

CHICAGO CONVENTION, ICAO AND AVIATION DISPUTES

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Scheme of Discussion

- Part I: Chicago Convention, which has been divided into four parts, 22 chapters and 96 articles. Part 1 Air navigation art. 1-42, Part II ICAO from Articles 43- 66, Part III Int. Air Transport regulations, 67-79, Part IV Final Provisions 80-96.
- PART-II (From Chapter VII-XIII ARTICLES:43-66 including Organization, Assembly, Council, Air Navigation Commission, Personnel, Finance and other Int. Arrangements
- Part III: International Air Law and Dispute Settlement--Definition and Types of Dispute Settlement, PCA and PCIJ, ICJ and Aviation Disputes, ICAO Council and Aviation Disputes, India v Pakistan (1952) Pakistan v India (1971) ICJ and Aviation India v Pakistan 1972, Lockerbie (Libyan Arab Jamahiriya v. United States of America) – 1992. Aerial Incident of 10 August 1999 (Pakistan v. India) – 1999. WTO and Dispute Settlements- Brazil and Canada had been accusing each other over illegal aircraft export subsidies since 1996.-Boeing-Airbus dispute

Chicago Convention 1944

Chicago convention has been divided into four parts, 22 chapters and 96 articles.

- Part 1 Air navigation art. 1-42 Covering six chapters including the schedule and non-schedule flights
- Part II International Civil Aviation Organization (ICAO) Structure, powers and functions of the ICAO are covered under articles 43-66
- Part III Int. Air Transport regulations and their implementations are covered under articles 67-79
- Part IV Final Provisions including the authentic languages, signature, ratification, amendments etc. are covered under articles 80-96.

Part I on Air Navigation

6 Chapters from Article 1 - 42

- **CHAPTER-I**
- **General Principles and Application of the Convention** (From 1-4) discusses the state sovereignty, territory including territorial waters, civil and state aircraft and use of civil aviation. Whole air law is developed on the concept of state sovereignty in civil aviation.
- According to Article I the **contracting states recognises that every state has complete and exclusive sovereignty over airspace above its territory.**

CHAPTER-II

- **Flight over territory of contracting states Article (5-16)** discusses issues relating to the scheduled and non-scheduled air services, cabotage, pilotless aircraft (about the Uavs) , prohibited areas, landing at custom airports, air rules and regulations, airport charges etc.
- Article 6 “No scheduled international air services may be operated over or into the territory of a contracting state, except with the special permission or authorization of that state, and in accordance with the terms of such permission or authorization.”

CHAPTER-III

- Chapter-III discusses about the Nationality and Registration of Aircraft from articles 17-21 of the convention.
- According to Article 17 Aircraft have the nationality of the state in which they are registered. Other important provisions of nationality of the aircraft includes dual registration, national laws governing registrations, display of marks and Reports of registration.

CHAPTER-IV

- The articles 22-26 of the Chicago Convention deal with the measures to facilitate air navigation.
- Provisions were made for facilitating the flight of aircraft engaged in international air navigation, including simplification of customs requirements, giving assistance to aircraft in distress, aiding investigation of accidents, exempting aircraft from seizure by reason of patent claims or infringements, and by the adoption of Standards and Recommended Practices (SARPs) in respect of airports, radio services, meteorological services and other air navigation facilities, standard communication procedures, codes, markings, signals, lighting and publication of charts & maps.

CHAPTER-V

- Articles 29-36 deal with conditions to be fulfilled with respect to aircraft including
- documents carried in aircraft, aircraft radio equipment, certificate of airworthiness, licences of personnel, recognition of certificates and licences, journey log books, cargo restriction and photographic apparatus.

CHAPTER-VI

- Articles 37-42 deal with Adoption and implementation of International Standards and Recommended Practices (SARPs) in international civil aviation.
- the adoption and departures of international standards, procedures, endorsement of certificates and licences and their validity, recognition of airworthiness etc are covered in this Chapter.

