



# Coercive Diplomacy in the Skies

By Marcelo L. Garcia and Roncevert G. Almond



The world is experiencing a gradual yet decisive shift toward a new paradigm in international relations—one that is based on muscular sovereignty and assertive nationalism. International trade is increasingly subject to geopolitics. In the realm of international air transport, this shift has come in the form of coercive

diplomacy involving civil aviation. From conflicts in the Crimean peninsula to the Taiwan Strait, this growing state practice has been referred to as the “weaponization of airspace.”<sup>1</sup> At issue is whether such actions are consistent with state obligations under the Convention on International Civil Aviation (Chicago Convention).<sup>2</sup>

In some cases, coercive diplomacy has taken the form of abrupt airspace closures and the unilateral withdrawal of traffic and other commercial rights for designated airlines.<sup>3</sup> In other cases, measures have aimed at seizing control of another state’s airspace as a means to assert sovereignty over a disputed territory.<sup>4</sup> In these instances, aspects of civil aviation are not used to promote cooperation and comity between states, but as geopolitical tools that create new hazards to commercial aviation and threaten peace and security in the skies above.<sup>5</sup> These measures breach the letter and spirit of the Chicago Convention, which sets forth core principles governing international air transport. Compounding the problem, the dispute resolution framework under the Chicago Convention is not equipped to mitigate the immediate safety and economic threats resulting from this new form of warfare.

This article reviews the dynamics of this troublesome trend in aviation. First, we briefly examine how the Chicago Convention stands in opposition to the use of airspace and civil aviation as means for coercive diplomacy. We then review how the airspace blockade against Qatar, as part of an ongoing dispute initiated by regional powers and their allies in 2017, conflicts with state obligations under the Chicago Convention. We close with a

recommendation to strengthen the dispute settlement process of the International Civil Aviation Organization (ICAO) to include provisional measures designed to immediately contain the harm from these airspace conflicts and, thus, further their eventual resolution.

## The Chicago Convention and Coercive Diplomacy

The Chicago Convention governs international aviation and sets forth principles for the safe and orderly development of the aviation industry.<sup>6</sup> The treaty is administered by ICAO, a specialized United Nations agency based in Montreal, Canada.<sup>7</sup> ICAO consists of an Assembly, a Council, a Secretariat, and other subsidiary bodies.<sup>8</sup> Pursuant to the Chicago Convention, ICAO prescribes rules relevant to the use of international airspace.<sup>9</sup> For example, via the Council’s quasi-legislative powers,<sup>10</sup> ICAO adopts Standards and Recommended Practices (SARPs),<sup>11</sup> which serve as Annexes to the Chicago Convention.<sup>12</sup> All contracting states are under a legal obligation to implement standards under the Convention.<sup>13</sup>

The coercive use of civil aviation violates various fundamental principles enshrined in the Chicago Convention. This includes the treaty’s objective “to avoid friction and to promote that cooperation between nations and peoples”<sup>14</sup> and the principle that “[e]ach contracting State agrees not to use civil aviation for any purpose inconsistent with the aims of this Convention.”<sup>15</sup> Some of ICAO’s primary objectives include ensuring the safe and orderly growth of international civil aviation; encouraging the development of airways facilitating air transport; ensuring that the rights of contracting states are fully respected and that every contracting state has a fair opportunity to operate international airlines; and promoting safety of flight in international air navigation.<sup>16</sup> In this regard, Assembly Resolution A39-15 has urged contracting states “to make every effort to fulfill their obligations, arising from the Convention and Assembly resolutions.”<sup>17</sup> Significantly, treaty obligations continue even if states have cut ties. The Vienna Convention on the Law of Treaties stipulates that the severance of diplomatic relations between states does not invalidate their treaty obligations.<sup>18</sup>

At the same time, territorial sovereignty remains a foundation block of international relations. The Chicago Convention codifies the fundamental principle that every state has “complete and exclusive sovereignty” over the airspace above its territory.<sup>19</sup> This reflects customary international law regarding sovereignty of national

