



## THE LEGAL FORCE OF THE INTERNATIONAL COURT OF JUSTICE DECISION ON THE APPEALS DISPUTE

(CASE STUDY: ICJ DECISION NO. 173 ON THE APPEALS DISPUTE BETWEEN BAHRAIN, SAUDI ARABIA, EGYPT, AND THE UAE VERSUS QATAR)

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### Abstract

*The Statute of the International Court of Justice does not include provisions regarding the authority or jurisdiction of the International Court to handle appellate cases. However, in practice, the International Court of Justice has issued judgments on appeals related to the ICAO Council's jurisdiction in disputes over flight restrictions in Qatar imposed by Bahrain, Egypt, Saudi Arabia, and the United Arab Emirates (UAE). This study aims to analyze the nature of decisions related to these appellate disputes. The research methodology employed is normative research with a legislative, conceptual, and case study approach. The findings of this research indicate that decisions on appellate cases are deemed final and binding as stipulated in Article 60 of the Statute of the International Court of Justice and Article 86 of the Chicago Convention, and the obligation of UN member states to comply with the judgments of the International Court of Justice is regulated in Article 94 of the United Nations Charter.*

**Keywords:** *Appeal; International Court of Justice; Nature of The Judgment*

### A. INTRODUCTION

The competence of the International Court of Justice in carrying out its duties and functions as an international dispute resolution body is based on the Statute of the International Court of Justice and the Rules of Court. The International Court of Justice has authority *ratione personae* and *ratione materiae*. The provision in Chapter II, which pertains to the competence of the court, is stated in Article 34, Paragraph 1 of the Statute of the International Court of Justice. It specifies that only states can be parties to cases before the court. Article 1)34) of the Statute of the International Court of Justice states:

*“Only states may be parties in cases before the Court.”<sup>1</sup>*

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<sup>1</sup>Ibid

The article clearly states that only states can be litigants in the courts of the International Court of Justice, so neither individuals nor international organizations can be litigants in disputes in the International Court of Justice. This is a form of the authority of the *Ratione Personae* (the subject who is entitled to submit a case to the International Court of Justice) of the International Court of Justice in carrying out its role and duties as an international dispute resolution body. If an individual or company is aggrieved by an act of another state, then in order for the dispute to be submitted to and dealt with by the Court, the individual's state or the state in which the company is registered first takes over the dispute and can then submit it to the Court.<sup>2</sup> *Ratione Personae* refers to the position of a body or institution that submits a case to the International Court of Justice while *ratione materiae* is the position or immunity granted to the International Court of Justice to handle the type of case referred to it. The jurisdiction of the International Court of Justice includes two things, namely jurisdiction over the subject matter of the dispute submitted (contentious jurisdiction), as well as non-contentious jurisdiction to provide legal advice (advisory jurisdiction). The International Court of Justice has consultative jurisdiction, namely providing legal advice which can then be used as advice by the state in dispute at the International Court of Justice using its advisory jurisdiction. Provisions regarding advisory opinions are included in article 96 paragraph 1 of the United Nations Charter which states:

*"The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question"*<sup>3</sup>

The explanation of consultative jurisdiction is also further regulated in article 65 of the Statute of the International Court of Justice which explains that the International Court of Justice can provide consultative opinions on any question of law in accordance with the request of any institution authorized or in accordance with the Charter of the United Nations to make such requests. In addition to the advisory opinion authority, the International Court of Justice has Contentious Jurisdiction which is the authority of the International Court of Justice over a dispute that allows the application of the rules and principles of international law to it.<sup>4</sup> In other words, contingent jurisdiction is the authority of the International Court of Justice in adjudicating a dispute. The International Court of Justice states that:

*"...First, that the dispute before it is a legal dispute, in the sense of a dispute capable of being settled by the application of principles and rules of international law, and secondly, that the court has jurisdiction to deal with it, and that jurisdiction is not fettered by any circumstance rendering the application inadmissible"*<sup>5</sup>

Which means "first, that the dispute before it is a legal dispute, in the sense of a dispute capable of being resolved through the application of the principles and rules of international law, and second, that the court has jurisdiction to deal with the matter, and such jurisdiction is not bound by any circumstances which render the application inadmissible".

