20. On December 26, 1981, the Civil Aeronautics Board issued a show cause order as to why Lot's landing privileges in the United States should not be suspended. CAB Order No. 81-12-155 (Dec. 26, 1981). On December 29, 1981, CAB issued an order stating that, upon notification from the President, Lot's landing privileges would be suspended. CAB Order No. 81-12-171; 93 CAB REPORTS 479 (1981). Notification from the President was received on December 30, 1981.

21. *N.Y. Times*, Jan. 1, 1982, at A4, col. 1.

22. *Id.* Early in January, Lot resumed reduced, but regularly scheduled international flights. However, Poland continued to restrict flights by foreign airlines into the country. *N.Y. Times*,



sion seriously reduced the number of foreign travelers and damaged the Polish economy in general.<sup>23</sup> In view of the desperate need of the Polish government for the hard foreign currency it gained through airline fares and tourist dollars spent in Poland, the suspension of Lot service to the United States has had a significant effect.<sup>24</sup>

In response to the suspension of Lot's landing rights, the Polish government requested arbitration under Article XIII of the Agreement. Both the United States and Poland appointed arbitrators.<sup>25</sup> These two arbitrators met in August and October of 1982, but could not agree on whom to name as a third arbitrator.<sup>26</sup> There has been no further progress.

There has been little indication of the legal positions that the two governments will take when arbitration ultimately commences. However, their likely positions can be inferred from basic doctrines in international law.<sup>27</sup>

It is difficult to argue that the United States action falls within the suspension provisions of the Agreement.<sup>28</sup> All of these require consultation before suspension, except Article IV(A)(2) concerning entry and exit regulations. The United States might argue that the emergency following the declaration of martial law prevented consultation before suspension. However, none of the suspension provisions seems to be directly on point and the United States did not base its action on any suspension provision at the time.

The Agreement provides for immediate suspension only if one party to the Agreement does not comply with the entry or exit regulations

Jan. 10, 1982, § 1, at 1, col. 1. On January 11, 1982, NATO leaders met to discuss possible group sanctions against Poland. Among the sanctions discussed was the reexamination of air service agreements between the NATO allies and Poland. *N.Y. Times*, Jan. 12, 1982, at A8, col. 1. On March 26, 1982, the Polish government announced that on April 1, 1982, Poland would lift some of the flight restrictions on foreign carriers and would expand Lot's schedule. *N.Y. Times*, March 27, 1982, at 4, col. 6.

23. *L.A. Times*, July 12, 1982, § IV, at 1, col. 2.

24. *Id.* See also *N.Y. Times*, March 25, 1983, at D5, col. 2.

25. Telephone interview with Daniel W. McGovern, Deputy Legal Advisor to the U.S. State Department (Feb. 3, 1983).

26. *Id.*

27. Aside from arguments for holding the Agreement void or voidable, there may be grounds for holding that the United States action was a legitimate reprisal. 2 L. OPPENHEIM, *INTERNATIONAL LAW* 135 (H. Lauterpacht 7th ed. 1952). The doctrine of reprisal allows violations of international law (e.g. breaking an agreement) in response to major violations of international law. United States interests such as the desire for the free movement of people (including United States nationals) across frontiers and the maintenance of basic human rights in all nations were involved here. Yet such general interests may not be sufficient at international law to justify the action by the United States. The doctrine of reprisal is generally considered limited to cases of physical injury to nationals and there was no such injury in this case. *Id.* at 136. Moreover, legal scholars consider reprisal justified only in cases where an attempt is made to negotiate the differences between the nations, which was not done in this case. *Id.* at 141-42.

28. See I. BROWNIE, *supra* note 2, at 614-15.

of the other party.<sup>29</sup> The United States could claim that the declaration of martial law was lawless behavior by the Polish government; that such action was even more serious than a violation of United States entry and exit provisions by Lot would have been; and that consequently the same remedy of suspension without consultation would be justified. However, because the lawless behavior in question consisted solely of domestic action by Poland and did not directly affect United States interests in Poland, and because the terms of the Agreement are quite specific, such an argument would be difficult to sustain.

If no provision within the Agreement allows the suspension of landing rights, one might look to various doctrines of customary international law to justify suspension of the Agreement. It would be difficult for the United States to base suspension on factors rendering international agreements void—corruption, error, fraud, coercion, conflict with a peremptory norm of international law, or inequality.<sup>30</sup> It could be argued, for example, that fraud occurred—i.e. that at the time the Agreement was negotiated the Polish government made assurances that the Polish human rights situation would improve, and that the United States relied on these assurances. Even if true, however, this would require documentation.<sup>31</sup>

A second ground in customary international law for justifying the suspension of the Agreement would be voidability. There are several grounds generally recognized for holding an international agreement voidable, as opposed to void.<sup>32</sup> Polish halting of air traffic out of Poland immediately after the declaration of martial law and the suspension of foreign air traffic into Poland through April 1, 1982 might be construed as material breaches of the Agreement, one ground for declaring it voidable.<sup>33</sup> However, the suspension of Lot's flights by Poland was for a very short period of time and imposed minimal inconvenience on American nationals in Poland in light of the extraordinary domestic circumstances there.<sup>34</sup> Furthermore, there was no breach of the most direct American interest in the Agreement, assurance of reciprocal landing rights<sup>35</sup> because Pan American, the only United States airline that had flown into Poland, had already stopped its flights there before the declaration of martial law.<sup>36</sup> And even if it

29. Air Transport Agreement, *supra* note 2, art. IV(A)(2).

30. See I. BROWNIE, *supra* note 2, at 610.

31. *Id.* at 512–15.

32. War between the parties and termination by mutual consent appear inapplicable. *Id.* at 613.

33. *Id.* at 615–16.

34. N.Y. Times, Dec. 12, 1981, at A17, col. 6.

35. According to the wording of the Agreement. Air Transport Agreement, July 19, 1972, United States-Poland, Preamble, 23 U.S.T. 4269, 4269, T.I.A.S. No. 7535, at 1.

36. L.A. Times, July 12, 1983, § IV, at 1, col. 2.

had not, the Polish government would argue supervening impossibility of performance on this issue because labor tensions in Poland required the shutdown of international flights for a short time.<sup>37</sup>

Another basis of voidability is the doctrine of *rebus sic stantibus*, which allows a party to suspend a treaty where there has been a fundamental change of circumstances.<sup>38</sup> The suspension of Solidarity, the declaration of martial law, and the Soviet intervention in Poland, all might be considered fundamental changes in the circumstances of Polish government. However, the power to declare martial law was a feature of the Polish Constitution when the Agreement was signed (and long before).<sup>39</sup> In addition, the degree of Soviet control in Poland when the Agreement was signed makes it hard to characterize the intervention as a fundamental change.

Finally, the United States might argue that widespread violation of human rights under martial law implicated a supervening peremptory norm of international law allowing it to suspend international agreements with the offending state.<sup>40</sup> NATO cited three human rights documents—the United Nations Charter, the Universal Declaration of Human Rights, and the Helsinki Accords—when it considered the suspension of Polish landing rights by NATO members.<sup>41</sup> The United States could claim that the human rights guarantees of these documents created a higher norm which superseded the Agreement in the face of martial law.<sup>42</sup> However, the International Covenant on Civil

37. I. BROWNIE, *supra* note 2, at 615. The United States would find it hard to argue supervening impossibility since it was physically possible for the United States to allow Polish planes to land in the United States. *Id.*

38. Vienna Convention on the Law of Treaties, Apr. 24, 1970, art. LXII, U.N.T.S. Reg. No. 18,323. *Rebus sic stantibus* arguments must be considered in light of the narrowing scope of the doctrine in legal scholarship and law. I. BROWNIE, *supra* note 2, at 616–18. The Vienna Treaty Convention substituted the term “fundamental change of circumstances” for “*rebus sic stantibus*” to avoid the malleability inherent in the Latin term because of varying interpretations of it by legal scholars. *Id.* While the United States has not ratified the Convention, it remains a codification of existing doctrine. *Id.* at 601; UNITED NATIONS SECRETARIAT, UNITED NATIONS MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL 619 (1982).

39. “The Council of State may proclaim martial law in parts or in the entire territory of the Polish People’s Republic, should this be required by considerations of the defence or security of the State.” KONSTYTUCJA art. 33, para. 2 (Pol.); KONSTYTUCJA OF 1952, art. 28, para. 2 (Pol.). (The Polish Constitution of 1952 was superceded by a new Constitution in 1974.)

40. I. BROWNIE, *supra* note 2, at 512–15. Selective enforcement of this norm by the United States and the refusal of United States allies to take similar actions tends to vitiate the argument. See N.Y. Times, March 27, 1982, at 4, col. 6.

41. N.Y. Times, Jan. 12, 1982, at A8, col. 4. However, the other NATO allies did not deny landing rights to Lot. N.Y. Times, March 27, 1982, at 4, col. 6.

42. The U.N. Charter discusses alternatives to the settlement of international disputes aside from unilateral action at great length. U.N. CHARTER art. 2, para. 3, arts. 33–38. The Charter’s human rights guarantees are at best vague. U.N. CHARTER preamble, arts. 1, 55, 56, 62, 68, 76. See I. BROWNIE, *supra* note 2, at 569–70. The Universal Declaration of Human Rights, G.A. Res. 217, 3 U.N. GAOR Res. at 71, U.N. Doc. 1/777 (1948), has been influential in developing international custom, but it specifies that its goals are merely aspirational. See I.

and Political Rights,<sup>43</sup> promulgated to give effect to the Declaration and the human rights guarantees of the Charter, provides specific channels to protest the human rights violations of signatory states, and the United States suspension of the Agreement would not be justified in light of them. Moreover, the United States has not even ratified the Covenant.<sup>44</sup>

Suspension of United States-Polish civil aviation illustrates the conflict between two great principles of international law, the inviolability of treaties and the fundamental nature of human rights.<sup>45</sup> The international legal system often settles such conflicts by considering whether other means were available to achieve similar results without the violation of international law. This case will help to clarify the hierarchy of values in the existing international system.

Michael E. Malamut

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BROWNLIE, *supra* note 2, at 570-71. The Helsinki Accords, 14 INT'L LEGAL MAT'L 1292 (1975), specify that they are not binding. Their purpose is to increase cooperation between the signatories. I. BROWNLIE, *supra* note 2, at 576.

43. Annex to G.A. Res. 2200; 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966).

44. UNITED NATIONS SECRETARIAT, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL 117 (1982).

45. I. BROWNLIE, *supra* note 2, at 564, 613.

### **Annex 53**

“Findings of Fact-finding Report Issued by the Independent National  
Commission on Events Concurrent with June 30th, 2013”,  
11 March 2014

Archives of the State Information Service  
of the Arab Republic of Egypt

Also available at  
[http://egyptevidence.com/downloads/NCHR\\_Report\\_EN.pdf](http://egyptevidence.com/downloads/NCHR_Report_EN.pdf)

**Findings**

**of**

**Fact-finding Report Issued by the**

**Independent National Commission**

**On**

**Events Concurrent with June 30<sup>th</sup>, 2013**

### **The Formation of the Fact-finding Commission:**

In light of these circumstances, the ambiguity and inconsistency surrounding events description, and the ensuing results, Counselor Adly Mansour, President of the Republic, issued Decree No. 698 of 2013 on December 21<sup>st</sup>, 2013 to form an "independent national Commission to gather information and evidence, find facts concurrent with June 30<sup>th</sup>, 2013 Revolution and subsequent events, and document and date them." The commission was headed by Dr. Fouad Abdel-Moneim Riad, a former international judge and professor of law, and comprised an elite group of prominent law figures. The commission had very limited changes to fill in vacant positions, or to enhance its assets with members of other disciplines.

Counselor Iskander Ghattas, former Assistant Minister of Justice for International Cooperation, was appointed Deputy Chairman of the Commission. He was entrusted with the responsibility of coordination and follow-up with the competent bodies and devices. He was also entrusted with overseeing the preparation of the final report to be approved by the Commission to be published. He was in the capacity of the Chairman, had the later been absent.

The membership of the Commission included: Dr. Hazem Atlam, Professor of International Law at the University of Ain Shams, and Dr. Mohammed Badran, Professor of public law at the University of Cairo, and Dr. Fatima Al Khafagy, Director of Office of Women's Complaints,

National Council for Women, and Mr. Mohsen Awad, a member of the National Council for Human Rights.

**Mission:**

The Republican Decree entrusted the Commission with the task of collecting and documenting information and evidence relevant to the events referred to in the formation decree thereof and in particular to:

- Establish a framework and system of work for the implementation of its tasks;
- Hold meetings and interviews, hear testimonies, and conduct discussions it finds necessary;
- Analyze and characterize events; and disclose how they occurred, their repercussions, actors, and the consequent effects;
- Access previous investigations; and
- State the facts, information, and evidence relevant to crimes that had been committed against the rights of citizens that have never been investigated.

**Challenges faced by the Commission in the Performance of its**

**Mission:**

- The Commission was faced by the refusal of some of the direct parties such as the Muslim Brotherhood and supporters of the Islamic current to cooperate with the Commission. The refusal was evident in their initial position towards the events, which stems from their vision of the events of June 30th as just a military coup against



legitimacy. It was also evident in their failure to provide what proves their claims concerning the numbers of victims promoted through their electronic media, and a number of international media outlets sympathized with them. The Commission has directed many calls for them to cooperate with it through all the media means (television, radio, newspapers) and on the internet. This resulted in the limited cooperation of a small number of them. It was followed by the declaration of Dr. Mohamed Ali Bishr, a prominent figure of the Muslim Brotherhood, of attending the Commission meeting. The meeting was on August 15<sup>th</sup>, 2014, but he excused himself not to come the day before. He provided reasons for not showing for the meeting, none of which constituted a new reason to change his attitude. The group's leaders, led by Khairat Al-Shater, refused to attend the Commission's meeting. The Commission was able to obtain testimonies of a number of imprisoned supporters of the Muslim Brotherhood, and reviewed reports of some concerned human rights organizations in this regard, which reflect the views of this group.

- The Commission also called Dr. Mohamed Salim Al-Awa, a former presidential candidate, to provide his input on the events; however, he excused himself in writing for not showing.
- At the beginning of the Commission's work, many citizens were apprehensive of cooperating with it because of allegations that they will be prosecuted, or being threatened by any party. Over time, these effects were mitigated gradually with the insistence of the Commission to obtain testimonies of citizens.

- Security considerations had prevented movement and listening to the largest possible number of the people of Sinai, although they represents a key element in fact-finding this period and events thereof.
- The undocumented data and information repeatedly disseminated have affected some people who adopted such data and information as facts. However, when the Commission communicated with sources of these data and information, individuals or organizations whether in the country or outside, the Commission has not received documented response, but it only received unproved figures. The Commission will only consider documented items regardless of its source.

### **Historical Background: The Road to the June 30<sup>th</sup>, 2013**

This background provides a historical overview of the events that led to June 30<sup>th</sup>, 2013, and sheds the light on the role of the Muslim Brotherhood in the revolution of January 25<sup>th</sup>, 2011. At first, they declared that they were not to participate as a group and they gave their members the freedom to participate. They did not participate in the events as a group until January 28<sup>th</sup>, 2011. The report explained their role in the transitional phase and until the former President Mohamed Morsi came to power in the June 30<sup>th</sup>, 2012.

### **The report includes a number of the most significant events in the reign of former President Mohamed Morsi which started with the following:**

- He refused to swear-in before the Supreme Constitutional Court and then he had to take the oath of office before it later.
- He called the dissolved parliament to convene despite the Constitutional Court's verdict. The verdict stated the unconstitutionality of the People's Gathering Law; therefore, it dissolved People's Gathering, which was elected on the basis of such Law.
- He issued the Constitutional Declaration on August 12<sup>th</sup>, 2012 that gave him all legislative powers alongside the executive ones. Then, he issued the second Constitutional Declaration on November 21<sup>st</sup>, 2012 that immunized all his decisions against judiciary supervision.

Later, he revoked the second Declaration with a third one issued on December 8<sup>th</sup>, 2012 without prejudice to the consequent effects.

- The Constitutional Declaration issued on November 21<sup>st</sup>, 2012 had many repercussions. They included the events of Ittihadiya Palace on December 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup>, 2012 that resulted in many deaths injuries.
- The majority members of the Constituent Gathering belonged to Muslim Brotherhood and their supporters, which raised the ire of civil and political currents.
- Judiciary, media and religious institutions were put under siege. The Supreme Constitutional Court, the High Court Complex, and the Media Production City were besieged. Mashyakhat Al-Azhar Al-Sharif and St. Mark Cathedral in Abbasiya were attacked.
- The number of citizens opposing the policies of former President Mohamed Morsi was increasing. Consequently, Tamarod movement was emerged and materialized this opposition in forms signed by the citizens. It was able to assemble millions of forms, and invited, with other civilian political forces, people to take to the streets on June 30<sup>th</sup>, 2013, the day the former President Mohamed Morsi assumed office, to express their rejection to his policies. Millions of people took to streets all over Egypt to declare their rejection to his policies.
- On June 23<sup>rd</sup>, 2013, the then Defense Minister announced 1-week ultimatum for the political powers to reach a solution to prevent explosion of the situation.

- On July 1<sup>st</sup>, 2013, the General Command of the Armed Forces issued a statement, which gave the parties another 48-hour ultimatum to fulfill the demands of the people.
- On July 3<sup>rd</sup>, 2013, the ultimatum expired without reaching an agreement to meet the demands of the people. The most important of these demands was holding early presidential elections. The General Command of the Armed Forces called for an emergency meeting of political powers and religious icons and the attendants announced the Road Map for the future.
- After the dismissal of former President Mohamed Morsi, the former President Adly Mansour, Chairman of the Supreme Constitutional Court, assumed the presidency of the country on a temporary basis starting from July 4<sup>th</sup>, 2013, pursuant to what the attendants collectively agreed upon at the meeting of July 3<sup>rd</sup>, 2013.

## Section I: Gatherings in roads and public squares

### Chapter 1: Rabaa Square Gathering

Muslim Brotherhood called for demonstrations in Rabaa Square since June 21<sup>st</sup>, 2013 as a preemptive measure against the demonstrations called for by popular and political powers on June 30<sup>th</sup>, 2013 against the rule of former President Mohamed Morsi.

On June 28<sup>th</sup>, the call to turn the demonstrations into a gathering emerged. The violence incidents had began from the first day of the gathering, some incidents were reported officially and others were not reported. The Report recorded the diaries of violence, relevant police records, and other police records on damages caused by the practices of assembled people until the dispersal day on August 14<sup>th</sup>, 2013. These police records were up to 108 records.

The Ministry of Interior developed a dispersal plan to implement the Public Prosecutor's decision no. 31/07/2013, and also to implement the decision adopted unanimously by the Council of Ministers on the necessity of implementing the Public Prosecutor's decision.

The Ministry of Interior determined August 14<sup>th</sup>, 2013 for implementing the decision of the Public Prosecutor to arrest the crimes' perpetrators in Rabaa and Nahda Squares and others. The Ministry of Interior leaked the date of dispersal to give a chance for those who desire to leave the gatherings. The Minister of Interior met with a group of journalists and activists of human rights organizations on the eve of the

dispersal and invited them to accompany the forces assigned to the dispersal mission.

The gathering included armed elements with different types of firearm, edged weapons, explosives, chemical materials, and other materials.

When the police forces surrounded the gathering place around 6:00am, they announced the necessity for evacuation and moving out through the safe passage in El-Nasr Road towards El-Manasa and other subsidiary lanes. They emphasized that people exiting through these lanes are not to be prosecuted. At 6:45am, militants from the gathering confronted and shot police forces and hurled them with Molotov cocktails and stones. Capt. Mohammed Hamdi was shot in his left arm while being in El-Taiaran Street.

The first killed person in these events was from police forces. Lieutenant Mohammed Gouda got a bullet in the face at 7:05am, when he was shot from the corner of El-Taiaran and Anwar al-Mufti Streets. He passed away at 7:45am according to official notifications and the Medico-legal Authority's documents.

The learned from the statements of witnesses and the recordings was that the police graduated their use of force, and they started with the warning and the use of (Long Range Acoustic Device) LRAD, water and gas vehicles. Police forces did not resort to the use of live ammunition unless after the fall of some killed and wounded persons among themselves. Therefore, police forces called for combat groups by noon to deal with fire sources shooting at them. There was an exchange of fire

between police forces and militants who had taken some people in the gathering as human shields. The militants moved among those people, who were hit by the fires of the two parties (the police and militants) and many of those people were killed or injured. The police forces were able to access the heart of Rabaa Square around 3:00pm, tightened their control, and evacuated the mosque around 6:00pm. They allowed some citizens to transfer the corpses, which was done by 8:00pm.

Muslim Brotherhood members' plans, which were seized by the police and filed in the case No. 2210/2014 of al-Agouza Police Station, were varied. There were plans to confront the state by economic and social boycott, disrupt its organs, create a parallel government, fatigue security forces, and break the Ministry of Interior to overthrow the regime. The plans included the formation of a People Defense Force to arrest a number of the judiciary, prosecutors, and security leaders and prosecute them publicly. They also planned to the state dismemberment by cutting off roads and means of transportation. For the media, they planned a strategy that includes repeating the news or information until they become irrefutable reality, and providing presence in all media means to immediately deny any leaked facts. They also broadcasted footage and video contents of events occurred abroad as if they were in Egypt. These contents included persons pretend to be injured and they have what looked like blood on their external clothes. When they revealed their underwear they appeared free of any traces of blood or wounds.



### The Dispersal Operation led to the Following Results:

- 8 killed and 156 injured from the police forces.
- 607 killed persons some of them were not among the gathered people who were shot by gunmen from the gathering. This was reported in police record No. 15899/2013 Administrative of Nasr City Police Station First dated on August 14<sup>th</sup>, 2013, and another case was reported in police record No. 57 of 2013 Administrative of Nasr City Police Station First. The Medico-legal Authority revealed the fact of transporting a number of corpses from places of death (Marg, El-Salam, El-Nahda, Dokki, El-Nozha) to Rabaa area, when the death record showed repetition of the same deceased persons in different places. The records were corrected by keeping only the recorded place of death. The Authority noted also that some names of the deceased people in Rabaa area were repeated, and the Authority deleted the repeated names, which explains why the number of the deceased became less than the number mentioned before. The number of injured people was 1492 regardless of those who favored treatment outside public hospitals.
- The number of corpses that were subject to postmortem by the Medico-legal Authority was 363. The gathered people insisted on burying the rest of the corpses with burial permits without postmortem. Burial permits were issued and none of which proved it was a case of suicide as previously claimed. The issuance of the burial permit has legal consequences such as identifying heirs and

cashing financial receivables. Therefore, there was a criminal penalty for burial without a permit.

- The directions of the shots that hit the cases underwent the postmortem were as follows:
  - 29 cases from top to bottom.
  - 87 cases from front to back.
  - 89 cases from back to front.
  - 145 cases from right to left.
  - 95 cases from left to right.

There are 82 cases among the abovementioned cases, with injuries from different directions.

- 51 firearms of various calibers, and number of bullets used with these firearms were seized, in addition to slingshots, metal ball, and other tools and materials that were used in the clashes.
- Criminal lab report proved that fire blazed in various places and tents inside the gathering at the same time and did not extend from one tent to the other, which indicates the multiplicity of perpetrators.

### **Conclusion**

- Although the gathering appeared to be of a peaceful nature, it was not a peaceful one, either before or during the dispersal.
- After efforts have failed to dispersal the gathering voluntarily, the police had legal justifications to disperse it by force.
- Prior to scheduling a time to dispersal the gathering, the government declared its intention to dispersal the gathering through airborne

leaflets, which were distributed to the protesters as well as media outlets. Afterwards, the time of dispersal was leaked to media outlets, which sent their correspondents to cover the event. In addition, a warning was issued ahead of the dispersal. Furthermore, the police established a safe exit and invited the protesters to evacuate the area through it. However, many protesters refused to exit or were forced to do so.

- From the beginning, it was proved that the goal of the police was to evacuate the Square, and not to kill the protesters. However, the police had to respond to fire opened by the militants among the protesters. The following is a proof of the above facts:

- The Police notified the media about the dispersal's time, and appealed the protesters to exit the Square before and after the dispersal.
- The police applied a gradual use of force, and summoned the battle groups only after deaths and injuries had been caused to its troops.
- After the suspects who opened fire at the police from "Al-Manayfa" building were in custody, they were not eliminated, but they were arrested and handed over to the competent authorities.
- The dispersal plan was the same in Rab'a gathering and Nahda gathering . When protesters of the Faculty of Engineering at Cairo University expressed their desire to exit safely, asking for the mediation of the governor of Giza, the police agreed to their request. If the police had been executing

a plan to kill the protesters, it would have continued to put them under siege and kill them inside the faculty.

**The Commission considers that the responsibility for the increased number of victims during the dispersal of the gathering at Rab'a Square shall be laid on the following parties:**

**The gathering , its leaders, its militants and the police forces**

- The gathering leaders who armed some of its members share the responsibility for the increased number of victims. Neither did they consider the request of state agencies nor welcomed both internal and external efforts to disperse the gathering peacefully. They also showed indifference to the outcomes of the clash. In addition, militants also share a part of responsibility as they started shooting at the police among the protesters. Therefore, victims, including dead and injured people fell from all parties. Moreover, they murdered other citizens who were not at the gathering.
- Although the police forces had to respond to the shootings, they failed to focus on the sources of fire among the protesters. Thus, the number of victims increased significantly.
- Some protesters bear a share of responsibility for insistence on being with the militants who used them as human shields during the shooting at the police. They did not heed the calls to exit safely either before or after the dispersal.

**The Egyptian Administration has missed the point regarding the following:**

- Allowing the gathering to increase in number and area. It also granted the access of individuals, equipment and materials to the gathering area supporting its fortification and continuity without making a firm decision to prevent such act.
- The government was reluctant whether to disperse the gathering in a short time bearing in mind the repercussions of such act, or disperse it with the least cost in an unexpected and long period of time. To ensure the existence of the state, the government chose the first option. There were other alternatives available to the government to cut off the sources of human support to the gathering, launch an extensive propaganda campaign announcing its intention to disperse the gathering and engage citizens to convince their sons and daughters not to engage in this non-peaceful gathering .

\* \* \* \*

## Chapter 2: Al-Nahda Square Gathering

This gathering started in conjunction with Rab'a gathering and simultaneously. The events took place on July 1, 2013. The daily records of such gathering highlight several violent incidents among its members, the residents of the surrounding areas and the police forces. These events resulted in deaths and injuries that were recorded in the official records. News about the dispersal of gathering was leaked to the protesters; therefore, some groups moved towards Faculty of Engineering at Cairo University. Such groups disassembled the lamps, collected some wood and amounts of sand. They also provided some instructions about the necessary procedures to be followed in the case of dispersing the gathering.

On August 14, 2013, the dispersal of the gathering was carried out in implementation of the General Prosecutor's decision. Before 6:00 am, security forces arrived at the Square and announced the call for evacuation. They also identified a safe exit extending from Al-Gam'a Street towards Giza Square. A number of protesters stood in front of police cars rejecting the call to evacuate the Square. One of the police vehicles put on its siren, and a number of protesters responded to the police's call and evacuated the Square from the safe exit. Later, a number of protesters began shooting at the police, setting fire to tents in order to stop the progress of police. Meanwhile, a number of protesters gathered at the Faculty of Engineering's building and they opened fire at the police, and the police exchanged fire with them. A number of protesters fled to the surrounding

streets. The protesters at the Faculty of Engineering requested the mediation of the Governor of Giza to evacuate the place, and the police accepted their request. At around 7:30 pm, they left from the safe exit. Subsequently, the second floor of the faculty of Engineering caught on fire.

**The dispersal operation resulted in 88 fatalities and 366 casualties, as follows:**

- Al-Nahda Square: 2 dead and 14 injured from the Police. 23 dead and 38 injured from the protesters.
- Surrounding areas: 63 dead and 314 injured. The clashes took place among the protesters who managed to escape the dispersal and their supporters on one side and the residents of these areas and the police from the other side. Previously, incidents of violence took place between the protesters and a number of residents of the areas surrounding the gathering, which resulted in many deaths and injuries.

**Conclusion:**

- Although the gathering appeared to be of a peaceful nature, it was not a peaceful one, either before or during the dispersal, and the police had the legal justifications to disperse it by force.
- The police aimed at evacuating the Square, and not killing the protesters. This was explained according to the statements mentioned in dispersal of Rab'a gathering.

- 41 firearms of various calibers were seized in addition to thousands of ammunitions to be used by such firearms. Forensic evidence report proved that setting the fire in the Faculty of Engineering has been caused by arsonists who set fire in different places at the same time.
- To avoid the confrontation with the police and exit from the gathering scene, the protesters at the Faculty of Engineering requested the mediation of the Governor of Giza. The police acceptance to such mediation has played a major role in reducing the number of victims and minimizing the losses. This indicates that, from the beginning, the police did not aim at killing protesters.

\* \* \* \*



## Chapter 3

### I: The Republican Guards Events

From July 5 to the dawn of July 8, the gathering began where a crowd of protesters in Rab'a moved closer to a military installation including the Republican Guards Headquarters and House (officers' club). Those protesters aimed at breaking through such installations in order to liberate former President Mohamed Morsi. Security forces in charge of securing the military installation warned protesters against approaching the barbed wire that surrounds this facility. Moreover, security forces told the protesters that former president was not inside the building. However, protesters turned a deaf ear to such warning, and a number of them headed to the barbed wire to break through the installation. Consequently, the security forces had to engage them. Five people fell dead and a number of people were injured.

The demonstrators lined in Salah Salem Street and in front of the military installation. They blocked the street, shut down government buildings and prevented the employees from entering into them. Furthermore, they interfered with the residents and workers of such area. At dawn on July 8, 2013, and after the protesters ended their prayers in the street, some of them began to knock on electricity poles as a signal for gathering. A large number of protesters assembled; they headed again to the military installation in another attempt to break it through. In addition, they opened fire on the security forces and threw Molotov cocktails from the roofs of some nearby buildings.

Security forces responded by opening fire on them. The clashes resulted in the death of 2 members from the security forces and the injury of 42 others. From the protesters, 59 fell dead and 435 were injured. Moreover, a number of firearms of different calibers including a pistol, which was reported as stolen weapon from the Suez Security Directorate as well as a number of ammunitions and other equipment used in the clashes. It is already known to everyone that it is not permissible to move closer to military installations. Therefore, the attempt to break into one of these important installations and repetition of such act within a few days using weapons shall be deemed a serious assault that provides for the security forces a legal justification to defend themselves, taking into account that the attack took place on a military facility within the capital.

## **II: The March of Manassa Memorial:**

- On July 26, 2013, the march began at 10:00 pm, when a crowd of protesters in Rab'a Square headed to the 6<sup>th</sup> of October Bridge and towards the Manassa Memorial (Memorial of the Unknown Soldier) to increase the number of protesters in Rab'a gathering. As the march was approaching Ramses Extension buildings, clashes began between armed members of the march and the residents of the area. A number of people from Manshiyat Naser joined the clashes to prevent the expansion of the march and recurrence of violations that took place in Rab'a. The security forces intervened to separate the two sides. Later, the events escalated after the attack on the police force and the killing of an officer and wounding of the other. Thus,

police responded by shooting and the clashes ended at almost 7:00 am on the following day, July 27, 2013.

- The clashes resulted in the death of a police officer and wounding of three other police officers in addition to the death of 95 and injury of 120 civilians.
- The information available to the Commission provides that the clashes started between militants of the gathering and the residents of Ramses Extension Residential area. Then, an armed attack was launched on the police, so they responded by opening fire, according to witnesses' statements. However, this information does not specify the party responsible for all the deaths and injuries as the clashes involved three parties (i.e., members of the march, residents of area and Manshiyat Naser and the police). Meanwhile, the Judiciary is investigating this incident as per record no. 4393/2013 misdemeanors Nasr City police station II.

\* \* \* \*

## **Section II: Assault on Individuals and Enterprises**

### **Chapter 1: Setting fire in Churches and Attacks against Christians and their Property**

In one of the worst events witnessed in the nation in the wake of dispersing Rab'a and Nahda gatherings, the Muslim Brotherhood and its supporters launched attacks at Christian citizens, and their churches and property. In light of incentive rhetoric against the Copts, such attacks included twenty-one governorates and they have already affected the Orthodox, Catholic, and Evangelical churches.

#### **Results of the Attacks:**

The attacks resulted in burning 52 churches and Christian facilities completely and partially as well as the incursion of 12 churches and other facilities including looting and plundering their contents. Furthermore, incidents of kidnappings and forced disappearances occurred, mostly for ransoms. In some cases, both the kidnapper and the kidnapped were Christians. The Ministry of Interior indicated that cases of absence and abduction increased after the revolution of January 25, 2011 in various governorates. As for Christians, 140 cases of absence and kidnapping were reported where 96 of them were resolved.

The cases of assault on Christian property amounted to 402 cases distributed among different governorates where the most intensive cases took place in the Governorate of Minya (281 cases). The Commission has documented 29 cases of murder in the context of sectarian violence. The

seriousness of such crimes does not only lie in the number of their victims and the damaged property, but it also lies in sectarian conflicts they ignited and the undermining of national unity and social peace. The risk lies in the pattern of committing these crimes, which reached mutilation. Therefore, there was an urgent need to renounce the rhetoric of incitement and hatred and emphasize on concepts of citizenship and prevention of discrimination.

## Chapter 2: Violence and Terrorism

In this chapter, the report reviews a theoretical aspect regarding the recruitment, planning, training, arming and funding of terrorist crimes in addition to providing a safe haven to their perpetrators. Furthermore, this chapter addresses the most important crimes that have occurred as they reflect a practical application to the facts stated in the theoretical background. All and above, the report highlights the legal framework to confront terrorism at both national and international levels.

As for the theoretical aspect, the report specified the patterns of violence and terrorism that took place in the nation. The first pattern was represented in targeting policemen such as attempted assassination of Minister of Interior, Mr. Mohammed Ibrahim, lieutenant colonel. Mohammed Mabrouk, Major General. Muhammad Al Saeed and Captain. Mohammed Abu Shakra. These operations led to the death of about 317 police officers. On the other hand, the second pattern was represented in targeting police installations such as bombings of Dakahlia Security Directorate, Directorate of Cairo Security and Directorate of North Sinai Security and the Directorate of South Sinai Security.

The third pattern was represented in the targeting of Armed Forces officers and soldiers. The fourth pattern was targeting vital facilities in the state such as networks of electrical connections, means of public transportation as well as an attempt to disrupt the educational process. The fifth pattern was the attempt to provoke sectarian conflict by attacking Christians, their churches and their property. The sixth pattern was staging

peaceful demonstrations in several places to prove existence. Such demonstrations resulted in many deaths and injuries as well as the destruction of public property. Finally, the seventh pattern was represented in planting improvised explosive devices in populated places. These explosive devices resulted in many deaths and injuries among police and civilians. They also instilled fears among members of the society affecting their safety and security and exposing them to risk.

The report addressed the relationship between the Muslim Brotherhood, their resort to violence and the establishment of the international organization of the Muslim Brotherhood as well as the means adopted by such organization to promote its beliefs. The report has also shed light on its responsibility for some terrorist crimes and the sources of funding for the group as well as the methods through which it recruits, trains and arms its members. In addition, the report highlighted the organization's relationship with Hamas Movement, al-Qaeda and Ansar Bait al-Maqdis group. Finally, the report highlighted the organization's confrontation with State institutions in order to achieve their project by force and through retaliation against current regime.

As for the practical aspect, the report was based on the Public Prosecutor's decisions in a number of issues that emphasize the facts stated in the abovementioned theoretical aspect as follows:

1. Case No. 423/2014 Supreme State Security (Ansar Bait al-Maqdis group) where a large number of the accused acknowledged their belonging to this group and the formation of cluster cells in several governorates. They also confirmed that they received military

training and arms from the Izz el-Deen al-Qassam Brigades, the military wing of the Palestinian Hamas Movement. They also confessed that they manufactured explosives and obtained rockets from the borders with Sudan. Moreover, they admitted the targeting of Suez Canal waterway as well as the targeting of Police Forces, Armed Forces, Christians and their churches in retaliation for the events of June 30, 2013 and the dispersal of Rab'a and Nahda Gatherings. They also confirmed that they received money transfers from non-Egyptians, and that Sinai was the safe haven to the elements of the organization and the place for holding military trainings.

