Ottawa, July 16, 2023,

The Honorable Mélanie Joly

The Minister of Foreign Affairs

Global Affairs Canada

125 Sussex Drive

Ottawa, Ontario

Dear Honorable Joly,

**Subject: Application instituting proceedings by four countries against the I.R. of Iran**

I have the honor to write regarding the application instituting proceedings by Canada, Kingdom of Sweden, Ukraine, and the United Kingdom of Great Britain and Northern Ireland against the Islamic Republic of Iran on 5 July 2023.

Grateful of all efforts by the four countries that have submitted the case of the downing of the Ukrainian flight PS752 to the International Court of Justice for the sake of justice, there are some points that are unclear:

1. The legal grounds for the applicant’s claim are on the Montreal Convention of 1971, articles 1, 6, 7, 10, 11 and 13. According to this application, the I.R. of 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, known as Montreal Convention. The unclear point is that this convention holds ONLY individual persons responsible for committing a wrongful act against the safety of the civil aviation, and cannot do justice to the victims lost their lives in the tragic shooting down of the flight buy the missiles of the Islamic Revolutionary Guard Corps. This missing point in this claim is that it ignores the Chicago Convention of 1944 holding states (and not necessarily individual persons) responsible for the use of WEAPONS against civil aviation. Article 3*bis* of the Conventionstates:

The contracting States recognize that every State must refrain from resorting to the *use of weapons against civil aircraft in flight* (emphasis added) and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations.

The blind point in the claim is that if the I.R. of Iran accepts the order of the court, only persons in charge of the crime must be persecuted. The I.R. of Iran has already announced that 10 personals of the Islamic Revolutionary Guard Corps have been prosecuted.[[1]](#footnote-1) In this case, there remain no grounds for the proceedings instituted by the four countries at the ICJ.[[2]](#footnote-2)

Here is that a reference to article 3*bis* of the Chicago Convention urges referencing. The use of WEAPONS against a civil aircraft involves a criminal responsibility of a state (and not and individual). It must be noted that the Montreal Convention includes no provision regarding the use of weapons against a civil aircraft. This means that the application by the four countries has reduce the responsibility of the I.R. of Iran to a legal case, and consequently, ignored the criminal responsibility of the intentional and willful shooting[[3]](#footnote-3) of the flights PS 752.

1. The use of weapons in a time escalation of a tension between the I.R. of Iran and the USA arising from targeting and killing of the General Qasem Soleimani by a U.S. drone strike near the Baghdad International Airport in Iraq on 3 January 2020, raises another concern. In this time of crisis, the point of reference in the application instituting proceedings by four countries against the I.R. of Iran, must be the article 52 of Protocol I to the Geneva Convention”. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2”.[[4]](#footnote-4)

The said article passes being inti a *jus cogens* norm from which no derogation if permitted. The supporting argument is that it violates a prohibition of weapons against targeting civilian targets such as the civilian aircraft. Indeed, in the context outside of war, a *fortiori* no weapons should be used against a civilian object. Here is that this article, by its compelling content is connected to article 3*bis* of the Chicago Convention. These two articles provide an appealing reference to the criminal aspect of the shooting down of the flight PS752. Article 1 of the Montreal Convention is NOT a solid ground in condemning the intentional wrongful act of the I.R. of Iran.

1. In line with the legal obligation of states stipulated in article 3*bis* of the Chicago Convention, the UN Security Council in resolution 1067, 1996 also confirmed that violation of such a legal and normative obligation is a reach of international law:

States must refrain from the use of weapons against civil aircraft in flight and that, when intercepting civil aircraft, the lives of persons on board and the safety of the aircraft must not be endangered.[[5]](#footnote-5)

According to the said resolution, all parties must acknowledge and comply with international civil aviation law and related internationally agreed procedures, including the rules and standards and recommended practices set out in the Chicago Convention. The resolution also reminds the elementary considerations of humanity, the rules of customary international law as codified in article 3*bis* of the Chicago Convention, and the standards and recommended practices set out in the annexes of the Convention. Security Council urges all States which have not yet done so to ratify as soon as possible the Protocol adding article 3 bis to the Chicago Convention.[[6]](#footnote-6)

