

INTERNATIONAL COURT OF JUSTICE

JOINT APPLICATION
INSTITUTING PROCEEDINGS

filed in the Registry of the Court
on 4 July 2023

AERIAL INCIDENT OF 8 JANUARY 2020

(CANADA, SWEDEN,
UKRAINE AND UNITED KINGDOM
v. ISLAMIC REPUBLIC OF IRAN)

COUR INTERNATIONALE DE JUSTICE

REQUÊTE
INTRODUCTIVE D'INSTANCE CONJOINTE

enregistrée au Greffe de la Cour
le 4 juillet 2023

INCIDENT AÉRIEN DU 8 JANVIER 2020

(CANADA, ROYAUME-UNI,
SUÈDE ET UKRAINE
c. RÉPUBLIQUE ISLAMIQUE D'IRAN)

I. CORRESPONDENCE

THE AMBASSADOR OF CANADA
TO THE KINGDOM OF THE NETHERLANDS
TO THE REGISTRAR OF THE INTERNATIONAL COURT
OF JUSTICE

3 July 2023.

I have the honour to enclose two (2) originals of a Joint Application submitted by the Governments of Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland pursuant to Article 36, paragraph 1, and Article 40 of the Statute of the International Court of Justice, instituting proceedings against the Islamic Republic of Iran concerning the latter's breaches of the Convention on the Suppression of Unlawful Acts Against Civil Aviation.

I hereby confirm that the Government of Canada has appointed Alan H. Kessel, Assistant Deputy Minister Legal Affairs and Legal Adviser, Global Affairs Canada, as Agent for the purposes of representing Canada in the conduct of these proceedings, pursuant to Article 42, paragraph 1, of the Statute of the International Court of Justice and Article 38 of its Rules of Court. Ms Carolyn Knobel, Director General Legal Affairs and Deputy Legal Adviser, Global Affairs Canada, is Deputy Agent. In accordance with Article 38, paragraph 3, of the Rules of Court, I certify that the signature on the Joint Application is that of the appointed Agent of Canada.

Pursuant to Article 40, paragraph 1, of the Rules of Court, the address for service for Canada to which all communications concerning these proceedings should be sent is:

Embassy of Canada
Sophialaan 7
2514 JP The Hague
The Netherlands

(Signed) Lisa HELFAND.

THE AMBASSADOR OF THE KINGDOM OF SWEDEN
TO THE KINGDOM OF THE NETHERLANDS
TO THE REGISTRAR OF THE INTERNATIONAL COURT
OF JUSTICE

4 July 2023.

I have the honour to enclose two (2) originals of a Joint Application submitted by the Governments of Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland pursuant to Article 36, paragraph 1, and Article 40 of the Statute of the International Court of Justice, instituting proceedings against the Islamic Republic of Iran concerning the latter's breaches of the Convention on the Suppression of Unlawful Acts Against Civil Aviation.

I hereby confirm that the Government of Sweden has appointed Elinor Hammarskjöld, Director General for Legal Affairs, Ministry for Foreign Affairs, as Agent for the purposes of representing Sweden in the conduct of these proceedings, pursuant to Article 42, paragraph 1, of the Statute of the International Court of Justice and Article 38 of its Rules of Court. Mr Daniel Gillgren, Deputy Director, Ministry for Foreign Affairs, is Deputy Agent. In accordance with Article 38, paragraph 3, of the Rules of Court, I certify that the signature on the Joint Application is that of the appointed Agent for Sweden.

Pursuant to Article 40, paragraph 1, of the Rules of Court, the address for service for Sweden to which all communications concerning these proceedings should be sent is:

Embassy of Sweden
Postbus 85601
2508 CH The Hague
The Netherlands

(Signed) Johannes OIJELUND.

THE AMBASSADOR OF UKRAINE
TO THE KINGDOM OF THE NETHERLANDS
TO THE REGISTRAR OF THE INTERNATIONAL COURT
OF JUSTICE

4 July 2023.

I have the honour to enclose two (2) originals of a Joint Application submitted by the Governments of Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland pursuant to Article 36, paragraph 1, and Article 40 of the Statute of the International Court of Justice, instituting proceedings against the Islamic Republic of Iran concerning the latter's breaches of the Convention on the Suppression of Unlawful Acts Against Civil Aviation.

I hereby confirm that the Government of Ukraine has appointed Ms Oksana Zolotaryova, Director of the Department of International Law, Ministry of Foreign Affairs of Ukraine, as Agent for the purposes of representing Ukraine in the conduct of these proceedings, pursuant to Article 42, paragraph 1, of the Statute of the International Court of Justice and Article 38 of its Rules of Court. Mr Andrii Pasichnyk, Deputy Director of the Department of International Law, Ministry of Foreign Affairs of Ukraine, and Mr Anton Korynevych, Ambassador-at-large, Ministry of Foreign Affairs of Ukraine, are Co-Agents. In accordance with Article 38, paragraph 3, of the Rules of Court, I certify that the signature on the Joint Application is that of the appointed Agent for Ukraine.

Pursuant to Article 40, paragraph 1, of the Rules of Court, the addresses for services for Ukraine to which all communications concerning these proceedings should be sent are:

Embassy of Ukraine
Zeestraat 78
2518 AD The Hague
The Netherlands
emb_nl@mfa.gov.ua

Ministry of Foreign Affairs of Ukraine
1, Mykhailivska Sq
Kyiv, 01018
Ukraine
72@mfa.-gov.ua

(Signed) Oleksandr KARASEVYCH.