2- Case No. 375/2013 Supreme State Security (Jihad): A number of suspects admitted their belonging to such organization and claimed responsibility for the killing of Major General. Nabil Faraj as they targeted Police Forces and Armed Forces for their support to a regime that does not comply with Shari'a (Islamic Law), according to their claims.

3- Case No. 26/2014 Supreme State Security: A number of the accused individuals admitted their joining Muslim Brotherhood, their possession of firearms, ammunition and training on them. In addition, they also confirmed their participation in the gathering and rally in support of former President, Mohamed Morsi. They also admitted that they attacked individuals who were against them. They admitted that some of them participated in the murder



of a policeman called (Sergeant A.A. M), and that the Muslim Brotherhood raise funds to support them.

#### **Chapter 4: Violence in Universities**

Immediately after the start of the academic year in September 2013, almost all public universities witnessed violence. Students protested against the road map and dispersing the gatherings of Rab'a and Al-Nahda. Furthermore, the demonstrations organized by students were not against the educational policy or study, but they were basically connected to the ongoing political events. In this regard, we will only state the events that took place in three major universities: Cairo, Ain Shams and al-Azhar universities.

In fact, the events which took place in the universities were unprecedented, and they seriously affected the educational process and students' performance. Additionally, the pattern of violence was almost the same in all universities, including scheduling demonstrations through the internet. The demonstrations were often organized in the afternoon by marching inside campuses, uttering slogans, hurling insults, launching fireworks, and suspending classes by forcing other students to go out from classes or disrupting students during lectures or exams. Moreover, they attacked some of the professors, blocked roads and harassed police to engage them. Organizers of demonstrations got support from individuals outside the universities and received money to accomplish their plans.

**The events of Cairo University resulted in the following:**

- 7 students fell dead and others were wounded, but most of them did not go to governmental hospitals to avoid security prosecution.
- Some security personnel and administrative staff of the university were injured.
- 178 students were arrested. .
- 92 students were dismissed from their universities.
- Firearms, bullets, gunpowder and nails were disposed in the Faculty of Engineering.
- Some university facilities were destroyed.

**The events of Ain Shams University resulted in the following:**

- Two students fell dead and others were injured.
- 59 students were arrested accused of triggering riot in the University Hostel. Therefore, they were referred to investigation authorities. 34 students committed violent acts in campus and were dismissed temporarily or finally.
- 4 faculty members were arrested in addition to one employee for committing violent acts, and were referred to the investigation authorities.
- A number of university facilities were destroyed.
- Three cars containing materials and tools used in violence were arrested. .

**The events of Al-Azhar University resulted in the following:**

- Attacking some faculty members.
- 6 students were killed and others were injured.

- 131 students were dismissed for committing violent acts. .
- Some university facilities were destroyed.
- 29 faculty members were given disciplinary sanctions.

### **Police Victims:**

Four policemen were killed during these events (one officer and three personnel), and 118 persons were injured until the end of May, 2014.

### **The Committee concluded the following:**

- Demonstrations held in universities by the students were not peaceful.
- Violent acts are supported and financed by Muslim Brotherhood group and the other supporting trends.
- Some university staff are involved in violent acts.
- The police used the force against violent demonstrators gradually.

### Conclusion

When the independent Fact-finding National Commission on the June 30, 2013 events launched its investigations, it did not only document information, gather evidence, specify accountabilities and develop recommendations, but it simultaneously had its eyes tight on a better future. This was not only satisfied by considering "how" these incidents occurred, but it should also consider "why" they occurred and deduct the lessons learned from them; to diminish the chances of their reoccurrence.

The Commission concluded in its fact-finding context that political Islam mainstreams disregarded the Egyptian society's right when they attempted to diminish its intellectual heritage, social diversity, political & social ambitions in the form of a disputed rigid ideology; even among the current of political Islam's intellect per se.

The Brotherhood was also mistaken when they diminished the concept of Democracy within the results of "the Battle of Ballot boxes"; describing the parliamentary elections. They ignored all other aspects of the concept of democracy which are represented in principles, procedures and institutions where legitimacy of elections wouldn't prevail otherwise, such as representing other opinions, and conflict management through democratic means, especially as the legitimacy of elections is controlled by multiple legitimacies during the interim period such as "revolutionary legitimacy", "legality of achievement" and "legitimacy of national consensus". Peoples' satisfaction remains the key component of legitimacy in its deepest sense.

The groups were also mistaken when they unprecedentedly disregarded the rule of law and its guardians from ordinary, constitutional and administrative justice. The Supreme Constitutional Court was besieged in order to impede judges from considering the constitutionality of the Shura Council elections law, infringing on its provisions to dissolve the People's gathering because of the unconstitutionality of this election law, overthrowing the Attorney General, and seeking to adopt a law for the judiciary authority to the termination of about three thousand judges' services. They further ignored final and binding court orders on the release of prisoners convicted of terrorist crimes.

The Brotherhood swore enmity for each of the Armed Forces, Police, the Media, Al-Azhar, the Church, Cultural institutions and civil political parties.

When the moment has come to face the true societal transformation away from the Brotherhood, and the escalating demands for an early presidential elections, or a referendum that can umpire the legitimacy of the rule once again, they failed to foresee these shifts; curtailed their manifestations; and underestimated the deadline set by the Armed Forces in favor of all parties to prevent the outbreak of a large-scale violence and, likewise the additional extended deadline.

This was followed by the tremendous mistake they have committed when they resorted to confrontation instead of dialogue. Dr. Saad Al. Katatni, head of the Freedom and justice Party, rejected the invitation to participate in the development of the future roadmap with other political and social actors on July 3, 2013. Instead; they mobilized their forces and

allies, pursuing the policy of a "scorched land" at home and bullying by foreign forces from abroad; where they lost the sympathy of supporters and ultimately misled in the second, until the country became on the verge of a civil war.

Official Newspaper – No. 4 (A), January 29, 2013

Law No. 01 of 2013

On

The Armed Forces' Participation in the tasks of maintaining  
Security & protecting State key installations

In the name of the People

The President

Upon issuing the adopted law by the Shura Council:

Article 01

Without prejudice to the primary role of the Armed Forces in protecting the country and ensuring the safety and security of its territories, the Armed Forces shall support and fully coordinate with the police authorities in maintaining security-related procedures and protecting State key installations until concluding the parliamentary elections. Whenever the President requests the Armed Forces to do so – and after referral to the National Defense Council – the Minister of Defense shall specify the Armed Forces' locations, personnel and tasks.

Article 02

The Armed Forces' officers and NCOs contributing in maintaining security-related procedures and protecting State key installations within each designated circuit shall be granted the judicial authority to arrest and

all its related privileges that are vested in judicial arrest officers; pursuant to the provisions of the Code of Criminal procedure in connection with performing their designated tasks; and under applied terms and controls.

### Article 03

The Armed Forces' officers and NCOs shall be committed to their judicial arrest tasks; in accordance with this law concerning all duties of the judicial arrest officer stipulated in the Code of Criminal procedure; including referring their drafted reports to the competent prosecution pursuant to the rules of jurisdiction stipulated in the aforementioned law. Without prejudice to the Military justice jurisdiction, ordinary judiciary shall umpire in the incidents drafted in these reports.

### Article 04

This law shall be published in the official newspaper and shall come into force from the following day from its publishing.

The law shall be sealed by the State Seal.

**Issued at the Presidency on 17 Rabee Al. Awal, 1434 HJ.**

**(29 January, 2013 AC)**

**Mohammad Morsi.**



*Crimes Committed by Muslim  
Brotherhood (MB) Members  
from 25 Jan. 2011  
to 31 Dec. 2013.*

من ٢٥ كانون الثاني ٢٠١١ - ٣١ كانون الأول ٢٠١٣

Hezbollah extremist agents and operatives in hostile activities such as:

- First:** A group of 24 agents headed by 2 fleeing agents assaulted Al-Arish police station and Alexandria Bank (Al-Arish Branch) (case No. 28/2012 higher state security court).
- Second:** A group of 5 personnel were accused of illegally possessing weapons and explosives, and planning for hostile operations in Sinai (case NO. 41/2012 higher state security court).
- Third:** The Terrorist group which was lately arrested in Nasr City and other governorates and which had planned to execute hostile operations in Egypt. The group included formerly freed terrorists by MB.
- Fourth:** Confessions of criminals escaping from prisons and belonging to Tawheed and Jihad Organization in Egypt (previously involved in hostile acts in Sinai 2004 – 2006). These confessions include exploiting insecurity following 25 Jan. 2011 to execute hostile acts against Armed Forces and Security agencies in Sinai for the purpose of transforming it to a Muslim Emirate.

- The Muslim Brotherhood (MB) exploited calls by some political powers to mass on 25 Jan. 2011 to overthrow the regime and achieve their strategic goal of ruling Egypt and transforming it from a civil state to a state controlled by religious fascism/ theological state. They massed their members and committed several crimes in the name of revolution.

#### Major Crimes Included:

- Criminal accord with outlaws, bullies and criminals to attack and burn police facilities as of 28 Jan. 2011, which resulted in the destruction of 150 police facilities, burning 4400 vehicles, stealing arms and ammunition, and freeing large numbers of criminals detained in police stations.
- Coordination with Hamas and Hezbollah militias to infiltrate into Egypt via illegal tunnels and desert passages to attack prisons and free 23000 inmates including MB leaders and some Hamas and Hezbollah agents imprisoned for crimes against Egypt's national security. Investigations by Judge Khalid Mahgoub prove all these events.
  - ❖ Recently intercepted intelligence proves the involvement of formerly detained Hamas and

- Massing criminals and outlaws to assault interior Ministry H.Q. to expedite the collapse of the State and security agencies completely in order to deploy militias later to control former State Security Agency H.Q..
- Involvement of some MB agents (including Hazem Farouk, an MB leader) in torturing citizens and policemen in a tourist office near Tahrir Square.
- Deployment of some MB members on buildings' roofs in Tahrir square and sniping protesters for the purposes of mobilizing public opinion against the police and motivating protesters to assault security premises.
- Massing MB members and supporters (including extremist Islamic groups) in front of the Presidential Palace (Itihadia) to attack, torture, and kidnap peaceful protesters, many of whom were killed including reporter Abudheif El hoseini (from Al- Fajr Newspaper).
- Since 28 Jan. 2011, MB has hidden its crimes and accused the police or (allegedly a third party) of such crimes. It presented itself as the only capable and suitable alternative to Mubarak's regime including its ability to rule Egypt as a civil state which integrates all political and religious trends and ideologies. Once they took over, they swallowed their

promises and pledges, limited freedom of expression, sapped the judiciary, and used their militias against political opposition.

- Since the ascent of ousted president Morsi as the president on 30 June 2012, he made several mistakes. He made decisions which sapped state security and degraded its status regionally. He also committed several constitutional, financial, and criminal crimes, which led to his losing legitimacy through the 30 June revolution by millions of Egyptians.

**Major Crimes, Wrong Decisions, and Acts Executed by Ousted President, Brotherhood Official, and His Regime Are:**

- **Committing serious constitutional violations as follows:**
  - Disrespecting presidential oath-taking procedures by refusing to swear before the Supreme Constitutional Court as established in the Constitution. He swore many times in different venues in violation of the established Constitution.
  - Issuing the complementary Constitutional Declaration on 21 Nov. 2012 to immunize his decrees from judicial review. It was a baseless dictatorial declaration (attached). It violated the Constitution, compromised judicial censorship, annulled

final judicial rulings, and immunized presidential decrees against appeal, objection, or cassation.

- Inviting the dissolved Parliament (by the Supreme Constitutional Court ruling) to convene, which is deemed a serious constitutional violation.
- Issuing decree No. 386/2012 to oust General Prosecutor, Abdul Megeed Mahmud, is a violation of article 119 of Judiciary Law No. 46/1972, which states that "General Prosecutors are not to be ousted".
- Not adopting the Cairo Appeal Court ruling regarding the invalidity of appointing judge Talat Abdullah as General Prosecutor, and re-appointing judge Abdul megeed Mahmud as General Prosecutor.
- Compromising the "separation among authorities principle" by intervening in judicial acts. This principle is followed by all democracies and is stated in the Constitution.
- Abusing power by filing( himself or through Brotherhood members) fake complaints against opposition reporters and media members.
- His statement in Sudan that he doesn't mind handing over "Halayeb and Shalateen Area" beibg under Sudanese sovereignty, and his attempts to abandon apart of Sinai to re-

settle Gaza ( Hamas) residents there. This is a violation of the Cconstitution, which does not give the right to anyone to abandon a part of the state area.

- Issuing decrees of amnesty for terrorists and criminals (labeled so by final court decisions), and using them as militias to protect his regime. Some of these terrorists committed crimes against Army and Police personnel during and after his presidency.
- Pressurizing relevant authorities to remove names of some terrorists from the list of people banned to enter Egypt.
- Inciting MB personnel to besiege the Supreme Constitutional Court and attack judges including judge Ahmed El-Zend, Chief of Judges' Club.
- Holding a secret meeting (was televised) regarding Renaissance Dam in Ethiopia, a situation that weakened Egypt's position in negotiations.
- Using power to grant Egyptian nationality to some Palestinians affiliated to terrorist and armed militias in Gaza.

**Crimes Regarding Financial and Administrative Corruption, and Power Abuse Included:**

- Former Prime Minister Hesham Kandil and other MB leaders abused power to illegally allocate 204 acres in a rich neighborhood in new Cairo. The price difference amounted to 3 billion Egyptian pounds. Other corruption cases are still under investigation by relevant authorities.
- Appointing 18 unqualified advisors from MB members and granting them financial privileges. In addition, many MB personnel were appointed in the Presidential Palace with unjustified high salaries.
- Using power to illegally transfer sums of money, which is a threat to national security. Also his sons were involved in transferring sums of money from unknown sources (various currencies).
- In light of congested political and social environment, insecurity, conflict between Islamic groups and liberal groups, a new movement called "Tamarud" (Rebel) was launched. It managed to get 22 million signatures from people demanding early presidential elections. When he refused, people took to the streets in millions on 30 June 2013 and demanded ousting the current President.



- A conflict started between Islamist groups on the one hand and liberal trends on the other hand over the legitimacy of the elected president.

**First: Stance of liberal parties, youth and revolutionary movements.**

All political movements including Tamarud – Egyptian popular Resistance – Salvation Front – National Assembly for Change – Black block – Anarchy Battalion – the free front for peaceful change – socialist revolutionaries – Revolutionary powers Alliance – Maspero youth Association – Egypt's revolutionaries coalition – National front).... and many liberal and leftist parties (Al-wafd – Egypt's youth – conservatives – Democratic front – free Egyptians – free Egypt – Karama – Tagamu – Socialist popular coalition – Democratic laborers – Egyptian Socialist)....All these groups participated in the following:

- Organizing several marches on 28 June 2013 to sit-in in Tahrir Square until 30 June. All participants agreed to sit-in and organize marches to the Presidential Palace raising Egypt's flag (no partisan slogans).
- The demonstration started on Friday 28 June 2013 through marches from different mosques (Istikama in Giza, Mustafa

Mahmoud in Mohandeseen – Imbaba – Shubra) towards Tahrir square and MB H.Q in Mokattam .

- Marching to the Palace in large groups using cameras to monitor any violent acts against them.
- The Socialist Revolutionaries launched "Rebel Week", which included a sit-in in front of the Palace for a week demanding fall of the regime, a civil presidential council (not including the Armed Forces or Salvation Front members).
- "Tamarud" campaign continued collecting signatures in millions; moreover, it organized activities in front of the UN H.Q in New York and other Egyptian embassies in Europe during the period 28-30 June 2013 to pressurize the regime in front of the whole world.
- The "6<sup>th</sup> of April Youth Movement" (Democratic Front) launched a campaign titled (we will not Keep silent) including marches and sit-ins.
- The "Revolutionary Groups' Coalition" launched an initiative to transfer power to a civilian authority, form an interim six-months council, call for early presidential elections under UN monitoring, and form a national salvation government.

- Black block members announced their peacefulness and assured that they would not attack facilities. They demanded police protection in accordance with the law and Constitution.
- The "Egyptian People's Resistance Movement" (led by former People's Assembly member Mohamed Abu Hamed) called on the people to mass. They sent letters to embassies in Cairo to ensure that Egyptian people will not commit to any agreements signed by the current regime.
- There were procedures in Alexandria titled (Nahda outcome) including an invitation to citizens to mass on 28 Jan. 2013 to achieve the Revolution principles.
- On 25 July 2013, judge Ahmed El-Zend (Chief of Judges' Club) held a press conference and announced his support for 30 June protests. He also announced the sit-in of Judges as a rejection of the president's policies.
- Members of National Salvation Front and Coordinating Committee of 30 June protests held a press conference at Al-wafd party H.Q with the presence of Mr. Amro Mousa and Mr. Sayed Abdelal , chief of Tagammu Party. They pointed out the following:

- Criticizing the president's speech on 26 June 2013 and assuring that the only way to political reform is active participation in June 30 protests.
- Demanding ousting the regime followed by a transitional period which includes the following: (power transfer to the Supreme Constitutional Court – forming a new cabinet with full authority – forming a committee to modify controversial articles in the Constitution – freeing all political detainees – dissolution of Shura council).
- The activities on 28 June 2013 included a march at Al-Azhar Mosque towards Tahrir, and a symbolic sit-in in Giza. The 30 June 2013 activities included marches from Mostafa Mahmoud square, Istikama Mosque in Giza, Shubra, Sayeda Zeinab in Cairo towards the Palace as well as marches from Nasr city, Heliopolis, Abbasia, Matarya ,and Ain Shams university towards Tahrir Square.
- Demands by all social, youth, and political entities and syndicates (except MB and extremists) included ousting the regime and holding early presidential elections, dissolving Shura council and reviewing all laws enacted by it, Dissolving MB Organization, immediate implementation of economic reforms, enacting interim

justice law to form revolutionary courts, and finally reforming the Constitution.

**Second: Stance of MB and other supporting Islamist parties and groups.**

They rejected all apposition calls for 30 June demonstrations to hold new presidential elections. They held up to the so-called "constitutional legitimacy" claiming that this situation would lead to inevitable violence and instability. Their activities included the following;

- Salafi Front and the People's Party " under formation" held marches on 28 and 29 June 2013 to take the initiative and deny liberal groups all possible opportunities.
- "Our nation", "Islamic Rebels", and "Back to Shari'a" movements held demonstrations in front of Media Production City on 30 June 2013.
- "Ultras Hazem Abu Esmael Movement" requested concessions from the authorities in return for supporting them. "Umma coalition" which includes Asala, Raya, Fadila, and Sha'ab" Islamic parties rejected any activities directed against the legitimacy.

- “Salafi Da’awa” and its EL-Nour party announced that they would not participate in the 30 June activities and asked all political parties to allow the president to complete his term. They also requested MB officials to make reforms such as (formation of a new cabinet – ousting the General Prosecutor – stopping Brotherizing the state agencies).
- "Gama'a Islamiya" massed its members nationwide in all activities starting from 21 June demonstrations in Rab'a Mosque until the protests which Asem Abdelmaged called for on 28 June 2013.
- Alwasat Party issued a statement titled "Sisi calls for a civil war" which rejected what they considered "military coup". It held Sisi responsible for all the killings which happened and will happen accordingly
- Alwatan Party issued a statement titled "Sisi's speech is a call for civil war" , assuring that the road map designed by General El-Sisi is a failure and that he seeks to revenge and limit freedoms.
- Major Extremist Islamist parties and Movements led by MB massed in Rab'a Square, Nasr City, and Nahda squqre, Giza as of 28 June 2013.

- Average total number of protesters amounted to 33 million people in various major streets and squares. They all demanded the fall of the regime. On 3 July 2013, A number of political and religious leaders met and announced the roadmap which included : Chief of the Supreme Constitutional Court to be interim President, suspending the 2012 Constitution pending modification ---etc).
- Masses in Rab'a and Nahda turned violent. They stored arms and ammunitions, committed crimes against peaceful citizens, and blocked the roads, bridges, and squares to show the State as "weak and incapable". They escalated violence as follows:
  - Establishing main and sub stands where speeches were full of instigation and rumors by extremist Islamic leaders.
  - Establishing tents on Tayaran and Nasr cross roads, and in other streets in Rab'a and Nahda.
  - Organizing marches towards governmental agencies with calls against the State and its institutions.
  - Televising all these speeches in a way undermining the state. They aired fake scenes and videos to garner

publicity and popular sympathy. They also directed speeches in English to international Media outlets.

- Holding marches to cause deliberate confrontations with the Armed Forces and Police in nearby locations.
- Using children and women as human shields to cause as many fatalities and casualties as possible, and investing it in the media (such as Dakahlya incident).
- Escalating confrontations deliberately such as the presidential Guard and Memorial of the Unknown Soldier incidents to gain public and international support to create a justification for foreign interference to put ousted president back to office.
- Investing those two incidents internationally by claiming that large numbers were killed and Egypt is divided into two camps so that the international community has to interfere under the pretext that the regime committed genocides.
- Terrorist groups in Rab'a and Nahda stored various types of weapons and ammunition to be used against potential dispersal by security forces. Intelligence proved that they used these weapons to kill innocent people and claim that they were killed by security forces (Army and



Police). Many trucks were stopped while carrying arms to Rab'a and Nahda sit-ins.

- Kidnapping, torturing and questioning citizens in the sit-in area. Many of them were killed there and buried elsewhere. Some people who could escape orture in Rab'a confessed that they were tortured.
- Muslim Brotherhood (MB) intensified terrorist operations in Sinai by Hamas and other Sinai – based affiliated terrorist groups to pressurize the government to free ousted president Morsi (as stated by Brotherhood leader Mohamed Albeltagy during Rab'a sit-in).
- Major crimes committed by MB and other affiliated terrorist groups included targeting Minister of Interior, Military and Security premises, tourist sites, Suez Canal , top Army and police, security officials, Mosques and Churches.
- Enclosed are two reports of MB violations to Egyptian Penal Code in Rab'a and Nahda, and two reports about the Presidential Guard and Memorial clashes. Enclosed also is the measures taken by the state prior to the dispersal of Rab'a and Nahda sit-ins. Sit-ins turned out to be armed and violent, which jeopardized national

security. They included (assault – torture – sabotage – blockade –instigation against the Armed forces and other institutions...)

Under the pressures of public, political, and media powers, the government decided to disperse the two sit-ins for the violation they posed to national security and public order.

- The state adopted international standards regarding dispersal of non-peaceful protests and sit-ins. A judicial warrant was issued first, ministries of health and media, and civil society organizations were invited to monitor the dispersal measures to make sure procedures were adopted according to international standards.
- For 40 consecutive days, Ministries of Defense and Interior had issued frequent warns and alarms demanding protesters to disperse voluntarily (attached).
- Dispersing forces began the operation by issuing warnings, but they were confronted by live fire and many security personnel were killed and injured at the beginning of the dispersal.

- Judicial authorities made sure that dispersing forces followed standards in terms of weapons used and adopting gradual procedures warning by microphone, water cannons, shields, teargas, and rubber bullets. Security forces surrounded the sit –in site and designated one safe exit. Despite self-restraint by the forces, protesters started shooting at security forces.
- Despite chaos and violent responses by protesters- security forces managed to control the situation by the least damages, casualties and fatalities possible. All phases of the dispersal were videotaped in coordination with satellite channels and civil society groups.
- Following the success of security forces in dispersing the sit –in, MB and affiliated extremist groups resorted to violence and terrorism. They burned several police stations, municipalities and city councils (such as Giza Governorate H.Q). Protesters also burned the Ministry of Finance, churches, and private possessions as of 14 and 15 August 2013.
- Attached is a report of crimes and terrorist acts committed following the dispersal of Rab’a and Nahda sit–ins until 30 May 2013.

- A large number of terrorists massed in Fateh Mosque in Ramses Square in an attempt to repeat Rab'a situation. The sit-in was dispersed and the criminals were arrested.
- Following the dispersal, a large number of terrorists from MB members and affiliated groups were arrested. Their terrorist plans were uncovered and the arms and ammunition they had stored were confiscated.
- 33 officers and conscripts were killed during the dispersal (Police casualties amounted to 11 officers and 18 conscripts in the Police hospital in Agouza).

### **January 2014**

*The Supplementary  
Constitutional Declaration*  
الاصول الدستورية التكميلية

## Constitutional Declaration

### **The President of the Arab Republic of Egypt**

After reviewing the constitutional declarations issued on February 13<sup>th</sup> 2011, March 30<sup>th</sup> 2011, and August 11<sup>th</sup> 2012;

Whereas the January 25<sup>th</sup> 2011 Revolution held the president responsible for achieving its objectives, maintaining its legitimacy, and stabilizing it with whatever procedures, measures, or decrees deemed necessary to secure it, achieve its goals, and especially, subvert the substructure of the former regime, exclude its icons, disintegrate its tools in the country and the community, eliminate and uproot corruption, pursue those involved in it, purge the country's institutions, fulfill social equality, protect Egypt and its people, address the utmost force and firmness to the symbols of the former regime, establish a base for a new legitimacy, crowned by a constitution which lays the pillars of good governance which is based on the principles of freedom, justice, and democracy, fulfills the people's ambitions and achieves the people's hopes; therefore, I decided the following:

### Article I

All the investigations and prosecutions in the cases of the murder, attempted murder and wounding of protesters as well as the crimes of terror committed against the revolutionaries by anyone who held a political or executive position under the former regime are to be re-opened, according to the Law of the Protection of the Revolution and other laws.

### Article II

Previous constitutional declarations, laws, and decrees made by the president since he took office on 30 June 2012, until the constitution is approved and a new People's Assembly is elected, are final and binding and cannot be appealed by any way or to any entity. Nor shall they be suspended or canceled. All lawsuits related to them and brought before any judicial body against these decisions are annulled.

### Article III

The prosecutor-general is to be appointed from among the members of the judiciary by the President of the Republic for a period of four years commencing from the date of office taking and is subject to the general conditions of appointment in the Judiciary, and shall not be under the age of 40. This provision

applies to the one currently holding the position with immediate effect.

#### **Article IV**

The text of article 60 on the formation of the Constituent Assembly in the March 30<sup>th</sup> 2011 Constitutional Declaration that reads, “it shall prepare a draft of a new constitution in a period of eight months from the date it was formed” is to be amended to “it shall prepare the draft of a new constitution for the country in a period of six months from the date of its formation.”

#### **Article V**

No judicial body can dissolve the Shura Council or the Constituent Assembly.

#### **Article VI**

If there was a threat to January 25<sup>th</sup> revolution, the nation's being, the national unity, the national safety, or whatever hinders the performance of state institutions for their role, The President may take the appropriate procedures and measures to counter this threat as regulated by law.



**Article VII**

This constitutional declaration is to be published in the Official Newspaper and is valid from the day it is issued.

Issued at the Presidential Palace on Moharam 7<sup>th</sup> 1434, corresponding to November 21<sup>st</sup>, 2012.

**Mohamed Morsi**



## Constitutional Declaration

### **The President of the Arab Republic of Egypt**

After reviewing the Constitutional Declarations issued on February 13<sup>th</sup> 2011, March 30<sup>th</sup> 2011, August 11<sup>th</sup> 2012 and November 21<sup>st</sup> 2012;

### Decreed

#### Article I

The constitutional declaration issued on November 21<sup>st</sup> 2012 is null and void starting from today, and all its effects remain in effect.

#### Article II

If new evidence arises, new investigations will be conducted into the killings, attempted killings, injury or terrorizing of citizens between January 25<sup>th</sup> 2011 and June 30<sup>th</sup> 2012 if these crimes were related to the revolution.

If the investigations find new evidence related to the above-mentioned crimes, the general prosecution is to refer the case to the court of legal jurisdiction, even if there is a final acquittal in such case or if the court rejected the prosecution-general's appeal on the acquittal.

### **Article III**

If the people vote against the constitution in the referendum on Saturday, December 15<sup>th</sup> 2012, the president is to call for the direct election of a new Constituent Assembly of 100 members within three months.

The new Assembly is to finish its task within six months from its election date. The president is then to call for a referendum on the new draft presented by the Assembly within thirty days of receiving it.

In all cases, vote counting and the announcement of results in the constitutional referendum is to take place publicly in election subcommittees as soon as the voting process is finished. The results are to be validated by the head of the subcommittee.

### **Article IV**

All constitutional declarations, including this one, are immune from any challenge in any court, and all related lawsuits are considered void.

### **Article V**

This constitutional declaration is to be published in the Official Newspaper and is valid from the day it is issued.

Issued by the Institution of Presidency on Moharam 24<sup>th</sup> 1434. (December 8<sup>th</sup> 2012)

**Mohammed Morsi**

قرارات العفو عن الإرهابيين

*Presidential Decrees*

*Granting*

*Amnesty for Terrorists*

**The Arab Republic of Egypt Presidential Decree No 57 on July 19<sup>th</sup>, 2012**

- The decree involved granting amnesty for (572) prisoners who were sentenced to different judgments (granting amnesty of the original sentences or the remainder thereof, and the additional penalties).
- Commuting penalties of (16) prisoners to different commuted sentences.

**The Arab Republic of Egypt Presidential Decree No 75 on July 26<sup>th</sup>, 2012**

- The decree involved granting amnesty fo (32) prisoners who were sentenced to different judgments (granting amnesty of the original sentences or the remainder thereof, and the additional penalties)
- Substituting the death penalty of (1) prisoner with 15 year imprisonment.

**The Arab Republic of Egypt Presidential Decree No 122 on August 16<sup>th</sup>, 2012**

- The decree involved granting amnesty to (53) prisoners who were sentenced to different judgments (granting amnesty of the original sentences or the remainder thereof, and the additional penalties)
- Commuting the penalties of (4) prisoners who were sentenced to different judgments to be 1 year imprisonment after mitigation.

# *Nahda Sit-in Events*

حوالہ ۱ کے تحت

(Annex)

## **The Most Remarkable Violations Committed by Muslim Brotherhood**

**and Its Supporting Islamists During Nahda Sit-in**

- In Nahda square and during their sit-in, Muslim Brotherhood and its supporting Islamists resorted to exploit

the sit-in to instigate against the Armed Forces and police because of their stance opposing the deposed president. MB and its supporting Islamists claimed the Armed Forces and police did not stick to the legitimacy. They declared during the sit-in the beginning of adopting violence and jihad; moreover, they issued several statements over the Internet carrying the same content.

- After June 30<sup>th</sup>, Revolution, MB, its leaders, and supporting extremists adopted hostile policies towards the state institutions. Such policies were reflected in attacking vital and important installations to spread chaos and instability. In this regard, they targeted security and military installations; security and military leaders; police and armed forces personnel; churches and mosques. All these practices are criminalized according to the Penal Law in articles 80, 86, 88, 89, 90, 133, 162, 167 and amendments thereto of the Penal Law No. 58 of 1937 and law No. 394 of 1954. Such laws define terrorism and terrorist acts and prescribe aggravated penalties to those who commit such acts.
- MB and its supporters committed several crimes during 40 days that cover the period of the sit-in started from the first day to the day it was dispersed according to the provisions



of the Egyptian and International laws. Such crimes include the following:

- Murders, murder attempts and instigating murder; committing such crimes is penalized in accordance with chapter 1 of the Third Book of Egyptian Penal Law No. 58 of 1937.
- Crimes of arms carriage and possession without a license; such crimes violate the provisions of Arms and Ammunitions Law No. 394 of 1954.
- Kidnapping and torture crimes; such crimes are criminalized as stipulated in the provisions of the Penal Law in Chapter 5.
- Stealing, seizing, and harming public property (electricity, water, state-owned vehicles); such crimes are criminalized in accordance with articles 89, 90, 116 and amendments thereto of the Penal Law No. 58 of 1937. Such crimes included carjacking of 6 state-owned vehicles equipped and assigned to satellite broadcasting.
- Resisting authorities and in purpose sabotaging public properties (i.e. occupying schools and worship premises, destroying sidewalks and public light poles,

surrounding the installations of security and police troops, Egyptian Media Production City, and the Supreme Constitutional Court). Such crimes are documented in accordance with the Egyptian Law provisions in articles 89, 90, 162, 167.

- Stacking arms in public squares; such acts violate the provisions of Arms and Ammunitions Law No. 394 of 1954.
  - **Blocking roads and traffic.**
- Official police reports filed on the most remarkable violations committed by Muslim Brotherhood and supporting Islamists during Nahda Sit-in are as follows:
- **July 3<sup>rd</sup>, 2013:**
    - A person, lives at 28 Helmy St., Baini El-Saraiat, Dokky, injured with a 14-centimeter cut in the neck, broken nose, and face bruises, filed a police report. According to the report, some Islamists who were in Nahda sit-in accompanied him forcefully and attempted to slaughter and hurt him. They left him afterwards under the stage installed in the square.

- **July 9<sup>th</sup>, 2013:**

- A female citizen, an editor in *El-Youm-El-Sabe'a Newspaper*, filed a police report to Giza Police Station. She reported that while covering a protest near Mostafa Mahmoud Mosque in Dokky, some of female protesters, who belong to Nahda sit-in accompanied her forcefully into a tent in the said sit-in, blindfolded her, and seized her camera. Some men harassed her without hurting her. She accused Mohamed Badie, Safwat Hegazy, and Mohamed Elbeltagy. The incident was reported and filed under number 2013/12592 misdemeanors, Giza Police Station.
- A citizen, a journalist in Veto Newspaper, filed a police report to Giza Police Station. He reported that while being in front of Mostafa Mahmoud Mosque in Giza covering the protests of the deposed president supporters, he threw a poster of the deposed president to the ground. Such act aroused the sentiment of those protesters; therefore, they accompanied him in a private car to Nahda Sit-in. There, they beat and injured him; and seized his cell phone and wallet. He

accused the deposed president, Mohamed Badie, Safwat Hegazy, Mohamed Elbeltagy, and Assem Abdel Maged. . The incident was reported and filed under number 2013/24 incidents, Dokky Police Station.

• **July 12<sup>th</sup>, 2013:**

- About 5000 supporters of the deposed presidents gathered in Nahda Square and blocked all traffic axes to such square. In the square, Basem Ouda, ex minister of supply, delivered a speech in which he attacked the Armed Forces and supported the deposed president.
- Giza Security Directorate arrested a Syrian, -an accountant with a Russian nationality and lives in Dokky area- on the based on broadcasted footage of him on Thir TV Channel in which he was carrying a gun in the late Presidential Guard incidents and participating in another protest. His house was searched and a camouflage battle dress uniform, laptop, some CDs on Syrian revolution were found. The aforementioned denied his participation in any protesting events in the country. He indicated that he is a member

of the Free Syrian Army, and the footages of him with a gun were in Syria. All required legal procedures were taken.

- **July 14<sup>th</sup>, 2013:**

- A report was filed to Imbaba Police Station from Tahrir General Hospital on the incident of the arrival of the so-called Ahmed Magdy Ahmed (age 25, worker, lives in Imbaba area, with burns in his left hand). He stated that while walking in Giza Square, a quarrel took place between him and participants in neighborhood watch securing sit-inners in Nahda Square because they searched him and tried to seize his belongings. One of them shot a bullet. Mr. Ahmed accused the sit-inners in the square and Muslim Brotherhood of injuring him. All required legal procedures were taken.

- **July 15<sup>th</sup>, 2013:**

- A police report on an Armed forces officer was filed to Giza Police Station. The report stated that, while he was passing through Giza Square, he encountered clashes between deposed

president's supporters and some of the neighborhood's residents. While escaping, he hit some citizens; subsequently, one of them died. Islamists accompanied him forcefully with his car to Nahda Square, where they beat him to death. They threw his corpse in Giza Square and torched his car. The incident was reported and filed under number 2013/1153 misdemeanors, Giza Police Station of 2013.