---

**Marcelo L. Garcia** ([mgrosales@qatarairways.com.qa](mailto:mgrosales@qatarairways.com.qa)) is Manager, Regulatory and Corporate Affairs at Qatar Airways. He is an attorney, qualified to practice law in Canada. **Roncevert G. Almond** ([ralmond@wicks-group.com](mailto:ralmond@wicks-group.com)) is a partner at The Wicks Group, PLLC, in Washington, D.C. The views, thoughts, and opinions expressed herein are exclusively those of the authors, and do not necessarily reflect the views, thoughts, positions, or opinions of the authors’ employers or any other group or individuals or governmental or corporate entities.

**The coercive use of civil aviation violates various fundamental principles enshrined in the Chicago Convention.**

airspace, as first articulated in the 1919 Convention Relating to the Regulation of Aerial Navigation (Paris Convention)<sup>20</sup> and later codified in the United Nations Charter.<sup>21</sup> Beyond national boundaries, above the high seas, all states enjoy the freedom of overflight,<sup>22</sup> but the Chicago Convention still applies. Civil operations in international airspace are governed by “Rules of the Air” established by ICAO.<sup>23</sup> Contracting states are required to also apply these rules to the “highest practicable degree” within their respective national airspace.<sup>24</sup>

Additionally, the Chicago Convention recognizes the unique threat civil aviation can pose to national security. The treaty regime preserves the “freedom of action” of states to respond to national emergencies and conditions of war upon the provision of notice to the ICAO Council.<sup>25</sup> The Chicago Convention also enables contracting states, for reasons of military necessity or public safety, to “restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services, and the aircraft of other contracting States likewise engaged.”<sup>26</sup>

Compliance issues arise when contracting states, under the cover of alleged national security concerns or as part of wider political agendas, use aspects of civil aviation, such as discriminatory airspace restrictions, as a form of coercive diplomacy. For example, the selective application of flight restrictions within national airspace to aircraft registered in another state—without any prior notice and in the absence of evidence of military conflict or an imminent threat to public safety—arguably violates the Chicago Convention.<sup>27</sup> The case is even clearer if such restrictions are arbitrarily applied beyond sovereign airspace, such as in portions of international airspace where contracting states exercise limited functional jurisdiction pursuant to the Chicago Convention.<sup>28</sup>

The airspace blockade against Qatar demonstrates the tensions created between Chicago Convention obligations and the use of civil aviation as a means of coercive diplomacy.

### **Airspace Blockade against Qatar**

On June 5, 2017, the Kingdom of Saudi Arabia, the United Arab Emirates, the Kingdom of Bahrain, and the Arab Republic of Egypt decided, abruptly and unilaterally, to sever diplomatic and economic relations

with Qatar and deployed a package of aggressive and comprehensive measures, which included barring all Qatar-registered aircraft from landing or departing from their airports, and overflying their airspace.<sup>29</sup> According to a U.S. congressional report, one basis for the air embargo is alleged national security concerns stemming from Qatar’s foreign policy in the region.<sup>30</sup> However, the list of demands issued by the four blockading countries in July 2017 illustrates in unequivocal terms that the dispute extends far beyond aviation and reflects a wider geopolitical agenda. For example, one of the key demands for Qatar was to shut down Al Jazeera and all of its affiliates and order the immediate closing of a Qatar-based Turkish military base under development.<sup>31</sup>

These drastic measures, imposed without warning, have created high levels of airspace congestion in the Gulf region, and continue to jeopardize the safety, security, and regularity of airline operations to and from Qatar. Indeed, the air blockade, substantively and procedurally, runs into serious challenges under the Chicago Convention.