PART-II (From Chapter VII-XIII ARTICLES:43-66)

- CHAPTER-VII (THE ORGANISATION-ICAO)
- CHAPTER-VIII (THE ASSEMBLY)
- CHAPTER-IX (THE COUNCIL)
- CHAPTER-X (AIR NAVIGATION COMM.)
- CHAPTER-XI (PERSONNEL)
- CHAPTER-XII (FINANCE)
- CHAPTER-XIII (OTHER INTL. ARRANGEMENTS)

ICAO and Air Law

- The Chicago Convention has also established principles, structures and procedures for the International Civil Aviation Organization (ICAO) have been covered in Part II from Articles 43 to 66 of the Convention.
- The ICAO has been responsible for establishing guidelines and standards for navigational aids, technical rules for landing areas, aircraft certification, licensing of pilots and other specialized personnel.
- ICAO is responsible of Development of Int. Air Law

The OBJECTIVES OF ICAO

- Art.44 Objectives-
- ensure a safe and orderly growth of international civil aviation throughout the world;
- Encourage the arts of aircraft design and operation for peaceful purposes;
- Encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- Prevent economic waste caused by unreasonable competition;
- Insure that the rights of contracting states are fully respected and that every contracting state has a fair opportunity to operate international airlines;
- Avoid discrimination between contracting states;
- Promote safety of flight in international air navigation;
- Promote generally the development of all aspects of international civil aeronautics.

ICAO Assembly

- The ICAO has Assembly, Council, the Secretariat, Air Navigation Commission, and other organs to run day-to-day activities.
- The Assembly meets once in every three years.
- All contracting states shall have an equal rights and each contracting state has one vote in the Assembly.

ICAO Council

- The Council is the permanent body responsible to the Assembly. It shall be composed of 33 contracting states elected by the Assembly. In electing the members of the council, the Assembly shall give adequate representation to
 - the states of chief importance in air transport
 - the states which makes largest contribution to the international civil aviation and
 - the major geographic areas of the world are to be represented.

ICAO Secretariat

- Headed by Sec. General and other staff to run the day to day functions.
- It also has various commissions and Burios including Air navigation commission and legal bureau, Air transport bureau, Tech. cooperation bureau, Admin. Services bureau.
- It also has aviation security and facilitation services

Part III Int. Air Transport

- Chapter XIV- information & Reports
- Art. 67 – File report with Council
- Each contracting state shall file its int. airlines report with the Council traffic reports, cost statistic and financial statements

Chapter XV

Airports & other air navigation facilities

- Articles 68- 76
- covered various airport and air navigation facilities including designation of routes and airports, financing & improvement of air navigation facilities, acquisition and use of land, expenditure and assessment of revenues etc.

CHAPTER-XVI

JOINT OPERATING ORGS. & POOL SERVICES

- Articles 77-79
- Deals with joint operating organizations permitted and pooling their air services on any route or in any regions with council permission, advisory function of council on the matters, states may participate in joint operating organizations.

Part IV- final provision

Chapter XVII

Other Aeronautical Agreements & Arrangements

- Articles 80-83
- States will give notice to council whether they are parties to the Paris and Habana Conventions, all pervious agreements between states shall be forthwith registered with the Council, abrogation of inconsistent arrangements and registration of new arrangements with council.

Chapter-XVIII

Disputes & Default

- Articles 84-88
- Council will settle the dispute between the states, against the decision of the council the state can appeal to CJI, it also deals with arbitration procedure, apples and penalty for non –conformity of airline and by state.

Chapter XIX

War

- In case of war the provision of this Convention shall not affect the freedom of action of any states whether the belligerents or as neutrals.
- In national emergency state will notifies the fact to the Council.

Chapter XX

Annexes

- Article 90 Adoption & amendment of Annexes
- Adoption of the Annexes by council will be by vote of 2/3 of the council – Art 54 (1)
- Council shall immediately notify all contracting states of coming force of any Annexes or amendment thereto.