THE AMBASSADOR OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND
TO THE KINGDOM OF THE NETHERLANDS
TO THE REGISTRAR OF THE INTERNATIONAL COURT
OF JUSTICE

4 July 2023.

I have the honour to enclose two (2) originals of a Joint Application submitted by the Governments of Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland pursuant to Article 36, paragraph 1, and Article 40 of the Statute of the International Court of Justice, instituting proceedings against the Islamic Republic of Iran concerning the latter's breaches of the Convention on the Suppression of Unlawful Acts Against Civil Aviation.

I hereby confirm that the United Kingdom of Great Britain and Northern Ireland has appointed Sally Langrish, Legal Adviser and Director General Legal, Foreign, Commonwealth and Development Office, as Agent for the purposes of representing the United Kingdom in the conduct of these proceedings, pursuant to Article 42, paragraph 1, of the Statute of the International Court of Justice and Article 38 of its Rules of Court. Paul Berman, Legal Director, Foreign, Commonwealth and Development Office, is Co-Agent. In accordance with Article 38, paragraph 3, of the Rules of Court, I certify that the signature on the Joint Application is that of the appointed Agent for the United Kingdom.

Pursuant to Article 40, paragraph 1, of the Rules of Court, I have the honour to advise that the address for service for the United Kingdom to which all communications concerning these proceedings should be sent is that of this Embassy at the following address:

British Embassy
Lange Voorhout 10
2514 ED The Hague
The Netherlands

(Signed) Joanna ROPER.

II. JOINT APPLICATION INSTITUTING PROCEEDINGS

TABLE OF CONTENTS

	<i>Page</i>
I. Introduction	12
II. Facts	12
III. Jurisdiction of the Court	22
IV. Legal Grounds for the Applicants' Claim	26
V. Relief Sought	28
VI. Judge <i>Ad Hoc</i>	28
VII. Reservation of Rights	30
List of Annexes	34

I. INTRODUCTION

To the Registrar of the International Court of Justice, the undersigned, being duly authorised by Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland, state as follows:

1. In accordance with Articles 36 (1) and 40 of the Statute of the International Court of Justice (“Statute of the Court”) and Article 38 of the Rules of Court, Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland (“the Applicants”) hereby submit this Application instituting proceedings against the Islamic Republic of Iran (“Iran”).

2. Iran has violated a series of obligations owed to the Applicants under the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971¹ (“Montreal Convention”), arising out of the shooting down on 8 January 2020 of Ukraine International Airlines Flight PS752 (“Flight PS752”), a civil aircraft in service, by military personnel of Iran’s Islamic Revolutionary Guard Corps (“IRGC”). All 176 passengers and crew on board, many of whom were nationals and residents of the Applicants, were killed.

3. Iran has violated its obligations under the Montreal Convention, including under Articles 6, 7, 10, 11 and 13. Iran failed to take all practicable measures to prevent the unlawful and intentional commission of an offence described in Article 1 of the Montreal Convention, including the destruction of Flight PS752. It also subsequently failed to conduct an impartial, transparent, and fair criminal investigation and prosecution consistent with international law. Instead, Iran withheld or destroyed evidence (including the immediate bulldozing of the crash site); blamed other States and low-level IRGC military personnel for the downing; threatened and harassed the families of the victims seeking justice; conducted a sham and opaque trial; and failed to report to the Council of the International Civil Aviation Organization (“ICAO”), or the Applicants, information in its possession concerning the offence or the measures taken in relation to the offenders. These actions and omissions violate the requirements of the Montreal Convention, to which Iran and each of the Applicants are parties.

II. FACTS

4. On 8 January 2020, Iran took a number of steps that knowingly placed civil aircraft in harm’s way. At approximately 02:00 Tehran Time (“TT”) on 8 January 2020, the IRGC Aerospace Force (“IRGC-ASF”) launched multiple ballistic missiles at two airbases used by the United States and Coalition forces in Iraq². In anticipation of possible counter-strikes, the IRGC-ASF positioned Tor-M1 mobile air-defence combat vehicles (also referred to as surface-to-air missile combat vehicles) around Tehran and

¹ Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971, 974 *UNTS* 177 (entered into force 26 January 1973) (Annex 1).

² The Aircraft Accident Investigation Board [AAIB] of the Islamic Republic of Iran, *Flight PS752 Accident Investigation, Final Report* (15 March 2021) [AAIB Final Report], online: [icao.int/safety/airnavigation/AIG/Documents/Safety%20Recommendations%20to%20ICAO/Final%20Reports/PS752Finrep.pdf](https://www.icao.int/safety/airnavigation/AIG/Documents/Safety%20Recommendations%20to%20ICAO/Final%20Reports/PS752Finrep.pdf).

in the vicinity of Tehran’s Imam Khomeini International Airport (“IKA”). One of the air-defence combat vehicles was positioned in the vicinity of the town of Bidganeh, along routine flight paths for civil aircraft transiting IKA³.

