
Jurisprudence of the International Court of Justice: Lockerbie Cases, Preliminary Objections

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Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising From the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom and Libyan Arab Jamahiriya v. United States of America, Judgment of 27 February 1998, for the text see the website of the ICJ, <<http://www.icj-cij.org>>.

Having declined the indication of provisional measures in the *Lockerbie* cases in 1992, the ICJ dealt with the preliminary objections raised by the United Kingdom and the United States. At first, the Court decided, against the strongly worded opposition of three judges, that the UK had the right to appoint a judge ad hoc, despite the identical legal questions in the cases against the two defendants. Secondly, the Court upheld its jurisdiction, holding that a dispute existed between the applicant and the respondents and not only between the applicant and the Security Council. The Court rejected the objections to the admissibility of the Libyan applications because Security Council Resolution 748 (1992), which could have made the applications inadmissible, had been adopted only after Libya had filed its applications. Holding by a 10 to 6 majority (10 to 5 in the case against the US) that the question whether Resolution 748 and the subsequent Resolution 883 (1993) had rendered the applications without object 'does not possess, in the circumstances of the case, an exclusively preliminary character' within the wording of Article 79 of the ICJ Rules, the Court joined the matter to the merits. By pointing out that this question concerned the 'very subject-matter' of the case, the majority of the Court seems to indicate that it does not intend to avoid dealing with the question of the primacy of the SC resolutions over the Montreal Convention. If the Court indeed extended the jurisdiction which was granted to it for the interpretation or application of a special convention to far-reaching and fundamental questions of general international law and UN Charter law, it ought to be aware that it does not put into question the acceptance of its decisions by its state clientele.

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