- **July 17<sup>th</sup>, 2013:**

- MB leader Mohamed Ezzat Sabry invited MB members to mass in Giza Square and chant with the legitimacy of the deposed president. In addition, he allowed some MB members to climb up to the roof of his clinic located at 241 Saad Zaghloul St., Giza to shoot citizens not supporting MB. It worth mentioning that the aforementioned seeks revenge for the death of his son in Bain El Saraiat incidents.
- MB leader Abdel Rahman Saudi funded MB elements movements in Rabaa and Nahda Squares, in addition to transferring his money to Algeria and UK.

- **July 18<sup>th</sup>, 2013:**

- A police report was filed to Giza Security Directorate on clashes that had been erupted between Nahda Square sit-inners and some of Bain El Saraiat neighborhood residents. A truck full of people was seen in the vicinity of Assad Bin Elforate. All required legal procedures were taken.

- **July 20<sup>th</sup>, 2013:**

- A police report was filed to Giza Police Station on the arrest of a Syrian called Fouad Melhem Mohamed Melhem (age 34, tailor, no known residence, with no passport). He was asleep in a bus belongs to Asmaa Fahmey Secondary School existed near Nahda Square. He was wearing Armed forces battle dress uniform (camouflage jacket and an empty ammunition pouch). Upon questioning him, he claimed that an Armed forces private gave him the uniform out of sympathy. All required legal procedures were taken.

- **July 23<sup>rd</sup>, 2013:**

- Some citizens filed a police report to Giza police Station on pro deposed president marches. The report stated that such marches blocked Giza Square and the metal Giza Overpass to block the traffic. The protesters harassed and attacked passing cars; such acts urged the residents to resist the protesters. A group of deposed president supporters fired some bullets from Giza overpass towards the residents; consequently, 7 people were killed. The incident was reported and filed under number 2013/11818 misdemeanors, Giza Police Station.
- **July 24<sup>th</sup>, 2013:**
  - MB electronic campaigns and social media groups started to disseminate one call of gathering in Rabaa and Nahda Squares and promote marches. Such marches targeted gathering new numbers for the two aforementioned sit-ins.
- **July 28<sup>th</sup>, 2013:**
  - A citizen, a journalist and photographer in Elbadiel Newspaper, filed a police report to Giza



Police Station. He reported that while being in the area of Nahda Square to capture some photos of the sit-inners, he was attacked by the sit-inners. He was injured and his camera was seized. The incident was reported and filed under number 2013/11953 misdemeanors, Giza Police Station.

• **July 29<sup>th</sup>, 2013:**

- A citizen, a journalist and photographer in Al-Ahram Newspaper, filed a police report to Giza Police Station. He reported that while walking in Nahda Square, he witnessed some members of MB digging in Orman Park to lay a mine. The incident was reported and filed under number 2013/1192 misdemeanors, Giza Police Station.
- A citizen filed a police report to Giza Police Station. He stated that participants in Nahda Square Sit-in forced him into Orman Park, assaulted him verbally and physically, and injured him. The incident was reported and filed under number 2013/12006 misdemeanors, Giza Police Station.

- **July 31<sup>st</sup>, 2013:**

- A citizen, a driver of Public Transportation Authority, filed a police report to Giza Police Station. He stated that while driving public transportation bus no. 8160 in Mourad St., Giza, a group of Nahda Square protesters attacked the bus. Damages occurred to the bus. The incident was reported and filed under number 2013/12024 misdemeanors.

- **August 1<sup>st</sup>, 2013:**

- The Ministry of Agriculture undersecretary and Orman Park Supervisor filed a police report to Giza Police Station on the damages, violations committed by Nahda Square sit-inners against the park. He stated that they denied the park staff access to the park. The incident was reported and filed under number 2013/12177 misdemeanors, Giza Police Station.

- **August 5<sup>th</sup>, 2013:**

- A citizen filed a police report to Giza Police Station. He stated that while being in microbus in Elbahr Elazam St., Giza, he was harassed by a

group of beard men in the microbus for smoking and not fasting in the month of Ramadan. The quarrel was escalated to a fight, and the insulted, beat, and injured him. They accompanied him forcefully to Nahda Square and assaulted him again. The incident was reported and filed under number 2013/12469, Giza misdemeanors.

- **August 6<sup>th</sup>, 2013:**

- A citizen filed a police report to Giza Police Station on his inconvenience. He stated that some MB elements seized 2 cell phones from him while passing in front of Orman Park in Giza. Afterwards, he saw some people with firearms. The incident was reported and filed under number 2013/12483, Giza misdemeanors.

- **August 9<sup>th</sup>, 2013:**

- Giza Security Directorate received two reports as follows:
  - The first reporter, a garage guard with bruises and abrasions in the face, belly, and feet, stated that on July 12<sup>th</sup>, 2013, he was subject to confinement and torture in Bark

Elkhiam area, Nahda Square area, by participants in Nahda Square Sit-in. They claimed his responsibility of stealing a motorbike of one of them. He could escape on the third day and he accused some of the sit-inners of his injury.

- The second reporter, Mohamed Saber Ahmed (age 22, a journalist in Veto Newspaper with the Head Office in Nile St., Dokky, resident of Elkhous Station, Elkaliubia Governorate, injured with various bruises and abrasions all over his body) stated that while covering a protest organized by Islamists in front of Mostafa Mahmoud Mosque on August 8<sup>th</sup>. Some Islamists distributed posters of the deposed president, and when he got one of these posters he threw it to the ground. Consequently, some people accompanied him forcefully to Nahda Square where they attacked and injured him and seized his belongings including a cell phone and wallet. Afterwards, they let him go. He accused the deposed president, the

Supreme Guide of Muslim Brotherhood, Mohamed Elbeltagy, Safwat Hegazy, and Assem Abdel Maged of instigating the protesters to assault and injure him.

○ All required legal procedures were taken..

● **August 11<sup>th</sup>, 2013:**

- A female citizen filed a police report to Giza Police Station. She stated that while walking near Nahda Square, some women in niqab (complete veil) insulted, beat, and injured her for carrying a poster of the Minister of Defense. She could escape them and she accused Muslim Brotherhood and the deposed president Mohamed Morsi. The incident was reported and filed under number 2013/12618, Giza misdemeanors.

● **August 13<sup>th</sup>, 2013:**

- The participants in Nahda Square Sit-in closed the car gate to Engineering Faculty on Elgamaa St. They allowed only the pedestrian gate and they searched all people passing through the gate. This provoked a lot of quarrels and fights.

In addition, they built a concrete wall before the Faculty of Engineering in both directions to expand their sit-in area.

• **August 22<sup>nd</sup>, 2013:**

- Police security elements assigned to Nahda Square were able to find an automatic rifle, cartridge, 30 bullets 7.62 X 39, a white pack of black gunpowder, nails and gravels. All required legal procedures were taken.

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## *Republican Guard House*

### *Events*

### Republican Guard House Events

#### Case No. 9134/2013 Misdemeanor, Misr Al-Gadida/Heliopolis

##### Police Station

- Some leaders of the MB group backed by supporters of Islamist currents in Rabaa delivered speeches instigating the people to work against the Armed forces and calling for committing acts of violence against the soldiers and military installations in order to push forward the reenistament of the deposed president. The leaders were identified as follows: (Esam AL-Arian – Safwat Hegazy – Tarek Al-Zomor – Asem Abdul-Maged –Mohamed Al-Beltagy – Mohamed Badiea – Abdul-Rahman Abdul-Hameed Al-Bar-Osama Yassin – Basem Auda – Mohamed Taha Wahdan-Saad Emara ).
  - Protesters supporting the deposed president went to the Republican Guard headquarters, a military installation on Salah Salem Street, following Gomaa Prayer on July 5<sup>th</sup>, 2013. Mohammed Al-Beltagy, an MB leader, made them swear an oath not to leave unless they release the deposed president. They started to remove the barbed wire to engage with the forces



assigned for security; the matter that made the forces to respond by using tear gas to disperse the demonstrators.

❖ *it is worth mentioning that there were multiple attempts of Rabaa Al-Adawiya protesters to storm the Republican Guard headquarters.*

- The protesters staged a sit-in in front of the Republican Guard headquarters, on Salah Salem Street, and built a stage to deliver exciting speeches in order to instigate people to storm it. On July 8<sup>th</sup>, and following Fajr prayer, the protesters moved toward the republican guard headquarters after circulating rumors of military vehicles movements aiming at repelling them. The Protesters attacked the forces to break through using automatic rifles and shotguns causing numerous deaths and injuries on both sides, they also occupied roofs of building in the surrounding area to shoot the troops, throw stones, and setting fire to buildings.
- These clashes resulted in (arresting 695 of the attackers and detaining them in the Republican Guard club – 66 deaths including one police officer, Nasr city police station, and 2 soldiers of the central security

forces- 322 injuries, damaging 25 private cars and 3 motorcycles, confiscating 1 shotgun rifle, 4 locally made pistols, 1 locally made rifle, a large number of white arms).

- The responses to the clashes differed among the Islamic currents and parties concerning the death of some of their elements while their attempt to storm the Republican Guard club on July 8<sup>th</sup> 2013 as follows :

- Salafist Nour party declared its withdrawal from the political process and demanded an immediate referendum on the legitimacy of President Mohamed Mursi to stop the bloodshed, as well as launching an initiative to find a solution to the crisis including the establishment of a committee of the wise, who are credible, to achieve the reconciliation among different political powers and to work out a new compromise plan to pass the present phase (that meets the approaches of Al-Watan and Al-Asala Salafist parties).
- The Jihadi current massed their elements to move to Rabaa Al-Adawiya square through circulating rumors on social networking sites(which included the rumor that says that the Armed Forces exploited the deceased protesters of Rabaa by wrapping them in shrouds and

claiming that they belong to the police and the Armed Forces in order to manipulate people's sympathy – another rumor that says that the troops moved to disperse protesters following the failure of coup d'etat – a claim that the arrested possessed weapons and ammunition in the sit-in areas in order to use the media to show that the weapons belong to the protesters to justify the attack against them). Jihadi current also called upon Jihadist leaders to show patience and determination and not to sacrifice any of their rights.

### Major Events related to Republican Guard Clashes.

#### July 2<sup>nd</sup>, 2013

- MB leaders and pro-Mursi Islamist currents in Rabaa Al-Adawiya called their supporters in many governorates to gather in front of the Republican Guard club on July 8<sup>th</sup>, 2013 to launch a mass demonstration. They wanted to send a message to the society that they are determined to reinstate the deposed president after the clashes which resulted in the death of many victims in front the Republican Guard Club.
- Rumors spread among the protesters in Rabaa Al-Adawiya Square that the MB leaders employed some foreign elements with experience in combats and sniping to use

them in the clashes in Rabaa Al-Adawiya and the headquarters of the Republican Guard.

- The protesters were totally convinced that the deposed president was detained in the Republican Guard Club which made them determined to protest there, try to break into the Club and force the Armed Forces to release him or negotiate this demand.

#### 7<sup>th</sup> of July 2013

- Nasr City Police Station I received many complaints regarding the MB sit-in in Salah Salem Street and blocking it in both directions, as well as obstructing the governmental services (Central Agency for Auditing, Ministry of Planning- Central Agency for Public Mobilization and Statistics, Leaders Institute). They were about 5000 persons; they stopped cars and searched the passengers. The incident was reported under number 31195, Nasr City misdemeanors for year 2013.
- A citizen (Manager, Mobil gas station) filed a report to Heliopolis Police Station that the driver of a vehicle with plates number GGT / 374 and another one riding a motorbike without plates carrying a shotgun repeatedly came to the station since the beginning of the deposed

president supporters held a sit-in in front of the Republican Guard Club. The incident was reported under number 5901, Heliopolis administrative for 2013.

### 8<sup>th</sup> of July 2013

Two MB elements' corpses arrived from Cairo to Al-Manzala city to be buried in the graveyard of their hometown. The investigations proved that they were killed during their participation in the Republican Guard Club assault. (all necessary legal procedures were taken)

### 9<sup>th</sup> of July 2013

Al Zohoor Private Hospital has reported to October City Police Station I that it received two citizens injured with gun shots. Police moved there for investigation and it was proved that they were injured during their participation in the aforementioned assault. The incident has been reported under number 34, incidents.

### 11<sup>th</sup> of July 2013

A publication titled (Very Dangerous - What happened in Ministry of Defense in the Last 72 Hours before the Massacre) was distributed among the protesters in Rabaa Al-Adawiya. It was alleged in this publication that a series of meetings were held by Minister of Defense with the Commanders of the main

services, as well as the allegations that there were quarrels between the Armed Forces commanders and General Abdul-Fatah Al-Sisi because the commanders supported the deposed president (those commanders according to the publication were: the 2<sup>nd</sup> Field Army Commander, Morale Affairs Department Director, Military Engineering Authority Chief), in addition to the allegation of the importance of negotiating with the deposed president to calm things down, as well as an alleged phone call that was made by Major General Mamdouh Shahin and the Supreme Guide of the MB to contain the situation.

### 12<sup>th</sup> of July 2013

Giza Security Directorate managed to arrest a Syrian person (an accountant who has the Russian citizenship, lives in Al-Dokky), as he was identified from the photos taken of him and aired by Al-Tahrir Channel while he was holding a weapon during the Republican Guard clashes. Upon searching his apartment, a military uniform, laptop and some CDs about the Syrian revolution were found. All necessary legal procedures were taken.

### 13<sup>th</sup> of July 2013

- The public prosecution made some decisions concerning the case No. 9134/2013 Heliopolis misdemeanors (the

Republican Guard incidents) the following: arresting 652 persons for participation in the aforementioned events, detaining 206 convicts for 15 days and bringing them before prosecution to review the renewal of their detention, setting 446 persons free after paying a bail of 2000 L.E. each, call on a coroner to examine 22 injured persons to determine the causes of their injuries, acquiring all the recordings and videotapes from the different Egyptian means of media, acquiring a copy from the military prosecution investigation/medical reports and issuing arrest warrants for arresting the following: Mohamed Badi'e, Mohamed Al-Beltagy, Safwat Hegazy, Mahmud Ezzat, Esam Al-Arean, Abdul-Rahman Al-Bar, Esam Sultan, Asem Abdue-Maged, Safwat Abdul-Ghani, Mahmud Hussien.

- Health Insurance Hospital reported to Nasr City Police Station I the death of one of the protesters due to a gunshot in the head, and upon questioning his brother he confirmed that the dead man was participating in the events. The incident was reported under No 31 incidents.

### 17<sup>th</sup> of July 2013

A citizen, employee at Port Saied Engineering Works Company, reported to Nasr City Police Station I that his company suffered some damage by the MB leaders (Mohamed

Al-Beltagy, Osama Yassen, Safwat Hegazy and Esam Al-Arian) as they provoked the protesters to break into the company that he worked for and destroy it. The incident was reported under number 32716 misdemeanors Nasr City Police Station I year 2013.

### **18<sup>th</sup> of July 2013**

The Rescue Center of Cairo Security Directorate received information from the Armed Forces Operations Center that two cars moved from Rabaa Al-Adawiya square behind the protesters heading toward the Republican Guard Club. The cars were loaded with weapons in order to perform hostile acts against the Armed Forces at the Republican Guard HQ.



ايجوات النصر

## *Al-Nasr Road Eevnts*

Memo

Al-Nasr Road Events

27<sup>th</sup> of July 2013

- The supporters of the deposed president attempted to extend their sit-in area in Rabaa Al-Adawiya Square in Nasr City to reach the Memorial of the Unknown Soldier on Al-Nasr Road in order to demonstrate the size of the masses and to exhibit the amount of support and solidarity of the people with the president ... this led those elements to clash with the police forces stationed at the Memorial of the Unknown Soldier and with the residents of this area. Hence, the police were forced to deal with them gradually according to the respective international standards, yet the deposed president's supporters used automatic weapons.

The most noticeable events related to El-Nasr Road Clashes were as follows:

27<sup>th</sup> of July 2013:

- The deposed president's supporters set off on a march from Rabaa Al-Adawiya Square with approximately 2000 persons heading to El-Nasr Road where they blocked it through building a brick wall; after that, they blocked the entrance of October Bridge facing Emtedad Ramses

apartment buildings and caused some damages to the sidewalks and walls, threw stones, Molotov cocktail bottles at the residents of the area and the stores owners, and set some cars in the area on fire... this in turn led the residents of the area to intervene; the police immediately engaged with the protestors. A police officer was killed, another police officer was injured and two other soldiers were injured (in total 57 were killed – 185 were injured including captain Sherif Al-Sebaai "Central Security Forces" – 73 rioters were arrested.... A report of this incident was file reported in Nasr City police Station II (no. 4393/2013 Misdemeanors).

- Al-Nozha Police Station received a notification from Heliopolis Hospital notifying that the hospital received a person with a gunshot in the abdomen during the clashes in front of the Memorial of the Unknown Soldier in Nasr city, and this person died upon arrival at the hospital... upon questioning the uncle of the deceased, he affirmed that he did not know the cause of the death, and that he was in his company in Rabaa Al-Adawiya Square. He did not charge anyone with the murder (the incident was registered in report no. 26 Incidents/statuses, Al-Nozha).

- Al-Nozha Police Station received a notification from Heliopolis Hospital notifying that the hospital received an ambulance vehicle at its ER carrying a dead body of an unknown person who was killed by a gunshot and accompanied by three people requesting a medical report showing the cause of the death and how it happened. Due to the fact that the Forensic Medicine is the entity responsible of issuing such reports, they took the body and left with the ambulance vehicle heading back to Rabaa Al-Adawiya(the incident was registered in report no. 7482/2013 Administrative, Al-Nozha).

**The Anti-Coup and National Coalition to Support Legitimacy issued a statement in which the most prominent points were as follows:**

- The Coalition considered what happened in Nasr City in front of the Memorial of the Unknown Soldier a heinous crime in which the anarchists shed more blood of the innocent.
- The Coalition charged the police with firing tear gas and live ammunition at the masses supporting the deposed president all the way from Al-Nasr Road till Al-Azhar University by means of using snipers who climbed onto the roof of Al-Azhar University facilities.

- The Coalition condemned this massacre and held the Coup government responsible for it .they also declared that the peaceful Sit-In was to continue.
- The Coalition held the Grand Sheikh of Al-Azhar and the President of Al-Azhar University responsible for this massacre because they allowed the snipers to climb the roofs of the university buildings and kill the peaceful protestors.
- The Coalition demanded that the Armed Forces stop what they called “the Butcheries”, and to save the blood of the innocent; they also affirmed that the Brothers are to continue their peaceful Sit-In.
- 3 volunteer physicians affiliated with the Brotherhood, who were working in the field hospital in Rabaa Al-Adwiya, received the dead bodies of those who were killed in the clashes in Rabaa Al-Adawiya, examined them, compiled medical reports and submitted those reports with the bodies to the people in charge of the sit-In in Rabaa Al-Adawiya to finalize their burial processes on their own without referring to the General Prosecution and without the General Prosecution taking any decision regarding this matter.

**28<sup>th</sup> of July 2013:**

- The security personnel of the of Al-Azhar University in Nasr City found (two 9mm.empty bullet cases – a box of empty shells) on top of the faculty of Islamic Daawa which is facing Al-Nasr Road while searching their facilities following the clashes occurred at its main gate on Al-Nasr Road and the assault of a number of the Brothers' elements against the University (all necessary legal measures were taken).
- All the data of this incident prove that elements of the Brotherhood' Group climbed onto the roofs of the faculty of Islamic Daawa building which is facing Al-Nasr Road, they also used their firearms against the forces and the citizens. It is proven valid that the calibers of the bullets used are not used by Ministry of Interior.

**29<sup>th</sup> of July 2013:**

- The number of the protestors in Rabaa Al-Adawiya reached 8000 persons approximately. They erected a marquee near the main gate of Al-Zohor Sporting Club on Al-Nasr Road to receive people who wanted to offer their condolences for those who were killed during the incident of Al-Nasr Road.

المرائن/الهابيب التي ارتكبت في اقطاع

**Crimes Committed after**  
نصف الساعة رابع حتى ٢٠ مايو ٢٠١٣  
**Dispersing Rab'a**

**Sit-In until 20 May 2013**

**Memorandum**

**Subject:**

**Crimes committed after  
the dispersal of Rab'a  
and Al-Nahda Sits-In  
until April 2<sup>nd</sup> 2014**

Following the dispersal of the sits-in in Rabaa and Al-Nahda areas, the MB waged a war against the Egyptian State. The MB unleashed their members, in coordination with the Egyptian as well as foreign terrorists affiliated with religious extremist sects, to commit a series of brutal massacres and butcheries as follows:

**14<sup>th</sup> of August 2013**

**Cairo Governorate:**

- Some elements of the religious extremist currents assaulted the headquarters of the General Department of Traffic in Rabaa Al-Adawiya and set it on fire.
- Some elements of the religious extremist currents managed to capture 4 money transfer vehicles and used them in an attempt to storm Nasr City Police Station I.



- A number of the elements of the religious extremist currents fired their firearms against Ain Shams Police Station in an attempt to storm it. Security forces confronted a number of the deposed president's supporters.
- Some of the extremists assaulted Ministry of Finance and set its ground floor on fire.

#### Giza Governorate:

- Elements of the religious extremist currents stormed Kerdasa Police Station, seized the weapons, captured Major General / Mostafa Al-Khatieb, Division Assistant Commander, and locked him up in one of Kerdasa's mosques in order to negotiate the release in of those who were arrested in Al-Nahda square. This assault resulted in the death of the General and (Brigadier General/ Amer Abdul Maqsoud, Deputy Sheriff of the police station, Captain/Mohamed Farouq, Investigation Assistant Chief, 1<sup>st</sup> lieutenant/ Hesham Shetta, Investigation Assistant Chief).
- 200 extremists assaulted Al-Waraq Police Station and Rescue Branch (located on the upper floor of the police station), and seized the weapons in there. Clashes between the security forces and the extremists erupted in Nasr El-Din St. near Al-Haram Tunnel.

- Other clashes also occurred between MB elements and security forces that resulted in (2 deaths – 4 wounded who were transferred to Misr International Hospital). 262 persons, involved in these clashes in Al-Nahda and Mostafa Mahmoud square, were arrested. Also, various items were confiscated( 29 shotguns – 9257 automatic rifle bullets - 322 shotgun shells – 43 9mm. bullets – 6 hand grenades – 1 bullet proof vest – 2 radio devices – 5 shotgun barrels – 55 Molotov cocktail bottles – 34 slingshot – 2 light torches attached to cameras and antennas – 2900 pounds on which the “Anti-Coup” slogan is stamped.

**Kalubia Governorate:**

- 1500 elements of the religious extremist currents organized a march in the city of Abo Zaabal, in which the participants stormed Abo Zaabal police station and the Criminal Investigation Branch facility located on the upper floor of the police station), set it on fire and destroyed police vehicles(all damages and injuries are being accounted for and reported).

### Alexandria Governorate:

- 5000 elements of the religious currents, gathering in front of the Court Complex, assaulted the temporary headquarters of Alexandria Governorate, set it on fire and engaged in a clash with the designated security forces.
- The Participants in the march coming from Al- Qaed Ibrahim Mosque (5000 elements of the religious extremist currents) set fire to a number of cars in Suez Canal St. (Bab Sharq Police Station jurisdiction). This incident resulted in the burning of 3 cars in front of Mar Girgis Church that belong to those who work in the church.

### Ismailia Governorate:

- 500 elements threw stones at the Court Complex in Ismailia city and set a part of it on fire after some armed Bedouins supported by some extremists stormed the Complex following their clash with the Central Security Forces. This clash resulted in the injury of 1st Lt. / Mohamed Meki with a gunshot in his right thigh.
- Some elements of the religious extremist currents were able to storm Ain Gheseen Police Station, attached to Ismailia police station, and set it on fire. After that, they headed to the rail way station and burned it.

- Some elements of the religious extremist currents started to fire their automatic weapons at people in Shibin Al-Kom st. in a random way. This incident resulted in the injury of (Captain/ Ahmed Abdul Ghani – Major/ Mohsen Hamad “Central Security Forces”), they also captured a police armored vehicle. Furthermore, three vehicles, on which automatic machine guns were secured, filled with Bedouins were seen shooting at people randomly.
- Some elements of the religious extremist currents, together with the inmates’ families assaulted Ismailia Police Station III...where the security forces were able to thwart their attempt.

**Suez Governorate:**

- The extremist elements organized a march from Hamza Mosque (approx. 3000 persons). On their way to the headquarters of the Governorate, they managed to capture an Armed Forces armored vehicle stationed in front of Bank of Alexandria on Al-Gaish st. and took a bullet belt; they also assaulted public as well as private properties, stormed the private Franciscan School and set it on fire, burned an Armed Forces vehicle in the area of Al-Mothalath. Upon arrival to the governorate headquarters, they attacked the security forces designated there and burned 3 Armed Forces armored

vehicles, in addition to, 2 firefighting vehicles, 2 shops owned by Christian citizens; they also burned a part of Al-Raie Al-Saleh Church and 2 private cars in front of it.

- Some elements of the religious extremist groups set fire to rubber tires on the railway in Amer village; they also threw Molotov cocktail bottles at the Police Officers' Club. As a result of that, they second floor of the club caught fire.

#### Al-Fayoum Governorate:

- Some elements of the religious extremist groups were responsible for the attempts to assault the police stations of Sinoras –Tamieya – Ishway – Itsa, as well as, the assault of the municipality and the police station of Al- Hamouly village, Youssef Al-Seddiq town. They also captured a soldier and his weapon, stormed the governor's house and the Administrative Control building, assaulted Al-Nazla Al-Gadida Church in Youssef Al-Seddiq town and set it on fire, and blocked the western desert road of Asuit.
- Some elements of the religious extremist groups managed to storm Qaroun police station of Youssef Al-Seddiq main police station, Al-Fayoum Rescue headquarters, Al-Lahoon police Checkpoint and captured their weapons.

- The assault on the Rescue headquarters in Al-Fayoum by the extremists resulted in the death of Lt. Sami Meghawry Abdul Mohsen, and Mr. Adel Fawzy Ghatas, 50 years old and a clerk in the Police Rescue Department.

**Sohag Governorate:**

- About 200 Christian citizens gathered in front of the archbishopric headquarters in Sohag to defend it after some elements of the religious extremist groups burned 10 cars inside it and the Social gatherings hall and the hostel for the female expatriates as well as inflicting damages in Mar Girgis Church.

**El-Mania Governorate:**

- Some elements of the religious extremist groups committed various acts of violence in the different central towns of Al-Mania Governorate. 500 extremist elements destroyed the facade of Mar Mena Church. 500 extremist elements gathered in front of Al-Mania police station, threw stones at it, and they were dealt with by the security forces. Al-Hoyesala police station was assaulted, and its weapons were captured. About 1000 extremist elements attacked Abo Korkas police station, and were dealt with by the security forces. About 1000 extremist elements attacked the police station in Meloua. In

Dir Mouas, the Holy Virgin and St. Abraam church for the Orthodox was set on fire in addition to the police station in Delga village and six houses for Christian citizens (among which is the house of the clergyman of the aforementioned church). In Samalot city, around 2000 extremists attacked the police station and set the Sherriff's house on fire. In Matai city, around 3000 extremists gathered around the police station; meanwhile about 1000 stormed the police station and burned the Nile Cruise "Al-Zahabia" (located in front of Bank of Alexandria on the Nile Cornice in Al Mania city and owned by the Anglican Church), the Governorate Headquarters Garage, and the IT Center. In addition, they burned the Civil Registry Office located near the police station. In Beni Mazar city, about 500 extremists gathered around the city hall and the court and set them on fire; after that, they headed towards the police station and threw stones at it. In Maghagha city, around 1000 extremist elements gathered in front of the Education Department and damaged its façade. In Al-Idwa, about 1500 elements gathered around the police station and the court; they were dealt with by the security forces.

- Some elements of the religious extremist groups were responsible for assaulting Al-Idwa police station and setting fire to the firefighting vehicles and capturing some of the equipment, burning the Armed Forces commissary, burning

the headquarters of the dissolved National Democratic Party, burning the Anglican Church in Bidini village, Matay city.

- Some elements of the religious extremist groups set fire to 3 stores and a pharmacy owned by Christian citizen who live in Dir Mouas.
- Some elements of the religious extremist groups attempted to assault the police stations of Maghagha and Matay. This incident resulted in the injury of the two investigation officers in the two stations with bruises.
- Nabil Gobrael, a policeman from the National Security Department, suffered a bruise under his eye when he was in Al-Idwa police station during the assault of some elements of the religious extremist groups on the station.
- Some elements of the religious extremist groups fired their weapons behind the Security Directorate of Al-Mania. As a result, 1stLt. /Mohamed Fouad Ahmed Al-Morsi, from the Central Security Forces, suffered a gunshot in his foot.

**Asuit Governorate:**

- Around 1000 elements of the religious extremist currents gathered in Um Al-Batal square in order to prevent the arrival of the governor from entering the Headquarters of the governorate located near the square. They also committed acts



of violence that resulted in the injury of 2 officers and 2 soldiers from the Security Directorate, the destruction of a Mobinil store, and the destruction of a police vehicle.

- Around 800 elements of the religious extremist currents organized a march in Al-Ghanaïem city and burned the city hall; some of them headed towards the police station and fired shots at it; they were dealt with. Other group of them set Al-Ghanaïem Summary Court on fire.
- Some elements of the religious extremist currents were responsible for the burning of Dar Al-Ketab Al-Moqadas Bookstore (responsible for distributing the Christian religion books) located in the area of Asuit Police Station II.
- Some elements of the religious extremist currents were responsible for the attempt of assaulting the Criminal Investigation Branch building in Abo Tig city. The policeman designated to secure it was shot dead in the head.
- **Attachments: The Egyptian National Security Sector investigation report regarding the incident of assaulting Abo Tig Police Station and the Criminal Investigation Branch facility.**
- Some elements of the religious extremist currents were responsible for the destruction of Nahdat Al-Kadasa Church

façade and the façade of Ibrahim Pasha Police station... some of them threw Molotov cocktail bottles at the two churches of (Mar Girgis – Saint Teresa) which resulted in the burning of the two facilities. They also set fire to private cars and stores, and Ikhnaton Hotel on Youssri St. in Asuit city.

- Some elements of the MB and the religious currents supporting them fired their weapons and RPG grenades at Sahil Selim Police Station, the matter that resulted in the death of all the security elements designated to secure the police station; they also captured all the weapons there. After that, they stormed the post office, the apartments located in the upper floors of the same building, the Agriculture Department building, and Sahil Selim Court; they set the city hall on fire.

**Attachments: the investigation report regarding the incident of assaulting Sahil Selim, the post office and the apartments located in the upper floors of the same building, the Agriculture Department building, and Sahil Selim Primary Court.**

**North Sinai Governorate:**

- Some unknown elements assaulted Mar Girgis church on 23<sup>rd</sup> of July St., AlAriesh city and set it on fire and robbed it. Other group of unknown elements shot Al-Sheiekh Zoayed police Station and blocked Taba -- Al-Nabaq Road.
- Some elements of the religious extremist currents stormed Bir Al-Abd Police Station and captured the weapons and set fire to the vehicles inside it.
- In the same way, Al-Ariesh Police Station III suffered a severe attack by some armed Bedouins ... the security elements were able to deal with the threat. Yet, 1st Lt. /Basem Farouk was killed and 1st Lt. / Khaled Shabana were shot (both were from the Central Security Sector in Arish).

**Marsa Matrouh Governorate:**

- Some elements of the religious extremist currents were responsible for throwing Molotov cocktail bottles at the Military Investigation headquarters that belong to Border Guards Forces. This incident resulted in the explosion of one vehicle inside the facility which was contained by the Armed Forces firefighting vehicles.

**15<sup>th</sup> of August 2013**

**Al-Kalubia Governorate:**

- Some elements of the religious extremist currents were responsible for setting the Criminal Investigation Unit located above Abo Zaabal Police Station on fire for the second time.

**16<sup>th</sup> of August 2013**

**Cairo Governorate:**

- Some MB elements accompanied by elements of the religious extremist currents gathered in front of Al-Azbakia Police Station, climbed to the roofs of the buildings around the police station, started to throw Molotov cocktail bottles and hand grenades and fired their firearms and shotguns against the security elements in order to storm the police station. This incident resulted in the injuries of many officers and soldiers; it also inflicted severe damages on the police station and the neighboring public and private properties.

**Attachments: the Egyptian National Security Sector and the Public Security Agency investigation reports regarding the attempt of assaulting Al-Azbakia Police Station.**

### 17th of August 2013

#### Cairo Governorate:

- Great numbers of Brotherhood (MB) and affiliated terrorists assembled around EL-Fateh Grand Mosque in Ramses downtown Cairo in an attempt to repeat Rab'a Sit-in. They occupied nearby buildings' roofs and started shooting and bombing Azbakeya Police Station and citizens. They destroyed the station and surrounding houses. Police men contained them and arrested large numbers.
- Some MB elements attempted to storm and occupy Al-Arman Orthodox (Ramses area), but the security forces confronted them.

#### Giza Governorate:

- Om El-Masryeen Hospital received a soldier, from Giza Security Forces Department who was seconded to Al-Ahram Police Station, with a gunshot in the back. He reported that while he was walking down Al-Ahram St., a group of MB members shot him during the riot occurred on the 15<sup>th</sup> of this month.

**Al-Fayoum Governorate:**

- Gun shots were fired from an unidentified vehicle at the security force designated at the Security Directorate and ran away. This incident resulted in the death of a child who happened to pass by the place.
- Some elements of the religious extremist currents assaulted Bahary Police Station and set it on fire.
- Some criminal elements accompanied by elements of the religious extremist currents assaulted the two Directorates of (Roads and Transportation – Agriculture), robbed them and set the Agricultural Guidance facility on fire.

**19<sup>th</sup> of August 2013**

**North Sinai Governorate:**

- A group of unknown armed elements fired their weapons at various security sites in Al-Ariesh city as follows: Security Directorate, National Security Sector, Al-Ariesh Police Station I, and the Central Prison, the offices of the GIS and the Military Intelligence, the Armed Forces Hotel. The security forces responded to these attacks.

**20<sup>th</sup> of August 2013****North Sinai Governorate:**

- A group of unknown armed elements shot an RPG grenade near Al-Mahager security checkpoint on the road to Al-Ariesh airport (Al-Ariesh Police Station I, North Sinai Security Directorate). No injuries were recorded.

**21<sup>st</sup> of August 2013****North Sinai Governorate:**

- A group of armed elements shot two RPG grenades at Al-Masoura checkpoint and the Armed Forces Liaison Office in Rafah. No injuries were recorded.

**26<sup>th</sup> of August 2013****EL-Menia Governorate:**

- While Malawi Police Station Sheriff was on a mission attending the funeral of one of the soldiers (who died earlier), A group of unknown armed elements fired their weapons at the force accompanying the sheriff in the village of Nawai. A soldier was shot dead in the chest on the spot; another soldier suffered various wounds by shotgun pellets.

**3<sup>rd</sup> of September 2013**

**North Sinai Governorate:**

- Some Takfiri and jihadist elements fired their weapons at a police security check point stationed at the National Bank of Egypt in the area of Al-Ariesh Police Station II ... the security elements engaged in a gunfire exchange with them. This incident resulted in the injury of one of the guards and a bank employee who were transferred to Arish Public Hospital.

**4<sup>th</sup> of September 2013**

**North Sinai Governorate:**

- Some takfiri and jihadist elements shot a former People's Assembly member (a National Democratic Party representative, and Al-Khrafeen tribe Sheikh) while riding his private car in the area of Al-Khazan; he died on the spot.

**5<sup>th</sup> of September 2013**

**Cairo Governorate:**

- A group of takfiri and jihadist elements (Ansar Beit Al-Makdis) targeted the convoy of Minister of Interior at 17 Mostafa Al-Nahas st. in Nasr City while passing through this area. This incident resulted in the death and injury of various members of the guards and citizens who happened to be



passing by (one child was killed – 10 policemen were wounded [4 officers – 6 others] – 11 citizens).