5. In this context, Iran had identified a high threat level for international civil aviation⁴. Nonetheless, an alleged request by the IRGC-ASF commander Brigadier General Amir Ali Hajizadeh to close the airspace was rejected⁵. Other obvious mitigation measures — in particular, Notices to Airmen (“NOTAMs”)⁶ — were also not implemented.

6. At approximately 05:51 TT, Flight PS752 contacted IKA Air Traffic Control (“ATC”) requesting permission to start the aircraft’s engines. Its flight plan was sent to the military sector⁷ and the Civil-Military Operational Coordination Centre (“CMOCC”) and received the necessary authorisation at 05:55 TT. At 06:10:20 TT, Flight PS752 was cleared for take-off by IKA ATC along the pre-approved flight path. At 06:12:38 TT, Flight PS752 departed IKA.

7. According to Iran’s AAIB report, less than three minutes into the flight, a “strong and short impulse, similar to detonation” was recorded on the plane’s Cockpit Voice Recorder (“CVR”). This is consistent with Iran’s admission that the first surface-to-air missile was launched by the IRGC air-defence combat vehicle stationed in the vicinity of the town of Bidganeh at or around 06:14:41 TT. A second missile was fired by the same vehicle at 06:15:11 TT. The CVR stopped recording seconds later.

8. At approximately 06:17:00 TT, Flight PS752 disappeared from the flight radars. At around 06:18:23 TT, Flight PS752 crashed to the ground and exploded in Khalajabad, near Shahedshahr, southwest of Tehran.

³ See Brigadier General Hajizadeh video statement imbedded in “Head of IRGC Aerospace Division accepts responsibility for plane crash”, *Iran Press News Agency* (11 July 2020) [Hajizadeh Statement], online: iranpress.com/content/17610/head-irgc-aerospace-division-accepts-responsibility-for-plane-crash (see transcript at Annex 2).

⁴ AAIB Final Report, *supra* note 2, at pages 92-95.

⁵ Hajizadeh Statement, *supra* note 3.

⁶ A Notice to Airmen (NOTAM) (also known as Notice to Missions) is a notice or advisory issued by aviation authorities for flight operations personnel. The notices contain information about any condition that may affect the safety of aircraft operations, such as any temporary changes to airport facilities, procedures or navigational aids, or to advise of potential hazards (e.g. closed runways or restricted airspace). They are issued for a specific time period and can be valid for a few days or weeks: Skybrary, Notice to Airmen (NOTAM) online: skybrary.aero/articles/notice-airmen-notam; The ICAO Manual for Civil Aircraft Operations Over or Near Conflict Zones state that NOTAMs provide essential knowledge to personnel concerned with flight operations and should be published when there is a presence of threat(s) from a heightened state of military alert or tension. International Civil Aviation Organization, *Risk Assessment Manual for Civil Aircraft Operations over or near Conflict Zones*, doc. 10084, 2nd ed., 2018, pp. 3-6 and 3-7, online: <https://zoek.officielebekendmakingen.nl/blg-846381.pdf>.

⁷ The reference to the “military sector” is taken from the AAIB Final Report at page 97. The report does not clarify what this entails. However, the AAIB Final Report indicates, at page 85, that CMOCC’s purported role was to communicate all flight plans to the State Air Defence Operation Center (or SADOCC) and air defence sectors of the Iranian military (see Figure 45 at page 85). AAIB Final Report, *supra* note 2.

9. The voices of the passengers and crew were recorded on the CVR after the first missile strike, when shrapnel from the Tor-M1 missiles punctured the fuselage⁸. The passengers were alive and must have been aware that the plane was about to crash. All 176 passengers and crew were killed. They included nationals and residents of Canada, Sweden, Ukraine and the United Kingdom, as well as Afghanistan and Iran. The age of the victims ranged from 1 to 74 years old.

10. In the immediate aftermath of the crash on the morning of 8 January 2020, Iran at first issued numerous denials rejecting any suggestion that the aircraft had been shot down⁹. Such denials persisted in the face of a public statement on 9 January, from Canadian Prime Minister, Justin Trudeau, referring to credible intelligence that Flight PS752 had been shot down by a surface-to-air missile¹⁰. Still, on 10 January, Ali Abedzadeh, the Head of Iran's Civil Aviation Organisation, insisted categorically that, "what is obvious to us and we can say for sure is that no missile has hit the plane"¹¹.

11. In fact, IRGC-ASF commander Brigadier General Hajizadeh later admitted that he had known very early on "Wednesday morning" [8 January 2020] that an IRGC missile "had hit a target" and he had advised "the authorities" of a "strong possibility that we [the IRGC] had hit a plane of our own"¹². Once advised, the Armed Forces General Staff — the highest military body in Iran, which reports directly to the Iranian Supreme Leader [Ayatollah] Ali Khamenei — immediately put those with knowledge of the missile strike "in quarantine" and prohibited them from talking to anyone¹³.

12. On 11 January 2020, confronted with overwhelming evidence, Iran finally admitted publicly that Flight PS752 had in fact crashed as a result of a missile strike by the IRGC, but claimed that the aircraft was targeted "unintentionally due to human error"¹⁴. A tweet by Iran's President, Hassan Rouhani, characterised it as an "unforgivable mistake"¹⁵. In a televised statement on the same day, Brigadier General Hajizadeh

⁸ An examination of the wreckage showed that Flight PS752 was riddled with thousands of small holes consistent with an 9M331 missile fired from a Tor-M1 combat vehicle. See AAIB Final Report, *ibid.* at pages 53-54 (Figure 23), see also page 67.