Chapter XXI

Ratifications, Adherence, Amendments & Denunciations

- Articles 91-95
- Deals with the Ratifications, Adherence, admission of other states, Amendments & Denunciations

Chapter XXII

Definitions

- Article 96
- Air Services
- International Air Services
- Airlines
- Stop for non-traffic purpose

Int. Air Law and Dispute Settlements

- International Air Law and Dispute Settlement--Definition and Types of Dispute Settlement, History and Development of Int. Disputes, Contribution of PCA and PCIJ, International Court of Justice (ICJ) and Aviation Disputes, ICAO Council and Aviation Disputes, India v Pakistan (1952) Pakistan v India (1971) Shortcomings in dispute resolution system of ICAO
- ICJ and Civil Aviation Disputes-Case Concerning the Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan), Judgment of 18 August 1972, ICJ Rep. 1972. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America) – 1992. Aerial Incident of 10 August 1999 (Pakistan v. India) – 1999
- WTO and Dispute Settlements- Brazil and Canada had been accusing each other over illegal aircraft export subsidies since 1996.-Boeing-Airbus dispute

Discourage Litigations

- Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser-in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good [person]. There will still be business enough.-Abraham Lincoln
- A '**dispute**' was defined by Permanent Court of International Justice (PCIJ) in the ***Mavromattis Palestine Concessions (Greece v UK)*** **1924 PCIJ: 'a disagreement on a point of law or fact, a conflict of legal views or interests between parties'.**
- **What is Dispute?**
- Disputes are characterized by: (1) specific disagreements concerning matters of fact, law, or policy between (2) two or more parties so that (3) a claim or assertion by one party is met with refusal, counterclaim, or denial by another.

International Disputes

International Disputes- Between Inter State, States and individuals, Corporate Bodies, Non State entities- All subject to International Regulations

Disputes can be of various Kinds- 'Legal' and 'Justiciable'. Different form 'conflict of interest'-such as Political and Non justiciable.

'Legal Disputes'-capable of judicial settlement by application of existing law and ascertainable rules of international Law.

Business disputes are increasingly becoming multijurisdictional and multi-party in nature.

International disputes are those in which the rivaling claims are based on international law. This will normally go hand in hand with the parties being (at least so-called 'limited') subjects of international law.

Issues Relating to Int. Disputes

- Attitude of Parties that determines its justiciability- i.e., willingness to accept the decision of international Tribunal for solving dispute.
- It's well established in International Law that "no state can without its consent, be compelled to submit its dispute with other State, either to Mediation, or to arbitration or to any other Kind of Pacific Settlement
- Issues Relating to International Disputes including:
 - Jurisdiction,
 - Access,
 - Mandate of the Court or Tribunal,
 - Evidentiary Rules and Principles,
 - Procedural issues,
 - Judgements, Awards or Decisions
 - Remedies and Enforcement.

Kinds of Disputes

- Kinds of dispute Settlements: Peaceful/Pacific and Coercive or Compulsive Dispute Settlements
- Obligation for the peaceful settlement of international disputes
- Methods of international dispute settlement--Diplomatic methods and Legal methods
- **Diplomatic methods of dispute settlement**
- Negotiation, Good offices and mediation, Inquiry and fact finding and Conciliation
- **Legal methods of dispute settlement:** Arbitration and Judicial settlement
- **Compulsive or forcible means of settlement**
- Retorsion, Reprisals, Embargos, Pacific Blocked, Interventions including wars

Do states have obligation to settle their disputes peacefully?

- **UN Charter - Article 1(1)**--To maintain international peace and security, and to that end:and to bring about **by peaceful means**, and in conformity with the principles of justice and international law, adjustment or **settlement of international disputes** or situations which might lead to a breach of the peace;
- **Art 2(3)**--All Members **shall settle** their international disputes by peaceful means in such a manner that **international peace and security, and justice, are not endangered**.
- **Art 33**--The parties to any dispute, **the continuance of which is likely to endanger the maintenance of international peace and security**, shall, first of all, **seek a solution** by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or **other peaceful means** of their own choice.
- The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.
- **Pacific Settlement of Disputes** -Chapter VI (Art 33- Art 38)-authorize General Assembly and Security Council.

History and Development of Dispute Settlement Mechanism

- The numerous international dispute settlement treaties concluded since the 1899 and 1907 Hague Conventions for the Pacific Settlement of Disputes
- (1) bilateral or multilateral negotiations; (2) good offices; (3) mediation; (4) inquiries; (5) conciliation; (6) ad hoc or institutionalized arbitration; (7) judicial settlement by permanent courts; (8) "resort to regional agencies or arrangements" or (9) to "other peaceful means of their own choice"; and
- (10) dispute settlement by the UN Security Council (e.g., pursuant to Articles 34-38 of the UN Charter), other UN organs, or other in organizations.