### 16<sup>th</sup> of September 2013

#### EL-Menia Governorate:

- A combined police taskforce composed of (Central Security– Public Security – National Security Sector elements) accompanied by the Armed Forces elements targeted the extremist elements in the village of Delga, Dir Mouas, Al-Mania. This campaign yielded the following results:
- 52 suspects in the acts of violence (assaulting and burning churches and private houses owned by Christians – storming the police station – bullying) were arrested, of whom was Ahmed Twafiq Gabr Mohamed (member in Al Dwa Wa Tabligh Group).
- A number of firearms and a huge amount of ammunition (3 automatic rifles – 2 shotgun rifles – one German rifle – 3 improvised shotguns -20 shotgun shells) were confiscated during the search operation in the plantations of the village.

**20<sup>th</sup> of September 2013**

**Giza Governorate:**

- A combined police taskforce composed of (Central Security– Public Security – National Security Sector) accompanied by the Armed Forces elements targeted the extremist elements in the areas of (Kerdasa – Nahia) in Giza Governorate in order to maintain order. This operation resulted in the following:
- 22 persons involved in the violence in the two regions including 4persons wanted by the prosecution as they participated in the burning of Kerdasa police station, two of whom are MB members Badereldin Mohmoud Goma and Medhat Gazi Mahmoud).
- Major General Nabil Farag, Assistant Director of Giza security, was killed in these events.
- Some MB and other extremists shot and bombed a café when they saw the photo of General Sisi. 2 persons were injured.

**Attachments:** National Security Sector reports regarding these incidents.

**27<sup>th</sup> of Sept.2013****Cairo Governorate:**

- A bombing in Mostorod checkpoint led to the injury of 2 policemen and 2 passers by, damage of the checkpoint and a private car, and finally damage to Mostorod Bridge.

Investigations proved that a time bomb was put under Mostorod bridge to target the check point. A knife was found in the theatre.

**1<sup>st</sup> of October 2013****Northern Sinai Governorate:**

- A bombing on Rafah – Alarish Road while 11 military minibuses and 3 buses were passing by carrying security forces (monthly vacations of officers and conscript, Ahriesh camp. 5 conscripts were injured and a bus was damaged.

**4<sup>th</sup> of October 2013****Ismailia Governorate:**

- A group of jihadists opened fire toward 3 Armed forces trailer trucks on Cairo-Ismailia desert road. 2 Persons were killed, Warrant Officer/ Ra'afat Zakarya Ibrahim, driver of the first truck, Private/ Hesham Abo El-Ezz, 313 artillery company;

and one was shot in the head, Private/Sayed Abdallah Sayed, 313 artillery company.

**7<sup>th</sup> of October 2013**

**Cairo Governorate:**

- "Ansar Beit Al-Makdes" terrorist group fired 2 RPG grenades toward the satellite center in Ma'adi. A dish was damaged (20cm. hole).

**Ismaelia Governorate:**

- While a military vehicle was moving on military road No. 36 near Salheya town, 3 jihadists riding a Verna car opened fire and killed all passengers (an officer and 5 conscripts)

**South Sinai Governorate:**

- Due to a car bombing inside South Sinai Security Directorate, 2 personnel were killed and 15 others were injured including Deputy Chief of security. There were damages in vehicles and building.

**10 October 2013****North Sinai Governorate**

- Some jihadists opened fire toward military convoy carrying security personnel in Rafah while returning from their routine leaves. One conscript was injured.

**11<sup>th</sup> of October 2013****Cairo Governorate:**

A hand grenade was bombed in front of building no. 18 , Shikh Ramadan St. and resulted in a child injury.

**13<sup>th</sup> of October 2013****Cairo Governorate:**

- 3 persons opened fire towards Nozha checkpoint, and ran away. There were no injuries. Investigations proved that plate number was incorrect.

**19 October 2013****Ismailia Governorate:**

- A car exploded in front of Al-Temsah tower (Suez Canal Authority) next to military intelligence office. 3 conscripts were injured and all buildings were damaged.

**20<sup>th</sup> of October 2013**

**Giza Governorate:**

- 2 persons opened fired towards some Christians while they were getting out of Al-Warraq church. 3 Christians were killed and 18 wounded.

**North Sinai**

- Some jihadists opened fire toward an army bus carrying security conscripts from Al Ahriesh Central Security. A warrant officer and 2 conscripts were injured, and the culprits managed to escape.

**11 Nov. 2013**

**Cairo Governorate:**

- 2 persons threw 2 Molotov cocktail bottles toward telegraph office, Mahmud Fahmy El-Nekrashi Street. They resulted in damages in the building and some paper work.

**17<sup>th</sup> of Nov,2013**

**Cairo Governorate:**

- "Ansar Beit Al-Makdes" agents assassinated Lt.Col. Mohamed Mabrouk, National Security Sector, while driving his car

**15<sup>th</sup> of December 2013****North Sinai Governorate:**

- A jihadist threw a grenade towards an army vehicle moving on Al-Ariesh Airport Road (no injuries). He was killed and a recruit found another grenade with him.

**24<sup>th</sup> of December 2013****Dakahliya Governorate:**

- "Ansar Beit Al-Makdes" detonated Dakahlya Security Directorate. 13 police officers were killed and 134 others were injured. The building was heavily damaged and the nearby buildings and cars were damaged too.

**December 26, 2013:****Cairo governorate:**

- Explosion of an explosive device planted on the garden separating between the two directions (Azhar University – facing King Fahd Complex). The explosion resulted in breaking the left peripheral windows of the bus and injuring 05 passengers. The public bus was passing in Mostafa Al. Nahas road towards the direction of Nasr City Second Police station. The casualties were transferred to the medical insurance hospital in Nasr City (one of them is seriously

injured). Explosion inspectors inspected and search the scene and they found another explosive device in the same location which was defused and secured.

**January 03, 2014:**

**Northern Sinai governorate:**

- A group of extremists fired an RBJ missile against an APC that belongs to Central Security Forces in Rafah Sector while moving close to “Al. Kherba” checkpoint in “Sheik Zouied” city and in the direction that leads to “Rafah” city. The APC was returning from a security mission of a bus that transports soldiers to “Al. Areesh” city. The forces exchanged fire with the extremist elements resulting in their escape and injuring 04 soldiers in various body parts. They were transferred to Areesh Military Hospital for treatment.

**January 06, 2014:**

**Northern Sinai governorate:**

- Two explosive devices were exploded at “Al. Sharka” - “Al. Kherba” road in “Sheik Zouied” city. They were planted for the purpose of targeting a bus that transports Central Security Forces’ soldiers in “Al. Ahrash” camp who are



going on vacations. The devices exploded 500 meters before the arrival of the bus and there were no casualties whatsoever.

**January 07, 2014:**

**Giza governorate:**

- Two anonymous people threw locally improvised sound device in July 26 ring road's traffic checkpoint followed by gunshots from an automatic rifle on the checkpoint. This caused some damages in the traffic checkpoint building and the checkpoint commander private car. There were no human casualties or injuries.

**January 12, 2014:**

**Alexandria governorate:**

- Loud blast was heard from a villa located in front of "Borg Al. Arab" stadium, circuit of "Al. Amriya" Police station. Security forces searched the place and there were 04 personnel, one of them was the son of a senior Brotherhood leader (identified). The blast did not result in any casualties. When searching the villa, the following were found: (05 gas masks – some bottles containing chemical substances – some empty glass jars – 05 publications of Freedom and justice journal – sack of broken glass – sensitive balance --

some books written by the Brotherhood founder “Hassan Al. Bana”.

**January 13, 2014:**

**Northern Sinai governorate:**

- Explosion in the entrance of “Al. Wefak” village, “Rafah” city resulting in the fatality of two personnel. Primary investigations showed that while two people (one of them is identified and the other “burned corpse” holding a radio) were planting an explosive device in “Al. Taweel” road in the entrance of “Al. Wefak” village; targeting Military and Police forces, the device exploded on both of them; leaving them immediately dead. There were no reported casualties among civilians or forces.

**January 14, 2014:**

**Giza governorate:**

- Explosion of an explosive device in front of North Giza first instance court located on Sudan street, “Imbaba” Police station circuit. The explosion was the result of a medium sized explosive device planted behind on the court building’s concrete pillars located in the front. The front of the court’s building was severely damaged; in addition to

the fronts of three adjacent buildings and the windshields of three parked cars in front of the court. There were no human fatalities or injuries.

**January 15, 2014:**

**Northern Sinai governorate:**

- Some extremists were involved in targeting a policeman from “Sheik Zouied” traffic department, along with his wife. They opened fire on him while he was standing in his balcony with his wife at “Al. Kawthar” region in “Sheik Zouied” city. The attack resulted in the immediate fatality of the wife and the policeman suffered some facial injuries; he was then transferred to “Areesh” Military hospital.

**January 17, 2014:**

**Northern Sinai governorate:**

- Explosion of the gas pipeline that is connected “Al. Areesh” city to supply (Sinai Cement Company – Armed Forces Cement Company). The pipeline is located in “Al. Rissan” region, “Al. Hassana” Police Station circuit in the center of Sinai. Security services in the industrial region searched and investigated the aforementioned region where long flames were created and absence of injuries.

**January 20, 2014:**

**Giza governorate:**

- Explosion of an officer's owned car while parking in front of his residence. He saw two personnel on a motorcycle throwing a bottle containing unidentified substance into the car and escaped; resulting in burning the car's front side. Investigations showed that the suspect is a Salafist member who was involved in the case of setting arson in "Atfeeh" Police Station.

**January 21, 2014:**

**Cairo governorate:**

- Explosion of an improvised explosive device in an underground station (Shohadaa station in Ramsis square). There were no reported injuries or damages.

**January 23, 2014:**

**Cairo governorate:**

- Explosion of two improvised explosive devices in two underground stations (Ataba station "Shoubra direction" – Gamal Abd el. Nasser "Marg direction"). There were no reported injuries or damages. It is noted that there were

some similarities between these explosive devices and the Ramsis square's device.

#### **Giza governorate:**

- Explosion in the building (04 Taha Abu Hashish, Tera' Zanin – Boulak Al. Dakroul Police Station circuit). Investigations showed that there was an explosion in the ground floor apartment inside the building resulting in some wall damages and the presence of gunpowder traces and nails. When searching the apartment, the following was found (Gasoline jerry – family size soda bottle containing gasoline – large bottle of acid attack – large quantity of gunpowder used in toys manufacture – empty soda bottles – bag containing lots of marble stones – 04 plastic gas masks – 02 sea goggles). Citizens were able to arrest 04 suspects and turned them in to the police. 02 suspects tried to escape from the window.

#### **Beni Sweif governorate:**

- Two anonymous personnel, riding a motorcycle and possessing automatic rifle, attacked “Saft” checkpoint (a border checkpoint between “Beni Sweif and Giza” governorates). The attack resulted in the fatality of 05

personnel (02 policemen – 03 personnel) working in the checkpoint and injuring a policeman and an individual.

**January 24, 2014:**

**Cairo governorate:**

- Explosion of a car bomb in front of Cairo Security Directorate; resulting in the fatality of 04 personnel, injuring 74 others and destructing the building's frontispiece (investigations are processing to know the incident background and arrest the suspects).

**Giza governorate:**

- Explosion of an explosive device above "Al. Bohoth" underground station in "Tahrir" street, next to Central Security Forces' services complex. The explosion resulted in the fatality of a policeman and injuring 09 others.
- Explosion of an explosive device in front of "Radobese" cinema on "Haram" street; resulting in the fatality of a citizen and the injury of another. 05 soldiers from Giza Central Security Forces' sector inside their vehicle which was passing by during the explosion.

**Al. Sharkiya governorate:**

- 08 masked suspects, carrying white weapons, attacked a police station and assaulted a policeman (from the station). The policeman suffered various stabs and injuries in his body and they seized his governmental automatic rifle. Suspects escaped from the crime scene and the policeman was transferred to “Zagazik” University hospital in a bad condition.

**January 25, 2014:****Suez governorate:**

- Explosion of a car bomb close to the rear gate of Suez security forces; resulting in the fatality of a child and injury of (08 soldiers – 07 public servants who were accidentally passing by during the explosion).

**January 27, 2014:****Northern Sinai governorate:**

- Explosion of the pipeline connected to the Kingdom of Jordan in the “Al. Kereeha” region which belongs to “Al. Kassema” police station.

**January 28, 2014:**

**Giza governorate:**

- While Major General Muhammad al. Saied (Chief of the Interior Minister's technical office) was riding his car accompanied by his driver, two anonymous suspects riding a motorcycle shot several gunshots towards his direction and escaped. He was severely injured in the neck and died immediately.
- Anonymous suspects, riding a private vehicle (identified), opened fire from their rifles against the security service assigned to guard the Church of Virgin Mary and Saint Marc for Orthodox Christians (October and O'seem Patriarch) located in the central axis, tenth region, October 06 city – Giza. Security service guards exchanged fire with them; resulting in the fatality of one guard and injury of one suspect and arresting another who possessed automatic rifle, birdshot rifle and the used vehicle.

**January 31, 2014:**

**Giza governorate:**

- Explosion of an improvised explosive device in front of the special operations department headquarter (Al. Mehwar



sector) on Cairo – Alexandria desert road. The attack took place when a vehicle was exiting the sector gate in the direction toward July 26 ring road. Five minutes later, this was followed by another explosion at the same location; resulting in the injury of a policeman and was transferred to the Police hospital. Security services arrested one suspect (identified) when attempting to escape on his motorcycle close to the attack timing.

#### **February 01, 2014:**

##### **Cairo governorate:**

- Two high tension towers suffered great damages in (Al. Tebeen region and Al. korymate region “owned by the Egyptian Company for connecting electricity”). Two anonymous suspects connected two butane gas cylinders to the two towers and exploded them with the intention of causing them to fall; one of them was burned and the other was tilted. This resulted in an power outage in some surrounding neighborhoods.

**February 02, 2014:**

**Northern Sinai governorate:**

- Explosion of a car bomb next to “Rafah” Municipal Council that belongs to “Rafah” Police Station; resulting in damaging the frontispiece of the building. It was noted that the car was targeting a bus loaded with soldiers from “Rafah” Central Security Forces; however, the explosion occurred few minutes before the bus arrival; resulting no casualties.

**February 03, 2014:**

**Cairo governorate:**

- A policeman from “Al. Shorouk” Rapid Response Police has been injured with a gunshot in his upper right temple and a hole below the neck; with a severely bad general condition. He was standing under “Bourdeen” bridge located on “Zagazig” – “Belbees” road; wearing his uniform and waiting to be transported to his work place.

**Behera governorate:**

- First Lieutenant Mazen Ibrahim Muhammad Ibrahim (Assistant detective in “Kar Al. Dwar” Police Station, Behera Security Directorate) was martyred during an

armed attack by anonymous suspects possessing automatic rifles while pursuing them in “Said Ghazy” region. 05 suspects involved in the incident were detained possessing (05 automatic rifles – 05 magazines – 60 bullets) while riding a pickup truck in “New Borg Al. Arab” city entrance, Alexandria.

#### **Northern Sinai governorate:**

- While the Armed Forces was conducting a crackdown campaign coordinated with (National Security – Public Security Agency – Central Security Forces) sectors that targeted “Goz Abu Raad” region in “Rafah”, they were attacked by a RBJ missile from some terrorist elements. The attack resulted in the injury of one of the participating tanks’ crew. There was an exchange of fires with the source of the missile; resulting in the fatality of 07 Takfiri elements (currently being identified), destruction of 04 4X4 vehicles and 04 motorcycles used in tracing and targeting the crackdown campaign.

#### **February 05, 2014:**

#### **Sharkiya governorate:**

- Two policemen (corporal – guard) from the Directorate Inmate transfer department were injured as a result of a

gunshot in the head (died instantaneously). Masked anonymous suspects interjected their way and opened fire against them while they were on their way home on an unregistered motorcycle.

**February 06, 2014:**

**Sharkiya governorate:**

- A policeman (from “Kafr Sakr” police station) was killed as a result of an armed attack by anonymous suspects. He was on his way home in “Al. Sharkawya” village from work.

**February 07, 2014:**

**Giza governorate:**

- Explosion of 02 small improvised explosive devices next to a Central Security formation (on Giza overpass); resulting in the injury of (a police officer – policeman – 02 soldiers) without any fatalities.

**February 09, 2014:**

**Dakablia governorate:**

- Torching a private car (identified – owned by the father of a Central Security Forces’ officer) parking under his residence in the neighborhood of “Talkha” court house.

- Torching 03 private cars (First: owned by the wife of an officer in Dakahliya Police department – Second: owned by director of juvenile prosecution in southern “Zagazig” city – Third: own by an ordinary citizen “identified”). The cars were parking under their residence in “Al. Kods” street within the police station circuit. Cars were totally damaged.

### February 11, 2014:

#### Ismailia governorate:

- Two anonymous suspects riding an unregistered motorcycle opened fire against a policeman (from Ismailia Police Department) when he was on duty on “Shebeen Al. kom” street. He was injured in the head and died immediately. Suspects were involved in stealing his official weapon.

#### Port Said governorate:

- Two anonymous suspects riding a motorcycle opened fire against Maj.\ Fady Mahmud Awad Seif Al. Din (from Port Said Police Department) when he was in “Ard Al. Golf” region. He was shot in the head and died immediately (his body was transferred to port Said public hospital).

**February 16, 2014:**

**Southern Sinai governorate:**

- Explosion of a tourist bus that belongs to Craft Tourism Company. There were 33 Korean passengers on board. The bus was standing on “Taba” outlet in front of Hilton Taba hotel waiting to cross into the Israeli side. The explosion resulted in killing 04 personnel (03 Koreans – 01 Egyptian driver); in addition to the injury of 12 other Koreans who were transferred to “Taba” and “Noweb’a” hospitals.
- Anonymous suspects torched two cars (identified) parking under the temporary residence of general prosecution members located in “Bandr Beni Mazar”. Fire-fighters and locals extinguished the fire. An empty bottle containing gasoline traces was found under the first car.

**February 28, 2014:**

**Dakahliya governorate:**

- Lieutenant Colonel \ Muhammad Eid (from Sharkiya National Security Sector) was killed on his way home in “Zagazig” city. Anonymous suspects shot him and he was transferred to “Al. Tayseer” Hospital in “Zagazig” city where he died in a surgical operation trying to save him.

**February 28, 2014:****Dakahliya governorate:**

- A group of masked gunmen riding a motorcycle shot dead a secret detective from the investigation department of First Mansoura Police station under “Sandoub” bridge on his way home in “Al. Egeeza” village in “Sinbellawen”. It is noted that the deceased was assigned as a guard to protect the residence of “Chancellor \ Hussein Kandeil”, right chancellor in the trial of the ousted President “Muhammad Mosri”.

**Ismailia governorate:**

- Two anonymous suspects torched the car owned by an officer. The car was parking under his residence located in “Shebeen” street within the circuit of Ismailia third police station.

**Gharbiya governorate:**

- Fire was set in the car owned by an officer (Police training center agent in Gharbiya). The car was parking under his residence located in “Muamer Al. Kazafi” street from “Saied” street within the police station circuit.

**March 02, 2014:**

**Asyut governorate:**

- Three anonymous suspects threw incendiary packages on the rear region of the temporary “Dairout” police officer residence’s; resulting in torching its sewage pipe and minor fire in one of the officers’ car. Suspects immediately escape from the crime scene and were not arrested or identified by security forces. Investigations showed the presence of Molotov bottles, a thick smell of gasoline and 02 fire flakes.

**March 03, 2014:**

**Giza governorate:**

- While three policemen (from Giza Rescue Department) were riding a police vehicle and after ending a mission of securing a money transfer vehicle, anonymous suspects attacked the vehicle with gunshots, killing one policeman and injuring two others. They were transferred to police hospital in “Agouza”.
- A policeman was shot in the mandible (two adjacent holes) while driving his privately owned vehicle next to “Oscar” village on his way home in Fayoum. He was transferred to police hospital in “Agouza” with an intermediate condition.



**Dakahliya governorate:**

- While a Rescue Police vehicle was passing on “Suez Canal” street (on its way to the Rescue police Department headquarter – after investigating an incident), two masked suspects on an unregistered motorcycle attacked the vehicle with gunshots; resulting the injury of the policeman in the head and the shoulder. He was transferred to “Mansoura” Emergency hospital in a bad condition.

**Beni Sweif governorate:**

- Two anonymous suspects riding a motorcycle attacked a policeman by gunshots. The policeman was assigned to guard the United Arab Bank in “Abaseiry” region. He was shot in the head and died at once.

**March 05, 2014:****Giza governorate:**

- While three policemen (from Giza Rescue Department) were riding a police vehicle and after ending a mission of securing a money transfer vehicle, anonymous suspects attacked the vehicle with gunshots, killing one policeman and injuring two others. They were transferred to police hospital in “Agouza”.

- A policeman was shot in the mandible (two adjacent holes) while driving his privately owned vehicle next to “Oscar” village on his way home in Fayoum. He was transferred to police hospital in “Agouza” with an intermediate condition.

**Dakahliya governorate:**

- While a Rescue Police vehicle was passing on “Suez Canal” street (on its way to the Rescue police Department headquarter – after investigating an incident), two masked suspects on an unregistered motorcycle attacked the vehicle with gunshots; resulting the injury of the policeman in the head and the shoulder. He was transferred to “Mansoura” Emergency hospital in a bad condition.

**Beni Sweif governorate:**

- Two anonymous suspects riding a motorcycle attacked a policeman by gunshots. The policeman was assigned to guard the United Arab Bank in “Abaseeiry” region. He was shot in the head and died at once.

**March 06, 2014:**

**Cairo governorate:**

- 04 masked suspects throw Molotov cocktail on the Electricity Holding Company’s bus while being in its garage

on “Gharb Al. Seka Al. Hadid” street next to “Ezbet Al. Nakhal” underground station within “Matariya” police station circuit. They were able to escape after attacking the garage’s guard with shotgun bullets when he was attempting to catch them. The incident resulted in torching other 03 buses; in addition to burning an electricity box adjacent to the garage. The gunshot incident did not result in any casualties.

**Minia governorate:**

- Setting fire on a private car owned by an officer in the Security Directorate while being parked under his residence in “Gomhoriya” street. The incident resulted in some limited damages in the car. A burned jerry was found inside the car.

**Gharbiya governorate:**

- Setting fire on a private car owned by an officer in the Central Security Sector in “Tanta” while being parked under his residence in “Tanta” city. Fire fighters controlled the incident.

**March 07, 2014:**

**Northern Sinai governorate:**

- Anonymous suspects attacked a policeman (from Ports Security Agency in “Rafah” land crossing) with gunshots; resulting in his fatality. The incident took place in front of his residence in “Al. Obour” region, “Arish” First Police station. Investigations showed that suspects were riding a silver “Hundai Verna” accompanied by a motorcycle; they attacked the policeman with gunshots in the head and the neck.

**March 09, 2014:**

**Giza governorate:**

- Explosion of a strange object above “Al. Gam’a Bridge” in the direction towards “Al. Nahda” square in front of the Israeli Embassy’s building with no reported casualties. Explosives experts declared that the object is a two kg improvised explosive device that contains tiny iron balls planted over the bridge over the area of security forces’ assembly who are assigned to secure the embassy. It was exploded by a remote control; resulting in some damages in 07 cars’ windshield, rear shield and bodies. It also resulted in breaking the glass of the front window of the first floor

- apartment in building 04 next to the Israeli Embassy's building.

**Sharkiya governorate:**

- Targeting a police sergeant (from Sharkiya Traffic Department) while being on duty at the beginning of the bridge adjacent to “Sharkiya” Security governorate). A terrorist element (on foot) shot him dead on the head using a pistol. There were two other policemen (from National Security Sector and “Sharkiya” Security directorate) who saw the incident, they traced the terrorist element and exchanged fire with him, resulting in his fatality and the injury of one policeman in the neck by a gunshot. When searched, the terrorist possessed 02 pistols one of them is a Helwan pistol, no. 1089032 (reported stolen from “Sharkiya” Security directorate) and the other is C.Z, no. A0247246 (reported stolen from Cairo Security directorate). He is possessed an improvised explosive device. Investigations showed that the terrorist (identified) belongs to religiously extremist elements and previously detained in October 2010 among Takfiri elements in “Sharkiya” governorate. He was kept on detainment until released in the aftermath of January 2011 revolution. It is noted that the two possessed pistols match the weapon used in three

previous crimes (assassinating Lieutenant Colonel / Muhammad abd el. Salam “officer in the National Security Sector” – assassinating police sergeant / Saied Morsi Ibrahim Morsi while securing the Post vehicle in “Zagazig” city – targeting a tractor that belongs to the Armed Forces leading to the injury of First Lieutenant / Seba’ey Muhammad Al. Baz and Private / Reda Muhammad Abdullah).

**March 11, 2014:**

**Ismailia governorate:**

- Locating a bomb in “Shell” street (junk trade assembly area). Investigations found a secured bomb written all over it (“Qassam” Battalions – Hamas).

**Fayoum governorate:**

- While two personnel working in National Security Sector department in Fayoum were riding a motorcycle on their way to work, two anonymous suspects riding a motorcycle throw them with a corrosive chemical substance (acid throw) in front of the cemeteries of “Al. Agameen” village, “Abshoway” Police station circuit. The suspects escaped from the crime scene. The victims suffered various burns in the face and body.

**March 13, 2014:****Cairo governorate:**

- Two anonymous suspects performed an armed attack against an Armed Forces' bus when it stopped in the intersection of "Omar Al. Mokhtar" street and "Al. Kablat" street in "Ezbet Al. Akad". The attack resulted in the fatality of an Armed Forces' personnel and the injury of an officer and two other personnel. Casualties were transferred to "Kobry Al. Koba" military hospital.
- Three anonymous suspects riding a car (identified) opened fire against a car that belongs to an officer from Cairo Security Directorate in the intersection of Alexandria street with "Al. Salam" street. The officer was on his way to work. Suspects succeeded to escape. The incident resulted in some damages in the officer's car (10 bullets in the car's body) without any injuries.

**Giza governorate:**

- Extremist elements threw Molotov cocktail on 02 electricity boxes in "Ouseem" region; resulting in burning and damaging them. Electricity outage has resulted in the region.

**Oena governorate:**

- Extremist elements riding an unregistered car shot several gunshots against forces assigned to secure western desert road (Cairo – Aswan), “Farshout” Police station circuit and they escaped. The incident resulted in the injury of a security personnel on his left arm.

**March 14, 2014:**

**Cairo governorate:**

- Torching the car owned by an officer working in “Mansoura” Central Security Sector (Hundai, Elantra); in addition to committing arson in his wife’s car (Dawoo Lanos) while being parked under their residence. Fire extended to catch a neighbor’s car.
- Some anonymous personnel torched the car owned by an officer working in “Mansoura” Central Security Sector while being parked in a garage (empty piece of land) next to his residence.

**March 15, 2014:**

**Qalyubia governorate:**

- Four anonymous suspects riding a black Mitsubitchi Lancer (blurred number plates) attacked a Military Police



checkpoint located on “Ismailia” channel (200 meters from “Mostorod” bridge). Three of them were involved in shooting live bullets at the guards inside the checkpoint (06 Armed Forces’ personnel); resulting in their immediate fatality. It is noted that the fourth convict has video-recorded the attack before they all escaped. Investigations showed the presence of two explosive devices inside a black briefcase left by the suspects. The Explosives unit succeeded to defuse one of the devices, while the other was taken by the civilian protection unit to secure its explosion. The bodies were transferred to “Kobry Al. Koba” military hospital.

**March 19, 2014:**

- Some members of “Ansar bait al. Maqdese” organization were detected and involved in executing several recent terrorist operations in the central zone (targeting the Military Police checkpoint in “Mostorod” – Armed Forces’ bus in “Matariya” – assassinating Major General \ Muhammad Saied – Explosion of Cairo Security Directorate). Their hiding den was in the form of a storage area in “Arab Sharkas” area in “Kanater Khaiyria” where they stored a large quantity of weapons, explosive devices, cars and motorcycles fully equipped to be used in terrorist

operations. In the early morning of March 19, the storage area was targeted in close coordination with the Armed Forces' Engineering Corps. When the hiding elements detected the arrival of the security forces, they started opening fire against the troops. Exchange of fire lasted for six hours; resulting in the fatality of two Armed Forces' officers and the injury of a Central Security Forces' officer.

- Security forces were able to execute 06 terrorist elements (04 were identified) and detaining 08 elements. They found (04 automatic rifles – 11 magazines and large quantity of its caliber ammunition – a 6.5 mm pistol – several tons of explosive materials – 05 explosive belts).

#### March 22, 2014:

##### Cairo governorate:

- Explosion next to “Kobba” police station located in building 77, “Suzan Mubarak” street, Saudi company building complex. Investigations showed some damages in the gas tank of a Police officer's privately owned car (break in the tank supporting base, residues of burning a solid object from below, and presence of nails and tiny iron balls inside and under the car.

**March 26, 2014:****Qena governorate:**

- Explosion next to a pharmacy located close to the building of National Security Sector department. Explosive experts noted that the explosion was a result of an improvised explosive device (water pipe containing some black gunpowder and equipped with a fuse). The explosion resulted in some damages in a parked car next to the accident site; there were no reported casualties.

**March 30, 2014:****Northern Sinai governorate:**

- Anonymous suspects targeted a bus carrying soldiers going on leave from the Central Security Forces in “Kherba” region, west of “Sheik Zouid” city. The attack resulted in the fatality of an NCO and the injury of three soldiers.

**April 02, 2014:****Giza governorate:**

- Explosion of three explosive devices planted by anonymous suspects next to static forces assigned secure Cairo University. The explosion resulted in the fatality of Brigadier General \ Tarek Al. Mergawy (Chief of West

Sector Investigations in Giza Security Directorate); in addition to the injury of 08 other officers and soldiers. Primary investigations of the crime scene showed that some anonymous suspects planted explosive devices in hidden locations; targeting security forces. Remote control cell phone was used for explosion.

**April 10, 2014:**

**Giza governorate:**

- Explosion of a privately owned car in “Al. Hossary” square, October first police station. Investigations showed that the car is owned by an officer (from Giza traffic department – on a static duty in “Al. Hossary” square). When the officer was inside the car, an explosion occurred in the front part of the car; resulting in his injury in the left knee. He was transferred to October 06 hospital in a stable condition.

**April 14, 2014:**

**Northern Sinai governorate:**

- Masked anonymous suspects riding a car (identified) targeting a police sergeant (from “Areesh” Second police investigation department) in front of “Mounir Mady”

hospital in “Areesh” city. He received three gunshots in the chest that led to his immediate fatality.

**Giza governorate:**

- A group of extremists riding a red Kia threw a butane cylinder connected to some electric circuits next to an electricity box on “Abu Rawash” road behind “Al. Saleba” checkpoint, “Kerdasa” police station circuit. There was no reported explosion. When searching the region, another butane cylinder was located next to the fresh water station responsible for supplying an Armed Forces’ insecticide company. The two cylinders were defused.

**April 15, 2014:**

**Giza governorate:**

- Explosion of an improvised explosive device on a traffic checkpoint in “Galaa” square in “Dokki” region; resulting in the injury of two policemen from Giza traffic department. An ordinary citizen (cab driver) was able to arrest Yasser Muhammad Ahmed Muhammad Khedr (bachelor degree in Engineering from Cairo University – lives in “Negmet el. Areef” street in “Beni Sweif” governorate – has another residence in “Hassan Maher” street, “Tereet Zanein”, “Boulak Al. Dakroun” region in Giza – affiliated to the so-

called “Agnad Masr” organization) after throwing the explosive device and his attempt to escape on his motorcycle with another person (unidentified – escaped).

**April 18, 2014:**

**Giza governorate:**

- Explosion of an improvised explosive device in “Lebanon” square’s traffic checkpoint; resulting in the fatality of Major \ Muhammad Gamal Al. Din Ma’moun (from Giza traffic department) and the injury of a policeman.

**April 19, 2014:**

**Northern Sinai governorate:**

- Explosion of an explosive device on “Areesh” – Airport road, “Areesh” first police station circuit when a police armor vehicle was passing along the road; resulting in the minor injuries of 03 soldiers.

**April 22, 2014:**

**Qena governorate:**

- While a police vehicle that belongs to Qena department of correction was passing in “Sidi Abd el. Rehem el. Qenawy” region, two suspects riding a motorcycle threw Molotov

cocktail on the vehicle; resulting in some damages in the car without any reported casualties. Suspects escaped from the crime scene. Accordingly; two policemen (riding the aforementioned police vehicle) pursued the suspects and were able to arrest them using help from the locals. One of them is a teacher (a Brotherhood member in Qena), while the other could escape.

**April 23, 2014:**

**Giza governorate:**

- When Brigadier General \ Ahmed Zaki (officer in Giza Central Security Forces' General Department) was riding his official police vehicle in front of his residence in the 6<sup>th</sup> zone, October second police station, an explosive device planted under the vehicle exploded 20 meters after the vehicle moved. The explosion resulted in the imputation of his left leg and immediate fatality; in addition to the injury of 02 other accompanying policemen.

**May 02, 2014:**

**Cairo governorate:**

- Explosion of an improvised explosive device in a traffic checkpoint on "Al. Mahkma" square, Heliopolis; resulting

in the fatality of a police corporal, the injury of a Police Captain and 03 policemen.

**Southern Sinai governorate:**

- A suicidal bomber exploded himself on “Al. Tor” – “Sharm Al. Sheik” road targeting a bus that belongs to a private transportation company. Passengers were a group of labors on their way to their workplaces in “Sharm Al. Sheik”. The incident resulted in full burning of the bus and the injury of (the driver – 02 labors). Investigations located a white 132 Fiat car opposite to the explosion site and 1.5 km inside the desert. The car contained (05 RBJ missiles – 02 Mortar bombs – 02 hand grenades); in addition to locating a sack containing 09 hand grenades around 200 meters from the car.
- A suicidal bomber exploded himself on “Al. Wady” security checkpoint on the entrance of “Al. Tor” city; resulting in the fatality of an Armed Forces’ private and the injury of (policeman – police sergeant – 03 soldiers).

**Cairo governorate:**

- Explosion of an unregistered white Lada “Niva” car on “Ramsis” street in front of the syndicate of engineers;



resulting in the fatality of its driver (a former Armed Forces' reserve officer).

**May 03, 2014:**

**Northern Sinai governorate:**

- Anonymous suspects shot an Armed forces' retired colonel dead on his way home in "Areesh" city riding his private car.

**May 14, 2014:**

**Northern Sinai governorate:**

- Anonymous gunmen (riding a car) opened fire in the direction of a van (that belongs to Civil Protection Department in Northern Sinai Security Directorate) in "Gesr Al. Wadi" region in "Areesh" city. The van was driven by a Lieutenant Colonel from the department; accompanied by 05 personnel after leaving the Security Directorate (gunmen succeeded in escape). The incident resulted in the injury of 02 policemen.

**May 16, 2014:**

**Cairo governorate:**

- Explosion of an improvised explosive device during a popular conference that supports the field marshal in “Ezbet Al. Nakhal” region in “Matariya next to the train station. An anonymous suspect inside the station throw the explosive device on the conference site; resulting in the injury of 04 individuals (police officer – policemen) assigned to secure the conference.

**May 19, 2014:**

**Cairo governorate:**

- Anonymous extremists riding a silver car (unidentified) opened heavy fire from an automatic rifle against security forces in the surroundings of Al. Azhar University hostel; resulting in the fatality of 03 policemen and the injury of 09 others including the chief of investigations unit in Nasr City Second Police station in his foot.

**Northern Sinai governorate:**

- Anonymous suspects were involved in the explosion of the gas pipeline in “Be’r Al. Hefn” region.