For instance, the flight restrictions against Qatar have at some point extended to the entire flight information regions (FIRs) controlled by the blockading states, and approval conditions have also been imposed on foreign (non-Qatar-registered) aircraft flying to and from the State of Qatar via their respective FIRs. An FIR is an area assigned to an ICAO member state for civilian air traffic control (ATC) purposes under a regional air navigation agreement with ICAO.<sup>32</sup> FIRs exist to facilitate international coordination to ensure safe and efficient air traffic management<sup>33</sup> through the provision of flight information<sup>34</sup> and alerting services.<sup>35</sup> In addition, the recommended geographic scope of FIRs corresponds with the route structure and need for efficient ATC services as opposed to national boundaries and security needs.<sup>36</sup> Indeed, the responsibility for ATC services in the FIR creates only functional responsibility for activity in the FIR and does not establish sovereignty or security rights. Instead, authority over air navigation services beyond a state’s territorial airspace is limited to technical and operational considerations for the safe and expeditious use of the concerned airspace.<sup>37</sup> The use of an FIR as a tactic in coercive diplomacy contravenes the very purpose and limitations of these airspace zones.

Even if there were a security or other recognized basis for establishing flight restrictions in designated airspace, the Chicago Convention establishes specific notice periods and duties to avoid threats to civil aviation. For example, Annex 11 requires states to coordinate with the appropriate air traffic services authorities when arranging activities that are potentially hazardous to civil aircraft over the high seas.<sup>38</sup> In addition, Annex 15 sets forth specific notice<sup>39</sup> and coordination requirements.<sup>40</sup> In such circumstances, the state with responsibility for the relevant FIR must initiate this notice and coordination process.<sup>41</sup> The coordination must occur early enough to permit timely promulgation of information regarding the activities in

accordance with the provisions of Annex 15.<sup>42</sup> Under Annex 15, states must provide at least seven days' advance notice through a notice to airmen (NOTAM)<sup>43</sup> when establishing prohibited, restricted, or danger areas in airspace.<sup>44</sup> Alternatively, Annex 15 allows for a greater lead-time of at least 28 days regarding the establishment and withdrawal of, and premeditated significant changes to, a danger area.<sup>45</sup> For prohibited, restricted, and danger areas, the type of restriction or nature of hazard and risk of interception in the event of penetration must be indicated in the Aeronautical Information Publication (AIP).<sup>46</sup> Establishing an airspace blockade, particularly involving international airspace within an FIR, without prior notice or coordination runs afoul of ICAO's procedural safeguards designed to mitigate the risk to and disruption of international civil aviation.

### Need for Provisional Measures

As demonstrated by the airspace blockade against Qatar, some states are increasingly using airspace as a tool for coercive diplomacy in the context of regional disputes that are driven by larger, nonaviation agendas.<sup>47</sup> However, the Chicago Convention provides a means of dispute resolution that can be used to address the legality of actions pertaining to civil aviation within the jurisdiction of the treaty.<sup>48</sup>

Pursuant to this dispute settlement process, if any disagreement between two or more contracting states relating to the interpretation or application of the Convention and its Annexes cannot be settled by negotiation, the ICAO Council may decide the matter based on the application of any state concerned in the disagreement.<sup>49</sup> No member of the Council is permitted to vote in the consideration by the Council of any dispute to which it is a party.<sup>50</sup> Appeal from the decision of the Council may be made to an ad hoc arbitral tribunal agreed upon with the other parties to the dispute or to the Permanent Court of International Justice (ICJ).<sup>51</sup> The decisions of the ICJ and of an arbitral tribunal are final and binding.<sup>52</sup> Penalties for noncomplying contracting states include the suspension of voting rights in the ICAO Council and Assembly.<sup>53</sup>