The Hague Peace Conferences and the Permanent Court of Arbitration (PCA)

- The Hague Peace Conference of 1899 (Hague), convened at the initiative of the *Russian Czar Nicholas II* – discussion - peace and disarmament.
- **Result:** Convention on the Pacific Settlement of International Disputes.
Features:
 - deals with arbitration and other methods of pacific settlement, such as good offices and mediation
 - Established **Permanent Court of Arbitration**
 - created a permanent Bureau (located at The Hague), with functions corresponding to those of a court registry or a secretariat,
 - laid down a set of rules of procedure to govern the conduct of arbitrations
- **Second Hague Peace Conference (1907):** revised the Convention and improved the rules governing arbitral proceedings.

PCIJ and Dispute Settlements

- After the creation of the Permanent Court of Arbitration in 1899 and the PCIJ in 1920, negotiations have remained the principal means for the prevention or settlement of disputes among states.
- Bilateral negotiations and third-party-assisted political methods of dispute settlement can offer important advantages, including:
 - (1) greater flexibility, privacy, and control by the parties over the outcome; (2) comparatively less costs; (3) the ability to take into account political as well as legal considerations; and (4) avoidance of "winner-loser" situations.
- Between 1922 and 1940 the PCIJ dealt with 29 contentious cases between States and delivered 27 advisory opinions.

International Court of Justice (ICJ)

- The World Court is the Principle Judicial organ of the United Nations
- Competence depends upon the States consenting to accept its jurisdiction
- The World Court is an organ of the United Nations that is regulated through the provisions in the Charter of the organization, the Statute of the Court and the rules made there under
- Since only States can be parties, some consider the Court's ability to resolve international disputes to be considerably less competent since it depends primarily upon a State consenting to accept its jurisdiction.
- This has not prevented it from evolving new international legal norms of considerable significance.
- The Court which has an international status can also meet in a chamber, to hear particular kinds of disputes.

Law Applied by the Court

- Statute under Article 38, Para 1 lays down that the disputes which are submitted to it are decided in accordance with International Law'
- 'International Law' is elaborated under the Statute in the same para of Article 38 which says that the Court shall apply
 - (a) international conventions whether general or particular, as recognized by the contesting States ;
 - (b) international custom, as evidence of a general practice accepted as law ;
 - (c) the general principles of law recognized by civilized nations ;
 - (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
- Article 38, Para 2 of the Statute states Court has a power to decide a case *ex aequa et bono*, if the parties agree thereto.

Aviation Law and Disputes

- Aviation laws and regulations govern national and international issues affecting the operation of aircraft, flights, air travel, maintenance of aviation facilities and airport matters.
- Aviation laws and regulations monitor the duties, rights, and liabilities of commercial businesses and private individuals.
- The settlement of international aviation disputes generally takes place under the multiple umbrellas of the Convention on International Civil Aviation (the Chicago Convention) and multilateral and bilateral agreements between states, including bilateral air services agreements.
- Aviation disputes may be classified as either:
 - Commercial, that is arising out of the application and interpretation of bilateral agreements.
 - Non-commercial, that is, between states and involving interpretation of obligations under the Chicago Convention.

Parties to Aviation Disputes:

- Parties to disputes relating to bilateral agreements may be two states, it is quite possible that the dispute may have initially existed between an airline of one state (a private entity) and an airport authority, which possesses appropriate regulatory powers, including power to increase airport fees.
- Where informal settlement attempts fail, the airline involved may request that its government involve itself in the dispute.
- In this way what begins as a private dispute becomes an inter-state dispute, 'a dispute between sovereign authorities.
- In practice, states may resort to a number of approaches. In the absence of a universal mandatory approach they may, for example, resort to using
 - (1) Unilateral coercive means; or
 - (2) Political means; or
 - (3) Legal means to resolve the dispute.