*Official Records by National  
Security Sector and Public  
Security Directorate*

*on*

*the Attempted Assault of AL-  
Azbakeya Police Station*

**Al-Azbakeya Police Station**

**The Report was opened on 17/8/2013 at 1:30 a.m.**

**By: Brigadier/ Ihab Fawzy                      Sherrif of Police Station**

**The following has been recorded**

Concerning the subject of Record No. 8615 of 2013 Al-Azbakeya Misdemeanors on the intention of some of Islamist political forces and extreme Islamist currents to mass up on Friday 16/8/2013 in what they called Friday of Anger in Ramses Square and streets nearby. After they assaulted forces and buildings and tried to break in the Police Station, forces started to gradually use force according to law till they managed to repel them and arrest the following while they were trying to block the road on Galaa St and Ramses and side streets leading to the Station after they used firearms, shotguns, stones, empty bottles, and gunshots and threatened to use violence and show off their power. Security forces managed to arrest the following:

1. Muhammad Zaghloul Muhammad El-Sebaey, born 25/6/1987, El-Mahalla El-Kobra, Gharbeya.
2. Tareq Ali Sayed Hassan, born 20/6/1969, employee, 23 El-Sahawy St, El-Matareya.

3. Sabry Abdo Abdul Khaleq Abdul Khaleq, born 22/10/1986, Tousa El-Bahr, Aga, Dakahleya.
4. Ahmed Muhammad Kamal Muhammad, born 1989, wall painter, Nazih Noubar, Abul Matameer, Behira.
5. Ragab Sayed Sayed Ahmed El-Mescery, born 1984, unemployed, Samoul, El-Mahalla, Gharbeya.
6. Muhammad Ibrahim Abdul Ghaffar Ali, born 1984, worker, Manyal Arous Village, Menoufeya.
7. Muhammad Saad Said Eliwa, born 1988, imam and preacher, 26 Muhammad Fadl St, Nasr City.
8. Atef Ahmed Muhammad Mustafa, born 1962, accountant, 4 Abu Atef St, Mahattet El-mayya St, El-Marg.
9. Ahmed Sadeq El-Sayed Eisa, born 1996, student, Aghour, Kalioubeya.
10. Khaled Sayed Muhammad Rabea, born 1975, worker, 25 Ezbet Othman St, Shubra El-Khima.
11. Muhammad Fathi Abdul Aziz Taha, born 1975, driver, 6 Saad Zaghoul St, El-Hawamdeya, Giza.
12. Ali Muhammad Hamdoun Gad, born 1988, worker, Houd El-Gnina, El-Khanka, Kalioubeya.

13. Ramadan Omar Abdul Raheem Muhammad, born 1984, worker, Beshir Bik St, Aswan.
14. Assim Hassan Muhammad Mahmoud, born 1969, furniture painter, El-Ezba El-Bahareya, Helwan.
15. Mustafa Ibrahim Muhammad El-Sayed, born 1995, worker, El-Ghannam St, Zaki Mattar, Imbaba.
16. Ahmed Ismail Ahmed Hassanein, born 1984, unemployed, 2 Fodoul St, El-Sharabeya.
17. Muhammad Samir Sayed Ahmed, born 1991, student, El-Kattaweya, Abu Hammad, Sharkeya.
18. Muhammad Fathi Abdul Baqi Suleiman Gomaa, born 1979, unemployed, Khaled Ibn Al-Waleed St, Warrak, Giza.

They have been detained in order to be investigated by the Public Prosecution. The Record has been concluded after recording the abovementioned on the record time and date.

**This report was initiated on October 3<sup>rd</sup> 2013 at 11am.**

**By: Major/Amr Ahmed**

**Officer, National Security Sector**

The following was recorded:

- In light of the investigations conducted by the Public Prosecution on the lawsuit number “8615/2013 Alazbakia misdemeanors”, and upon its decision demanding the National Security Sector investigations on the incident and its circumstances, the investigations on whether or not the accused committed the crimes stated in the arrest report and the inquisitions of the Public Prosecution, and investigations on whether or not any of the accused promoted ideas which encourage obstructing or violating the law, or whether or not any of them affiliates with a gang or a group that promote such ideas, and whether or not there were other accused persons who participated with the arrested suspects through concordance, instigation, or assistance. And, In case there were such accomplices, identify the names, data of them.
- Our reliable secret sources information confirmed by our careful investigations showed the following:
- Following the dispersal of Rabaa Al-Adawiya Sit-In, the Brothers group leader/ Salah Al-Din Abdul-Halim Morsi

Sultan organized a meeting in his residence located at 4 H, 38 Al-Shatr Al-Sabie, Zahraa Al- Maadi, Cairo with a number of the Brothers' leaders of whom the following were identified:

- 1- Gamal Abdul-Satar Mohamed Abdul-Wahab (born on 15<sup>th</sup> of April 1968, professor in faculty of Islamic Daawa, Al-Azhar University , resides at 151 Intidad Ramses st., Nasr City)
- 2- Ahmed Mostafa Hussien Mohamed Al-Moghier (born on 16<sup>th</sup> of February 1980, engineer and a member in the Brothers' Electronic Committee, resides in Giza).
- 3- Abdul-Rahman Abdul-Hamid Ahmed Al-Bar (born on 14<sup>th</sup> of June. 1963, professor in Faculty of Islamic Fundamentals, Al-Azhar University, Al-DaKahliya Branch, resides in Aga city, Al-DaKahliya governorate).
- 4- Abdul-Rahman Ezz Al-Din Imam Hassan Amr (born on 24<sup>th</sup> of April 1987, Misr 25 TV Channel reporter, lives at 8a Mahmud Sami Al-Meimari st., Al-Zaher).
- 5- Abdul Hafeez Al-Sayed Mohamed Ghazzal (born on 1<sup>st</sup> of February 1956, former Imam of Al-Fatah Mosque, resides at 9 Swiaqat Alilah st., Al sayeda Zeinab, arrested).



6- Diaa Sayed Abdul-Mageed Mohamed Farahat (born on 17<sup>th</sup> of October 1959, physician and owner of Al-Diaa company for Franchises, resides at 19 Al-Obour apartment buildings, Al-Obour city).

7- Saad Mohamed Mohamed Omara (born on 12<sup>th</sup> of December 1951, internal medicine specialist physician , resides on Al-Nokrashi st., Faraskour, Damietta).

8- Sherief Ahmed Mohamed Al- sayed Mansour( born on 1<sup>st</sup> of November 1974, law researcher South Sharkia networks, Misr 25 TV channel interviewer “Brothers’ TV channel”, resides in Malas, Mania Al Qamh, Sharkia governorate, arrested during Al-Fath Mosque incident).

- During the abovementioned meeting, they agreed to rally the masses of the Brothers group to stage protests in various parts of Cairo, during which they would block roads and obstruct traffic means and commit acts of violence against military and police facilities, and churches via using firearms, shotguns, cold weapons, Molotov cocktail bottles , batons, and stones in order to undermine security, disturb social peace and cause a state of chaos that would suggest that there is a civil war in the country, in addition to attempting to convince the world’s public opinion of such image.

- It was possible through the information provided by the sources and through the investigations to identify the elements who were assigned to assault Al-Azbakia police station. They are as follows:
  - 1- Mostafa Al-Sayed Khodiery (born on 12<sup>th</sup> of April 1989, high school graduate, resides at 5 Hamdey Salama st., Ezzbet Maarouf, Al-Mataria, arrested).
  - 2- Mohamed Sayed Mordi aka /Mohamed Belia (44 years old, hardware and paints store owner, resides on Al-Seha st., Ezzbet Atef, Al-Mataria, arrested).
  - 3- Saied Sayed Mordi aka / Saied Belia(41 years old, resides on Al-Seha st., Ezzbet Atef, Al-Mataria, arrested).
  - 4- Saber Eid Abo Al-Sarasir (50 years old, contractor, lives in Arab Al-Hisn, Al-Mataria, arrested).
  - 5- Adel Mohamed Al-Tawil (51 years old, turner, lives in Khartit Al-Tawil, Arab Al-Hisn, Al-Mataria, arrested).
  - 6- Hossam Ahmed Kinawi Hussien (born in 1988, vendor, resides in Abo Ragwan Al-Bahary, Al-Badrashin, Giza, arrested).
- On 16<sup>th</sup> of August 2013, the abovementioned elements organized a mass rally in front of Al Azbakia police station

and appointed some armed elements to climb up the Arab Contractors building and the 6 of October Bridge facing the police station in order to use them to shoot their weapons, throw Molotov cocktail bottles against Al Azbakia police station and to harass the citizens and to set fire to some public and private properties neighboring the police station. Yet, the security forces faced these elements and thwarted their attempt to storm the police station. This incident resulted in some damage in the outer part of the police station facility, shattering its windows and the injury of some of the security elements assigned to guard the police station, in addition to the escape of a number of those who were detained for lawsuits.

- After that, as the information and investigations revealed, those elements instigated the protestors to head to the area around Al-Fath Mosque in order to spread chaos and create a state of instability. Moreover, they instigated those protestors to hold a sit-in inside the mosque as an alternative site instead of Rabaa Al-Adawiya and AlNada squares, and to resist the security forces in case the latter attempt to disperse their sit-in. In order to achieve this goal, they provided the protestors with firearms, batons, and a large amount of medications and shrouds to face the security forces. The residents of the area, together with the Army and the police

forces, were able to arrest 609 persons. Meanwhile, the rest of the protestors are still at large, of whom some were issued arrest warrants in their names as they participated in the assault upon Al-Azbakia police station and the Arab Contractors' facility and the incidents occurred around Al-Fath Mosque.

- A number of the protestors of foreign nationalities were arrested. They are as follows:
- Matin Ahmed Torran "Turk"
- Ibrahim Hussien Mohamed Halawa "Irish of Egyptian origin"
- Fatma Hussien Mohamed Halawa "Irish of Egyptian origin"
- Somia Hussien Mohamed Halawa "Irish of Egyptian origin"
- Amina Hussien Mohamed Halawa "Irish of Egyptian origin"
- Ahmed Nour Al-Din Nabil Al-Kial "Syrian"
- Mohamed Mohamed Mosa Al-Hariri "Syrian"
- John Richard Grisson "Canadian"
- Tarek Nadeem Ahmed Al-Labani "Canadian"

- The information and investigations proved that some elements of aforementioned foreign origins participated in the acts of violence targeting Al-Fath Mosque area in Ramses square. They are as follows: (Matin Ahmed Torran” Turk”, Ibrahim Hussien Mohamed Halawa” Irish of Egyptian origin, Fatma Hussien Mohamed Halawa” Irish of Egyptian origin”, Somia Hussien Mohamed Halawa ” Irish of Egyptian origin”, Amina Hussien Mohamed Halawa ” Irish of Egyptian origin”, Ahmed Nour Al-Din Nabil Al-Kial ”Syrian”, Mohamed Mohamed Mosa Al-Hariri ”Syrian”, ). In addition to that, some of these elements held a sit-in inside Al-Fath Mosque in Ramses square and assaulted the adjacent stores and the citizens by using firearms, shotguns. These acts resulted in the injury of many citizens and the damage of the stores... Meanwhile, it was revealed that the participation of the Canadian citizen named/ John Richard Grisson and the Canadian citizen named/ Tarek Nadeem Ahmed Al-Labani was only limited to photographing the incidents without taking part in the acts of violence and sabotage in the area surrounding the mosque on Ramses St. It was also revealed that they do not belong or affiliate with the Brothers Group.

- The investigations and information revealed that a number of the elements arrested participated in assaulting the Arab Contractors' facility. They are as follows:
  - 1- Sayed Abdul-Kader Sayed Dawood(born in 1981, laborer, resides at 62 Al-Giza houses, Al-Mokatam, Cairo).
  - 2- Ahmed Mohamed Fath-Allah Al-Daoushi(born in 1987, laborer, resides in Khier- Allah area, Al-Basateen).
  - 3- Khaled Hamdey Sayed Ibrahim (born in 1985, laborer, resides at 14 Mohamed Al-Nagi, Al-Basateen).
  - 4- Badawy Afifi Badawy Afifi (born in 1983, plumber, resides in Roud Al-Farag).
  - 5- Ahmed Mahrous Mohamed Abdul-Halim (born in 1994, unemployed, resides in Abdeen, Cairo).
- The investigations and information affirmed that the Brothers Group leaders assigned some elements working in the medical field (physicians, nurses, paramedics) to participate in the said incidents in order to make use of them to treat any of the elements who get injured during the clashes with the Army and police forces.
- The information and investigations concluded that some arms and tools used in the acts of violence inside Al-Fath

mosque were as follows(1 shotgun rifle, 4 locally made shotgun pistols , 1 Russian made shotgun pistol, 6 (12mm.)shotgun shells, 2 automatic rifles, some ammunition 7.62\*39mm. , 21 Molotov cocktail bottles, a large amount of medical supplies and shrouds)

- Note 1: attached herewith is a CD (containing some clips from inside Al-Fath mosque during the MB sit-in).
- Note 2: attached herewith is a CD (containing some clips regarding the attempts to storm Al-Azbakia police station).
- The report was concluded at the said time and date after recording the abovementioned; it shall be presented to the Chancellor and Chief of Public Prosecution.

ملفوظات  
Annex 7

**Numerical statement of firearms and shotguns  
found at Rabaa and Nahda sit-ins**

بیا



Ministry of Interior

Division of Public Security

The General Administration of Inspecting Criminal Evidences

CEO Office

About: unsealing the exhibits of weapons  
and ammunitions seized from Rabaa El  
Adawya Square in Cairo.

Memorandum

- On 24<sup>th</sup> August 2013, the prosecution of East Cairo pronounced its resolution in Cases No. 15899/2013 (Giza Administrative) and No. 35758/2013 (Criminals of Police station No. 1 at Nasr City) along with the exhibits of Weapons, Ammunitions and the other items from Rbaa El Adawya in Cairo right after dispersing the sit-in.

A picture shows a general view of the seized items awaiting inspection

following has been stated:

- First: the firearms:
  - 9 rifles, caliber 7.62 X 39 mm.
  - 1 FN rifle, caliber 7.62 X 51 mm.
  - 2 Beretta machine guns, caliber 9 mm.
  - 2 Israeli-made UZI machine guns, caliber 9 mm.
  - 1 semi-automatic shotgun, caliber 12.
  - 22 local-made shotguns, caliber 12 (one of them with a carving of David Star on the grip).
  - 1 local-made shotgun with a cylinder with the capacity of 6 cartridges, caliber 12.
  - 6 local-made shotguns, caliber 16.
  - 3 local-made piston like shotguns, caliber 12.
  - 1 local-made firearm, caliber 7.62 X 39 mm.
  - 3 transformed sound arms, commercial calibers (9 mm – 8 mm).
  - 1 long Helwan Pistol, caliber 9 mm.

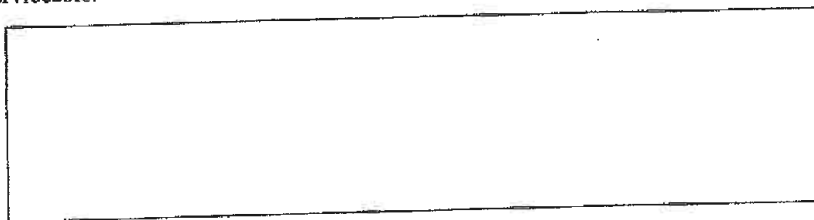
A picture of Israeli- made UZI machine gun and a shotgun with a carving of David star on the grip

\*\* After performing the technical inspection, it was found that all arms are serviceable except 4 local-made shotguns, caliber 12.

▪ Second: Ammunitions:

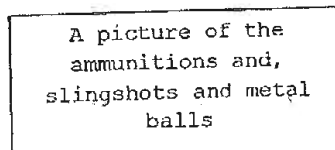
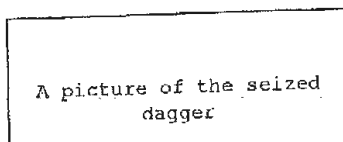
1. 63 bullets for firearms of caliber 7.62 X 39 mm.
2. 207 bullets for shotguns of caliber 12.
3. 4 bullets for shotguns of caliber 16.
4. 28 bullets for long firearms of caliber 9 mm.
5. 15 blank cartridges for bullets that are used with firearms caliber 7.62 X 39 mm.
6. 39 blank cartridges for bullets that are used with shotguns caliber 12.
7. 16 blank cartridges for bullets that are used with long firearms caliber 9 mm.
8. 1 projectile belongs to a bullet that is used with firearms caliber 7.62 X 39 mm.
9. 28 sound cartridges with their heads struck which are used with transformed sound arms for commercial caliber 9 mm.

\*\* After performing the technical inspection, it was found that all ammunitions are serviceable.



▪ Third: other items:

1. 1 bulletproof vest containing a hole made by a firearm projectile, and a trace of blood stains which are being inspected in the laboratory.
2. 3 protective vests which are used for violent sports (like Taekwondo).
3. 1 floating vest.
4. 28 gas masks, one of them is burnt.
5. 1 pair of plastic goggles.
6. 7 magazines used for firearms caliber 7.62 X 39 mm.
7. 1 magazine used for long machine guns caliber 9 mm.
8. 3 round objects containing brown material and a fuse in the front, the objects are being inspected in the laboratory.
9. 9 metal slingshots provided by elastic rubber used for attacking people along with 81 metal balls of caliber 1.7 mm and 1.5 mm.
10. 1 cold weapon such as a silver color dagger with one blade.



\*\*\* All exhibits were inspected at once and delivered to the General Administration of Cairo Investigation Bureau. The necessary technical report is being processed to be presented to the General Prosecution.

Kindly be informed of the aforementioned.

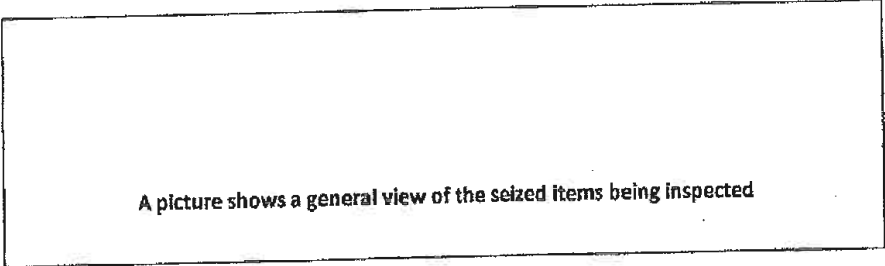
26<sup>th</sup> August 2013  
Major General/  
(Tarek El Gebily)  
CEO of Criminal Evidences

Ministry of Interior  
Division of Public Security  
The General Administration of Inspecting Criminal Evidences  
CEO Office

**About: unsealing the exhibits of weapons and ammunitions seized from Nahda Square in Giza.**

Memorandum

- On 20<sup>th</sup> August 2013, the prosecution of Giza pronounced its resolution in Case No. 12681/2013 (Giza Misdemeanors) along with the exhibits of Weapons, Ammunitions and the other items from Nahda Square in Giza right after dispersing the sit-in.



A picture shows a general view of the seized items being inspected

- Upon unsealing the exhibits and performing the technical inspections, the following has been stated:
  - First: the firearms:
    1. 12 rifles, caliber 7.62 X 39 mm.
    2. 1 shotgun, caliber 12.
    3. 12 local-made shotguns, caliber 12.
    4. 1 local-made shotgun with a cylinder with the capacity of 5 cartridges, caliber 12.
    5. 3 local-made shotguns, caliber 12
    6. 6 local-made piston-like shotguns, caliber 12.
    7. 3 local-made piston-like shotguns, caliber 12 missing the frontal muzzles.
    8. 3 local-made firearms, caliber 7.62 X 39 mm.

\*\* After performing the technical inspection, it was found that all arms are serviceable except 3 rifles are charred.

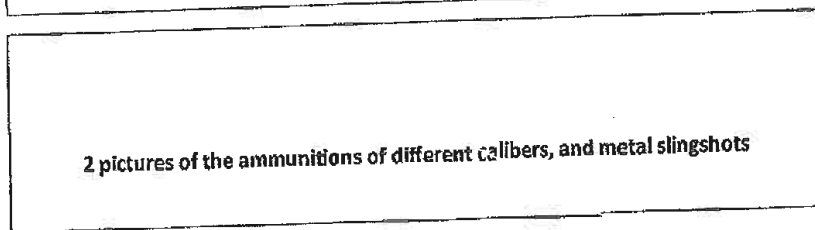


A picture of the exhibits of firearms being inspected

▪ **Second: Ammunitions:**

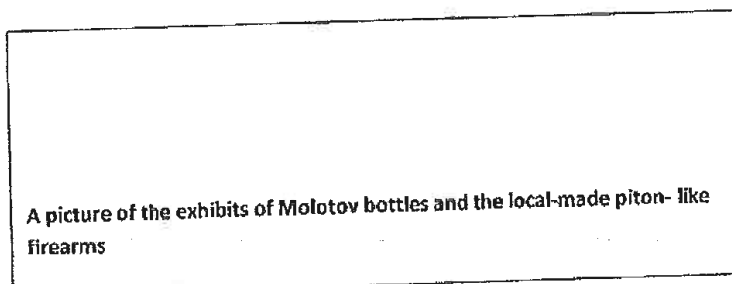
1. 9457 bullets for firearms of caliber 7.62 X 39 mm.
2. 229 bullets for shotguns of caliber 12.
3. 13 bullets for shotguns of caliber 16.
4. 12 bullets for firearms of caliber 7.62 X 51 mm.
5. 20 bullets that are used with long firearms caliber 9mm.
6. 2 defensive bullets that are used with shotguns caliber 12.

\*\* After performing the technical inspection, it was found that all ammunitions are serviceable.



▪ **Third: other items:**

1. 1 protective vest.
2. 2 plastic bags containing white powder and being inspected in the laboratory.
3. 2 glass bottles containing flame creating material and a fuse in the front.
4. 32 metal slingshots provided by elastic rubber used for attacking people along with 3 glass balls.
5. 6 rifle magazines.
6. 56 soda bottles with a fuse protruding from each nozzle which are known as (Molotov bottles). Also, 1 plastic Jerry can, and after a laboratory inspection the material inside it was Gasoline which is used as ignition catalytic.
7. Clothes (a T-shirt and a scarf) stained with brown material, after the laboratory inspection it wasn't blood.



\*\*\* All exhibits were inspected at once and delivered to the General Administration of Giza Investigation Bureau. The necessary technical report is being processed to be presented to the General Prosecution.

Kindly be informed of the aforementioned.

20<sup>th</sup> August 2013  
Major General/  
(Tarek El Gobily)  
CEO of Criminal Evidences

1112

المحور الثالث  
الإجراءات القانونية  
في مأساة 14 يوليو  
Third Axis

### Legal & Security Proceedings

#### In Raba'a & Al. Nahda Missions

In the light of these legally flagrant violations and crimes, the date of August 14, 2013 was set to execute the decision of the General Prosecutor regarding Raba'a & Al. Nahda sit-ins. The Ministry was keen on preceding the execution operation by a set of security procedures that target inviting the protesters to leave peacefully without causing any casualties. The Ministry reassured the Security institution's conscious awareness of the importance of engaging the Egyptian society and all institutions that are related to the execution phases. The procedures were as follows:

#### First Provision: Government decisions & official statements issued in regard to Raba'a & Al. Nahda Sit-ins<sup>1</sup>:

July 27, 2013:

- The Minister of Interior held a press conference on the incidents being witnessed at Nasr Road, and the brotherhood's supporters opening fire on Central Security Forces which resulted in the fatality of an officer by a gunshot and the injury of another officer and 04 soldiers. The Minister called on protestors and brotherhood leaders to rationalize, avoid incitement and exploiting bloodshed, reopening blocked roads, and stop the killing & torturing acts that victimized three individuals and

<sup>1</sup> Attached herein is a CD that includes the government decisions & official statements, brief on Raba'a incidents, and conferences held at the Cabinet and the Interior Ministry after terminating the events on August 14, 2013 (CD no. 44).

injured seven others after assaulting them inside the sit-in as they were suspected to be security elements. The Minister declared that these actions would be handled in accordance with the General Prosecution's orders.

- Major General / Mohammad Ibrahim, Minister of Interior, held a meeting with the Chiefs of civil community organizations and human rights entities to discuss security situations and introduce his vision regarding Raba'a & Al. Nahda sit-ins. They all confirmed that the sit-in was armed through all the witnessed scenes and evidence that protestors possess various types of weapons. The Minister of Interior invited all civil community organizations, human rights' entities, and various media outlets to accompany the security bodies after specifying the date of executing the General Prosecutor's decision; and after legalizing all procedures. This is what actually taken place.

**July 31, 2013:**

- The cabinet declared its decision to launch all required procedures that help in confronting all risks resulting from the sit-in and threatening National Security & Public Peace. The decision further assigned the Minister of Interior to take all required procedures in this regard; within the provisions of the law and constitution.

**July 31, 2013:**

- The General Prosecutor issued this decision [The Police are assigned to take all legally required actions in order to detect



crimes that took place in the circuits of Tahrir, Raba'a & Al. Nahda Squares in Cairo & Giza governorates; Al. Ka'ed Ibrahim Mosque in Alexandria; Al. Shawn Square in Mahla city in Al. Gharbiya governorate; and all other squares in lower and upper Egypt where these crimes have taken place. The Police are further assigned to unveil whoever committed these crimes and take all legally required actions against them; while considering the aforementioned law provisions and seizing all utilized weapons and tools; in addition to retrieving the seized radio broadcasting vehicles owned by the Radio & Television Union; and arresting these crimes' inciters who are "Mohammad Badee" the Muslim Brotherhood Guide, "Mohammad El. Beltagy", "Safwat Hegazy", "Hassan Al. Brens", "Bassem Ouda" from the Brotherhood leaders; and "Tarek Al. Zomor" a leader in the Islamic Group; and referring them to the General Prosecution once arrested].

**August 01, 2013:**

- The Ministry of Interior issued a statement through its Press Spokesperson; advising and warning protestors to return back to their homes and works; in the light of the cabinet decision to assign the Ministry of Interior to take all required procedures; undertaking not to follow anybody, and providing all means of transportation to their governorates.

**August 03, 2013:**

- The Ministry of Interior issued the second statement through different media outlets; calling on protestors to leave peacefully. The Ministry undertook not to follow anybody and provide all necessary means of transportation. The statement warned protestors to stop committing crimes against citizens, blocking roads, torturing & killing acts, and threatening public peace and security. All this took place before executing the General Prosecutor's decision.

Repeated calls were extended to the protestors through various media outlets urging them to disperse the sit-in and leave via secure corridors; and assuring them that they will not be followed by security bodies.

The Police chopper disseminated a written message requesting protestors to disperse the sit-in and leave; thereby considering other citizens' interests and considering the rights of the nearby residents from the sit-in location to exercise their daily routines freely.

**August 07, 2013:**

- The Presidency issued a statement charging the non-peaceful Muslim Brotherhood crowd of the responsibility against the failure of international efforts in which representatives from (USA – EU – UAE – Qatar) have participated; in addition to the diplomatic efforts that lasted for ten days. The statement declared the termination of the diplomatic efforts phase and

holding the Brotherhood accountable for the vulnerability of societal peace and all its repercussions.

**August 07, 2013:**

- The Prime Minister issued a statement in various media outlets stating that the cabinet decision to assign the Ministry of Interior to break up the two sit-ins is irreversible. The reason behind the delay was considering the holiness of the month of Ramadan and granting another chance to put an end to these non peaceful actions without security interference. However; all efforts have gone in vain, the protestors exceeded all peaceful limits, incited violence and use of weapons in spite of several not to use weapons against the police and innocent civilians. The statement called on the protestors in Raba'a & Al' Nahda to leave quickly without being followed; it further declared the State undertaking to provide free of charge means of transportation to transport them away from the sit-in locations.

**August 08, 2013:**

- The Prime Minister & and the Minister of Interior visited Al. Darassah Sector for Central Security Forces. They had a meeting with the troops where they introduced the government's decision and motivated them to effectively participate in executing the government plan in accordance with the law. All State efforts and capabilities will be utilized to break up the sit-ins and overcome its related risks.

**Al. Minya Security Directorate**

**Department of Criminal Investigation**

  
**Report**

**Subject: Report on identifying various assault incidents on police stations, police installations, and Christian Houses of God since June 30, 2013.**

**Investigation:**

- The department received the correspondence of the Assistant Minister – Security Director; including the correspondence of the Assistant Minister for legal affairs sector no. 20665 on December 12, 2013 regarding the aforementioned subject. According to the conducted investigations and coordination with the North & South Investigation departments, the following was clarified:
- Since June 30, 2013 revolution, Al. Minya Governorate has witnessed several crimes conducted by the supporters of the ousted President from various Islamic currents especially the Muslim Brotherhood which represented illegal and illegitimate actions in various security circuits, centers and police stations inside the directorate as follows:

**Identifying all forms of assaults on Police installations and Civil Entities:**

- On July 03, 2013 and after listening to the Armed Forces' statement, a crowd of Islamic currents (estimated to be around 7000 individual) who have formerly been gathered in front of the governorate's main administrative building opened random fire in

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( 6 )

the direction of the governorate building causing various damages in the front side and in the security office. They moved in different directions along the streets of the city; opening random fire that caused damages to some citizens' cars. Some of them moved towards the Nile Kournish street where they caused damages on the front side of the National Bank of Development and Tourism Activation Authority. They also damaged the ATM machines of Bank of Alexandria, the front sides of Faisal Bank, National Bank of Egypt and the United Bank. Then they moved towards the Security Directorate building where they opened random fire against the building which resulted in the injury of First Lieutenant / Mohammad Gamal Adly Abu Khalifa (23 years old) from the Central Security Forces who was assigned to secure the Security Directorate building. Accordingly; Security Forces exchanged live fire with them. The injured officer was transferred to Al. Minya University hospital where he passed away on July 04, 2013 as a result of his injury. A police report no. 6344/2013 was initiated.

- On August 14, 2013, (23) police stations were assaulted and attacked; setting fire on them, stealing and damaging all their contents (furniture / documents / books / papers / some installations). Some police vehicles and other confined cars and motorbikes were seized; in addition to seizing confined weapons, stealing radio devices and causing damages to the attached officers' lounges. There was also an attempt to assault 03 police stations.
- On August 19, 2013, a fight broke out between the villagers of "Abu Garg" in "Bani Mazar" province and a group of Muslim

Brotherhood supporters who were assembled in an anti-military march; chanting several anti-military & Police slogans. Some of them opened fire against the villagers which resulted in the fatality of a 20-year old Private / "Muhammad Reda Ahmed Ibrahim", a conscript in the Security forces who was shot in the face by birdshots. A 14-year old villager "Ahmed Abdullah Shabaan" was shot in the back; resulting in his injury. A police report no. 7047/2013 was drafted on both incidents.

- On November 15, 2013, Al. Minya Police Station received a complaint from a 45-year old dentist / Elham Othman Abulazeem. When she was driving her car on the bridge, the ousted President's supporters were conducting a march and blocking the bridge. They stopped, cursed and assaulted her; causing damages in the windshield and rear shield.
- On November 29, 2013, Al. Minya Police Station received a complaint from a 24-year old lawyer / "Islam Said Ahmed", and the mother of / "Said Ahmed Afify" (50 years) that they were assaulted, insulted and beaten by "Said El. Bana" and others who were in a march that supported the ousted President which resulted in the injury of the first in the forehead. They were beaten as they refused to join the march and show Raba'a sign.

#### **Criminal Directorate efforts in facing these incidents:**

- After legalizing the procedures, (1935) convicts were arrested for committing these crimes. Security forces also succeeded in arresting (93) prisoners who fled during the prison break; and retrieving (1843) various types of the seized weapons.

- According to the aforementioned, it's now clear that all the fatality cases, injuries and damages in police & public installations, bank properties, vehicles, and assaults on civilians and their properties have resulted since June 30, 2013 revolution and after the breaking up of Raba'a & Al. Nahda sit-ins on August 14, 2013. These incidents were committed by the ousted President's supporters. All necessary procedures were taken and it was possible through the investigations to identify the involved personnel and detaining them. Huge amounts of seized weapons from police stations were also retrieved.

**Col. Muhammad Saad**

**Criminal Investigations Department**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**Statement**

**National Defense Council**

**Arab Republic of Egypt**

In accordance with Article 22 of the Constitutional Declaration issued on July 08, 2013, the National Defense Council convened in the eve of Wednesday, July 24, 2013 (Ramadan 15, 1434), chaired by Counselor / Adly Mansour, President of the Arab Republic of Egypt, to consider the developments in the internal situations and security status in the country; and to discuss further threats facing the Egyptian National Security at home and abroad.

In the light of discussing the ongoing developments surrounding both the local and international arenas which undoubtedly confirm the presence of direct threats against societal peace and national security, the council adopted the following decisions:

- 1- Asserting the State's commitment towards ensuring the rights & liberties of its citizens; particularly the right of the freedom to believe and freedom of peaceful expression. The State is obliged to protect the right of peaceful expression by its citizens or demonstration or sit-in; pursuant to the law and without violating or threatening societal security or disrupting life systems.
- 2- Asserting the State's commitment towards protecting its citizens whatever their affiliations are; in addition to protecting societal peace. The State will not allow threatening the society or disrupting its domestic security; whatever the type of the threat is



and whatever the sources are; in the frame of the rule of law and protection of human rights.

- 3- Reaffirming the State's commitment - with all its entities & institutions and in the frame of the rule of law and protection of human rights - not to allow anybody to terrorize its citizens, threaten the State and society, spread terrorism either verbally or practically, attempt to racketeer the citizen, humiliate the society, or disrupt local peace and security.
- 4- Asserting that the State - with all its entities & institutions and in the frame of the rule of law and protection of human rights – will take all necessary actions that ensure deterring outlaws, pursue and hold those who threaten citizens' security accountable or those who mess with societal peace or deprive them from a stable and natural life.
- 5- Asserting that the State - with all its entities & institutions and in the frame of the rule of law and protection of human rights – will take all procedures & measures to dry-up the sources of terrorizing civilians or violating the law.

**Reference: The Armed Forces' Official Spokesperson on July 25, 2013.**

Cairo Security Directorate

General Investigation Directorate of Cairo

Criminal Investigation Directorate

Heliopolis Investigation Team

تقرير

**Report**

- According to the attached papers from the Directorate – Planning and Follow-up Directorate – about requesting for the available information about events of Rabaa Al-Adaweya sit-in, department Nasr City Police Station 1.

**Testification**

**Subject:-**

- Providing available information, and previous contemporary and sequent reports about events of Rabaa Al-Adaweya sit-in dispersal, department of Nasr City Police Station 1.

**Examination:- after examination we found out that:-**

- After ousting the former President/ Muhammad Morsy in July 2013, the terrorist Muslim Brotherhood took Rabaa Al-Adaweya square, department of Nasr City Police Station 1 as a location for their sit-in and protesting through what is being broadcasted by some satellite channels. Protestors made crimes such as blocking the four directions of the road, interrupting the traffic, occupying spaces between buildings, its entrances and in front of the apartments, and entirely resided in it, making tents, damaging all

the facilities in the road, making barricades and obstacles to hinder the entrance to this area, possessing some murdering and torching equipment such as fire weapons and Molotov Cocktails. Protestors committed crimes such as killing any person who attempts to move near the place where they sit-in, kidnapping persons, breaking arms and legs. Some of the neighborhood residences have drafted many complaints about the impossibility of living in there, undertaking their jobs by which they get substances or getting their needs. The matter which led to community tension because of these actions which bastardize the dignity of the citizens and paw their humanity. All the local and international attempts have been used up to disperse the sit-in peacefully.

- Herewith a list of 108 police report issued against regulators and protesters of Rabaa Al-Adaweya square before breaking up the sit-in.
- On July 31, 2013, a decision has been issued by the attorney general to disperse Rabaa Al-Adaweya sit-in because of the enough signs of subversion activities, damaging the state institutions and buildings, willful murder, resisting authorities, detention and physical torture of civilians that have been available.
- The Prime Minister and National Defense & Security Council issued a decision that assigned the police authority and the Armed Forces to break up the sit-in and arrest Muslim Brotherhood leaders who are responsible for the incited violence.

- All the dimensions and cautions have been considered; legalism and sit-in dispersal mechanism have been maintained.
- On Wednesday 14<sup>th</sup> of August 2013, a date has been specified to disperse the sit-in. The relevant forces for mission implementation oriented and launched a warning by speakers to disperse the sit-in peacefully, but protesters refused and started to act feloniously and resisted the forces, this led police forces to fire tear gas grenades to disperse them but the protesters escalated the situation and used fire weapons, fireworks and Molotov Cocktails against the police forces which led to some fatalities in both sides.
- Forces could arrest 798 accused persons.
- As a result, police report no. 15899 in 2013 departmental Nasr City police station has been issued.
- Decision of the General Prosecution:-

**First:** Detention of 772 accused persons for fifteen days under remand for the investigation.

**Second:** Setting 23 accused persons free, only if they paid a five thousand-pound bail, or they will stay for fifteen days under the remand detention for the investigation.