<sup>2</sup>Huala Adolf. (2020). *Hukum Penyelesaian Sengketa Internasional, Edisi Revisi*. Jakarta: Sinar Grafika, hlm. 81

<sup>3</sup>United Nations, *United Nations Charter*. Art 96 (1)

<sup>4</sup>Huala Adolf. (2020). *Hukum Penyelesaian Sengketa Internasional, Edisi Revisi*. Jakarta: Sinar Grafika, hlm. 81

<sup>5</sup>Huala Adolf, *Op.Cit.*, hlm. 81

In exercising its contingent jurisdiction the International Court of Justice sets out the conditions under which states can access the International Court of Justice which is set out in article 35 (1) of the Statute of the International Court of Justice which states:

*“The Court shall be open to the states parties to the present Statute”*<sup>6</sup>

The explanation of the first paragraph of Article 35 above is that the International Court of Justice is open to states that are parties to its statutes. The Court can only deal with a dispute when the states concerned have recognized its jurisdiction. Therefore, no state can become a party to proceedings before the International Court of Justice unless it has given its consent in some form or other to the International Court of Justice.<sup>7</sup> Cases and disputes registered with the International Court of Justice vary greatly from the settlement of international treaties to the settlement of international conventions both in terms of the interpretation of the convention to the implementation of a treaty or convention.

International Civil Aviation Organization or abbreviated as ICAO is a UN agency that has an important role in regulating and facilitating cooperation in the field of international civil aviation. ICAO involves 193 countries with the aim of coordination and cooperation in the field of air transportation signed and agreed upon by the relevant countries in the Chicago Convention (1944). The foundation or source of law used in enforcing the rules of the ICAO Council is contained in the Convention on International Civil Aviation or better known as the Chicago Convention. The ICAO Council is one of the international dispute resolution bodies that has special competence in aviation dispute resolution.

On June 5, 2017, Bahrain, Egypt, Saudi Arabia, and the United Arab Emirates severed diplomatic relations with Qatar and took a series of restrictive measures related to land, sea, and air lines of communication including restrictive measures in the field of aviation. Due to the airspace blockade measures, all Qatar-registered aircraft are prohibited from landing or departing from their airports and are prohibited from passing through their territorial areas, including territorial sea areas within the relevant flight information areas..<sup>8</sup> Not only aircraft registered in Qatar but aircraft that are not registered in Qatar are also required to obtain civil aviation authority approval by the appeals parties. The Quartet States (the appeal parties) carried out the blockade action for alleged violations by Qatar of its obligations in several international agreements involving Qatar with the appeal parties, including the Riyadh Agreement and other obligations under international law.<sup>9</sup>

Qatar submitted an application on June 15, 2017 to the office of the Secretary General of ICAO with the aim of initiating proceedings before the ICAO board naming Bahrain, Egypt, Saudi Arabia, and the United Arab Emirates as complainants and attaching a memorandum. On October 30, 2017 Qatar submitted a new application and

<sup>6</sup>International Court of Justice, *Statute of International Court of Justice*, art 35 (1)

<sup>7</sup>International Court of Justice, *Contentious Jurisdiction*. Available from: <https://icj-cij.org/contentious-jurisdiction> [diakses 21 Agustus 2023]

<sup>8</sup>ALJAZEERA. (2020). *Understanding the Blockade Against Qatar*. Available from: <https://www.aljazeera.com/news/2020/6/5/understanding-the-blockade-against-qatar> [diakses 21 Agustus 2023]

<sup>9</sup>International Court of Justice. (2020). *Judgment (Introduction, Factual Background); 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)*. Page 17 (23). Available from: <https://icj-cij.org/sites/default/files/case-related/173/173-20200714-JUD-01-00-EN.pdf> [diakses 21 Agustus 2023]

memorandum to the ICAO board in accordance with article 84 of the Chicago convention where Qatar stated that the flight restrictions imposed by Bahrain, Egypt, Saudi Arabia, and the United Arab Emirates had violated their obligations under article 84 of the Chicago convention which reads:

*“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.”<sup>10</sup>*

Bahrain, Egypt, Saudi Arabia, and the United Arab Emirates on March 19, 2018 as respondents before the ICAO Council filed two preliminary objections. In the first preliminary objection, the four countries argued that the ICAO Council did not have jurisdiction under the Chicago Convention because the issues involved in the dispute between the parties involved matters beyond the scope of that instrument. In the second rebuttal the parties argued that Qatar failed to fulfill the negotiation prerequisites set out in article 84 of the Chicago convention.<sup>11</sup> The ICAO Council rejected the preliminary objections raised by the parties (Bahrain, Egypt, Saudi Arabia and the United Arab Emirates).<sup>12</sup>

The applicants, namely Bahrain, Egypt, Saudi Arabia and the UAE, filed an appeal to the International Court of Justice on July 4, 2018 against the decision of the ICAO board dated June 29, 2018, which then in terms of resolving the appeal dispute at the International Court of Justice will raise legal questions, namely whether the International Court of Justice’s decision on the appeal dispute will have a final, binding and non-appealable nature in accordance with the provisions of the rules contained in the Statute of the International Court of Justice regarding the nature and decisions of the International Court of Justice on appeal disputes referred to it under article 84 of the Chicago Convention. Appellate disputes submitted to the International Court of Justice are quite unique cases because in the Statute of the International Court of Justice there are no explicit rules that discuss the appellate jurisdiction of the International Court of Justice. This, of course, will also raise legal questions regarding the nature and legal force of the International Court of Justice’s decision on the appeal dispute.

<sup>10</sup>International Civil Aviation Organization, *Convention on International Civil Aviation (Chicago Convention)*. Art 84

<sup>11</sup>International Court of Justice. (2020). *Judgment (Introduction, Factual Background); 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)*. Page 17-18 (24). Available from: <https://icj-cij.org/sites/default/files/case-related/173/173-20200714-JUD-01-00-EN.pdf> [diakses 21 Agustus 2023]

<sup>12</sup>International Court of Justice. (2020). *Judgment (Introduction, Factual Background); 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)*. Page 18 (25). Available from: <https://icj-cij.org/sites/default/files/case-related/173/173-20200714-JUD-01-00-EN.pdf> [diakses 21 Agustus 2023]

## B. METHOD

The author employs the normative juridical method in their research. Normative legal research is a type of library research that views law as a framework composed of a system of norms. It involves examining primary, secondary, and tertiary legal sources. The author attempts to analyze the nature and legal implications of the Court's decision on appeal dispute No. 173, which was filed by Bahrain, Egypt, Saudi Arabia, and the UAE against Qatar. This analysis is based on the Statute of the International Court of Justice and other relevant provisions of international law. The author employs the deductive research method by analyzing various sources, including the International Court of Justice's decision on appeal dispute No. 173, the Statute of the International Court of Justice, the Rules of Court, and the Chicago Convention. The author also utilizes the statutory, conceptual, and case study approaches.

## C. ANALYSIS AND DISCUSSION

The International Court of Justice as the principal judicial organ of the United Nations can decide on binding measures.<sup>13</sup> In accordance with the Statute of the International Court of Justice, that in general the jurisdiction of the International Court of Justice is divided into two parts, namely contentious jurisdiction and advisory. Contentious jurisdiction is the first type of jurisdiction given to the International Court of Justice. Contentious jurisdiction is the authority of the International Court of Justice which includes the settlement of disputes between states in accordance with international law.

*“So far as the parties to the case are concerned, a judgment of the Court is binding, final and without appeal. This principle applies to all the Court's judgments, whether delivered by a full Bench of the Court or by a Chamber, whether delivered by the ICJ when hearing a case brought directly to it or on appeal from another tribunal”*<sup>14</sup>

The above quote from The International Court of Justice Handbook states that decisions issued by the International Court of Justice will be binding on all parties involved in the dispute, the decisions of the International Court of Justice are final, binding and cannot be appealed. This principle applies to all decisions of the International Court of Justice whether they are rendered by the full Court or by a group, whether they are rendered by the Court in hearing a case directly referred to it or in the course of an appeal from another international legal settlement body.