In the case of the airspace blockade, on June 8, 2017, Qatar requested that the ICAO Council convene a special session to consider the actions of Saudi Arabia, the United Arab Emirates, Bahrain, and Egypt.<sup>54</sup> The Council held an extraordinary meeting on July 31, 2017, to consider this request.<sup>55</sup> On October 30, 2017, Qatar submitted two applications and memorials, under Article 84 of the Chicago Convention and Article II, Section 2 of the International Air Services Transit Agreement (IASTA), respectively.<sup>56</sup> In March 2018, Saudi Arabia, the United Arab Emirates, Bahrain, and Egypt filed their counter-memorials and raised preliminary objections, contesting the jurisdiction of ICAO in the matter and in the alternative that the claims raised by Qatar were inadmissible.<sup>57</sup> The Council suspended the proceedings on the merits

of Qatar's claim pending the resolution of the preliminary objections. Following a response to the preliminary objections by Qatar, and a rejoinder by the opposing parties, the Council heard oral arguments in a half-day session on June 26, 2018.<sup>58</sup> The Council adopted its decision on June 29, 2018, rejecting the preliminary objections of Saudi Arabia, the United Arab Emirates, Bahrain, and Egypt. On July 4, 2018, those parties subsequently filed an appeal to the ICJ, pursuant to Article 84 of the Chicago Convention, claiming that the procedures adopted by the ICAO Council in its decision were flawed and that the Council had erred in fact and in law in rejecting the parties' preliminary objections.<sup>59</sup>

Even as the proceedings continue in this case, there remains a significant shortcoming: the Chicago Convention's current dispute settlement mechanism, including rules of procedure,<sup>60</sup> does not include the ability for ICAO to require the suspension of coercive measures, such as through an injunction or temporary restraining order, while the merits of the case are being heard and evaluated. The process could be strengthened by amending the Chicago Convention to explicitly empower the Council to mandate provisional measures under special circumstances that are likely to cause irreparable harm,<sup>61</sup> upon a basis similar to a grant of injunctive relief under U.S. law.<sup>62</sup> The penalty for non-compliance with provisional measures can be the same as already provided for under the Chicago Convention: suspension of voting rights in the ICAO Council and Assembly.<sup>63</sup>

In the case of an airspace embargo or civil aviation blockade, the disruption to international air transport and related economic harm is immediate and potentially permanent—even in normal circumstances, commercial aviation is an extraordinarily competitive and turbulent industry. An aggrieved state is not likely to achieve relief from ongoing injury as the Council deliberates. In the entire history of formal dispute resolution at ICAO, the Council has never issued a decision on the merits.<sup>64</sup> This legal gap creates incentives for aggressive first action even if the underlying legal basis is thin or nonexistent under the Chicago Convention. In the long run, without the availability of immediate recourse, international civil aviation may become even more vulnerable to coercive diplomacy or forms of economic warfare. Without an efficient and equitable dispute settlement mechanism, ICAO may lose ground as the central institution within the

**Establishing an airspace blockade without prior notice or coordination runs afoul of ICAO's procedural safeguards.**

international civil aviation system.

Provisional measures may not be a panacea, but they can prove effective, as demonstrated by the current case involving Iran and the United States before the ICJ concerning the reimposition of U.S. sanctions on Iran following the Trump administration's decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA), otherwise known as the "Iran Nuclear Deal."<sup>65</sup> Pursuant to ICJ doctrine, provisional measures may be taken only if the applicant satisfies a three-part test: First, there must be a prima facie basis for the court's jurisdiction.<sup>66</sup> Second, the rights asserted by the applicant must be plausible with a link between such rights and the measures being requested.<sup>67</sup> Third, there must

be a real and imminent risk that irreparable prejudice will be caused to the rights at issue in the absence of the provisional measures.<sup>68</sup> On October 3, 2018, the ICJ determined that Iran had met this standard, despite strenuous opposition from the United States, and ordered the United States to ensure that reimposed sanctions exempt, among other items, spare parts, equipment, and associated services (including warranty, maintenance, repair services, and inspections) necessary for the safety of civil aviation.<sup>69</sup> In response, the United States announced that it will withdraw from the bilateral treaty with Iran that provided the basis for

the ICJ's jurisdiction, but begrudgingly acknowledged compliance with the ICJ's provisional measures, including those addressing civil aviation safety.<sup>70</sup>