**Annex 54**

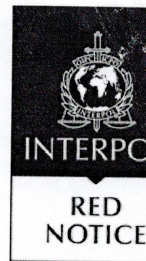
Interpol Red Notice for Yousf Al Qaradawi, 20 November 2014  
(Redacted)

Archives of the State Information Service  
of the Arab Republic of Egypt

# ALQARADAWI Yousf

## Control No.: A-9237/11-2014

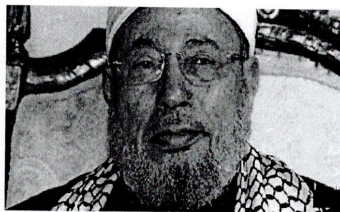
Requesting country: Egypt  
 File No.: 2014/58772  
 Date of publication: 20 November 2014  
 Updated on: 20 November 2014



### FUGITIVE WANTED FOR PROSECUTION

Circulation to the media (including Internet) of the extract of the notice as published on INTERPOL's public website: No

#### 1. IDENTITY PARTICULARS



Family name: ALQARADAWI  
 Forename(s): Yousf  
 Sex: Male  
 Date and place of birth: 9 September 1926  
 Nationality: Egypt (confirmed), Qatar (confirmed)

#### Also known as

	Type	Family name	Forename	Date of birth
1.	Alias	ALQARADAWI	Yousf	9 September 1926

#### Father's family name and forenames:

#### Mother's maiden name and forenames:

#### Regions/Countries likely to be visited:

Bahrain, France, Jordan, Qatar, Turkey, All Arab countries specially Bahrain - Qatar - Jordan, All European countries specially Turkey - France

#### Identity documents

	Nationality	Type	Number	Date of issue
1.	Egypt	Passport		29 August 2004
2.	Qatar	Passport		

#### 2. CASE

##### Facts of the case

Country	Date
Egypt	From 1 January 2010 to 10 February 2011

##### Summary of facts of the case

During the period from 01/01/2010 to 10/02/2011, the a/m subject has agreed via international communications with others to make the confusion inside the country as well as he has agreed to train armed members for committing hostile and military operations inside the country, breaking the prisons and smuggling Egyptians and foreigners prisoners who are supporters for them. In addition to, he agreed to supply foreign members and other members who execute the subversive operations with money and forged IDS for entry our country, supplying cars, equipment and weapons using in breakage the prisons which caused killing a lot of police's individuals and civilians.

### FUGITIVE WANTED FOR PROSECUTION

#### ARREST WARRANT OR JUDICIAL DECISION 1/1

Charge(s): Agreement, incitement and assistance to commit intentional murder, helping the prisoners to escape, arson, vandalism and theft.

**INTERPOL RED NOTICE**

**INTERPOL For official use on**

**Law covering the offence(s):** Article 40 secondly and thirdly , 41/1 , 43 , 45/1 , 46 , 77 , 83A/1 , 86 , 88 bit , 90 , 138 , 142 , 230 , 231 , 434 , 235 , 252 , 314 of Egyptian penal code .

**Maximum penalty possible:** Years: 25

**Arrest warrant or judicial decision having the same effect**

Number	Date of issue	Issued or handed down by	Country
56460	21 February 2014	Madenat Nasr felonies	Egypt

Copy of arrest warrant available at the General Secretariat in the language used by the requesting country: No

**3. ACTION TO BE TAKEN IF TRACED**

**LOCATE AND ARREST WITH A VIEW TO EXTRADITION:**

Assurances are given that extradition will be sought upon arrest of the person, in conformity with national laws and/or the applicable bilateral and multilateral treaties.

**PROVISIONAL ARREST:**

This request is to be treated as a formal request for provisional arrest, in conformity with national laws and/or the applicable bilateral and multilateral treaties.

Immediately inform NCB CAIRO Egypt (NCB reference: 3052/2014 of 28 September 2014) and the ICPO-INTERPOL General Secretariat that the fugitive has been found.





## **Annex 55**

Public Prosecution, Office of the Attorney General of Egypt,  
“Request to Reconsider The Decision of the Commission for the  
Control of INTERPOL’s Files (CCF) issued on the 17th of October  
2018, in Session No. 106, according to provisions of Article 42 of the  
statute of the Commission regarding the Egyptian sentenced: Yusuf  
Al-Qaradawi under extradition No. 22 of 2014 (International  
Cooperation Bureau)”, 9 March 2019

Archives of the State Information Service  
of the Arab Republic of Egypt

## **Request to Reconsider**

**The Decision of the Commission for the Control of INTERPOL's Files (CCF) issued on the 17<sup>th</sup> of October 2018, in Session No. 106, according to provisions of Article 42 of the statute of the Commission regarding the Egyptian sentenced: Yusuf Al-Qaradawi under extradition No. 22 of 2014 (International Cooperation Bureau)**

### **- Preamble**

- 1- The General Prosecution of the Arab Republic of Egypt issued, on the 1<sup>st</sup> of Feb. 2014, an arrest warrant for the Egyptian accused Yusuf Abdulla Al-Qaradawi, among 130 others, based on the referral order issued on the 12<sup>th</sup> of Dec. 2013 by the investigating judge in case No. 56460 of 2013 Nasser City felonies whereas the abovementioned, among 130 others, have agreed among each other, in the period from 1/1/2010 to 10/2/2011, by means of international calls, to create chaos in the country, bring down the state with its associations, train armed elements to carry out hostile acts in the country, attack and assault police stations and prisons and free prisoners.
- 2- On the 20<sup>th</sup> of Nov. 2014, the INTERPOL issued Red Notice No. A-9237/11-2014 to arrest the abovementioned accused for the charges of case No. 56460 of 2013 Nasser City felonies.



- 3- It has been proven, by means of reviewing the registers of the Egyptian Passports, Emigration and Nationality Administration, that the accused departed to Qatar on 17/7/2013.
- 4- In its session held on 16/6/2015, the competent criminal court ruled, in absentia and by consensus, to sentence the accused Yusuf Abdulla Al-Qaradawi to death penalty on basis of the abovementioned charges and according to the provisions of the Egyptian Penal Code.
- 5- On 11/9/2017, the legal affairs department of the INTERPOL reported that a closed session has been held in the INTERPOL'S Headquarters (Lyon, France) to discuss the situation of sentenced Yusuf Al-Qaradawi in light of the statements of the Egyptian media regarding the annulment of the Red Notice of arresting him. The session concluded the validity of the Red Notice issued on request of Cairo's INTERPOL, and not to comply with the complaints the sentenced filed to the human rights committee to annul the Red Notice.
- 6- On 30/4/2018, the General Prosecution received a communication from the INTERPOL stating that the CCF has received a request from the mentioned sentenced objecting on the data recorded in the files of the INTERPOL pleading that the criminal procedures taken against him were of political nature and not in conformity with human rights or his right of fair trial in accordance with Articles 2 and 3 of the INTERPOL'S Constitution.

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**Office of the Attorney-General**



- 7- On 30/4/2018, the CCF received further information to determine whether the subject of challenge was in conformity with the ITERPOL's regulations. The information was about all criminal procedures taken by Egyptian courts against the sentenced, copies of judgments issued in his regard and other elements expressing the possibility of his physical and actual participation in the incidents relating to the charges filed against him, particularly those in relation to provocation to assault prisons, freeing prisoners and financing armed elements to commit such crimes.
- 8- On 9/6/2018 the Egyptian General Prosecution informed the CCF of the information available. The mentioned sentenced was made aware of the information recorded against him on the request of Cairo's INTERPOL according to the provisions of Article 35 of the CCF's regulations.
- 9- On 17/10/2018 the CCF issued its decision No. CCF/R892.17 stipulating that the request of Yusuf Al-Qaradawi was not in conformity with the regulations of the INTERPOL on processing personal data with the necessity of deleting it from the INTERPOL's files.
- 10- The decision of the CCF of deleting the mentioned data and the annulment of the Red Notice was established on basis of the following:
  - a) The inaccuracy of the data provided by the Egyptian National Office (Cairo's INTERPOL) regarding the maximum penalty for



the charges filed against the abovementioned (provisions 25:28 of the Commission's decision);

- b) The political nature of the case, whereas the Qatari National Office (Doha's INTERPOL) indicated in Feb. 2015 to the CCF regarding the red notice issued against the abovementioned (Provision 37 of the CCF's decision) and the CCF's conclusion that the case is of a political nature (Provisions 41:76 of the CCF's decision) in noncompliance with the provisions of Article 3 of the INTERPOL's constitution and Article 34 of Data Processing Rules;
- c) Lack of respect to human rights of the above mentioned in noncompliance with Article 2 of the INTERPOL's Constitution (provisions 87:94 of the CCF); and
- d) Lack of evidence of committing the crimes the above mentioned has been charged with.

11- On 5/12/2018 the Egyptian General Prosecution received the response regarding the mechanism of reconsidering the CCF's decision on annulling the previously issued Red Notice for the sentenced Yusuf Abdulla Al-Qaradawi and deleting his data from the INTERPOL's files according to Article 42 of the Statute of the CCF which required the necessity of providing new incidents or evidences that should change the viewpoint, besides enabling the abovementioned to be educated on what has been provided and to respond thereto according to Article 1/35 of the CCF's Code.

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- **The new incidents and evidences upon which the Egyptian General Prosecution establishes its request of reconsidering the CCF's decision:**

12- The General Prosecution refers to the provisions of Article 42 of the CCF's Code on the mechanism of reconsidering request applied in the INTERPOL, and represents the following issues, incidents, pleas and evidences for the reconsideration of the CCF's decision.

13- The General Prosecution allows the accused or his attorney to access such information and respond thereto in compliance with Article 54 of the Egyptian Constitution, provisions of Article 2 of the INTERPOL and Article 1/35 of the CCF. The General Prosecution requests that it be informed of the accused responses or what he may provide of papers and emphasizes its right to respond verbally or in writing in a reasonable period.

14- Firstly, the decision of the CCF that the case is of political nature was based on the incidents of the case, the situation of other international organizations, the nature of the charges, the situation of the sentenced, the impartial results of the INTERPOL according to the criteria provided in Article 3/34 of the procedural rules of the CCF which the prosecution has applied and found that there has been a major incident that the CCF hasn't been aware of and which shall nullify the political nature of the case. The General Prosecution has indicated in paragraph 3 above that it has been proven, through the questionnaire of the Egyptian Passports,

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Emigration and Nationality Administration, that that Mr. Yusuf Al-Qaradawi departed from the Arab Republic of Egypt to Qatar on 17/8/2013, namely after the 30<sup>th</sup> of June 2013 (the date on which the Egyptian people ousted Muhammad Mursi). This means that: the abovementioned was not banned from traveling even though he was a member of the MB, his opposition to the regime in that time, the procedures taken against him were absolutely legal notwithstanding any political affiliation, and that the arrest warrant issued for him was by the investigation judge on 12/12/2013 after he had committed punishable criminal offenses according to the Egyptian law stipulating freedom depriving punishments. This emphasizes the absence of any political nature to the case referred to.

- 15- There have been several judgments issued to insert the MB in the list of terrorist groups, an incident that the FCC hasn't been aware of. Therefore, the MB is a terrorist group according to the Egyptian judiciary and the enforceable legislations (Law No. 8 of 2015). There is a number of criteria stipulated in the Egyptian law to list any entity, group or organization in the list of terrorist groups. This law resembles Egypt's commitment to countering terrorist and its financing, pursuing terrorists and terrorist groups; this is in light of the conclusions of the Security Council's decisions of countering terrorism and terrorists. In the same regard, the Egyptian law identifies terrorist groups as any associations, groups,

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organizations, gatherings, cells or others of whatsoever legal or actual personality who practice, in any way, in or outside the country, harming people, terrorizing them or endangering their lives, freedom, rights or security, or endangering the environment, natural resources, monuments, means of communication, transportation, money, facilities, public or private properties or taking over them, or hindering authorities, judiciary, government services, municipals, warship venues, hospitals, education facilities, other public facilities, diplomatic or counselor missions, regional or international organizations in Egypt, hindering public or private means of transportation, inciting disturbing public order, endangering safety of the society, its interests and security, obstructing constitution enforcement, works of state authorities, or invading personal freedom and public rights guaranteed by the constitution, or threatening national integrity or social or national peace.

- 16- The General Prosecution refers to the erroneous grounds of the judgment that the MB is a political party opposing the regime and the state is targeting its leaders. The CCF has confused the Egyptian judiciary with the investigation authorities and the political system of the state. In the same regard, the General Prosecution indicates that dissolved national party that preceded the MB has neither been listed as a terrorist group nor its leaders has been accused with terrorist crimes. This means that the end result is based on the



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criteria of the Egyptian law, and it has been proven that the MB and its members have committed acts of violence, homicide and sabotage which are crimes punishable by the regulations of the Egyptian law.

- 17- In regard to the nature of the person himself, Yusuf Al-Qaradawi, the General Prosecution refers to his history as one of the respected popular influential Islamic scientists in the Egyptian community. He has also been honored by many Arab states for his accomplishments and contributions. He is the president of the International Union of Muslim Scholars and generally influential in Arab communities. He exploited that to achieve personal objectives using Islamic rhetoric to provoke the public, who was actually provoked, to carry out his ideologies which resulted in punishable criminal offenses according to the enforceable Egyptian legislations.
- 18- As evidence on the mentioned in paragraph 17, the Prosecution indicates that search and arrest warrant No. 4030/1304 was issued against Yusuf Al-Qaradawi on 25/12/2014 on request of the Iraqi Judiciary because the abovementioned has expressively provoked the public, through Aljazeera Channel – Al-Shari'a Walhya Program, to kill Mr. Nouri Al-Malki, the Iraqi Prime Minister, on 3/3/2013, claiming that he is a murderer of his people, the elderly, children and women. (Annex 1, a copy of the search and arrest warrant)

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19- The Prosecution indicates the existence of footage of Al-Qaradawi provoking the Libyans to kill the late Libyan president, Muammar Al-qaddafi, for the same reasons (on YouTube)

<https://www.youtube.com/watch?v=IQXuoZe5fCQ&feature=youtu.be>

The Prosecution also refers to the footage of the death of the late Libyan president, Muammar Al-qaddafi, by one of the Libyan opponents.

20- the General Prosecution refers to open sources where Yusuf Al-Qaradawi said it is allowed to explode oneself to target a corrupt system even if civilians died as long as this is done according to group's planning.

<https://youtube.com/watch?v=DxtFLSCFO-M&feature=youtu.be>

21- The General Prosecution also refers to a speech of Dr. Yusuf Al-Qaradawi publicized on Aljazeera, directed to the Egyptians, provoking them to create violent chaos and riots against the regime in noncompliance with international norms.

<https://www.youtube.com/watch?v=2y2t6iE3nz0&feature=youtu.be>

22- The General Prosecution also attaches footage in which Al-Qaradawi appears after the judgment, in absentia, of sentencing him to death penalty, in which he was calling for revolution and chaos, and admitting that he called for revolutions in all countries to achieve justice.

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<https://www.youtube.com/watch?v=LKzkPU&feature=youtu.be>

<https://youtu.be/Lkz8oC3zkPU>

- 23- Regarding passing a judgment in absentia by the Egyptian judiciary to punish the abovementioned, the CCF was not aware of the procedural system in Egypt. The judgment was only a threatening one to the sentenced and it automatically expires in case of the attendance of the sentenced, by arresting him, or by making an appeal before the proper criminal court according to Article 395 of the Egyptian Penal Code. In this case, the person shall be re-trialed with all legal and judicial guarantees referred to by the Prosecution in its memorandum dated 9/6/2018 (appendix2).
- 24- Even though Yusuf Al-Qaradawi was aware of the judgment rendered in his regard, he neither attended in person nor assigned an attorney to attend on his behalf, before the competent court. Instead, he escaped justice and didn't follow the national legal equity procedures, which is still possible. Such procedures have been taken by several others and resulted in the innocence of some and the guilt of others according to the evidences available.
- 25- In reference to the same judgment issued on 16/6/2015, the Egyptian Cassation Court cancelled it for some other accused and trialed them again before other criminal courts. If the case were of a political nature, as the CCF indicated, the Egyptian Cassation Court wouldn't have accepted challenging the judgment. The

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Egyptian judiciary is independent, impartial and doesn't interfere with politics.

- 26- The acts committed by the sentenced are absolute criminal charges that don't relate to any political orientation, and his affiliation to a certain group doesn't resemble immunity against law.
- 27- Criminalizing terrorist acts in the frame of the national law has been in compliance with all international regulations and conventions of the UN and particularly the Security Council on countering terrorism, its financing and drying up its resources. In no circumstances shall terrorist acts that result into death, sabotage and killing the innocent be considered oppositional acts nor shall their committer be considered a political opponent.
- 28- The Prosecution refers to the report published on open sources by Arab World Magazine in its publication on 20/4/2018 regarding the statements of the former Russian ambassador in Qatar, Vladimir Titorenko, in an interview in Rehla Felzakera Program on the Russian RT Channel where he talked about Yusuf Al-Qaradawi's role, AKA President of the International Union of Muslim Scholars, and how he instructed the Qatari Emiri Divan to finance the opposition in Egypt to support the revolution. Mr. Vladimir Titorenko emphasized that he attended several meetings with Al-Qaradawi, who was old enough to forget that the ambassador was present and used to say "finance the opposition and the revolution will be fiercer." (16<sup>th</sup> min of the footage)



<https://www.youtube.com/watch?v=QcHI712il6k&feature=youtu.be>

29- International Community has distinguished hatred rhetoric from freedom of speech, considering the religious rhetoric that incites violence is an act that allows states to punish, counter and eliminate those who commit it. In this context, peaceful freedom of speech should not be confused with inciting violence, hatred, sabotage, facilities assault, disturbing security and public safety. Article 2 of the International Convention on Civil and Political Rights stipulates the necessity of prohibiting any incitement of national, racist or religious hatred, and the Egyptian Law was in conformity with this frame when criminalized incitement of violence, terrorism, chaos and panic.

30- INTERPOL has issued a Red Notice for the abovementioned sentenced in the same case and the same grounds, convinced that the case is absolutely a criminal one with no political motives or backgrounds. In spite of the validity of the arrest warrant and the Red Notice of the INTERPOL, Doha's INTERPOL and the Qatari authorities have neither identified the wanted person's location nor arrested him or cooperate with the Egyptian INTERPOL breaching Article 87 of the INTERPOL'S Data Processing Statute which identifies the procedures to be taken upon identifying the wanted person's location, namely informing the national office of the requesting country of the location of the wanted person and taking all legal procedures to arrest him. On the contrary to that, Doha's

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INTERPOL totally ignored the Red Notice in breach of the INTERPOL's codes and provided a safe haven to criminal offenders.

- 31- After the General Prosecution assessed the appeals presented to the CCF, it noticed that only the escapees to Qatar filed appeals against being in the Red Notices. Such appeals were made in a systematic endeavor of Doha INTERPOL and the State of Qatar to misuse the INTERPOL and its mechanisms. The INTERPOL mainly aims to counter criminal and terrorist crimes in particular, in addition to arresting criminals. Qatar did that to provide safe haven to such criminals and let them escape the judicial authorities of different countries.
- 32- The General Prosecution refers to the unawareness of the CCF that the investigating judge supervised the investigations of this case. This investigating judge is a member of the Egyptian Judiciary and not an affiliate to any political faction, and he is independent, cannot be dismissed, and is subject to no other authority but the law. The Egyptian judge referred Youssef Al-Qaradawi to the competent criminal court, which is a normal judicial entity. Such judge did not take any exceptional procedures as the court that pronounced the sentence was the competent criminal court in accordance with previously determined national jurisdictions applied to all courts. The Prosecution also refers to its memorandum dated 12 June 2018 (Appendix 2) on the independence of the Egyptian Judiciary,

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General Prosecution, and Egyptian Courts, along with the litigation rights of the accused in criminal lawsuits.

33- Regarding lack of evidence, the General Prosecution indicates several facts proved by investigations carried out regarding the case. Such investigations proved that the said person is one of the terrorist MB leaders, and he chaired the International Union of the Muslim Scholars and exploited his position to incite the public to execute the plot of the terrorist MB of inciting chaos all over the country and bring it down along with its institutions. Al-Qaradwi travelled with others to many countries, including Turkey, to meet some members of the International Organization of Muslim Brothers and coordinate with them concerning the execution of such plot. The same happened in the meeting with leaders from Hamas Movement, Lebanon Hizbullah, and some extremists in Northern Sinai. Some armed affiliates of such groups crossed the Egyptian eastern borders in January 2011 to execute such plot. They intended to assault and destroy Egyptian prisons and free the inmates. Some of such inmates were members of extremist groups and terrorist organizations, and they created chaos within the country to bring it down. In this context, we refer to what foreign mass media broadcasted when Al-Qaradawi expressively urged funding the activities done in Egypt by the aforementioned terrorist group.

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34- The role of the CCF is limited to its main law regarding reviewing compliance of Red Notices to the INTERPOL's Constitution and Rules, and CCF does not investigate and collect evidence of a crime. Therefore, talking about evidence assessment and their sufficiency is considered interference from the CCF with the jurisdiction of the competent court before which the case is filed. The available evidence is sufficient for the trial Mr. Yusuf Al-Qaradawi by the Egyptian Judiciary and to determine whether he was innocent or guilty. The judgment in absentia shall be nullified in case of the attendance of the sentenced, or if his attorney took the procedures necessary for his retrial, but neither the sentenced nor his attorney attended to present their defense against the evidence of the investigating authority, represented in the inculpatory evidence of the witnesses, the investigation of the national authorities represented in national security sector and general intelligence service, besides a recording of a phone call made between the former president, Muhammad Mursi and the so called Ahmad Muhammad Abdulmo'ty which proved that they agreed, in details, to carry out the plot and to transfer funds for Yusuf Al-Qaradawi to support such plot by exploiting his title, president of the International Union of Muslim Scholars, giving religious rhetoric supporting the plot. Mr. Yusuf Al-Qaradawi did not present his defense in this regard.





35- In reference to the relation the CCF made between the charges filed against Mrs. Ola Al-Qaradawi and the Red Notice issued in his regard, the CCF took such charges as a reason to delete the data of the aforementioned and cancel nullify the Red Notice. The Prosecution would like to indicate that Mrs. Ola Al-Qaradawi and her husband, MR. Hosam Khalafalla, are charged in case No. 316 of 2017 filed by the Higher State Security. The General Prosecution is carrying out the criminal investigations for this case, whereas Mrs. Ola is charged with punishable criminal offenses under national legislations. The General Prosecution indicates that detaining the abovementioned is based on its decision made under its jurisdiction under the Egyptian Law stipulating its right of pre-trial detention. The prosecution also indicates that the detention of the accused has been in prisons where all accused are detained, it also indicates the existence of physical evidence (classified information of criminal investigations). The abovementioned have committed crimes that are considered financing and supporting terrorist acts under Article 3 of countering terrorism law No. 94 of 2015. The Prosecution also refers to its decision of arresting the accused for pre-trial detention starting from 2/7/2017, i.e. after more than two and half years from issuing the arrest warrant against Yusuf Al-Qaradawi. The accused were present in Egypt before issuing the pre-trial decision and the authorities did not take any legal actions against them.

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36- The Prosecution indicates that the inaccuracy of the information of the arrest warrant, subject of the Red Notice, regarding the maximum penalty allowed against the accused Yusuf Al-Qaradawi is up to the court before which the case is filed, and the legal adaptation of the incident is a right of the competent court under the law.

37- The General Prosecution of the Arab Republic of Egypt, based on the incidents, the evidences and the information in the request, requests that the CCF reconsider its decision of deleting the data of Yusuf Al-Qaradawi and the cancelation of the Red Notice, and requests relisting the data in the INTERPOL's files and the revalidation of the Red Notice. The Prosecution also urges the CCF not to be influenced by the pressures practiced by Qatar and its media.

Made on 9/3/2019

International Cooperation Office  
Attorney General Office

9/3/2019

Attorney General  
Arab Republic of Egypt  
Counselor/ Nabil Ahmad

## **Annex 56**

ICAO Council – 214th Session, Summary Minutes of the Eighth Meeting  
of 26 June 2018, ICAO document C-MIN 214/8, 23 July 2018 (Final)





**International Civil Aviation Organization**

C-MIN 214/8 (Closed)  
23/7/18

**COUNCIL — 214TH SESSION**

**SUMMARY MINUTES OF THE EIGHTH MEETING**

**(THE COUNCIL CHAMBER, TUESDAY, 26 JUNE 2018, AT 1430 HOURS)**

**CLOSED MEETING**

President of the Council: Dr. Olumuyiwa Benard Aliu

Secretary: Dr. Fang Liu, Secretary General

**PRESENT:**

Algeria	— Mr. A.D. Mesroua	Mexico	— Mr. D. Méndez Mayora
Argentina	— Mr. G.E. Ainchil	Nigeria	— Mr. M.S. Nuhu
Australia	— Mr. S. Lucas	Panama	— Mr. G.S. Oller
Brazil	— Mr. O. Vieira (Alt.)	Republic of Korea	— Mr. Y.J. Lee
Cabo Verde	— Mr. C. Monteiro	Russian Federation	— Mr. S. Gudkov
Canada	— Mr. M. Pagé	Saudi Arabia	— H.E. Dr. N.B.M. Al-Amudi, Minister of Transport and Chairman, GACA
China	— Mr. Shengjun Yang	Singapore	— Mr. T.C. Ng
Colombia	— Mr. A. Muñoz Gómez	South Africa	— Mr. M.D.T. Peege
Congo	— Mr. R.M. Ondzotto	Spain	— Mr. V.M. Aguado
Cuba	— Mrs. M. Crespo Frasquieri	Sweden	— Ms. H. Jansson Saxe
Ecuador	— Mr. I. Arellano	Turkey	— Mr. A.R. Çolak
Egypt	— H.E. H. EL-Adawy, President, CAA	United Arab Emirates	— H.E. S.B.S. Al Mansoori, Minister of Economy and Chairman, GCAA
France	— Mr. P. Bertoux	United Kingdom	— Mr. D.T. Lloyd
Germany	— Mr. U. Schwierczinski	United Republic of Tanzania	— Mr. R.W. Bokango
India	— Mr. A. Shekhar	United States	— Mr. T.L. Carter
Ireland	— Ms. N. O'Brien	Uruguay	— Mr. M. Vidal
Italy	— Mr. M.R. Rusconi		
Japan	— Mr. S. Matsui		
Kenya	— Ms. M.B. Awori		
Malaysia	— Mr. K.A. Ismail		

**ALSO PRESENT:**

Mrs. M.F. Loguzzo (Alt.)	— Argentina
Mr. C. Fernández (Alt.)	— Argentina
H.E. K.B.A. Mohammed, Minister of Transportation and Telecommunications (Obs.)	— Bahrain
Mr. M.T. Al Kaabi (Obs.)	— Bahrain
Mr. S.M. Hassan (Obs.)	— Bahrain
Mr. D. Krishan (Adv.)	— Bahrain
Mr. G. Petrochilos (Adv.)	— Bahrain
Ms. A. Keene (Adv.)	— Bahrain
Mr. R.F. Pecoraro (Alt.)	— Brazil
Mr. D. Tavares Taufner (Alt.)	— Brazil
Mr. H. Gonzales (Alt.)	— Brazil
Mr. Chunyu Ding (Alt.)	— China
H.E. A. Salama (Alt.)	— Egypt
Mr. A. Khedr (Rep.)	— Egypt
Mrs. S. El Mowafi (Alt.)	— Egypt
Mrs. Y.H.M. Elbedewy (Alt.)	— Egypt
Mr. M. Millefert (Alt.)	— France
Mr. N. Naoumi (Alt.)	— Germany
Mr. M. Usami (Alt.)	— Japan
Mrs. D. Valle Álvarez (Alt.)	— Mexico

**SECRETARIAT:**

Mrs. J. Yan	— C/OSG
Ms. I. Sosina	— SA/PRES
Mr. J. Huang	— D/LEB
Mr. Y. Nyampong	— LEB
Mrs. D. Brookes	— LEB
Mr. M. Vaugeois	— LEB
Mr. A. Larcos	— C/ACS
Miss S. Black	— Précis-writer

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**ALSO PRESENT (CONTINUED):**

H.E. J.B.S. AlSulaiti, Minister of Transport and Communications (Obs.)	— Qatar
H.E. A.N. AlSubaey (Obs.)	— Qatar
H.E. F.M. Kafood (Obs.)	— Qatar
H.E. Y.S. Laram (Obs.)	— Qatar
Mr. E.A. Al-Malki (Obs.)	— Rep. of Qatar to ICAO
Mr. M.A. AlHajri (Obs.)	— Qatar
Mr. T.A. Almalki (Obs.)	— Qatar
Mr. E.A. Mindney (Obs.)	— Qatar
Mr. A. Altamimi (Obs.)	— Qatar
Mr. J. Augustin (Obs.)	— Qatar
Mr. K. Lee (Alt.)	— Republic of Korea
Mr. D.S. Ha (Alt.)	— Republic of Korea
Mr. D. Subbotin (Alt.)	— Russian Federation
H.E. A.M. Altamimi (Alt.)	— Saudi Arabia
H.E.H.E. W.M.A. Alidrisi (Adv.)	— Saudi Arabia
Mr. S.A.R. Hashem (Rep.)	— Saudi Arabia
Mr. M.S. Habib (Alt.)	— Saudi Arabia
Mr. N.B.B. Alsudairy (Obs.)	— Saudi Arabia
Mr. D.L.Q. Ming (Adv.)	— Singapore
Mr. L.C. Yong (Adv.)	— Singapore
Mr. S. Vuokila (Alt.)	— Sweden
Mr. Ö. Doğrukol (Alt.)	— Turkey
H.E. S.M. Al Suwaidi (Alt.)	— United Arab Emirates
H.E. M.S.H. Al Shehhi (Alt.)	— United Arab Emirates
H.E. F. Al Raqbani (Alt.)	— United Arab Emirates
Miss A. Alhameli (Rep.)	— United Arab Emirates
Mr. M. Salem (Alt.)	— United Arab Emirates
Mr. M. Al Shamsi (Alt.)	— United Arab Emirates
Dr. L. Weber (Alt.)	— United Arab Emirates
Mrs. L. Coquard-Patry (Alt.)	— United Arab Emirates
Mrs. S. Aminian (Alt.)	— United Arab Emirates
Mrs. S. Kirwin (Alt.)	— United Arab Emirates
Mrs. K.L. Riensema (Alt.)	— United Kingdom
Mr. S. Kotis (Alt.)	— United States
Mr. J.M. Padilla (Alt.)	— United States
Mrs. M.A. González (Alt.)	— Uruguay
Mr. F. de Medina (Alt.)	— Uruguay

**Representatives to ICAO**

Bolivia (Plurinational State of)  
Chile  
Cyprus  
Ethiopia  
Greece  
Honduras  
Indonesia  
Iran (Islamic Republic of)  
Lebanon  
Paraguay  
Peru  
Qatar  
Senegal  
Sudan

**Subject No. 16: Legal work of the Organization**  
**Subject No. 26: Settlement of disputes between Contracting States**

**Settlement of Differences: 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) (relating to the interpretation and application of the Chicago Convention and its Annexes): Preliminary Objection Stage**

**Settlement of Differences: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain and the United Arab Emirates (2017) – Application (B) (relating to the interpretation and application of the International Air Services Transit Agreement): Preliminary Objection Stage**

1. On behalf of the Council, the President extended a warm welcome to the following high-level Government Officials who were duly accredited to represent their respective Member States as their Authorized Agents: H.E. Kamal Bin Ahmed Mohammed, Minister of Transportation and Telecommunications of Bahrain, H.E. Hany EL-Adawy, President of the Civil Aviation Authority of Egypt, H.E. Jassem Bin Saif ALSulaiti, Minister of Transport and Communications of Qatar, H.E. Dr. Nabeel bin Mohamed Al-Amudi, Minister of Transport and Chairman of the Board of the General Authority of Civil Aviation of Saudi Arabia, and H.E. Sultan Bin Saeed Al Mansoori, Minister of Economy and Chairman of the Board of the General Civil Aviation Authority of the United Arab Emirates. In addition, he welcomed all other officials from the said five Member States who were also in attendance. The Secretary General joined in this welcome.

2. The Parties and the Council agreed to the proposal by the President for the concurrent presentation and consideration of the two above-mentioned items, on the understanding that the Council would take separate decisions thereon given that Application (A) and Application (B) related to two different international air law instruments, namely, the Chicago Convention and the International Air Services Transit Agreement (Transit Agreement), and that there were different Respondents thereto. The items were considered on the basis of two working papers presented by the Secretary General, C-WP/14778 Restricted (with Addendum No. 1) and C-WP/14779 Restricted (with Addendum No. 1), respectively, and the following memoranda issued by the Secretary General to Council Representatives:

- memorandum SG 2411/18 (with Blue rider) dated 23 March 2018, which transmitted the Respondents' Statements of preliminary objections with respect to Application (A) and Application (B);
- memorandum SG 2416/18 (with Blue rider) dated 8 May 2018, which transmitted the Applicant's Responses to the said Statements of preliminary objections; and
- memorandum SG 2420/18 dated 13 June 2018, which transmitted the Respondents' Rejoinders to the Applicant's Responses to their Statements of preliminary objections.

*Introduction of C-WP/14778 Restricted (with Addendum No. 1) – Application (A)*

3. The Secretary General introduced C-WP/14778 Restricted (with Addendum No. 1), which provided an overview of the procedure applicable to **Application (A)** – the disagreement between Qatar, as Applicant, on the one hand and Bahrain, Egypt, Saudi Arabia and the United Arab Emirates, as Respondents, on the other hand, during the preliminary objection stage.

4. In the executive summary of C-WP/14778 Restricted, the Council was invited to hear the arguments of the Parties relating to the preliminary objection and to take a decision on the matter in line with the procedure set forth in Article 5 of the *Rules for the Settlement of Differences* (Doc 7782/2), paragraph (4) of which specified 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 these Rules."

*Introduction of C-WP/14779 Restricted (with Addendum No. 1) – Application (B)*

5. The Secretary General then introduced C-WP/14779 Restricted (with Addendum No. 1), which provided an overview of the procedure applicable to **Application (B)** – the disagreement between Qatar, as Applicant, on the one hand and Bahrain, Egypt and the United Arab Emirates, as Respondents, on the other hand, during the preliminary objection stage. The action by the Council proposed in the executive summary of C-WP/14779 Restricted was identical to that proposed in the executive summary of C-WP/14778 Restricted.

6. The President of the Council recalled that, for the two cases before it, the Council was sitting as a judicial body under Article 84 of the Chicago Convention, taking its decisions on the basis of the submission of written documents by the Parties, as well as on the basis of oral arguments. The Council's consideration was limited to the Respondents' two Statements of preliminary objections with respect to Application (A) and Application (B), the Applicant's respective Responses thereto, and the Respondents' respective Rejoinders, and would not address the merits of the cases. The *Rules for the Settlement of Differences* (Doc 7782/2) and the *Rules of Procedure for the Council* (Doc 7559/10) would be used.

*Presentation by the Respondents' Authorized Agents of their oral arguments with respect to Application (A) and Application (B)*

7. At the invitation of the President of the Council, and on behalf of Bahrain, Egypt, Saudi Arabia and the United Arab Emirates, H.E. Dr. Nabeel bin Mohamed Al-Amudi (Saudi Arabia) presented the preliminary objection filed by the Respondents in response to Qatar's **Application (A)** under Article 84 of the Chicago Convention. Before he began, H.E. Al-Amudi reiterated the Respondents' utmost respect for ICAO, the Council, and the international rules and principles governing civil aviation. He emphasized that safety had been, and continued to be, the Respondents' top priority. In noting that the Respondents, the Secretariat, and the ICAO Middle East Regional Office (MEO) (Cairo), among others, had worked diligently to ensure that contingency arrangements were in place in the Gulf region, and that such arrangements ensured the safe operation of civil aircraft, H.E. Al-Amudi indicated that that task had been accomplished.