The decision of the International Court of Justice is final and binding. The legal basis for this is contained in article 60 of the Statute of the International Court of Justice which explains:

*“The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.”*<sup>15</sup>

Decisions of the International Court of Justice are final and without appeal. In the event of a dispute over the meaning or scope of a judgment, the International Court of Justice shall interpret it at the request of any party. This principle, of course, applies to

<sup>13</sup>Andras Jakab and Dimitry Kochenov (ed). (2017). *The Enforcement of EU Law and Values. Ensuring Member States' Compliance*. Oxford: Oxford University Press, hlm. 363

<sup>14</sup>The International Court of Justice. (2014). *Handbook: The Sixth Edition “The Decision. A Judgment Is Binding On The Parties”*, Netherland: International Court of Justice, hlm. 77

<sup>15</sup>International Court of Justice, *Statute of The International Court of Justice* Article 60

all types of judicial decisions issued by the International Court of Justice. In the decision of the International Court of Justice issued on appeal dispute number 173 related to the jurisdiction of the ICAO Council submitted by Bahrain, Egypt, Saudi Arabia and the UAE against Qatar, the decision explained that the objections raised by the applicant countries could not be accepted by the International Court of Justice and considered that the ICAO Council had jurisdiction to handle and decide the case submitted by Qatar. As in the decision issued by the International Court of Justice on the appeal case filed by India vs Pakistan related to the jurisdiction of The ICAO Council. In the decision, the court explained that the ICAO Council has the authority to exercise its jurisdiction over the dispute settlement filed by Pakistan.

The binding nature of the court's decision certainly applies to every decision issued by the International Court of Justice whether issued by the Court with full bench of the court or by a Chamber. The binding nature of the decisions of the International Court of Justice is a consequence of the ratification, accession, or acceptance of the Statute of the Court by the state.<sup>16</sup>

In contentious jurisdiction, the nature of the decision issued by the International Court of Justice is final and binding. But in contrast to non-contentious jurisdiction, the nature of the advisory decision is not binding, the legal advice given by the International Court of Justice to the parties to the dispute can be applied or not. Therefore, the types of disputes submitted to the International Court of Justice will also be divided into two, namely contentious cases and advisory opinions.

The appeal dispute filed by the four applicant countries namely Bahrain, Egypt, Saudi Arabia, and UAE vs Qatar is a contentious case. The power of the International Court of Justice to decide disputes is specified in the Statute of the International Court of Justice known as dispute jurisdiction.<sup>17</sup> Provisions regarding the strength or nature of decisions issued by the International Court of Justice in its contingent jurisdiction are regulated in Article 60 of the Statute of the International Court of Justice which explains that the decisions of the International Court of Justice are final, binding and cannot be appealed. In the event of a dispute regarding the interpretation or scope of the decision issued, the International Court of Justice will provide meaning or interpret it at the request of one of the parties (state parties).

By ratifying the Charter, each member state of the United Nations undertakes to abide by the decisions of the International Court of Justice in cases to which it is a party. In addition to agreeing to the jurisdiction of the International Court of Justice over a dispute, member states must also accept that the decisions rendered by the International Court of Justice are final and binding. In general and in practice, decisions of the International Court of Justice are rarely enforced.<sup>18</sup>

It is known that the five countries (Saudi Arabia, Egypt, Bahrain, United Arab Emirates and Qatar) are countries that are members of the United Nations membership. In accordance with the explanation of article 94 paragraph 1 (one) of the United Nations

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<sup>16</sup>Huala Adolf. (2020). *Hukum Penyelesaian Sengketa Internasional Edisi Revisi*. Jakarta: Sinar Grafika, hlm. 106

<sup>17</sup>J.G. Merrills. (2011). *International Dispute Settlement: Fifth Edition*. New York: Cambridge University Press, hlm. 116

<sup>18</sup>The International Court of Justice. (2014). *Handbook: The Sixth Edition "The Decision. A Judgment Is Binding On The Parties"*. Netherland: International Court of Justice, hlm. 77

Charter that each member state of the United Nations undertakes to comply with the decision of the International Court of Justice in every case where the member states are parties to the litigation.