⁹ On 8 January 2020, the Director of Iran's Center for Communication and Information in the Ministry of Roads and Urban Development, Qasem Biniiaz, denied rumours that the plane had been hit by a missile: Mohammad Nasiri, Nasser Karimi and Jon Gambrell, "Ukrainian airplane crashes near Iran's capital, killing 176", *CTV News* (8 January 2020), online: [ctvnews.ca/world/ukrainian-airplane-crashes-near-iran-s-capital-killing-176-1.4757677?cache=?clipId=89926?autoplay=true?autoplay=true?autoplay=true](https://www.ctvnews.ca/world/ukrainian-airplane-crashes-near-iran-s-capital-killing-176-1.4757677?cache=?clipId=89926?autoplay=true?autoplay=true?autoplay=true). On the same day, Iranian Armed Forces spokesman, Brigadier General Abolfazl Shekarchi, rejected Western media reports that a missile had hit Flight PS752: "Armed Forces spox strongly rejects rumors of missile hitting Ukrainian airliner", *Mehr News* (8 January 2020), online: en.mehrnews.com/news/154348/Armed-Forces-spox-strongly-rejects-rumors-of-missile-hitting.

¹⁰ Prime Minister of Canada, Justin Trudeau, held a press conference on 9 January 2020 — Canada received credible intelligence that Flight PS752 was shot down by a surface-to-air missile. CPAC, "PM Trudeau: Intelligence suggests plane was shot down" (9 January 2020), online: [cpac.ca/episode?id=6a9b1c74-436d-432d-910b-ad7f521617b2](https://www.cpac.ca/episode?id=6a9b1c74-436d-432d-910b-ad7f521617b2) (see transcript at Annex 3).

¹¹ "Surely No Missile Hit Ukrainian Airliner: Iranian Official", *Tasnim News Agency* (10 January 2020), online: tasnimnews.com/en/news/2020/01/10/2178971/surely-no-missile-hit-ukrainian-airliner-iranian-official.

¹² Hajizadeh Statement, *supra* note 3.

¹³ *Ibid.*

¹⁴ Announcement of the General Staff of the Armed Forces about Ukrainian Passenger Plane Crash, *Islamic Republic News Agency* (11 January 2020 at 7:07 a.m. Tehran Time), online: [اطلاعیه: ایرنا ستادکل نیروهای مسلح درباره سقوط هواپیمای مسافری اوکراینی - ایرنا](https://www.irna.ir) (irna.ir) (Annex 4).

¹⁵ Hassan Rouhani, "Armed Forces' internal investigation . . .", Twitter (10 January 2020,

claimed that the air-defence vehicle located in the vicinity of Bidganeh had misidentified the Boeing 737-800 as a cruise missile. He further claimed that the vehicle operator had failed to get the necessary authorisation from his superiors before firing on the target¹⁶. This was the same narrative repeated by IRGC Commander-in-Chief Major General Salami before the Iranian Parliament on 12 January 2020¹⁷.

13. By the time Iran admitted that the IRGC had shot down Flight PS752, the primary crash site had already been bulldozed, and the numerous police and military personnel who were present had failed to secure the evidence or prevent extensive looting of the primary site. Law enforcement was observed extracting items from purses and bags, including identifying information, and placing them randomly in transparent bags. Air accident investigators from Ukraine arriving in Tehran on 9 January 2020 noted that airplane debris, and passenger belongings, as well as soil from the crash site had been moved to a secondary location by truck and shovelled haphazardly by bulldozers into large piles.

14. In the days following the downing, the families of the victims were subjected to numerous acts of intimidation and abuse, including pressure by the IRGC to declare the victims as “martyrs”¹⁸. IRGC Commander-in-Chief Major General Salami told family members that the victims were “martyrs” because the destruction of Flight PS752 had helped avoid a war with the United States and thus saved many lives¹⁹. Those who demanded justice faced a pattern of what UN human rights reports have characterised as threats and harassment. There have even been accounts of torture of the families of the victims²⁰.

11:40 p.m. EST/11 January 2020, 8:10 a.m. TT), online: twitter.com/HassanRouhani/status/1215856039997984768.

¹⁶ Hajizadeh Statement, *supra* note 3.

¹⁷ “General Hossein Salami speaking about the downing of Flight PS752 to Iranian Parliament”, *YouTube* (12 January 2020), online: <https://www.youtube.com/watch?app=desktop&v=DaC5nhc9cUQ> (unofficial translation in subtitles) (see unofficial transcript at Annex 5).

¹⁸ Islamic Republic of Iran, Government Information Center, “The Victims of the Ukrainian Airplane Incident Are Considered Martyrs” (14 January 2020), online: <https://dolat.ir/detail/333308> (Annex 6); See also, “Some Relatives of Ukrainian Airliner Victims Complain of Pressure from Iranian Authorities”, *Radio Free Europe/Radio Liberty* (3 February 2020), online: rferl.org/a/some-relatives-of-ukrainian-airliner-victims-complain-of-pressure-from-iranian-authorities/30414991.html.