8. H.E. Al-Amudi underscored that, as one of the Council Members had astutely recognized and stated during the Extraordinary Session of the Council convened on 31 July 2017 pursuant to the request made by Qatar under Article 54n) of the Chicago Convention, the aviation component of the situation in the Gulf region was but one part of a complex environment. ICAO's role, within that environment, was to administer an international aviation system that delivered safe, secure and efficient air navigation for all Member States. He observed that that role had been fulfilled.

9. In emphasizing that the Respondents had not chosen to bring this dispute before the Council today, H.E. Al-Amudi stressed that, as previously notified to the President of the Council and the Secretary General, the procedures set for the present hearing were contrary to the Respondents' requests, the *Rules for the Settlement of Differences* (Doc 7782/2), and the fundamental rules of due process. He cited two notable examples, as follows: firstly, the Respondents' preliminary objections needed 19 positive votes to carry the day, but the Rules only required a simple majority of the Council Members entitled to vote; and secondly, the Respondents had not been provided with sufficient or equal time to adequately present their case. Their right to be heard had thus been compromised.

10. H.E. Al-Amudi highlighted that during the present meeting it fell on the Council to recognize that the real issue of this dispute did not concern international civil aviation but rather the Applicant's breaches of its international obligations, which had left the Respondents with no effective option other than to exercise their sovereign right to implement measures to protect their national security interests.



11. Underscoring the importance of the dispute's context, H.E. Al-Amudi recalled the 2013 and 2014 timeframe, when the Gulf Cooperation Council States, including Qatar, had agreed to a series of collective obligations known as the Riyadh Agreements. He noted that although Egypt was not a signatory thereto, under their terms, and in particular, as expressly stated in Article 4 of the November 2014 Agreement, Egypt was a beneficiary of those Agreements. H.E. Al-Amudi further noted that, under the signature of its Emir, Qatar had committed to stop funding, harboring, and supporting persons and organizations engaging in terrorist or extremist activities, and to desist from interfering in the internal affairs of neighbouring States. He emphasized that the Riyadh Agreements reinforced the Applicant's international law obligations, as set forth in the *Charter of the United Nations* (UN), the *International Convention for the Suppression of the Financing of Terrorism*, relevant binding United Nations Security Council Resolutions, and the customary international law principle of non-interference in the internal affairs of other States.

12. Recalling that the Respondents had asked the Applicant, time and again, to halt these practices, in line with its commitments, H.E. Al-Amudi underscored that, time and again, the Applicant had failed to do so. He indicated that in June 2017, after assessing that all other options had been exhausted, the Respondents had determined that the only way to address these grave threats to their national security was to terminate diplomatic and consular relations with the Applicant, and to institute a basket of lawful counter-measures, including the said airspace restrictions. He stressed that unless and until the Applicant fulfilled its obligations under the Riyadh Agreements, the Respondents would consider it a grave national security threat, and would continue the basket of counter-measures necessary to counter that threat.

13. In affirming that the Respondents did not implement such counter-measures to punish the Applicant, H.E. Al-Amudi underscored that their purpose was rather to induce the Applicant to bring its actions into compliance with its fundamental obligations. He emphasized that when the Applicant fully complied with its international obligations, as reinforced in the Riyadh Agreements, then the said counter-measures would be lifted, and that as long as the Applicant continued to breach its obligations, the counter-measures would remain.

14. Noting that some Council Representatives might be asking themselves why the Respondents were talking about terrorism in an Organization established to deal with international civil aviation, H.E. Kamal Bin Ahmed Mohammed (Bahrain) emphasized that that was exactly the point of first ground of their **preliminary objection with respect to Qatar's Application (A)**, which rested on the fact that the present dispute between Qatar, as Applicant, and the Respondents would require the Council to determine issues that fell outside the latter's jurisdiction. Noting that the Applicant had all but conceded that point, he recalled that it had promised to present a "robust defence" against the allegations of its funding and support of terrorism and to show why the Respondents' counter-measures were unlawful were the case to get to the merits. The Council would then have to determine those issues. H.E. Mohammed underscored, however, that the Council's jurisdiction under Article 84 of the Chicago Convention was limited to "any disagreement ... relating to the interpretation or application" of the Chicago Convention. In emphasizing that that provision clearly limited the types of matters that the Contracting States to the Convention intended the Council to hear, he underscored that the exercise of jurisdiction over matters unrelated to civil aviation was outside the latter's mandate. H.E. Mohammed stressed that by asking the Council to ignore that principle, the Applicant was in fact asking the Council to act far beyond the scope of its authority, which was not appropriate.

15. Noting that the Parties apparently agreed on the content and applicability of the customary international law principle on counter-measures in this case, H.E. Mohammed emphasized that the obligations in the Chicago Convention could not be viewed in isolation of those rules. The Respondents maintained that the Applicant's breaches of its international law obligations created a situation where they had no choice but to impose lawful counter-measures to induce the Applicant to change its behaviour.

16. H.E. Mohammed recalled that the International Court of Justice (ICJ) had held in the *Hungary/Slovakia* case that an injured State could take counter-measures against a State which had breached its obligations. Under international law, five conditions had to be met for the counter-measures to be considered lawful, the first of which was that the counter-measure must be adopted in reaction to a previous internationally wrongful act and directed against the wrong-doing State. He affirmed that such was the case here.

17. H.E. Mohammed underscored that the Respondents maintained that their said airspace restrictions were lawful counter-measures, and were permitted under international law. He indicated that Council Members would know from their own experience that States had, in the past, been compelled to restrict their airspace in the face of illegal conduct by other States. They had done so bilaterally or collectively, and on various legal grounds, including by way of counter-measures. H.E. Mohammed cited, as examples, a European Union (EU) flight ban at the time of the Kosovo crisis; the flight bans on Libyan outbound flights in 2015; similar bans on North Korean flights; and bans on South African flights as a reaction to the continuation of apartheid policies in the 1980's. He noted that although the list of examples was much longer, the salient point was clear, and it had never been suggested by the States involved, and rightly so, that any of those broader disputes could be characterized as an aviation matter and resolved by the Council.

18. H.E. Mohammed emphasized that despite the Applicant's allegations, the Respondents were not asking the Council to decide those issues now; rather, at this stage, the Council had only to decide whether it could properly exercise jurisdiction over the merits, as it related to the real issue in the case. However, the Respondents did ask the Council to make a decision on its jurisdiction at this phase of the case. They submitted that their preliminary objection had an exclusively preliminary character. Deciding on the objection now would not require the Council to rule on the merits of the real issue in dispute, but simply require it to decide whether it had jurisdiction at all. H.E. Mohammed underscored that in keeping with ICAO's *Rules for the Settlement of Differences* (Doc 7782/2), as well as the practice of the ICJ, the objection should be resolved at the preliminary stage, if at all possible.

19. H.E. Mohammed noted that in order to rule on the legality of the Respondents' said airspace measures at large, the Council would first have to determine if the Applicant had in fact violated the Riyadh Agreements, the *Convention of the Organization of the Islamic Conference on Combatting International Terrorism*, the *Arab Convention for the Suppression of Terrorism*, the *International Convention for the Suppression of the Financing of Terrorism*, numerous United Nations Security Council Resolutions, and the customary international law principle of non-interference. To state the obvious, such matters were outside the mandate of the Council. Recalling that the Council had not once ruled on an Article 84 case in its history, H.E. Mohammed underscored that to do so on a matter involving national security and counter-terrorism would be unprecedented.

20. H.E. Mohammed stressed that it was impossible to rule on the legality of the Respondents' said airspace measures without dealing with the larger dispute at hand, a dispute in which the real issue was the Applicant's illegal actions. In indicating that for that reason the Council should rule in favour of the Respondents' preliminary objection, he reiterated that the real and principal issue in this dispute was not civil aviation. Recalling that the Council itself had reviewed and confirmed that the contingency arrangements in the Gulf region agreed in 2017 ensured the safe operation of civil aircraft, H.E. Mohammed maintained that the larger dispute at issue that the Applicant sought to bring before the Council did not belong in ICAO.

21. H.E. Sultan Bin Saeed Al Mansoori (United Arab Emirates) then presented the second ground of the Respondents' **preliminary objection with respect to Qatar's Application (A)**. Recalling that Article 84 of the Chicago Convention provided that only disagreements which "cannot be settled by negotiation" may be submitted to the Council, he indicated that that meant that an Applicant, in the present

case, Qatar, must show that it had attempted negotiations about the dispute *before* submitting a case to the Council. The text of Article 84 was quite clear.

22. H.E. Al Mansoori also brought to the Council Members' attention Article 2(g) of the *Rules for the Settlement of Differences* (Doc 7782/2), which provided that the Applicant's Memorial must contain "A statement that negotiations to settle the disagreement had taken place between the parties but were not successful." He noted that the Respondents' submissions cited numerous precedents where the ICJ had dealt with that issue, including the 2011 case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (cf. Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, paragraph 160). H.E. Al Mansoori underscored that where a treaty, such as the Chicago Convention, explicitly called for negotiations before a dispute may be brought, that requirement operated as a precondition that the Applicant must satisfy before filing an Application with the Council. Towards that end, it was notable that many of the exhibits the Applicant had provided to support its attempt at negotiations had come after it had filed its Application (A) and Memorial.

23. H.E. Al Mansoori affirmed that the Applicant had made no attempt to negotiate the real dispute with the Respondents, and had not even attempted to fulfil the said Article 2(g) requirement when filing its Application (A). He noted that, in fact, the Applicant conceded on page 7 of its Memorial (A) that it had not attempted to enter into negotiations in relation to the matters it now raised before the Council, taking the position instead that the severance of diplomatic relations had made negotiations "futile."

24. Indicating that the Applicant appeared to have realized, belatedly, that that argument did not satisfy the precondition to negotiate, H.E. Al Mansoori highlighted that in its Response, the Applicant had fundamentally changed its position, and now asserted that it had in fact attempted negotiations. It was notable, however, that despite exhibiting dozens of media reports containing the Applicant's supposed official statements, the Applicant had only illustrated that it had made vague public statements to third party States about its willingness to negotiate. However, the Applicant had not proved that it had demonstrated that willingness to the Respondents and the Applicant had never made a formal request to initiate negotiations. H.E. Al Mansoori maintained that the issuance of empty statements regarding the Applicant's "willingness" to negotiate was insufficient.

25. H.E. Al Mansoori emphasized that, as the Party asserting jurisdiction, the burden fell on the Applicant to demonstrate that it had satisfied the requirement of negotiations by making an attempt to negotiate, consistent with the ICJ Judgment in the said case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*. The Applicant had failed to do so, however.

26. This led H.E. Al Mansoori to bring to the Council's attention to another clear contradiction in the Applicant's submission. He noted that the first ground of the Respondents' preliminary objection with respect to Qatar's Application (A) rested on the fact that the real issue of this dispute fell outside of international civil aviation. The Applicant disagreed with them in that regard. However, at the same time, the Applicant's response in relation to the question of whether it had fulfilled the precondition of negotiations was to point to vague statements relating to the larger dispute at hand. H.E. Al Mansoori reiterated that, indeed, none of the exhibits that the Applicant had pointed to as evidence of its attempts at negotiations touched on the Respondents' airspace restrictions.

27. H.E. Al Mansoori queried why, if the real issue of the dispute was the Respondents' airspace restrictions, did the evidence that the Applicant relied upon as supposedly demonstrating its attempts at negotiation of those airspace restrictions contain statements *only* as to the larger dispute. He underscored that if the real issue of the dispute was indeed the said airspace restrictions, as the Applicant would have the Council believe, then the Applicant had failed to fulfil the requirement of negotiations under Article 84 of the Chicago Convention.

28. H.E. Al Mansoori observed that the Applicant had further attempted to confuse the issue by referring to discussions held in entirely unrelated fora, for example, to proceedings before the World Trade Organization (WTO), which related to a different dispute. He underscored that, consistent with the views expressed by the ICJ in the said case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, such discussions did not satisfy the requirement of prior negotiations because they did not relate to what the Applicant claimed was the subject of its Application (A) before ICAO.
29. H.E. Al Mansoori noted that the Applicant had also asserted that the proceedings of the the Extraordinary Session of the Council on 31 July 2017, held pursuant to Article 54 n) of the Chicago Convention, were evidence that there had been negotiations between the Parties within the framework of ICAO. He emphasized that, as the Council Members well knew, those Article 54 n) proceedings had been rightfully confined to discussions regarding the safety of civil aviation in the context of the contingency arrangements in the Gulf region. H.E. Al Mansoori affirmed that such discussions could not, under any characterization, constitute an attempt by the Applicant to negotiate for purposes of satisfying the requirement of prior negotiations under Article 84 of the Chicago Convention. He noted that while the Applicant had also pointed to letters that it had submitted to the President of the ICAO Council and the ICAO Secretary General, arguing that it had indeed attempted negotiations, none of the letters it had referred to included any request to the Respondents to negotiate on the said airspace restrictions. Indeed, those letters had not even been addressed to the Respondents.
30. H.E. Al Mansoori indicated that, in these circumstances, the Respondents respectfully submitted that the Council should conclude that the Applicant had failed to fulfil the precondition of negotiations required by Article 84 of the Chicago Convention and, further, that it had failed to comply with Article 2(g) of the *Rules for the Settlement of Differences (Doc 7782/2)*. As a consequence, the Respondents respectfully submitted that the Council should decline to proceed with this matter further.
31. H.E. Al Mansoori underscored that even if the Applicant were to affirm today its willingness to undertake negotiations with the Respondents, it would be too late for the present case. Maintaining that any such request for negotiations had to occur before the Application was filed with ICAO, he reiterated that the law on that question was crystal-clear.
32. H.E. Al Mansoori indicated that, for all of the foregoing reasons, the Respondents respectfully requested that the Council accept and uphold their preliminary objection with respect to Qatar's Application (A) and therefore decide: i) that it lacked jurisdiction to adjudicate the claims raised by Qatar's Application (A); or ii) in the alternative, that Qatar's claims were inadmissible.
33. On behalf of Bahrain, Egypt and the United Arab Emirates, H.E. Hany EL-Adawy (Egypt) addressed the preliminary objection filed by them, as Respondents, in response to Qatar's **Application (B)** under Article II, Section 2 of the Transit Agreement. He prefaced his remarks with an affirmation of the Respondents' utmost respect for ICAO, the Council, and the international rules and principles governing civil aviation and their commitment to cooperating with all parties, including Qatar, under the auspices of ICAO, to ensure the safe and secure operation of civil aviation.
34. H.E. EL-Adawy underscored that the grounds for the preliminary objection explained earlier in respect of the Chicago Convention applied with equal force to the Transit Agreement. He reiterated that the first ground of the preliminary objection rested on the fact that the real issue of this dispute, the Applicant's illegal actions, fell outside the scope of ICAO's mandate, and that the second ground of the preliminary objection rested on the fact that the Applicant had not satisfied the precondition to make a genuine attempt at negotiations.
35. H.E. EL-Adawy took this opportunity to re-emphasize that the central issue in the current crisis was the Applicant's ongoing support for extremism and terrorism and its continued interference in the

internal affairs of other States. He reiterated that the Applicant's policies represented a threat not only to the security and stability of Arab States, but also to many other countries.

36. In noting that at this stage the Council was only called upon to decide whether it could properly exercise jurisdiction over the merits of the case, as they pertained to the real issue, H.E. EL-Adawy reiterated that if the Council were to accept jurisdiction and proceed to the merits of the case, then it would be acting inconsistently with international law and contrary to the expectations of States, because it would be required to pass judgment on issues outside its jurisdiction.

37. H.E. EL-Adawy underscored that the Applicant had overstated the breadth of the Council's jurisdiction when it claimed in its Response that "the Council has never refused jurisdiction in any case brought before it.". He emphasized that the Council had only rejected preliminary objections challenging its ability to hear a disagreement on three occasions, and that it had never issued a final decision on the merits. H.E. EL-Adawy noted, by contrast, that since the founding of ICAO, the Council had never asserted jurisdiction over a counter-measures defence. He indicated that the Respondents respectfully submitted that ICAO should not be involved in setting this dangerous precedent today and accordingly respectfully requested the Council to uphold their preliminary objection with respect to Qatar's Application (B) on the grounds that: i) the Council lacked jurisdiction to adjudicate the claims raised by Qatar's Application (B); or ii) in the alternative, that Qatar's claims were inadmissible.

*Presentation by the Applicant's Authorized Agent of its oral arguments in response to the Respondents' oral arguments*

38. H.E. Jassem Bin Saif AlSulaiti (Qatar) prefaced his presentation with an expression of Qatar's gratitude to ICAO for its efforts and service to ensure the safety and security of international civil aviation, and for assuming its responsibilities by convening the present Council meeting to consider Qatar's requests regarding the aviation restrictions imposed on it by Saudi Arabia, the United Arab Emirates, Bahrain and Egypt on 5 June 2017.

39. H.E. AlSulaiti underscored that the purpose of the meeting was to discuss the Respondents' preliminary objections and not the merits of the claims made by Qatar in its Application (A) and Application (B) and their corresponding Memorials filed with ICAO on 30 October 2017. He emphasized that the current hearing was simply to discuss the jurisdiction of the Council, which was set out in Article 84 of the Chicago Convention and Article II, Section 2 of the Transit Agreement. Under those agreements, the jurisdictional clause was simple: the Council had jurisdiction to decide the case if there was any disagreement relating to the interpretation or application of the Chicago Convention or the Transit Agreement which could not be settled by negotiation. There was nothing under those agreements or in the *Rules for the Settlement of Differences* (Doc 7782/2) which set any other limits on, or otherwise circumscribed, the assumption of jurisdiction by the Council. The Council was simply being asked to undertake a function with which it had been constitutionally mandated.

40. H.E. AlSulaiti recalled that, on 5 June 2017, without any previous warning and without any effort to negotiate with Qatar, the said four States, acting in concert and in coordination, had taken what Qatar considered to be a series of brutal and unprecedented measures against it, which included the prevention of Qatari-registered civil aircraft from transiting their airspace and from landing for non-traffic purposes. He asserted that those actions explicitly violated a number of provisions of the Chicago Convention and the Transit Agreement as set out in Qatar's Application (A) and Application (B) and their corresponding Memorials, which had been filed with ICAO on 30 October 2017.

41. H.E. AlSulaiti noted that by letter dated 19 March 2018, the Respondents had presented to ICAO their Statements of preliminary objections to Qatar's Application (A) and Application (B). Qatar had responded on 30 April 2018. The Respondents subsequently had filed so-called "Rejoinders" on 12 June 2018. Before proceeding further, H.E. AlSulaiti wished to place on record that Qatar believed that it had

been procedurally and substantively prejudiced by virtue of the fact that the Respondents had been permitted to file the so-called “Rejoinders” under Article 7(1) of the *Rules for the Settlement of Differences* (Doc 7782/2). As stated in Qatar’s e-mail of 25 May 2018 to Council Delegations, Qatar was equivalent to the defendant for the purposes of consideration of the Respondents’ Statements of preliminary objections, yet the said Rules had been interpreted to allow the Respondents to file Rejoinders, which were the last written pleadings permitted following the filing of the Counter-memorials. The Respondents’ Counter-memorials had not yet been submitted, however.

42. H.E. AlSulaiti noted that since the Parties were making a single presentation for both of the said Applications for convenience and to save time, references in his current presentation to certain excerpts or texts were to Qatar’s Application (A), the Respondents’ Statement of preliminary objections (A), Qatar’s Response (A) and the Respondents’ so-called “Rejoinder” (A). He indicated that they were to be taken as cross-read with the comparable provisions in the pleadings for Application (B).

43. H.E. AlSulaiti emphasized that essentially, the crux of the Respondents’ arguments was that the Council did not have jurisdiction, or alternatively, that Qatar’s claims were inadmissible. He indicated that, at times, the Respondents confused the two concepts in their Statement of preliminary objections. They claimed that their actions constituted lawful counter-measures, and that that would require the Council to determine issues forming part of a wider dispute between the Parties. The Respondents stated that there was a body of law outside of the Chicago Convention which afforded them a dispositive defence to the claims of Qatar. The basis of the alleged lack of jurisdiction essentially boiled down to an allegation that “While the Council has considerable expertise in the technical aspects of aviation enshrined in the Chicago Convention, it is not well-suited or well-equipped to handle disputes of a wider nature ...”(cf. Statement of preliminary objections, executive summary, paragraph 4). Additionally, the Respondents claimed that Qatar had failed to meet the condition of negotiation.

44. H.E. AlSulaiti underscored that although the Respondents claimed that, in determining the issues raised by Qatar under the Chicago Convention or the Transit Agreement, the Council was prevented or circumscribed from considering any issues falling outside of the Convention or Agreement, they did not explain or explain satisfactorily why that should be so. He highlighted that most legal disputes arose in a wider context and that their determination could also take into account other issues relevant to the determination of the legal question placed before the tribunal. In adjudicating issues, tribunals, even those with subject matter jurisdictional clauses like the Council, were not placed in blinkers.

45. H.E. AlSulaiti affirmed that, as Qatar had pointed out in its Response to the said Statement of preliminary objections, the Council had jurisdiction as long as the question for decision related to the interpretation or application of the Chicago Convention or the Transit Agreement and could not be settled by negotiations.

46. H.E. AlSulaiti underscored that, as Qatar has shown in its said Responses, the *Rules for the Settlement of Differences* (Doc 7782/2) did not permit the Council to consider issues of *admissibility* at the preliminary objection stage. Article 5(1) of the Rules, adopted by the Council to govern its consideration of disputes under Article 84 of the Chicago Convention and Article II, Section 2 of the Transit Agreement, quite clearly only allowed a preliminary objection to be filed as to jurisdiction.

47. H.E. AlSulaiti averred that the reference made in paragraph 15 of the Respondents’ “Rejoinder” to Article 36(6) of the *Statute of the International Court of Justice* (ICJ) was intended to divert the Council’s attention from the central issue. The Article simply stated that in the event of a dispute as to whether the Court had jurisdiction, the matter shall be settled by the decision of the Court itself. It had nothing to do with admissibility.

48. H.E. AlSulaiti noted that it was quite remarkable how the Respondents attempted to explain away the recent decision of the Council in the case *Settlement of Differences: Brazil and United*

*States (2016)*. He emphasized that if Brazil had not wished to make the point that the Council should not address issues of admissibility at the preliminary objection stage, then that had been Brazil's prerogative. Qatar now raised the matter. H.E. AlSulaiti underscored that contrary to what had been alleged by the Respondents, there was no confirmation by the Council that it could have ruled on admissibility at that stage. In fact, for the Council, the matter to be decided at the preliminary objection stage was only jurisdiction, which was why the Council had not even discussed the arguments on extinctive prescription in the said case. He maintained that it was the Respondents who were wrong in law on that point.

49. H.E. AlSulaiti recalled that in paragraph 24 of the "Rejoinder", the Respondents stated that Qatar presumably intended to invite the Council to join the Respondents' preliminary objections to the merits in both Applications. Underscoring that the Respondents' presumption was wrong, he highlighted that in paragraph 214 of its Response, Qatar invited the Council to declare that it had no competence at the preliminary objection stage to consider the claims, arguments and submissions of the Respondents on admissibility.

50. H.E. AlSulaiti observed that the statement made by the Respondents in paragraph 26 of their Rejoinder that Article 5(4) of the *Rules for the Settlement of Differences* (Doc 7782/2) did not give the Council the option of joining preliminary objections to the merits was correct. He emphasized, however, that under Article 5(1) of the Rules, preliminary objections were to be on issues of jurisdiction, not issues of admissibility.

51. H.E. AlSulaiti averred that, given Qatar's arguments, it was disingenuous and trickery for the Respondents to claim, as they did in paragraph 14 of their Rejoinder, that Qatar did not dispute a Respondent's right to file an objection on grounds of admissibility under ICAO's Rules. Qatar's response was that although such an objection could be presented, the Council could not consider it at this stage.

52. H.E. AlSulaiti indicated that, as had been pointed out in paragraph 17 of Qatar's Response, although the ICJ could rule on admissibility at the preliminary objection stage, the ICJ had indicated in its Judgment in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* that under its Rules, where the Court found that an objection did not possess an exclusively preliminary character, it would be dealt with at the merits stage (cf. Preliminary Objections, Judgment, ICJ Reports 2008)

53. H.E. AlSulaiti underscored that the Respondents' claim that the real issue before the Council was something different from their actions which were not in conformity with the Chicago Convention and the Transit Agreement was wrong and misleading. He averred that the Respondents had not understood or had ignored the case law. H.E. AlSulaiti stressed that the object of Qatar's claim, or the real issue for the Council to determine, was whether or not the Respondents had violated the Chicago Convention and the Transit Agreement, and to declare that accordingly. He emphasized that, as Qatar had pointed out in paragraph 34 of its Response, the fact that a legal dispute had wider underlying elements did not mean that such a dispute fell outside the jurisdiction of the Council or was inadmissible. H.E. AlSulaiti recalled that many of the cases under Article 84 of the Chicago Convention or the Transit Agreement previously referred to the Council had had wider underlying political issues or other non-aviation problems, and that in no case had the Council since its inception declined jurisdiction over it.

54. H.E. AlSulaiti highlighted that, as stated by the ICJ in its Judgment in the *United States Diplomatic and Consular Staff in Tehran* case, no provision of its Statute or Rules contemplated that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute had other aspects, however important (cf. ICJ Reports 1980).

55. H.E. AlSulaiti emphasized that, although the Respondents would like the Council to believe otherwise, there was no provision in the Chicago Convention or the Transit Agreement which stipulated that the Council should decline jurisdiction over a disagreement on their interpretation or

application merely because there were other aspects to the dispute before the Council, or that the decision could or must take into account elements which did not fall completely within the parameters of civil aviation. He underscored that the violation of the Chicago Convention and the Transit Agreement was not a marginal or incidental matter before the Council.

56. H.E. AlSulaiti averred that the reference made by the Respondents in their Statement of preliminary objections and paragraph 42 of their Rejoinder to the *Chagos Islands* arbitration case did not help them. They had helpfully pointed out that the Tribunal had stated that where a dispute concerned the interpretation or application of the Convention, the jurisdiction of a court or tribunal extended to making such findings of fact or ancillary determinations of law as were necessary to resolve the dispute presented to it. H.E. AlSulaiti emphasized that that was exactly what Qatar was requesting the Council to do.

57. H.E. AlSulaiti underscored that the assertion made by the Respondents in paragraph 44 of their Rejoinder that bodies such as the Council may not encroach upon the jurisdiction which other bodies may have over the real dispute, which was related to the so-called “principle of specialty”, was wrong in law and unsubstantiated. He indicated that as Qatar had addressed that issue in paragraphs 49 to 65 of its Response to show that that principle espoused by the Respondents could not apply to prevent the Council from assuming jurisdiction, he would not repeat the arguments here in the Council. H.E. AlSulaiti indicated that it would mean that no other Specialized Agency or other body would have jurisdiction to consider a matter as long as there was some connection, incidental or otherwise, with the functions of another organization. The net result would be a complete denial everywhere of the justiciability of Qatar’s grievances. It would also render invalid the constitutional mandate under the Chicago Convention and the Transit Agreement to settle differences or disagreements relating to their interpretation and application.

58. H.E. AlSulaiti averred that the point which the Respondents tried to make about the use of the words “political issues” was, in the main, one of pure semantics. Noting that the words “wider issues”, “wider disputes”, “political issues”, “broader issues”, “wider underlying elements”, “broader questions”, “other aspects” and so on were all used, he underscored that, fundamentally, whatever terminology was used, the law was still the same.

59. H.E. AlSulaiti observed that all of the Respondents’ arguments as to why the Council could not answer the legal question put to it boiled down to one thing. In the Statement of preliminary objections, executive summary, paragraph 3, the Respondents claimed that resolution of Qatar’s claims would require the Council to determine issues forming part of the wider dispute between the Parties. They stated that the Council would have to determine, amongst other things, whether Qatar had breached its relevant counter-terrorism obligations under international law. In paragraph 4, they alleged that the Council did not have jurisdiction to adjudicate issues as to whether Qatar had breached its other obligations under international law. In particular, the Respondents stated in paragraph 58 of their Rejoinder: “Such a factual and legal assessment requires considerable expertise on technical and legal matters. The Council has considerable specialist expertise in the technical aspects of aviation enshrined in the Chicago Convention. But it is not well-suited or equipped to handle disputes about violation of sovereignty, breach of the principle of non-intervention, subversion and terrorism”. More or less the same statement was repeated in the Respondents’ Statement of preliminary objections, executive summary, paragraph 4, and paragraph 69; and in their Rejoinder, executive summary, paragraph 5.

60. H.E. AlSulaiti stressed that while it was clear that most of the Respondents’ arguments boiled down to the rationale that the Council was not well-suited or well-equipped to answer the legal question put to it or to assume its legal mandate, that was not a valid argument in law or in fact. Yet that was what the Respondents were, in effect, having as the conclusion of their reasoning and arguments.

61. In emphasizing that Qatar had the utmost respect for the Council, H.E. AlSulaiti indicated that although it might or might not agree with every decision of the Council, it had confidence in the ability of the Council and the Representatives to answer the legal questions put to them. He recalled that the Group



of Experts established to draft Rules for the Settlement of Differences in the 1950's had been of the view that: "If Council decides to hear a case arising under Article 84 [of the Chicago Convention] which presents problems of legal complexity or requires special knowledge of economic or air transport matters on the part of the Council, it is open for each State member of the Council to designate, temporarily, a legal, economic or other expert as Representative of that State on Council during the period or on the occasions where the contemplated case under Article 84 is being dealt with."

62. Further, as to the supposed difficulty the Council Representatives would face if the Respondents would put forward a defence that they had instituted lawful counter-measures, Qatar believed that, based on the documents which the Respondents had unfortunately produced as exhibits and the statements they had made in their Statements of preliminary objections and Rejoinders, the matter would be one of the easiest for the Council to decide at that session when it would examine the merits of the two cases.

63. H.E. AlSulaiti underscored that, whether or not Council Representatives believed that statement, the fact was that the assessment could only be made after the Respondents' Counter-memorial was presented, which may or may not contain a claim from the Respondents that their actions were lawful counter-measures, and after Qatar replied to whatever defence was put forward by the Respondents. In emphasizing that the Council could not make that assessment now, he noted that that was what the ICJ had been guarding against in its 1972 Judgment regarding the *Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan)*.

64. H.E. AlSulaiti recalled that in that ICJ case India had alleged then that flights of Pakistani aircraft over India was governed by a Special Regime in force between the two States, which was completely outside of the Chicago Convention and the Transit Agreement, and also that India had become entitled under international law or international treaty law outside of those two agreements, to terminate or suspend them. In its Judgment, the ICJ had decided that as long as there was "a dispute of such a character as to amount to a 'disagreement ... relating to the interpretation or application' of the Chicago Convention or of the related Transit Agreement ... then *prima facie* the Council is competent. Nor could the Council be deprived of jurisdiction merely because considerations that are claimed to lie outside the Treaties may be involved, if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question." (cf. ICJ Reports 1972, p. 61, paragraph 27). The Court had gone on to state that "The fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, – otherwise parties would be in a position themselves to control that competence, which would be inadmissible." (cf. ICJ Reports 1972, p. 61, paragraph 27). Thus the competence or jurisdiction of the Council must depend on the character of the dispute submitted to it and on the issues raised, not on those defences on the merits or other considerations, which would become relevant only after the jurisdictional issues had been settled.

65. H.E. AlSulaiti emphasized that although the Respondents had tried to explain away the importance of that ICJ Judgment, they could not hide from the plain, clear wording of the Court. They could not claim that the Council had no jurisdiction because they intended to raise a defence of counter-measures at the stage of the merits. They could not bring forward a defence, any defence, on the merits so as to deny jurisdiction. The Council had not seen the Respondents' Counter-memorial and Qatar's reply, and it could not assume that it had no jurisdiction because of issues which might be in there.

66. Further, all those arguments of the Respondents went to admissibility, not jurisdiction, and should be dismissed at this stage.

67. The Respondents kept claiming that the actions they had taken were lawful counter-measures. They were not.

68. On the issue of the negotiations, Qatar had made it clear that the threshold to establish jurisdiction was quite low.

69. H.E. AlSulaiti underscored that compromissory clauses such as, or similar to, Article 84 of the Chicago Convention or Article II, Section 2 of the Transit Agreement were not uncommon. Qatar believed, and reiterated, that the question as to the date when the condition of negotiation must be fulfilled was not definitively settled in law, as prior to the *Racial Discrimination* case, there had been a long string of cases, going back to 1924 right through to 2008, to the effect that any initially unmet condition, including for jurisdiction, may be fulfilled at the time the Court rules, as otherwise the Applicant would be entitled to initiate fresh proceedings, which would not be in the interests of sound administration of justice. The one case that went against the grain was the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* case, which had a strong dissenting opinion by five judges (cf. Preliminary Objections, Judgment, ICJ Reports 2011, p. 70, paragraph 160).

70. Recalling that Qatar had mentioned in its said Response that none of its efforts to negotiate with the Respondents had been fruitful, H.E. AlSulaiti indicated that the core issue before the Council was Qatar's request that it determine whether the Respondents had violated the provisions of the Chicago Convention and the Transit Agreement. In so doing, the Council was free, as the Respondents had pointed out in paragraph 42 of their Rejoinder, to make such findings of fact or ancillary determination of law as were necessary to resolve the dispute presented to it. For example, if the Respondents would keep their promise to defend their actions by saying that their counter-measures were valid, then the Council was not prevented from considering elements which would go to a determination of the question. Nor was it an argument in law or in fact to say that the Council was ill-suited or ill-equipped to do so.

71. H.E. AlSulaiti underscored that the issue of negotiations in the two cases now under consideration must be considered in the context that the Respondents had broken off diplomatic relations with Qatar at the same time as they had instituted the said measures. They had acted then, and had continued to act, in concert and in coordination with each other. The Respondents had refused to negotiate with Qatar, instead presenting non-negotiable demands and principles, which if accepted, would render Qatar no longer a sovereign nation. H.E. AlSulaiti averred that it was therefore self-serving for the Respondents to claim that Qatar did not negotiate the aviation aspects with them, when in fact all the other coercive measures had been taken jointly as one package.

72. H.E. AlSulaiti emphasized that Qatar had nevertheless presented evidence that it had negotiated or attempted to negotiate with the Respondents, through the mechanism of ICAO, the very subject matter of the violations of the Chicago Convention and the Transit Agreement. Qatar was seeking to work with the Respondents through ICAO to find a solution to the measures which they had taken. He recalled that when Qatar had taken the matter to the Council under Article 54 n) of the Chicago Convention, the Respondents had asked the Council to recognize that the Parties were cooperating and to encourage them to cooperate further. H.E. AlSulaiti noted that the United Arab Emirates had indicated that the ICAO MID Regional Office had coordinated multiple meetings to review the contingency measures in the Gulf region and to discuss additional proposals. Numerous Representatives had spoken of the need for the Parties to "*continue*" to cooperate, or negotiate, or dialogue, or discuss. The Council had encouraged all Parties to continue their collaboration. Contrary to the Respondents' assertion, in carrying out those negotiations through the mechanism of ICAO, Qatar did not have to indicate that they were under Article 84 of the Chicago Convention. Discussions and negotiations on the Respondents' aviation restrictions had taken place in ICAO. If the other Parties had not responded then in a manner to negotiate in good faith and to resolve the aviation measures taken against Qatar, Qatar could not be faulted for that.

73. H.E. AlSulaiti noted that the multiple ICAO meetings held in the Gulf region had also been to seek solutions to mitigate the effects of the coercive measures taken by the Respondents by preventing Qatari-registered aircraft from overflying their airspace.