The application of state parties' compliance in implementing decisions based on legal disputes resolved through contentious jurisdiction is contained in article 94 paragraph 1 of the United Nations Charter which states that:

*“Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party”<sup>19</sup>*

A State, whether a member of the United Nations or not, which is of the opinion that another party has failed to perform an obligation incumbent upon it under a judgment rendered by the International Court of Justice may refer the matter to the security council of the United Nations. The security council shall take further action to decide on the steps to be taken to implement the judgment.<sup>20</sup>

This is stated in the United Nations Charter in article 94 paragraph 2 which states :  
*“If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment”<sup>21</sup>*

If one of the state parties fails to comply with a judgment rendered by the International Court of Justice, the other party may apply to the Security Council, which may, if and when it deems necessary, recommend or decide on action to be taken to enforce the judgment.

The United Nations Charter states that each member state is committed to abide by the decisions of the International Court of Justice in every case to which it is a party. Further discussion of the legal force of the International Court of Justice's decision on the dispute appealed to it in article 84 of the ICAO Council is also explained in the Convention on International Civil Aviation in article 86 which states:

*“Unless the Council decides otherwise any decision by the Council on whether an international airline is operating in conformity with the provisions of this Convention shall remain in effect unless reversed on appeal. On any other matter, decisions of the Council shall, if appealed from, be suspended until the appeal is decided. The decisions of the Permanent Court of International Justice and of an arbitral tribunal shall be final and binding.”<sup>22</sup>*

In the explanation of the above article it says that any decision of the board on whether an international air carrier is operating in accordance with the provisions of this convention shall stand unless overturned on appeal, unless the board decides otherwise. On any other matter, if an appeal is lodged, the decision of the board shall be suspended until the decision of the appeal is made. The decisions of the arbitral tribunal as well as the Permanent Court of International Justice shall be appealable and binding.

<sup>19</sup>United Nations, *United Nations Charter*, San Francisco, 1945, Article Number 94 (1)

<sup>20</sup>The International Court of Justice. (2014). *Handbook: The Sixth Edition “The Decision. A Judgment Is Binding On The Parties”*. Netherland: International Court of Justice, hlm. 77

<sup>21</sup>United Nations, *United Nations Charter*, San Francisco, 1945, Article Number 92 (2)

<sup>22</sup>International Civil Aviation Organization, *Convention on International Civil International*, Article Number 86

In the International Court of Justice's ruling on the appeal dispute filed by Bahrain, Saudi Arabia, Egypt, and the UAE against Qatar.

Apart from the legal provisions that apply to regulations that discuss the legal force of the International Court of Justice's decisions, compliance in carrying out and obeying the decisions of the International Court of Justice is also enforced by one of the principles of international law, namely good faith. Good faith in the international world has been used as one of the important foundations for the enforcement of international law. The principle of good faith is one of the fundamental principles in complying with obedience in the enforcement of international law.

So far, the decisions of the International Court of Justice have had a significant impact on aspects of international relations, especially in legal and political relations. Due to the binding nature of its decisions, the parties to any dispute must comply with and implement the decision with the principle of good faith.<sup>23</sup>

#### **D. CONCLUSION**

The legal force of the International Court of Justice's decision in the appeal case will still be final and binding. In accordance with the provisions of Article 60 of the Statute of the International Court of Justice, which emphasizes that the decisions of the International Court of Justice are final, binding, and not subject to appeal. This principle applies to all decisions of the International Court of Justice, whether they are fully processed by the Court itself or by other international dispute resolution bodies. It also applies to decisions delivered by the Court in cases directly referred to it or in the process of appeal from other international dispute resolution bodies. These decisions do not affect the nature and legal force of the International Court of Justice's rulings.

In addition, the nature of the International Court of Justice's decision on the dispute appeal filed by Bahrain, Saudi Arabia, Egypt, and the UAE against Qatar, using Article 84 of the Chicago Convention, is also regulated in Article 86 of the Chicago Convention. Article 86 briefly explains that if the Board's decision is appealed, it will be suspended until the appeal is resolved. Decisions issued by the International Court of Justice or an arbitral tribunal have a final and binding character. State parties resolving disputes at the International Court of Justice are obligated to carry out the decision in accordance with the principles of international law, particularly the principle of good faith.

Decisions issued by the International Court of Justice or an arbitral tribunal have a final and binding character. State parties resolving disputes at the International Court of Justice are required to implement the decision in accordance with the principles of international law, particularly the principle of good faith.

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