¹⁹ “Iranian Parents Take On Powerful Revolutionary Guard as They Seek Justice over Jet’s Downing”, *Radio Free Europe/Radio Liberty* (11 January 2022), online: rferl.org/a/iran-families-revolutionary-guard/31649627.html.

²⁰ United Nations, Office of the United Nations High Commissioner for Human Rights, Press Release, “Attack on PS752: Iran violated multiple human rights obligations — UN experts” (23 February 2021) [OHCHR Press Release 23 February 2021], online: [ohchr.org/en/press-releases/2021/02/attack-ps752-iran-violated-multiple-human-rights-obligations-un-experts](https://www.ohchr.org/en/press-releases/2021/02/attack-ps752-iran-violated-multiple-human-rights-obligations-un-experts); Javaid Rehman, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, UNGAOR, 75th Session, UN doc. A/75/213 (2020), online: [documents-dds-ny.un.org/doc/UNDOC/GEN/N20/190/27/PDF/N2019027.pdf?OpenElement](https://www.un.org/doc/UNDOC/GEN/N20/190/27/PDF/N2019027.pdf?OpenElement); “Iran: Scores injured as security forces use unlawful force to crush protests”, *Amnesty International* (15 January 2020), online: [amnesty.org/en/latest/news/2020/01/iran-scores-injured-as-security-forces-use-unlawful-force-to-crush-protests/](https://www.amnesty.org/en/latest/news/2020/01/iran-scores-injured-as-security-forces-use-unlawful-force-to-crush-protests/); “Iran’s Cover-up of Plane Crash Compounded Its Trouble in the Streets”, *Human Rights Watch* (24 January 2020), online: [hrw.org/news/2020/01/24/irans-cover-plane-crash-compounded-its-trouble-streets](https://www.hrw.org/news/2020/01/24/irans-cover-plane-crash-compounded-its-trouble-streets); “Iran: Ukraine Airline Victims’ Families Harassed, Abused”, *Human Rights Watch* (27 May 2021), online: [hrw.org/news/2021/05/27/iran-ukraine-airline-victims-families-harassed-abused](https://www.hrw.org/news/2021/05/27/iran-ukraine-airline-victims-families-harassed-abused); United Nations, Letter of the Special Rapporteur on extrajudicial, summary or arbitrary executions Agnès Callamard, UN doc. AL IRN 28/2020, 24 December 2020, online: [spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25795](https://www.unhcr.org/refugees/files/2020/12/20201224_AL_IRN_28_2020.pdf).

15. Amidst growing demands, including by the Applicants²¹, for transparency, justice and accountability, Iran’s Military Prosecutor purported to conduct an investigation into the downing of Flight PS752. Upon conclusion of this opaque investigation on 7 January 2021, the Prosecutor simply repeated Iran’s official position from 11 January 2020 that the downing was caused by the “human error” of military personnel who had acted with “carelessness and recklessness” and had not followed Armed Forces rules and regulations²².

16. In February 2021, Special Rapporteurs of the UN Human Rights Council criticised the military investigation, saying that Iran had failed to conduct an impartial, independent, and comprehensive investigation, consistent with its international obligations. They further noted that “[t]he investigation by the Iranian authorities also disregarded the responsibility of high-level officials”²³.

17. This criticism is consistent with numerous UN human rights reports expressing deep concern over the lack of independence and impartiality of the judiciary in Iran, and repeatedly urging Iran to ensure that international fair trial standards are met in its criminal justice system²⁴.

18. On 6 April 2021, the Military Prosecutor of Tehran stated that criminal indictments had been issued for ten military officials, but their identities and rank were not made public at the time²⁵.

19. In September 2021, it was reported that senior government and IRGC officials responsible for the operation on 8 January 2020 would not stand trial²⁶.

20. The court sessions were closed to the general public and the indictment was not publicly available. Some families of the victims were allowed to attend specific court sessions, but they were subject to strict confidentiality requirements. Moreover, families have faced intimidation and harassment because of their repeated expressions of concern that the trial was neither impartial nor transparent.

21. On 16 April 2023, Iran’s Ministry of Justice announced that the military court had issued its verdict. Although this verdict has not been made public or shared with the

²¹ International Coordination and Response Group for the victims of Flight PS752 — Framework for Cooperation with Iran, 16 January 2020, online: canada.ca/en/global-affairs/news/2020/01/international-coordination-and-response-group-for-the-victims-of-flight-ps752--framework-for-cooperation-with-iran.html; Joint Statement from the International Coordination and Response Group for the victims of Flight PS752, 27 October 2020, online: canada.ca/en/global-affairs/news/2020/10/joint-statement-from-the-international-coordination-and-response-group-for-the-victims-of-flight-ps752.html; Joint statement from the International Coordination and Response Group for the victims of Flight PS752 on notice of claim to Iran, 3 June 2021, online: canada.ca/en/global-affairs/news/2021/06/joint-statement-from-the-international-coordination-and-response-group-for-the-victims-of-flightps752-on-notice-of-claim-to-iran.html.

²² “Tehran’s Military Prosecutor Describes New Aspects of Ukrainian Aircraft Crash”, *Islamic Republic News Agency* (7 January 2021), online: irna.ir/news/84177070 (Annex 7).

²³ OHCHR Press Release 23 February 2021, *supra* note 20.