ICAO and Aviation Dispute Settlements

- The ICAO Council, under the Chicago Convention also function as either a conciliation body or a judicial organ in disputes between members.
- Chapter XVIII of the Chicago Convention (84-88) provides for adjudication of disputes by the ICAO Council
- Article 84- 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.
- Article 85 of the convention provides for the arbitration procedure,
- Article 86 provides for appeals and
- articles 87 and 88 imposes penalty for non conformity by airline or State respectively.
- Some of the disputes settled by the ICAO Council are: India v. Pakistan (1952), United Kingdom v. Spain (1969), Pakistan v. India (1971), Cuba v. United States (1998)

Disputes before ICAO Council

- India v Pakistan (1952)
- The first dispute to be submitted before the ICAO Council was a complaint by India against Pakistan, in 1952.
- This dispute arose out of Pakistan's refusal to permit Indian aircrafts to and from Afghanistan, to fly over its territory since it had established a prohibited area along its western border with Afghanistan.
- This forced Indian aircrafts to fly via Karachi onwards to Iran and then to Afghanistan, increasing the flight distance from 642 miles to 1900 miles.
- According to India, this breached Pakistan's obligations under the Chicago Convention and the Transit Agreement.
- In order to resolve the dispute, the Council appointed a working group of three of its representatives to help with devising a procedure.
- The working group recommended that the parties negotiate further to reach an amicable resolution of the problem.
- This recommendation was implemented, and India and Pakistan reached an amicable solution in June 1953.

ICAO and Dispute Settlement

- The second dispute between the United Kingdom and Spain took place in 1967 and dealt with the Spanish ban on overflight of the approaches to Gibraltar.
- Third case was brought to the Council but the parties subsequently requested the Council in 1969 to defer the dispute sine die.
- The fourth case was brought to the Council in 1998. At that time, the United States denied Cuban aircraft the right to fly over its territory towards Canada. After the hearings of the parties, the President of the Council acted as Conciliator and the parties reached an agreement.

ICAO and Dispute Settlement

- Pakistan v India (1971): Once again within a span of 19 years, India and Pakistan found themselves before the ICAO Council in 1971.
- This time, Pakistan alleged that India's suspension of Pakistani airlines over its territory was in breach of India's obligations under the Chicago Convention and the Transit Agreement.
- India's suspension was prompted by the hijacking of an Indian airline from Srinagar to Jammu by Ashraf and Hashim Qureshi, members of the Kashmir National Liberation Front.
- The airline was hijacked to Lahore where the passengers and crew members were released while the aircraft remained in the possession of the hijackers. When the Indian government refused to meet the demands of the hijackers, the hijackers blew up the aircraft.
- During this time, the hijackers had received asylum from Pakistan. Furthermore, Pakistan refused to meet India's demands for compensation. As a result, India suspended Pakistan's overflight privilege over its territory

Pakistan v India (1971) case Cont..

- India disputed the jurisdiction of the ICAO Council to hear the dispute.
- This is because in the period prior to the hijacking, border disputes between India and Pakistan resulted in the signing of the Tashkent Declaration in 1966.
- It was India's contention that at the point of the hijacking, relations between the two countries were governed by the Tashkent Declaration and not by the Chicago Convention.
- The ICAO Council decided in favour of its jurisdiction.
- This case was finally settled in 1976 following a joint statement by the parties announcing the discontinuance of the proceedings
- As a result, according to Article 84 of the Chicago Convention, India appealed to the ICJ.

Disputes before the ICJ

- As mentioned above, Pakistan's dispute with India over India's suspension of Pakistan's overflight privileges reached the ICJ when India appealed against the ICAO Council's decision to uphold its jurisdiction.
- The ICJ decided in favour of the jurisdiction of the ICAO Council holding *inter alia* that the Council had jurisdiction to decide over a dispute relating to any disagreement regarding the application of the Chicago Convention.
- *Case Concerning the Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan), Judgment of 18 August 1972, ICJ Rep. 1972, 46,*

LOCKERBIE (LIBYAN ARAB JAMAHIRIYA V. UNITED STATES OF AMERICA) – 1992

- The Government of the Libya instituted proceedings against the Government of the USA on March 3, 1992 asking the Court to interpret and confirm the applicability of the 1971 Montreal Convention.
- The subject matter of the dispute arose from the prosecution of two Libyan nationals who were accused of placing a bomb aboard Pan Am Flight 103 on December 21, 1988 bound from London to New York, which exploded and caused the airplane to crash
- On November 14, 1991 a Grand Jury of the United States District Court for the District of Columbia issued indictments for the Libyan nationals primarily accounting for the following offences within the meaning of Article I of the 1971 Montreal Convention:
 - (1) performing an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of the aircraft,

LOCKERBIE CASE Cont...