Amending the Chicago Convention may prove challenging, but it is not unprecedented—even when complex geopolitical issues are involved. During the Cold War, following the controversial downing of Korean Air Lines Flight 007 by the Soviet Union,<sup>71</sup> the Chicago Convention was amended to expressly prohibit the use of weapons against civil aircraft in flight and provide specific safeguards for the interception of civil aircraft.<sup>72</sup> The urgency of this task—of making ICAO's dispute resolution process more effective and efficient—will only increase as geopolitical disputes continue to threaten the existing consensus-driven global civil aviation system. Given its unique position and mandate, ICAO is the best forum for resolving aviation conflicts stemming from these larger disputes, for promoting the safe and orderly development of international civil aviation throughout the world.

## Conclusion

In a world in which coercive diplomacy in the skies gains momentum, breaches of the Chicago Convention are and will continue to be justified by some states on the basis of wider geopolitical agendas and without due regard to the safety, security, efficiency, and regulation of civil aviation. In this context, the role of ICAO is fundamental to prevent further escalation of coercive measures and potential cycles of destructive retaliation, as these can extensively or even irrevocably damage the global aviation system developed under the Chicago Convention. More particularly, the ICAO Council should continue to assert its mandate to settle disagreements relating to the interpretation or application of the Chicago Convention. This mandate should be enhanced through reform of the treaty to expressly allow for provisional measures, such as the mandatory suspension of coercive actions targeting civil aviation.

## Endnotes

1. Roncvert Ganon Almond, *The Weaponization of Airspace*, *DIPLOMAT* (Oct. 15, 2018), <https://thediplomat.com/2018/10/the-weaponization-of-airspace/>.
2. Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S. 295 [hereinafter Chicago Convention].
3. Max Bearak, *Three Maps Show How the Qatar Crisis Means Trouble for Qatar Airways*, *WASH. POST* (June 7, 2017), <https://www.washingtonpost.com/news/worldviews/wp/2017/06/07/three-maps-explain-how-geopolitics-has-qatar-airways-in-big-trouble/>.
4. Michelle Martin et al., *Europe Safety Agency Urges Airlines to Avoid Crimean Airspace*, *REUTERS* (Apr. 3, 2014), <https://www.reuters.com/article/us-ukraine-crisis-airspace/europe-safety-agency-urges-airlines-to-avoid-crimean-airspace-idUSBREA321P120140403>.
5. See Chicago Convention, *supra* note 2, at pmbl.
6. See *id.*
7. See *id.* at arts. 43–66.
8. *Id.* at art. 43.
9. See *id.* at art. 12 (“Over the high seas, the rules in force shall be those established under this Convention.”).
10. *Id.* at art. 50.
11. *Id.* at arts. 37, 54(D).
12. *Id.* at art. 90.
13. *Id.* at art. 38.
14. *Id.* at pmbl.
15. *Id.* at art. 4.
16. *Id.* at art. 44.
17. Int'l Civil Aviation Org. Assemb. Res. A39-15 (2016), [https://www.icao.int/Meetings/a39/Documents/Resolutions/a39\\_res\\_prov\\_en.pdf](https://www.icao.int/Meetings/a39/Documents/Resolutions/a39_res_prov_en.pdf).
18. Vienna Convention on the Law of Treaties art. 63, May 23, 1969, 1155 U.N.T.S. 331.
19. Chicago Convention, *supra* note 2, at art. 1.
20. Convention Relating to the Regulation of Aerial Navigation art. 1, Oct. 13, 1919, 11 L.N.T.S. 173 (“The High contracting Parties recognize that every Power has complete and exclusive

sovereignty over the air space above its territory.”).

21. U.N. Charter art. 4.

22. United Nations Convention on the Law of the Sea arts. 87, 89, Dec. 10, 1982, 1833 U.N.T.S. 397; *see also* Chicago Convention, *supra* note 2, at art. 2.