²⁴ Situation of human rights in the Islamic Republic of Iran: Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, Javid Rehman, UNGAOR 49th Session, UN doc. A/HRC/49/75 (2022) at paras. 49-51, online: <https://digitallibrary.un.org/record/3957951?ln=en>.

²⁵ “Issuing indictment for ten people in the case of the Ukrainian plane”, *Iranian Students’ News Agency* (6 April 2021), online: <https://www.isna.ir/news/1400011707677/> (Annex 8).

²⁶ “Iran’s Judiciary Exonerates Top Officials for Flight 752”, *Iran Wire* (1 September 2021), online: <https://iranwire.com/en/special-features/70259/?ref=specials>.

Applicants, it was reported that all ten accused were allegedly found guilty of lesser charges, including not following orders. Only the alleged commander of the air-defence combat vehicle near Bidganeh that shot down Flight PS752 was found guilty of a charge that appears to be equivalent to criminal negligence causing death. He was allegedly sentenced to 13 years in prison²⁷.

22. On 18 April 2023, the Applicants issued a public statement condemning the trials and verdicts as lacking the necessary impartiality and transparency required under international law²⁸.

23. Prior to the verdict, in February 2023, numerous families of the victims had withdrawn their complaints, stating that they did not recognise the legitimacy of the military court proceedings²⁹. Following the verdict, in May 2023, it was reported that one of the families of the victims who had not withdrawn their complaint filed an appeal with the Supreme Court of Iran to contest the validity of the charges originally laid and the lack of transparency in the investigation and judicial proceedings. The Applicants have no expectation that the Supreme Court will be willing or capable of remedying the lack of impartiality, transparency, and fairness that are endemic in Iran’s judicial system.

24. In exchanges with the Applicants, Iran has claimed — without any explanation — that it has dealt with “all technical, military, legal, criminal and compensatory aspects of the case . . . based on and even beyond, the international obligations”³⁰. Yet it remains the case that Iran has not reported the findings of a preliminary enquiry. It has not reported to the ICAO Council relevant information concerning the circumstances of the offence and the measures taken in relation to the offenders and in particular, the results of legal proceedings. Iran has also failed to accept repeated requests for assistance in respect of criminal proceedings in Ukraine arising out of the destruction of Flight PS752.

III. JURISDICTION OF THE COURT

25. The Applicants and Iran are all Members of the United Nations and bound by the Statute of the Court, including Article 36 (1), which provides in relevant part that the Court’s jurisdiction “comprises . . . all matters specially provided for . . . in treaties and conventions in force”.

26. The Applicants and Iran are all Contracting States to the Montreal Convention. None of them has reservations to this Convention.

27. Article 14, paragraph 1, of the Montreal Convention provides:

“Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within

²⁷ “Issuing the Verdict for the Ukrainian Aircraft Case After 20 Court Hearings: First-row Defendant Sentenced to 13 Years in Prison”, *Mizan Online* (16 April 2023), online: mizanonline.ir/fa/news/4707892/ (Annex 9).

²⁸ Joint Statement from the International Coordination and Response Group for the victims of Flight PS752 on the criminal trials in Iran, 18 April 2023, online: canada.ca/en/global-affairs/news/2023/04/joint-statement-from-the-international-coordination-and-response-group-for-the-victims-of-flight-ps752-on-the-criminal-trials-in-iran.html.

²⁹ “Families of Airline Downing Victims Withdraw Complaint, Say Iranian Court Incompetent”, *Radio Free Europe/Radio Liberty* (13 February 2023), online: rferl.org/a/iran-flight-victims-withdraw-suit/32269478.html#:~:text=Abbas%20Sadeghi%2C%20a%20lawyer%20and,our%20complaint%20on%20February%2012.%22.

³⁰ Note Verbale from the Ministry of Foreign Affairs of the Islamic Republic of Iran to the Ministry of Foreign Affairs of Ukraine dated 17 November 2021, No. 641/969901 (Annex 10, note 25).

six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.”

28. As indicated below, each of the requirements for jurisdiction under Article 14, paragraph 1, of the Convention is met:

- (i) there is a dispute between two or more Contracting States concerning the interpretation or application of the Montreal Convention;
- (ii) the dispute cannot be settled through negotiation; and
- (iii) the Applicants have requested arbitration, but the Parties have been unable to agree on the organization of the arbitration within six months from the date of the request.

(i) *There Is a Dispute between the Applicants and Iran concerning the Interpretation or Application of the Montreal Convention*

29. On 2 June 2021, the Applicants, transmitted a formal Notice of Claim³¹ to Iran. The Notice recorded the Applicants’ position that the downing of Flight PS752 by the IRGC constituted an internationally wrongful act and that Iran’s actions and omissions amounted to breaches of Iran’s obligations under the Montreal Convention. It further stated that Iran was required to make full reparation in accordance with international law and to investigate and prosecute or extradite all alleged offenders in a transparent and impartial manner in accordance with the requirements of international law.

30. Additional details of the Applicants’ claims, including their claims under the Montreal Convention, were provided to Iran in a Note Verbale and Annex, dated 20 December 2021³².

31. To date, Iran has not acknowledged the Notice of Claim or any of the Applicants’ claims related to the downing of Flight PS752. On the contrary, Iran has repeatedly asserted that there is nothing to discuss because all relevant matters have already been addressed in accordance with Iran’s international obligations³³.