- (2) destroying an aircraft in service or causing damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
- (3) placing or causing to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight.
- Libya still had possession of its accused nationals and did not surrender them to USA, since no extradition treaty existed between them. Libya sought to settle the dispute through arbitration, in accordance with Article 14(1) of the Montreal Convention. However, USA failed to respond to such an offer and continued to pressure Libya to surrender its nationals to USA.
- Libya argued that the Montreal Convention was the only appropriate convention in force between the parties relating to the alleged offences. Secondly, it was entitled to take necessary measures to establish its jurisdiction over the offences as per Article 5(2) of the Montreal Convention. Thirdly, Article 5(3) of the Convention gave it power to exercise criminal jurisdiction.

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LOCKERBIE CASE Cont...

- Fourthly, Article 8(2) of the Convention made any form of extradition subject to the laws of the State from which extradition was requested and Article 493 (A) of the Libyan Code of Criminal Procedures prohibited extradition. Fifthly, USA was bound by Article 11(1) of the Convention to afford Libya the greatest measure of assistance in connection with the criminal proceedings.
- The Court dismissed grant of provisional measures under Article 41 of the Statute of the ICJ by its order dated April 14, 1992.
- By order dated February 27, 1998, the Court dismissed the preliminary objection, since it found that Libya's position would be adversely effected if the Court would not proceed to the merits stage.
- The Court removed the case from the list by its order dated September 10, 2003. This was as a result of a letter dated September 9, 2003 filed in the Registry whereby the Agents of both parties agreed to discontinue with prejudice the proceedings initiated by Libya.

AERIAL INCIDENT OF 10 AUGUST 1999 (PAKISTAN V. INDIA) – 1999

- The Government of Pakistan initiated proceedings against the Government of India on September 21, 1999. The subject matter of the dispute arose due to the shooting down of a Pakistani Atlantique-type aircraft of the Pakistani Navy on August 10, 1999.
- The aircraft was on a routine training mission with sixteen personnel on board, all of whom were killed. Pakistan claimed that the aircraft was shot down over Pakistani airspace. Pakistan based its claim on the following legal grounds.
- First, Pakistan claimed that India violated Article 2(4) of the Charter of the United Nations since the shooting down of the military aircraft in Pakistani airspace constituted a use of force which also violated Pakistan's sovereignty and territorial integrity.
- Secondly, it claimed that India's action violated the Agreement on Prevention of Air Space Violations concluded on April 6, 1991 (specifically a violation of the duty to inform other side envisaged by Article 1 of the Agreement).
- Thirdly, it claimed that India violated customary principles of non-use of force. On the basis of these grounds, Pakistan requested the Court to declare that the acts of India constituted breaches of the UN Charter, treaties specified in the claim and customary international law and that India was under an obligation to make reparation for the same.

PAKISTAN V. INDIA – 1999 CONT..

- India took a preliminary objection to Pakistan's claim on the ground that the ICJ does not have jurisdiction over the subject matter of the present dispute by a letter dated November 2, 1999 on three major premises.
- First, India argued that Pakistan's application did not refer to any treaty or convention in force between the two nations which conferred jurisdiction upon the Court under Article 36(1) of the Statute of the ICJ.
- Secondly, Pakistan's application failed to consider India's reservations in its Declaration accepting the compulsory jurisdiction of the Court dated September 15, 1974, filed under Article 36(2) of the Statute of the Court. One of these reservations expressly excluded all disputes involving India from the jurisdiction of the ICJ in respect of any state which *"is or has been a Member of the Commonwealth of Nations"*.
- Thirdly, Sub-paragraph 7 of Paragraph 1 of India's Declaration prevented Pakistan from invoking jurisdiction of the World Court since it concerned a dispute arising from the interpretation or application of a multilateral treaty, unless at the same time all the parties to such a treaty are also joined as parties to the case before the Court.



PAKISTAN V. INDIA – 1999 CONT..