74. With regard to the WTO, H.E. AlSulaiti recalled that although Qatar had written to three of the Respondents in Application (A) and to two of the Respondents in Application (B) requesting consultations on the prohibition of Qatari-registered aircraft from accessing their airspaces and landing at their airports, the answer from the three States had been a flat “no”. So within another multilateral framework Qatar had sought unsuccessfully to engage the Respondents on the subject matter of the specific dispute before the Council today.

75. H.E. AlSulaiti recalled that under international jurisprudence, it was not necessary for Qatar to have referred specifically to the Chicago Convention or the Transit Agreement, as long as the negotiations related to the subject matter of those Agreements.

76. With respect to the use of good offices of the Emir of Kuwait and certain other States, H.E. AlSulaiti noted that despite the expressions of willingness by Qatar to negotiate a solution, the only reaction on the part of the four Respondents had been to issue non-negotiable demands, some of which would be an affront to the sovereignty of any State.

77. H.E. AlSulaiti highlighted that among the demands which the Respondents stated were non-negotiable were to: immediately shut down the Turkish military base; shut down Al Jazeera and its affiliate stations; align Qatar’s military, political, social and economic policies with the Gulf and Arab countries; shut down all news outlets funded directly and indirectly by Qatar; respond within 10 days of the list being submitted to Qatar, or the list would become invalid; and consent to monthly compliance audits in the first year, quarterly audits in the second year and annual audits in the following 10 years.

78. H.E. AlSulaiti emphasized that Qatar had made clear that it was open to negotiations and had attempted negotiations, that it would not negotiate on items which would derogate from its sovereignty, but was open to discuss all other issues in accordance with international law.

79. H.E. AlSulaiti indicated that Qatar had noted with particular interest the statement in paragraph 137 of the Respondents “Rejoinder” that Qatar had not made any genuine attempt to negotiate through other channels, such as via Kuwait and the United States. He considered that that was quite an astonishing assertion, which utterly ignored the evidence produced by Qatar in its various exhibits attached to its Response. H.E. AlSulaiti recalled that the then US Secretary of State Rex Tillerson had said on 19 October 2017 that “It is up to the leadership of the quartet when they want to engage with Qatar because Qatar has been very clear – they’re ready to engage.”

80. H.E. AlSulaiti stressed that under these circumstances, it was clear that negotiations were futile and the Parties were deadlocked.

81. H.E. AlSulaiti underscored that Qatar clearly had met the requirement for negotiations under Article 84 of the Chicago Convention and Article II, Section 2 of the Transit Agreement. He reiterated that Qatar had been subjected to a brutal campaign from the four States, targeting its civil aviation and aiming to cause direct and premeditated damage to Qatar and its airlines. The campaign was still going on for a year. The Respondents refused to allow Qatari-registered aircraft to fly over or land in their territories, in violation of numerous provisions of the Chicago Convention and the Transit Agreement. They acted with complete impunity.

82. H.E. AlSulaiti recalled that the drafters of the Chicago Convention had given the Council a noble and sacred function to decide upon disagreements between States relating to the interpretation or application of those two instruments. That duty became even more important to protect Member States from aggressive and arbitrary actions by other Member States. The Council was elected by all of the Member States of ICAO to work for the global good of civil aviation. That was the vision of the creators of this Organization.

83. H.E. AlSulaiti recalled Article 4 of the Chicago Convention, which indicated that each Contracting State agreed not to use civil aviation for any purpose inconsistent with the aims of the Convention. He underscored that ICAO contracting States looked to the Council Members to preserve the integrity of the Chicago Convention and the Transit Agreement, and to set an example to the other Contracting States, not to violate themselves those treaties.

84. In concluding, H.E. AlSulaiti indicated that Qatar respectfully requested the Council to accept its submissions at paragraphs 214 and 215 of its Response, including to reject the preliminary objection of the Respondents in both Application (A) and Application (B).

85. After a brief recess to enable consultations, the Respondents and the Applicant presented the following rebuttals to each other's oral arguments, all of which were duly noted and recorded for the minutes of the meeting.

#### *Respondents' rebuttal*

86. Speaking on behalf of the four Respondents on this very important matter which raised novel issues for the Council, Mr. Georgios Petrochilos (Legal Advisor, Bahrain Delegation) noted that the latter had heard arguments from the Applicant on a number of points. Rather than reiterating the Respondents' procedural concerns at this stage, he focused only on three of the Applicant's points. He started with its argument, or perhaps lack of argument, on what was the real issue in dispute. As the Council would have seen, in the pleadings, the term "real issue in dispute" was a legal term of art. Mr. Petrochilos noted that there were three main propositions, the first of which was that it was within the power of the Council to address and assess objectively the object of the dispute. Affirming that that was indeed a responsibility of the Council, he underscored that it was a responsibility that went hand-in-hand with the power of the Council to determine the existence and the scope of its jurisdiction. The second proposition – and it followed from the first one like the night follows the day – was that in so doing the Council was not bound by the characterizations made by the Parties, and in particular, by the characterizations that were made by one Party, in the present case, the Applicant. The third proposition was that the object of the dispute consisted of the issues that arose objectively from the pleadings of both sides.

87. In now applying that test to the facts of the cases, Mr. Petrochilos indicated that when one looked at Qatar's Applications one saw an attempt – and Council had heard it today – to frame the dispute as one under ICAO international treaties. Even so, it was hard to keep up that pretense in the pleadings, and so the Applicant had had to admit, as in fact it did, that the Respondents had adopted a set of measures which included the severance of diplomatic and consular relations with the Applicant and various other restrictions placed on the latter. Mr. Petrochilos recalled that the Applicant called those measures "actions", in the plural, and that it admitted that they had several "aspects". He noted that the position was then made clearer in the Respondents' pleadings, which described the main measures, although very briefly. The pleadings also referred to the stated position of the Respondents from the outset of the measures that the latter were being adopted as lawful counter-measures. Those had been taken, as the Council had heard, in the face of the Applicant's multiple grave and persistent breaches of international obligations essential to the security of the Respondents and the region. Mr. Petrochilos underscored that the Applicant did not dispute that counter-measures were what the Respondents intended to take, nor that the Respondents were entitled to bring that defence and have it determined before any court or tribunal that had proper jurisdiction to adjudicate the real dispute. Indeed, the Applicant conceded in its Response, and had stated the same thing during the present meeting, that in order for the Council to decide on the merits of the case the Council would need to determine "on the facts and in law whether the Respondents have met the conditions for lawful counter-measures". Mr. Petrochilos underscored that that would require the Council to conduct a forensic factual enquiry, in proper judicial fashion, into the Applicant's illegal activities. He respectfully submitted that that left the Council in a place clearly outside the Chicago Convention and the Transit Agreement.

88. In elaborating thereon, Mr. Petrochilos indicated that, on the merits of the case the Council would first have to determine whether the Applicant had breached or had not breached a number of international obligations that, as it admitted, had, in the main, nothing whatever to do with civil aviation. He queried how the Council was to assess the long list of the Applicant's grave misdeeds which the Respondents said were not related to civil aviation, the Chicago Convention, or to the Transit Agreement, and what legal standard the Council would apply. Mr. Petrochilos noted that, while the Council would then have to determine whether the four Respondent States were entitled to react to the Applicant's breaches by taking a set of counter-measures to induce it to come back to the fold of legality, the Chicago Convention and the Transit Agreement could not help the Council answer that question. He underscored that it was crucial to understand that this forensic and legal examination would come before the Applicant's complaints under the Chicago Convention and Transit Agreement. Why was that? because – and this was uncontroversial between the Parties – counter-measures precluded any question of unlawfulness at the threshold. Mr. Petrochilos emphasized that the Council would not get anywhere near the Chicago Convention or the Transit Agreement, which were the texts that granted it jurisdiction, until it had fully considered and decided a host of other issues on which the Chicago Convention and the Transit Agreement had nothing whatever to say. He averred that one was unable to see how the Council might uphold its jurisdiction in those circumstances. Mr. Petrochilos reiterated that this was not a civil aviation dispute but rather a dispute about fundamentally different and broader duties of international law. He underscored that those duties were neither ancillary, as the Applicant had said, nor incidental issues on any possible view, but rather “the core of the dispute”, to quote the *Chagos Islands* ICJ decision.

89. Turning to the second point, the Applicant's argument about the preliminary nature of the Respondents' objections, or otherwise, Mr. Petrochilos recalled that the *Rules for the Settlement of Differences* (Doc 7782/2), at Article 5(1), characterized a preliminary objection as a question as to “the jurisdiction of the Council to handle the matter presented by the Applicant.”. Thus a preliminary objection might concern either, firstly, whether the Council had jurisdiction at all to consider the Application, or secondly, whether the Council should, in the circumstances of the case, exercise a jurisdiction that it had. Mr. Petrochilos noted that the first type of objection was one of jurisdiction, while the other type of objection could perhaps, in legal theory, be called one of admissibility. He averred that those distinctions did not matter for the Council's purposes as both of those types of objection were covered by the wording of Article 5(1). They were points as to the jurisdiction of the Council to handle the dispute, whether it had jurisdiction or whether it should exercise it. Mr. Petrochilos indicated that, in any event, there was not much daylight between the two types of objection because both, if successful, precluded the consideration of the substance of the dispute. They operated at the threshold.

90. Mr. Petrochilos highlighted that Article 5(4) of the said Rules provided that where preliminary objections had been lodged, as in the present case, the Council *shall* decide the question as a preliminary matter. Recalling that the ICJ had held “that in principle a Party raising preliminary objections is entitled to have them resolved preliminarily”, he underscored that all the said Rules were doing was expressing a general procedural principle. Mr. Petrochilos underscored that the Council had always resolved preliminary objections that it had characterized as going to its jurisdiction in a preliminary decision and had never joined them to the merits of the dispute for consideration later. The only circumstances in which the Council had joined preliminary objections to the merits was where the objection did not possess “an exclusively preliminary character”, which might mean either that the Council did not have enough information to properly evaluate the objection at that stage or that it was impossible to rule on the preliminary objection separately on its own without prejudging the merits. Mr. Petrochilos stressed that at present the Council was not in either one of these territories. The Respondents were not asking the Council to validate the lawfulness of the measures they had taken, nor were they asking the Council to condemn the Applicant for its severely unlawful conduct. They were simply asking the Council to recognize the real object of the dispute between the Parties and to recognize and declare on that basis that it did not possess jurisdiction to consider the substance of this dispute.

91. The last point that Mr. Petrochilos wished to make on this issue of the Respondents' primary position was that both of their preliminary objections went to the Council's jurisdiction i.e. to the issue of whether the Contracting States, including the four Respondent States, had or had not consented to have this dispute adjudicated by the Council. In the interest of time, he picked that point up only by reference to Article 84 of the Chicago Convention, in which the Contracting States had consented to the Council's jurisdiction to adjudicate disputes which firstly related to "the interpretation or application of this Convention". It was thus necessary for Council Members to satisfy themselves that the real dispute that was objectively before them was about the interpretation or application of the Chicago Convention. Secondly, it was necessary for them to satisfy themselves that this was a dispute that could not be settled by negotiation. Those were jurisdictional requirements enshrined in Article 84 of the Convention.

92. Turning to the requirement of exhaustion of negotiations before an Applicant may commence proceedings, Mr. Petrochilos re-emphasized that Qatar had not fulfilled that precondition. He noted that Article 84 of the Chicago Convention and Article II of Section 2 of the Transit Agreement were formal: they required that the dispute must be one that could not be settled by negotiations. At the risk of stating the obvious, Mr. Petrochilos underscored that that was not an option at the Applicant's discretion, nor was it a mere formality. He recalled that the ICJ, which was the appeal body in respect of the Council's decisions, required an Applicant to make at least "a genuine attempt to resolve the disagreement through negotiations and that attempt and these negotiations must take place prior to the filing of an Application". Mr. Petrochilos underscored that an Applicant which commenced legal proceedings first and only thereafter sought to start negotiations fell afoul of that jurisdictional requirement. He noted that there were good policy reasons why the Respondents asked the Council to enforce that precondition, as follows: firstly, that unless the Parties had tried to negotiate and had clearly stated their positions in a formal and appropriate way, the contours of the dispute were not known and it was not possible to see the pathology that had developed in this case. The Council was able to assess the nature and the scope of the dispute only through the exchange of pleadings between the Parties, which the Respondents considered was neither appropriate nor helpful. The second policy reason was that if the Council were to accept jurisdiction on the basis that one can start proceedings first and only then pick up the phone perhaps or send a formal diplomatic correspondence, more importantly and more appropriately, then there would be no motivation for Applicant States to do that which was required of them by the Chicago Convention, and that was not a policy to be encouraged. Thirdly, it was necessary to always bear in mind that judicial resolution was the mechanism of last resort, and that negotiation was the primary method of resolution in international relations. Mr. Petrochilos recalled that the Applicant represented to the Council in its Application (A) and Application (B) that it had not sought to negotiate. It stated in section (g) thereof that "The Respondents did not permit any opportunity to negotiate the aviation aspects ...". Then the Applicant had had to prove that assertion. He noted that that kind of assertion, which was one that went to futility, was a very demanding one which required one, at the very least, to try to commence negotiations. Mr. Petrochilos underscored that when the Respondents had put the Applicant to that point in their pleadings, the latter had changed tack, presumably because it had not been able to sustain its allegation anymore. The Applicant had therefore stated that it had invited negotiations after all.

93. In making two points on that allegation, Mr. Petrochilos averred that as 11 of the statements relied upon by the Applicant during the present meeting post-dated its said Applications, the Council could ignore them. He highlighted that all of the remaining statements were addressed to third parties, for political consumption in the view of the Respondents: they had not been made in the formal fashion of formal correspondence on specific issues. Mr. Petrochilos further emphasized that, in fact, not even in that irregular fashion adopted by the Applicant had the latter even once formulated a specific invitation to negotiate specific complaints that it now claimed to have under the Chicago Convention and the Transit Agreement, and yet the Applicant had admitted in its own Applications that the negotiations would have to concern civil aviation specifically. He underscored that an invitation to negotiations would have been a very straightforward thing to do for any State that resorted to the Council with a genuine complaint within the ICAO system. Any State would know how to do it. That the Applicant had instead

expended its energies on vague political statements addressed to third parties showed that it had no intention to have a genuine negotiation on specific legal rights and obligations.

94. Before closing, Mr. Petrochilos noted that he was authorized to represent to the Council one important factual point: the four Respondent States had heard today for the first time, if they had understood correctly, that the Applicant had invited all of them to negotiate. So far as ICAO-related complaints were concerned, he was authorized to place on record on behalf of the said Respondents that that was incorrect. It had never happened. Unless he could be of further help to the Council under the control of the Respondents' Authorized Agents, that concluded Mr. Petrochilos' intervention.

95. Returning to the point raised regarding the safety of civil aviation, H.E. Al Mansoori (United Arab Emirates) recalled that the Council, at its said Extraordinary Session on 31 July 2017, had successfully addressed the issue of contingency arrangements in the Gulf region. In emphasizing that the Applicant's airports and airspace remained open, he noted that: Qatar Airways alone currently had over 100 aircraft in operation flying to more than 150 destinations worldwide; Qatari-registered aircraft continued to fly in and out of Doha every day; contingency routes had been established through the Respondents' FIRs; and, in addition, landing and overflight options remained available for safety or emergency purposes. H.E. Al Mansoori indicated that it was very regrettable that the Applicant was exploiting ICAO, a very important technical organization, for its political and media campaign purposes.

*Applicant's surrebuttal*

96. H.E. AlSulaiti (Qatar) reiterated that Qatar's sole intention in submitting its Application (A) and Application (B) and their corresponding Memorials to ICAO had been to raise purely technical issues relating to the interpretation and application of the Chicago Convention and the Transit Agreement and not any political issues. He then gave the floor to Mr. John Augustin (Observer, Qatar Delegation).

97. Enquiring whether the Respondents' Legal Advisor had given an additional presentation or a rebuttal, Mr. Augustin noted that whereas his rebuttal was supposed to have addressed issues raised by the Applicant in its oral arguments, his comments had gone well beyond that into a fresh presentation. He underscored that the Applicant had neither been afforded such an opportunity to give an additional presentation nor been prepared to give one, although the Respondents had apparently been prepared to do so.

98. In then commencing his surrebuttal, Mr. Augustin highlighted that approximately one-third of the Respondents' comments had had to do with issues which absolutely went to the merits of the two cases and whether the Applicant supported terrorism or terrorism financing. He pointed out that whereas in the past when the Council has considered similar matters it had drawn a curtain on discussions which touched on the merits of the case, some ten minutes had been spent by the Respondents in commenting on the Applicant's alleged support for terrorism or terrorism financing, which had nothing to do with the matter currently before the Council.

99. In emphasizing that the Applicant had a completely different view from the Respondents on the issue of admissibility of its claims and the *Rules for the Settlement of Differences* (Doc 7782/2), Mr. Augustin indicated that it was completely unable to understand the logic of the Respondents' reasoning with regard to Article 5(1) of the Rules, which clearly stated "If the Respondent questions the jurisdiction of the Council to handle the matter presented by the Applicant, he shall file a preliminary objection setting out the basis of the objection." The Respondents accepted that there was a difference between jurisdiction and admissibility. However, Article 5(1) referred to the jurisdiction of the Council and not to the admissibility of a case. Mr. Augustin emphasized that ICAO's *Rules for the Settlement of Differences* (Doc 7782/2) were different from the ICJ's Rules in that regard.

100. Mr. Augustin highlighted that a completely new philosophy had been presented by the Respondents, namely, that of the “real issue” in the case. He noted that although Qatar’s Application (A) and Application (B) and their corresponding Memorials related purely to the interpretation and application of the Chicago Convention and the Transit Agreement, for some reason the Respondents considered that the Council lacked the jurisdiction to hear and resolve the claims raised therein. Mr. Augustin further indicated that the Respondents had avoided the substantive issue of the *Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan)* on which the ICJ had rendered its Judgment on 18 August 1972, referred to earlier by H.E. AlSulaiti (cf. paragraphs 69 and 70 above). In that Appeal India had claimed that there were issues outside the Chicago Convention and the Transit Agreement which prevented the Council from examining the merits of the case, the same argument being used by the Respondents in the present two cases. He repeated the ICJ’s decision that as long as there was “a dispute of such a character as to amount to a ‘disagreement ... relating to the interpretation or application’ of the Chicago Convention or of the related Transit Agreement ... then *prima facie* the Council is competent. Nor could the Council be deprived of jurisdiction merely because considerations that are claimed to lie outside the Treaties may be involved, if, irrespective of this, issues concerning the interpretation or application of these instruments are nevertheless in question.” (cf. ICJ Reports 1972, p. 61, paragraph 27).

101. Recalling that the Respondents had indicated that they might have a defence on the merits, Mr. Augustin enquired whether that was a promise that they would bring forward the issue of their counter-measures. Noting that neither the Respondents’ defence on the merits nor the Applicant’s reply had been seen by the Council, he underscored that as a consequence the latter could not make a determination that it lacked jurisdiction to hear and resolve the claims raised in Qatar’s Application (A) and Application (B). Mr. Augustin quoted, in this regard, the ICJ’s Judgment in the said Appeal relating to the jurisdiction of the ICAO Council (*India v. Pakistan*) “The fact that a defence on the merits is cast in a particular form, cannot affect the competence of the tribunal or other organ concerned, – otherwise parties would be in a position themselves to control that competence, which would be inadmissible.” (cf. ICJ Reports 1972, p. 61, paragraph 27). Averring that that was the very core of the Respondents’ arguments, he asserted that they wanted, at this stage, to control the competence of the Council for a defence on the merits which no one had seen and to which the Applicant had not replied.

102. Mr. Augustin reiterated that if the Respondents were to put forward a defence that they had instituted lawful counter-measures, then the Applicant considered, on the basis of the evidence referred to earlier, that the matter would be one of the easiest for the Council to decide at that session when it would examine the merits of the two cases. The Respondents, on the other hand, had indicated that it would be extremely difficult as the Council’s hands were tied and it was incapable of handling the matter. The point was that the Council could not make a determination that it had no jurisdiction until it had seen the Respondents’ defence on the merits and the Applicant’s response, which was exactly what the said *Appeal relating to the jurisdiction of the ICAO Council (India v. Pakistan)* had been trying to avoid.

103. Mr. Augustin then referred to the Respondents’ argument, presented in their Statement of preliminary objections, executive summary, paragraph 4, that “While the Council has considerable expertise in the technical aspects of aviation enshrined in the Chicago Convention, it is not well-suited or well-equipped to handle disputes of a wider nature ... including issues regarding terrorism and other matters related thereto.” He recalled that that argument was repeated in paragraph 69 of the said Statement (“The Council, comprised of aviation specialists, has considerable expertise in the technical aspects of aviation enshrined in the Chicago Convention, but is not well-suited or well-equipped to handle disputes about interference, violation of sovereignty, subversion and terrorism.”), as well as in the Respondents’ Rejoinder, executive summary, paragraph 5 (“The Council is not well-suited or equipped to handle disputes of this nature, nor is it competent to do so.”) and paragraph 58 (“Such a factual and legal assessment requires considerable expertise on technical and legal matters. The Council has considerable specialist expertise in the technical aspects of aviation enshrined in the Chicago Convention. But is not well-suited or equipped to handle disputes about violation of sovereignty, breach of the principle of non-intervention, subversion and terrorism.”).



104. Mr. Augustin indicated that he would very much like to see the Respondents go before a proper tribunal or court of law such as the ICJ and claim that it was not well-suited or well-equipped to discuss issues which went to the merits of a case, whatever the type of issue. He averred that it was a novel legal argument and that it had no basis in fact or in law. Recalling the oral arguments presented earlier by H.E. AlSulaiti (cf. paragraph 67 above), Mr. Augustin reiterated that the Group of Experts established to draft Rules for the Settlement of Differences in the 1950's had been of the view that: "If Council decides to hear a case arising under Article 84 [of the Chicago Convention] which presents problems of legal complexity or requires special knowledge of economic or air transport matters on the part of the Council, it is open for each State member of the Council to designate, temporarily, a legal, economic or other expert as Representative of that State on Council during the period or on the occasions where the contemplated case under Article 84 is being dealt with". Affirming that each Council Member State was free to designate temporarily whomever it wished to listen to a particular case, Mr. Augustin stressed that it could not be said that the Council was ill-equipped or ill-suited and that the case should therefore be dismissed upfront at the preliminary objection stage.

105. All of the preceding oral arguments were duly noted and recorded for the minutes of the meeting. In the absence of any direct questions to the Authorized Agents or Legal Advisors of the Applicant and the Respondents by Council Members non-Parties to the disagreements, the Council proceeded to its deliberations on the items.

#### *Deliberations*

106. Taking into account the Council's recent experience with the *Settlement of Differences: Brazil and United States (2016)* (cf. C-DECs 211/9 and 211/10), and the views of the many Council Representatives who had been consulted prior to the present meeting, the Representative of Mexico, in his capacity as Dean of the Council, proposed that the Council proceed directly to a vote by secret ballot in order to take a decision on each of the Respondents' preliminary objections with respect to Application (A) and Application (B), pursuant to Article 50 of the *Rules of Procedure for the Council* (Doc 7559/10).

107. This proposal was seconded by the Representative of Singapore, in his capacity as First Vice-President of the Council, as constituting the most efficient way forward.

108. The Council agreed to the said proposal. Under Article 52 of the Chicago Convention, decisions by the Council required approval by a majority of its Members. In line with the consistent practice of the Council in applying that provision in previous cases, since the Council comprised 36 Members, acceptance of the Respondents' preliminary objections in both Application (A) and Application (B) required 19 positive votes.

109. It was highlighted: that Egypt, Saudi Arabia and the United Arab Emirates were not entitled to vote under Application (A) and that Egypt and the United Arab Emirates were not entitled to vote under Application (B) in accordance with Article 84 of the Chicago Convention and Article 15 (5) of the *Rules for the Settlement of Differences* (Doc 7782/2), which specified that "No Member of the Council shall vote in the consideration by the Council of any dispute to which it is a Party"; that pursuant to Article 66 b) of the Chicago Convention only those Council Member States parties to the Transit Agreement were eligible to vote under Application (B)<sup>1</sup>; and that following the completion of each secret ballot, a staff member from LEB would assist in the tallying of all of the votes cast for the purpose of ensuring its accuracy.

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<sup>1</sup> List of Council Member States parties to the Transit Agreement:

Algeria, Argentina, Australia, China (Hong Kong Special Administrative Region and Macao Special Administrative Region), Congo, Cuba, Ecuador, Egypt, France, Germany, India, Ireland, Italy, Japan, Malaysia, Mexico, Nigeria, Panama, Republic of Korea, Singapore, South Africa, Spain, Sweden, Turkey, United Arab Emirates, United Kingdom and the United States.

110. A request made by H.E. Al-Amudi (Saudi Arabia) on behalf of the Respondents for an open ballot for the sake of transparency in the process given that the Council was currently acting as an adjudicator was declined by the Council on the basis of Rule 50 of the *Rules of Procedure for the Council* (Doc 7559/10), which stipulated that “Unless opposed by a majority of the Members of the Council, the vote shall be taken by secret ballot if a request to that effect is supported, if made by a Member of the Council, by one other Member, and, if made by the President, by two Members”.

111. In seeking clarification regarding the voting majority required, H.E. Al Mansoori (United Arab Emirates) noted that, pursuant to Article 84 of the Chicago Convention, 33 Council Members were eligible to vote on the Respondents’ preliminary objection relating to Application (A). In his view, that meant that 17 positive votes constituted a majority. In further noting that in accordance with Article 66 b) of the Chicago Convention 25 Council Members were eligible to vote on the Respondents’ preliminary objection relating to Application (B), he indicated that in his opinion 13 positive votes constituted a majority.

112. Reiterating that Article 52 of the Chicago Convention stipulated that “Decisions by the Council shall require approval by a majority of its Members.”, the Director, Legal Affairs and External Relations Bureau (D/LEB) noted that his Bureau had examined the historical records of previous ICAO proceedings under Article 84 of the Chicago Convention relating to the settlement of disputes and that it had been the consistent and unanimous practice of the Council to require approval of its decisions by a majority of its Members, which currently stood at 19.

113. H.E. Al-Amudi (Saudi Arabia) wished to place on record his objection to the statement that 19 votes would constitute the voting majority required under Article 52 of the Chicago Convention. Indicating that it was the Respondents’ understanding that a review of the *Rules for the Settlement of Differences* (Doc 7782/2) would be undertaken in September 2018, he underscored that they considered that it was contrary to due process to conduct such a review of the rules whereby the Council adjudicated the settlement of differences while such momentous and critical decisions by the Council on Qatar’s Application (A) and Application (B) were pending.

114. In clarifying that when the Council was sitting as a court, as at present, it was not the role of LEB to provide its interpretation of relevant rules, D/LEB underscored that earlier he had merely read the text of Article 52 of the Chicago Convention and recited to the Council the factual historical records of previous Council decisions, no more, no less.

115. In providing factual information in response to a query by the President of the Council, D/LEB recalled that at the Tenth Meeting of its 211th Session on 23 June 2017 the Council had requested the Secretariat to review the *Rules for the Settlement of Differences* (Doc 7782/2) with the aim of determining whether they needed to be revised and updated taking into account relevant developments that had occurred since the publication of that document (cf. C-DEC 211/10, paragraph 45). The Secretariat had subsequently reported that it was necessary to consult the Legal Committee thereon during its upcoming 37th Session (Montréal, 4-7 September 2018). D/LEB further clarified that while Article 33 of the said Rules stipulated that the latter “may, at any time, be amended by the Council”, it also stipulated that “No amendment shall apply to a pending case except with the agreement of the parties”.

116. H.E. Al Mansoori (United Arab Emirates) also wished to place on record his objection to the voting majority required (19) for the Council’s acceptance of the Respondents’ preliminary objections with respect to Qatar’s Application (A) and Application (B). In protesting against the voting majority required (19), he noted that Article 52 of the Chicago Convention did not provide for a qualified majority and instead provided that decisions by the Council “shall require approval by a majority of its Members”. H.E. Al Mansoori further noted that Article 84 of the Chicago Convention and Article 15(5) of the *Rules of Settlement of Differences* (Doc 7782/2) both provided that “No Member of the Council shall vote in the consideration by the Council of any dispute to which it is a party.”. He affirmed that Article 52 of the

Chicago Convention, read together with Article 84 thereof, should be interpreted as meaning that the majority required was of all Council Members entitled to vote. Accordingly, as there were 33 Council Members entitled to vote on the preliminary objection with respect to Application (A), 17 positive votes would constitute a majority. Furthermore, as there were 25 Council Members entitled to vote on the preliminary objection with respect to Application (B), 13 votes would constitute a majority. H.E. Al Mansoori averred that any other reading of the rules would defeat their purpose and also defy the principle of treaty interpretation, fairness and equal treatment of the Parties. He therefore felt compelled to clearly express his disagreement with the voting majority required (19).

117. In supporting the above intervention by H.E. Al Mansoori, H.E. EL-Adawy (Egypt) requested that his objection to the said voting majority required be also placed on record. He enquired how that requirement would be applied in the case of a dispute regarding the interpretation or application of a Convention to which there were fewer than 19 parties and thus fewer than 19 States, in particular, Council Member States, eligible to vote

118. A request then made by H.E. Al Mansoori (United Arab Emirates) that the Council reconsider the above-mentioned majority of 19 positive votes in the current Council for the approval of its decisions on the Respondents' preliminary objections with respect to both Application (A) and Application (B) was declined in the absence of any desire on the part of the Council to determine what constituted the voting majority other than the relevant provisions of the Chicago Convention read by D/LEB.

119. The above-mentioned requests and statements were noted for the record.

120. The Council then proceeded to the holding of a secret ballot on the Respondents' preliminary objection with respect to Application (A) and on their preliminary objection with respect to Application (B). In response to questions by the Representatives of the United States and South Africa, D/LEB clarified that: a "Yes" vote was a vote in favour and meant acceptance of the Respondents' preliminary objection; a "No" vote was a vote against and meant disagreement with the said preliminary objection; and "Abstain" meant that there was no vote, neither for nor against the preliminary objection.

121. H.E. Mohammed (Bahrain) recalled that the Respondents had two preliminary objections each to Qatar's Application (A) and Application (B). As explained by Mr. Petrochilos (Legal Advisor, Bahrain Delegation), the first preliminary objection was that the real issue in dispute was not an issue of the interpretation or application of the Chicago Convention or the Transit Agreement. The second preliminary objection was that the dispute was not one which cannot be settled by negotiation as was required by the jurisdictional clauses of those two treaties. As accepting either one of those preliminary objections had the effect of disposing of the case here and now, Mr. Petrochilos suggested that the appropriate wording of the question for the secret ballot for each Application would be "Do you accept either one of the two preliminary objections formulated by the Respondents in respect of each of the Applications?"

122. The President of the Council observed that both of the Respondents' said preliminary objections related to the jurisdiction of the Council. At his request, D/LEB read the text of Article 5(1) of the *Rules for the Settlement of Differences* (Doc 7782/2), which stipulated that "If the Respondent questions the jurisdiction of the Council to handle the matter presented by the Applicant, he shall file a preliminary objection setting out the basis of the objection."

123. The President of the Council noted that in essence for each of Qatar's Application (A) and Application (B) the Respondents had a preliminary objection for which they provided two justifications. He took the point made by Mr. Petrochilos that the voting on each preliminary objection applied to both of the justifications provided therefor.

*Secret ballot on the Respondents' Preliminary Objection – Application (A)  
(relating to the interpretation and application of the Chicago Convention and its Annexes)*

124. The result of the secret ballot on the question “Do you accept the preliminary objection?”, in which 33 votes were cast by the Council Members eligible to vote, was as follows:

In favour	4 votes
Against	23 votes
Abstentions	6 votes

There were no invalid ballots or blank votes.

125. Based on this result, the President declared that the preliminary objection filed by the Respondents with respect to Application (A) was not accepted by the Council.

*Secret ballot on the Respondents' Preliminary Objection – Application (B)  
(relating to the interpretation and application of the Transit Agreement)*

126. The result of the secret ballot on the question “Do you accept the preliminary objection?”, in which 25 votes were cast by the Council Members eligible to vote, was as follows:

In favour	2 votes
Against	18 votes
Abstentions	5 votes

There were no invalid ballots or blank votes.

127. Based on the above result, the President declared that the preliminary objection filed by the Respondents with respect to Application (B) was not accepted by the Council.

*Closing statements*

128. H.E. AlSulaiti (Qatar), as Applicant, expressed appreciation to the Council for having been afforded the opportunity to participate in the present meeting and to present its views regarding the Respondents' preliminary objections with respect to Qatar's Application (A) and Application (B).

129. Speaking on behalf of the Respondents, H.E. Al-Amudi (Saudi Arabia) reiterated their utmost respect for ICAO and the Council and reaffirmed their unwavering commitment to the rules and principles of the Chicago Convention and the Strategic Objectives and principles of ICAO. He re-emphasized that the cases brought before the Council during the present meeting involved: the Applicant's multiple and persistent breaches of international law, obligations that did not relate to civil aviation; and the sovereign right of the Respondents under international law to take lawful counter-measures to induce the Applicant to comply with its international obligations and to protect against a national security threat. Underscoring that the Respondents regretted that the Council had decided that ICAO had jurisdiction to hear the Applicant's complaints, H.E. Al-Amudi reiterated that they believed that the rules applied today were contrary to the fundamental rules of due process. In particular, they considered that the super majority voting requirement was not in line with the plain meaning of the Chicago Convention.

130. Repeating that the Respondents had not chosen to bring this dispute before the Council, H.E. Al-Amudi indicated that they respectfully submitted that ICAO's role did not extend to consideration of a dispute where the real issue involved national security and international instruments outside of civil aviation. He underscored that while the Respondents had the utmost respect for the Council, they were compelled to exercise their right under Article 84 of the Chicago Convention to appeal the Council's

decisions to the ICJ and would file their applications with the Court in this regard immediately following the receipt of the Council's approved decisions. The Respondents continued to take the view that the dispute that the Applicant had brought before the Council fell outside the scope of matters that the ICAO Council could adjudicate upon under Article 84 of the Chicago Convention and Article II, Section 2, of the Transit Agreement. By cause of the Respondents' impending appeal, the dispute was now moving to the ICJ. H.E. Al-Amudi emphasized, however, that as the Respondents had expressed before and as they now again expressed, their four States were committed to continuing to work with all Parties, including Qatar, under the auspices of ICAO to ensure the safe operation of air traffic. He stressed that the safety of civil aviation had been, and remained, the Respondents' top priority. In concluding, H.E. Al-Amudi thanked the President and the Council for their efforts in this matter and their commitment to the Strategic Objectives of this esteemed Organization.

131. The above statements were noted and recorded for the summary minutes of the meeting.

132. On behalf of the Council, the President expressed appreciation to the high-level Government officials from Bahrain, Egypt, Qatar, Saudi Arabia and the United Arab Emirates and the members of their Delegations for having participated in the present meeting. He stressed that, regardless of the Council's decisions regarding the Respondents' preliminary objections with respect to Application (A) and Application (B), it was important that as Member States of the same Organization, ICAO, they continue to communicate, consult and collaborate for the further development of international civil aviation. The President expressed the hope that all ICAO Member States would continue to move forward in that spirit.

133. It was noted that, on the basis of the above proceedings, the Secretariat would prepare and circulate the draft text of the Council's decisions at the preliminary objection stage of the *Settlement of Differences: 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)*, and the *Settlement of Differences: The State of Qatar and the Arab Republic of Egypt, the Kingdom of Bahrain and the United Arab Emirates (2017) – Application (B)*, which would be tabled for the Council's consideration and approval at its Eleventh Meeting (214/11) on Friday, 29 June 2018.

134. It was further noted that the time-balance of seven calendar days remaining for the Respondents to file their Counter-memorial with ICAO shall begin to run from the date of receipt by the Respondents of the Council's approved decisions regarding their preliminary objections with respect to Application (A) and Application (B). However, the Respondents had indicated their intention to exercise their right under Article 84 of the Chicago Convention and to immediately thereafter file appeals of the Council's said decisions with the ICJ, in which case, pursuant to Article 86 thereof, the said decisions of the Council would be suspended until the appeals were decided by the ICJ.

135. The meeting adjourned at 1810 hours.