(ii) *The Dispute Cannot Be Settled through Negotiation*

32. For over two years, the Applicants sought in good faith to resolve their dispute with Iran over the interpretation and application of the Montreal Convention by negotiations, but, by December 2022, all attempts had proven to be futile and it had thus become clear that the dispute cannot be settled by negotiation³⁴.

33. Notwithstanding Iran’s admission that Flight PS752 was shot down by the IRGC, it has given no indication that it accepts responsibility for its actions and omissions under international law.

³¹ Applicant’s Notice of Claim to the Islamic Republic of Iran dated 2 June 2021 (Annex 10, note 19).

³² Note Verbale from the Applicants to the Ministry of Foreign Affairs of the Islamic Republic of Iran dated 20 December 2021, No. 72/23-604-102444 and 72/23-604-102445 (Annex 10, note 26).

³³ Notes Verbales from the Ministry of Foreign Affairs of the Islamic Republic of Iran were sent separately to Applicants (see Annex 10, notes 27-30, 33-36, 41-44). See also Letter from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General dated 31 January 2022 (Annex 10, note 37).

³⁴ See Annex 10 for the list of Notes Verbales exchanged between the Applicants and the Islamic Republic of Iran.

34. By December 2022, the Applicants had concluded that there was no prospect of the parties settling this dispute through negotiations.

*(iii) The Applicants Requested Arbitration, but the Parties
Have Been Unable to Agree on the Organization of the Arbitration
within Six Months from the Date of the Request*

35. In a Note Verbale dated 22 December 2022, delivered to Iran on 28 December 2022, the Applicants requested arbitration in accordance with Article 14, paragraph 1, of the Montreal Convention, and proposed that discussions be held to agree on the organization of the arbitration³⁵. In subsequent correspondence from the Applicants to Iran in April 2023³⁶, the Applicants reiterated their proposal to hold discussions and invited Iran to meet at a specific time and place.

36. Despite explicit efforts from the Applicants to attempt to organize arbitration pursuant to the Montreal Convention, Iran continued to ignore the matter entirely. In its Notes Verbales dated 30 May 2023 to each Applicant³⁷, Iran did not accept the proposed place and time for a meeting on this issue and did not offer a counter-proposal. Iran did, however, finally accept and acknowledge that collective negotiations were the optimal manner in which to pursue a negotiated settlement. The Applicants responded on 22 June 2023 by asking Iran to acknowledge their request to organize arbitration³⁸.

37. The six-month period provided for in Article 14, paragraph 1, expired on 28 June 2023, without any expression of willingness by Iran to discuss, let alone to reach agreement on, the organization of the arbitration.

38. The requirements of Article 14, paragraph 1, having been met, the Court has jurisdiction, pursuant to Article 36 (1) of the Court's Statute and Article 14 of the Montreal Convention, to hear the claims submitted in the present Application against Iran.

IV. LEGAL GROUNDS FOR THE APPLICANTS' CLAIM

39. The Applicants' claims are based on violations by Iran of several of its obligations under the Montreal Convention, including, but not limited to the following:

- The failure to immediately make a preliminary enquiry into the facts and promptly report its findings, as required by Article 6;
- The failure to submit the case to its competent authorities for the purpose of prosecution, as required by Article 7;
- The failure to take all practicable measures for the purpose of preventing the destruction of Flight PS752, as required by Article 10;
- The failure to afford the greatest measure of assistance in connection with the criminal proceedings, as required by Article 11; and

³⁵ Note Verbale from the Applicants to the Ministry of Foreign Affairs of the Islamic Republic of Iran dated 22 December 2022, No. 72/05-620-106210 (Annex 10, note 52).

³⁶ Note Verbale from the Applicants to the Ministry of Foreign Affairs of the Islamic Republic of Iran dated 20 April 2023, No. 72/22-620-44438 (Annex 10, note 105).

³⁷ See Notes Verbales from the Ministry of Foreign Affairs of the Islamic Republic of Iran sent separately to the Applicants (Annex 10, notes 108-111).

³⁸ Note Verbale from the Applicants to the Ministry of Foreign Affairs of the Islamic Republic of Iran dated 21 June 2023, No. 72/22-620-72387 (Annex 10, note 112).

— The failure to report to the ICAO Council as promptly as possible any relevant information in its possession concerning the circumstances of the offence and the measures taken in relation to the alleged offender(s), as required by Article 13.

40. These violations give rise to Iran's responsibility under international law, including the duty to make full reparation.