23. Chicago Convention, *supra* note 2, at art. 12; Int’l Civil Aviation Org. [ICAO], *Rules of the Air: Annex 2 to the Convention on International Civil Aviation*, at 2-1, ICAO Doc. ICAO/ANX/2 (10th ed. 2005), <https://www.theairlinepilots.com/forumarchive/quickref/icao/annex2.pdf> (noting that Annex 2 applies to flights above the high seas without exception).

24. Chicago Convention, *supra* note 2, at arts. 12, 38.

25. *Id.* at art. 89.

26. *Id.* at art. 9.

27. Elizabeth Cuadra, *Air Defense Identification Zone: Creeping Jurisdiction in the Airspace*, 18 VA. J. INT’L L. 485, 488–89 (1978) (acknowledging that the Chicago Convention “left some aspects of sovereignty in the airspace unresolved”).

28. *See generally* Roncevert Almond, *Clearing the Air above the East China Sea: The Primary Elements of Aircraft Defense Identification Zones*, 7 HARV. NAT’L SEC. J. 126 (2016) (examining the legal problems with jurisdictional claims to international airspace even on the basis of national security).

29. Kareem Fahim & Karen DeYoung, *Four Arab Nations Sever Diplomatic Ties with Qatar, Exposing Rift in Region*, WASH. POST (June 5, 2017), [https://www.washingtonpost.com/world/four-arab-nations-sever-diplomatic-ties-with-qatar-exposing-rift-in-region/2017/06/05/15ad2284-49b4-11e7-9669-250d0b15f83b\\_story.html](https://www.washingtonpost.com/world/four-arab-nations-sever-diplomatic-ties-with-qatar-exposing-rift-in-region/2017/06/05/15ad2284-49b4-11e7-9669-250d0b15f83b_story.html).

30. KENNETH KATZMAN, CONG. RESEARCH SERV., RL44533, QATAR: GOVERNANCE, SECURITY, AND U.S. POLICY (2019).

31. *Arab States Issue 13 Demands to End Qatar-Gulf Crisis*, AL JAZEERA (July 11, 2017), <https://www.aljazeera.com/news/2017/06/arab-states-issue-list-demands-qatar-crisis-170623022133024.html>.

32. *See* Int’l Civil Aviation Org. [ICAO], *Air Traffic Services: Annex 11 to the Convention on International Civil Aviation*, at 2-1, ICAO Doc. ICAO/ANX/11 (13th ed. 2001) [hereinafter *Annex 11*], <https://www.theairlinepilots.com/forumarchive/quickref/icao/annex11.pdf>.

33. *Id.* at 2-2.

34. Flight information includes meteorological information and operational information concerning radio navigational services and aerodromes. *Id.* at 4-1.

35. Alerting services involve responding to aircraft determined to be in a state of emergency, such as search and rescue. *Id.* at 5-1.

36. *Id.* at 2-5.

37. *Id.* at 2-1.

38. *Id.* at 2-7.

39. Int’l Civil Aviation Org. [ICAO], *Aeronautical Information Services: Annex 15 to the Convention on International Civil Aviation*, at 5-1 to 5-2, ICAO Doc. ICAO/ANX/15 (14th ed. 2001) [hereinafter *Annex 15*], <https://www.theairlinepilots.com/forumarchive/quickref/icao/annex15.pdf>; *see also id.* at 6-1, APP 4-1.

40. *Annex 11, supra* note 32, at 2-6.

41. *Id.* at 2-7.

42. *Id.*

43. A NOTAM is defined as “notice distributed by means of telecommunication containing information concerning the establishment, condition or change in any aeronautical facility, service, procedure or hazard, the timely knowledge of which is essential to personnel concerned with flight operations.” *Annex 15, supra* note 39, at 2-3.

44. *Id.* at 5-1 to 5-2.

45. *Id.* at 6-1, APP 4-1.

46. *Id.* at ch. 4, app. 1.

47. Joint Application Instituting Proceedings (Bahr., Egypt, Saudi Arabia & U.A.E. v. Qatar) (July 4, 2018), <https://www.icj-cij.org/files/case-related/173/173-20180704-APP-01-00-EN.pdf>.