- The court found that it did not have jurisdiction to hear the present dispute by its judgment dated June 21, 2000. The grounds for the same were that;
- first, Article 17 of the General Act of 1928 which was invoked by Pakistan did not grant jurisdiction to the Court since India had denounced the same on August 16, 1979, hence being no longer bound by the Act.
- Secondly, the Court upheld India's reservations to its Declaration accepting the compulsory jurisdiction of the Court.
- Thirdly, the Court stated that Article 1(i) of the Simla Accord only required the two nations to respect the principles of and purposes of the UN Charter in their mutual relations; however it carried no obligation on India and Pakistan to submit their disputes to the ICJ.
- As a concluding remark, the World Court stated that the parties were not relived from the obligation to settle disputes peacefully, and although it did not have jurisdiction to hear the matter, it requested the parties to amicably settle the dispute.

WTO and Dispute Settlements

- The WTO's procedure for resolving trade quarrels under the Dispute Settlement Understanding is vital for enforcing the rules and therefore for ensuring that trade flows smoothly.
- A dispute arises when a member government believes another member government is violating an agreement or a commitment that it has made in the WTO. Ultimate responsibility for settling disputes also lies with member governments, through the Dispute Settlement Body.
- Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced.
- The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case.

Canada v. Brazil and Brazil v. Canada

WT/DS46/AB/R [8/2/99]

- Brazil and Canada had been accusing each other over illegal aircraft export subsidies since 1996.
- WTO finds that Canada Account financing of the Air Wisconsin and Air Nostrum transactions, as well as Corporate Account financing of three Comair transactions, were inconsistent with WTO rules. WTO also finds that EDC's Canada and Corporate Accounts, as well as Investissement Québec are compliant, as such.
- June 24, 2002 - Brazil requests that the WTO grant Brazil authorization to take appropriate countermeasures against Canada.
- December 23, 2002 - WTO grants Brazil the authority to impose \$385 million in economic countermeasures against Canada.

Boeing-Airbus dispute

- **The US WTO challenge to EU support for Airbus**
- Since 1992 direct and indirect government support to aircraft industry in the US and the EU has been regulated by the bilateral EU-US Agreement on Trade in Large Civil Aircraft.
- During the course of 2004 the USA purported to unilaterally withdraw from the bilateral 1992 Agreement and unexpectedly filed a WTO challenge of all EU support even though it had been granted in accordance with the Agreement
- On 12 October 2004 the US requested formal WTO consultations with the EU regarding alleged subsidisation of Airbus by the EC and certain of its Member States, and a WTO panel was set up thereafter.
- The major bone of contention is that of EU Member State co-financing of R&D for new Airbus aircraft ("Member States Financing" or "reimbursable launch investment"). This form of support is expressly agreed under the bilateral EU-US Agreement and has been used on three of the nine Airbus aircraft launched since 1990

The EU WTO challenge to US subsidies to Boeing

- Following the United States' unjustified and unilateral withdrawal from the 1992 bilateral ECUS Agreement on Trade in Large Civil Aircraft and the initiation of WTO dispute settlement procedures against the EU, the EU for its part on 12 October 2004 decided to mirror the US steps by initiating WTO dispute settlement procedures regarding a number of US measures, including federal and state subsidies. A WTO panel was set up thereafter
- The EU has undertaken numerous good faith attempts towards a negotiated solution to the differences of opinion between the EU and the US, without success to date. For its part, the EU is challenging various US State subsidies benefiting Boeing. These subsidies amount to billions of USD for Boeing a USD 900 million package in the State of Kansas in the form of tax breaks and subsidised bonds.
- As regards US federal measures, the EU has successfully challenged the tax breaks – now repealed in 2006 by US legislation – offered to Boeing under the Foreign Sales Corporation successor legislation, the American Jobs Creation Act. These tax benefits, which the EU estimates at a value to Boeing of USD 2.1 billion over the period 1989-2006, finally ceased to exist on 1 January 2007.

Aviation Disputes

- Important disputes arisen under Bilateral Air Transport Agreements are:
- United States v. France (1963)
- United States v. Italy (1965)
- United States v. France (1978)
- Belgium v. Ireland (1981)
- United States v. United Kingdom (1992)
- Australia v. United States (1993)
- The significant disputes placed before the ICAO Council as per the provisions of the Chicago Convention are:
- India v. Pakistan (1952)
- United Kingdom v. Spain (1969)
- Pakistan v. India (1971)
- Cuba v. United States (1998)
- The United States v. The European Union (2000)
- The significant disputes placed before The International Court of Justice

Thank you