V. RELIEF SOUGHT

41. The Applicants respectfully request the Court to:

- (a) Adjudge and declare that Iran has violated the Montreal Convention, including Articles 6, 7, 10, 11 and 13, including by failing to:
- endeavour to take all practicable measure[s] to prevent the destruction of Flight PS752;
 - conduct a prompt, effective, independent and impartial preliminary enquiry into the shooting down of Flight PS752 and to report its findings;
 - submit the case in good faith to its competent authorities for the purposes of prosecution in the same manner as in the case of any ordinary offence of a serious nature under the laws of Iran, and to ensure that the resulting prosecution is conducted in an impartial and transparent manner to ensure accountability and justice for the victims and their families;
 - afford the greatest measure of assistance in connection with criminal proceedings; and
 - report to the ICAO Council as promptly as possible any and all relevant information in its possession concerning the circumstances of the offence and the measures taken in relation to the offender or the alleged offender.
- (b) Order that the Respondent:
- (i) Publicly acknowledge its internationally wrongful acts and omissions as alleged;
 - (ii) Publicly apologise to the Applicants and the families of the victims;
 - (iii) Provide assurances and guarantees of non-repetition, including by adopting concrete measures to prevent a similar downing in the future;
 - (iv) Fulfil its other legal obligations under the Montreal Convention, including prosecution or extradition of alleged offenders, with any prosecution taking place in a transparent and impartial manner.
- (c) Order full reparation for all injury caused to the Applicants as a result of the Respondent's violations of the Montreal Convention, including:
- (i) Returning the missing belongings of the victims;
 - (ii) Providing full compensation to the Applicants for the material and moral damages suffered by the victims and their families.

VI. JUDGE *AD HOC*

42. In accordance with the provisions of Article 31 (3) of the Statute of the Court, and Article 35 (1) of the Rules of the Court, the Applicants give notice of their intention to exercise their right to choose a judge *ad hoc*. In light of Article 31 (5) of the Statute of the Court, it is the intention of the Applicants to appoint a single judge *ad hoc*.

VII. RESERVATION OF RIGHTS

43. The Applicants reserve the right to revise, supplement or amend this Application, as well as the legal grounds invoked and the relief requested, as may be necessary to preserve and vindicate their rights under the Montreal Convention.

Submitted on behalf of Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland, respectively.

(Signed) Alan H. KESSEL,
Agent of Canada.

(Signed) Elinor HAMMARSKJÖLD,
Agent of the Kingdom of Sweden.

(Signed) Oksana ZOLOTARYOVA,
Agent of Ukraine.

(Signed) Sally LANGRISH,
Agent of the United Kingdom
of Great Britain and Northern Ireland.

III. CERTIFICATION

The Applicants certify that the documents attached by way of Annexes are true copies of the originals thereof and that all the translations of annexes submitted herewith are, to the best of their knowledge and belief, a true and correct rendering of the text in the original language.

(Signed) Alan H. KESSEL,
Agent of Canada.

(Signed) Elinor HAMMARSKJÖLD,
Agent of the Kingdom of Sweden.

(Signed) Oksana ZOLOTARYOVA,
Agent of Ukraine.

(Signed) Sally LANGRISH,
Agent of the United Kingdom
of Great Britain and Northern Ireland.

LIST OF ANNEXES*

- Annex 1.* Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971, 974 *UNTS* 177 (entered into force 26 January 1973) — English.
- Annex 2.* Transcript of Brigadier General Hajizadeh video statement imbedded in “Head of IRGC Aerospace Division accepts responsibility for plane crash”, *Iran Press News Agency* (11 July 2020) — English.
- Annex 3.* Transcript of “PM Trudeau: Intelligence suggests plane was shot down”, *CPAC* (9 January 2020) — English and French.
- Annex 4.* Announcement of the General Staff of the Armed Forces about Ukrainian Passenger Plane Crash, *Islamic Republic News Agency* (11 January 2020) — Persian.
- Annex 4.1.* Announcement of the General Staff of the Armed Forces about Ukrainian Passenger Plane Crash, *Islamic Republic News Agency* (11 January 2020) — English.
- Annex 5.* Transcript of “General Hossein Salami speaking about the downing of Flight PS752 to Iranian Parliament”, *YouTube* (12 January 2020) — English.
- Annex 6.* Islamic Republic of Iran, Government Information Center, “The Victims of the Ukrainian Airplane Incident Are Considered Martyrs” (14 January 2020) — Persian.
- Annex 6.1.* Islamic Republic of Iran, Government Information Center, “The Victims of the Ukrainian Airplane Incident Are Considered Martyrs” (14 January 2020) — English.
- Annex 7.* “Tehran’s Military Prosecutor Describes New Aspects of Ukrainian Aircraft Crash”, *Islamic Republic News Agency* (7 January 2021) — Persian.
- Annex 7.1.* “Tehran’s Military Prosecutor Describes New Aspects of Ukrainian Aircraft Crash”, *Islamic Republic News Agency* (7 January 2021) — English.
- Annex 8.* “Issuing indictment for ten people in the case of the Ukrainian plane”, *Iranian Students’ News Agency* (6 April 2021) — Persian.
- Annex 8.1.* “Issuing indictment for ten people in the case of the Ukrainian plane”, *Iranian Students’ News Agency* (6 April 2021) — English.
- Annex 9.* “Issuing the Verdict for the Ukrainian Aircraft Case After 20 Court Hearings/First-row Defendant Sentenced to 13 Years in Prison”, *Mizan Online* (16 April 2023) — Persian.

* The Annexes are not reproduced in the print version. They are available in electronic version on the Court’s website (<https://www.icj-cij.org>, under “Cases”).

- Annex 9.1.* “Issuing the Verdict for the Ukrainian Aircraft Case After 20 Court Hearings/First-row Defendant Sentenced to 13 Years in Prison”, *Mizan Online* (16 April 2023) — English.
- Annex 10.* List of Notes Verbales Exchanged between the Parties and Other Correspondence.