48. Chicago Convention, *supra* note 2, at ch. XVIII (Disputes and Default).

49. *Id.* at art. 84.

50. *Id.*

51. *Id.* at art. 85.

52. *Id.* at art. 86.

53. *Id.* at art. 87.

54. Joint Application Instituting Proceedings, *supra* note 47, ¶ 11.

55. *Id.* ¶ 12.

56. *Id.* ¶ 13.

57. *Id.* ¶¶ 18–19.

58. *Id.* ¶¶ 21–25.

59. *Id.* ¶¶ 29–32.

60. Int’l Civil Aviation Org. [ICAO], *Rules for the Settlement of Differences*, ICAO Doc. 7782/2 (2d ed. 1975).

61. In conjunction with amending the Convention, the rules of procedure could be reformed to permit a written request for provisional measures, with the applicant bearing the burden of specifying the reasons for such measures and the possible consequences if the request were not granted. The Council could be assisted by an independent technical panel, which could make an assessment and recommendation as to whether provisional measures are necessary to protect the safety, security, and regularity of civil aviation. The Council would make the final determination.

62. For example, under U.S. federal law, a preliminary injunction must meet the following test: (1) the movant has shown a likelihood of success on the merits; (2) there is a likelihood that the movant will suffer irreparable harm in the absence of a preliminary injunction; (3) the balance of equities tips in the movant’s favor; and (4) the injunction is in the public interest. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009).

63. Chicago Convention, *supra* note 2, at art. 88. In cases of bad faith on the part of contracting states, other remedies may be required.

64. In each of the five cases filed with ICAO, the parties achieved resolution through ICAO’s role in conciliation and mediation. *See* PAUL STEPHEN DEMPSEY, *PUBLIC INTERNATIONAL AIR LAW* 736 (2008). The threat of provisional measures may

incentivize countries to engage in conciliation and mediation once formal dispute settlement proceedings have begun.

65. Presidential Memorandum, Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapon (May 8, 2018), <https://www.whitehouse.gov/presidential-actions/ceasing-u-s-participation-jcpoa-taking-additional-action-counter-irans-malign-influence-deny-iran-paths-nuclear-weapon/>.

66. Jadhav (India v. Pak.), Provisional Measures, 2017 I.C.J. Rep. 231, 236, ¶ 15 (May 18).

67. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russian Federation), Provisional Measures, 2017 I.C.J. Rep. 104, 126, ¶ 63 (Apr. 19).

68. India v. Pak., 2017 I.C.J. Rep. at 243, ¶¶ 49–50.

69. Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. U.S.), Request for the Indication of Provisional Measures (Oct. 3, 2018), <https://www.icj-cj.org/files/case-related/175/175-20181003-ORD-01-00-EN.pdf>.

[org/files/case-related/175/175-20181003-ORD-01-00-EN.pdf](https://www.icj-cj.org/files/case-related/175/175-20181003-ORD-01-00-EN.pdf).

70. The United States noted that the current exceptions, exemptions, and licensing policies for humanitarian-related transactions and safety of flight will remain in effect. See Remarks to the Media by Secretary of State Michael R. Pompeo (Oct. 3, 2018), <https://www.state.gov/secretary/remarks/2018/10/286417.htm>; Elena Chachko, *What to Make of the ICJ's Provisional Measures in Iran v. U.S. (Nuclear Sanctions Case)*, LAWFARE (Oct. 4, 2018), <https://www.lawfareblog.com/what-make-icjs-provisional-measures-iran-v-us-nuclear-sanctions-case> (concluding that Sec. Pompeo's statement "communicates that the U.S. is complying with the [ICJ's] provisional measures").

71. See Masahiko Kido, *The Korean Airlines Incident on September 1, 1983, and Some Measures Following It*, 62 J. AIR L. & COM. 1049, 1062 (1997).

72. Chicago Convention, *supra* note 2, at art. 3 *bis*.