1. Although international law acknowledges the principle of *appurtenance*, stipulated in article 1 of the Chicago Convention,[[7]](#footnote-7) Iran could impose restrictions on the use of the airspace in the time of crisis and tension in which an immanent attack was possible. Iran should have determined which routes and at which minimum altitude aircraft may fly within that airspace. The UN Special Rapporteur in the report dated 24 December 2020, quotes the IRCG Aerospace Force Commander reportedly indicated after the strike “we had repeatedly demanded that the country’s airspace be suspended from flights”. However, this did not happen, and flights continued. According to the same report, the Iranian government did not issue a Notice of Airmen (NOTAM) or other notice about potential military dangers at Imam Khomeini Airport.[[8]](#footnote-8) These issues have also been ignored in the proceedings instituted at the ICJ by the four countries.
2. The Annexes to the Chicago Convention set forth standards for ensuring the safety of civilian flights, including design of the proper training programmes for personals with the purpose of improving safe operating practices.[[9]](#footnote-9) The Government of Iran is in failure of complying with these provisions requiring an assessment of the potential hazards. The government of Iran should also have to determine which are safe for the civil aviation. In accordance with the Draft Articles on State Responsibility for the Internationally Wrongful Acts[[10]](#footnote-10), such failure constitutes responsibility of the state (and not a person identified by the Montreal Convention).[[11]](#footnote-11)
3. The ICJ in the Military and Paramilitary Activities in and against Nicaragua reminded the rules of customary international law emphasizing the elementary considerations of humanity which are more exacting in the time of peace than war. This is among the principles of international law applicable to the safety of civilian objects. “Certain general and well recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war”.[[12]](#footnote-12) The I.R. of Iran is in the charge of the flagrant omission (or violation) of the principles of international law confirmed by the judicial practices of the ICJ.
4. **Special Advisor to the Prime Minister** of Canada, the honorable Mr. Ralph Goodale in his report confirms that Canada will also continue to work vigorously to find some *measure of justice* (emphasis added) by pursuing full reparations from Iran for the victims, their grieving families and the affected states.[[13]](#footnote-13) He highlights downing of the flight which is absolutely a flagrant violation of international law as specified in article 3*bis* of the Chicago Convention as well as the UN Security Council resolution 1067 emphasizing use of weapons against the civil aircraft. This report is clear evidence of an international crime committed against the civil aircraft and NOT a mere aerial incidence.

Dear Honorable Mélanie Joly,

I believe that the said application lacks strong legal grounds against the I.R. of Iran for the shooting down of the flight PS752. Indeed, the scope of the issue is wider than the legal grounds explicated in the application by the four states. Indeed, the reference to the Montreal Convention is one of the number of grounds. The other grounds, mentioned above, are entirely missing in the application instituted against the I.R. of Iran. This could have adverse impacts on the rights of the families of the victims of the downed flight, and hence cannot do justice to the wrongful act by the I.R. of Iran.

I humbly request an explanation of the reasons for not covering the above reasons in the applicationd against the I.R. of Iran. Often Canadian Iranians as well as other Iranians living abroad urge me an explanation of the case. I must provide a clear response to their request.

I would be happy to discuss this matter further with you or members of your staff.

Sincerely,

Mahmoud Masaeli

Retired professor of Political Science and International Law

Executive Director of Alternative Perspectives and Global Concerns (ap-gc.net

Email: president.apgc@outlook.com – president.apgc@gmail.com

1. See: *Hamshahri* Newspaper, 13 July 2023. [↑](#footnote-ref-1)
2. The I.R. of Iran may argue that has already complied with article 6 of the Montreal Convention. [↑](#footnote-ref-2)
3. #  Ukraine now says it believes Iran intentionally shot down Flight 752, *Globe and Mail*, April 15, 2021. Also, General Hossein Salami the commander-in-chief of the Islamic Revolution Guard Corps, in an interview with Shargh Newspaper acknowledge this intentional act: “If the plane had not crashed, there would have been a war with America and ten million people would have been killed”.

 [↑](#footnote-ref-3)
4. #  Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

 [↑](#footnote-ref-4)
5. United Nations Security Council Resolution 1076 adopted on 26 July 1996. [↑](#footnote-ref-5)
6. Ibid article 7. [↑](#footnote-ref-6)
7. The contracting States recognize that every state complete and exclusive sovereignty over the airspace above its territory. [↑](#footnote-ref-7)
8. Mandate of the Special Rapporteur on Extrajudicial, Summary, or Arbitron Execution. Reference AL IRN 28/2020, pp. 9-10. [↑](#footnote-ref-8)
9. Annex 1 to the Convention on International Civil Aviation Personnel Licensing. [↑](#footnote-ref-9)
10. Draft Articles on Responsibility of States for Internationally Wrongful Acts, International Law Commission, 2001. [↑](#footnote-ref-10)
11. General Principles: Article l Responsibility of a State for its internationally wrongful acts “Every internationally wrongful act of a State entails the international responsibility of that State”. Article 2 “Elements of an internationally wrongful act of a State There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State”. [↑](#footnote-ref-11)
12. The ICJ, **Military and Paramilitary Activities (Nicaragua/United States of America) Merits. J. 27.6.1986. ICJ Reports 1986.** [↑](#footnote-ref-12)
13. https://www.international.gc.ca/gac-amc/publications/flight-vol-ps752/index.aspx?lang=eng. [↑](#footnote-ref-13)