

Civil Aviation and Dispute Settlements

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Aviation Law & 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
- WTO and Dispute Settlements

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
- **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.

Kinds of Disputes

- Kinds of dispute Settlements
- Peaceful and Coercive or Compulsive Dispute Settlements
- Obligation for the peaceful settlement of international disputes
- Methods of international dispute settlement
 - Diplomatic methods
 - Legal methods
- **Diplomatic methods of dispute settlement**
 - Negotiation
 - Good offices and mediation
 - Inquiry and fact finding
 - Conciliation
- **Legal methods of dispute settlement: Overview**
 - Arbitration
 - Judicial settlement

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- Art37)-**

Arts.10,11,12,14,52(2,99.)—authorize General Assembly and Security Council.

- Obligation w.r.t certain category of Disputes.--Art 2 (3) and Art 33---Customary International Law

Issues Relating to Disputes

- Institutional issues
- Jurisdiction
- Access
- Mandate of the court or tribunal
- Evidentiary rules and principles
- Procedural issues
- Judgements, awards or decisions
- Remedies and enforcement

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 - Features

- The World Court and 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.

E.g. **Electronic Sicula S.P.A. (ELSI) Judgement 1989 ICJ 15**; The Court upheld the requisitioning of the subsidiary of an American company by Italian authorities. The case is important as there was considerable discussion by experts and detailed factual evidence on a wide range of commercial matters. It is a good demonstration of how a private commercial dispute can become the subject of litigation between two States before the ICJ.

Law Applied by the Court

- Statute under Article 38, Part 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.

WTO and Dispute Settlements

- The World Trade Organization (WTO) is an international organization designed to supervise and liberalize international trade.
- The WTO came into being on 1 January 1995, and is a successor to the General Agreement on Tariffs and Trade (GATT), which was created in 1947, and continued to operate for almost five decades as a de facto international organization.
- WTO deals with the rules of trade between nations at a near-global level. It is responsible for negotiating and implementing new agreements, and is in charge of policing member countries adherence to all WTO agreements, signed by the majority of the world's trading nations and ratified by their parliaments.
- **Functions of WTO** : Administering WTO trade agreements; Forum for trade negotiations; Handling trade disputes; Monitoring national trade policies; Technical assistance and training for developing countries and Cooperation with other international organizations

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.

International Criminal Court (ICC)

- The International Criminal Court is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression in the sphere of international liability. It is founded by the Rome Statute and it can only prosecute crimes committed on or after the date of its establishment.
- The Rome Statute provides a sufficient framework of obligations, of considerable detail, but that both the goodwill and adequate legislative framework of States will be necessary to realize the ICC's potential. Notwithstanding their obligations under the Statute, States retain the decisive decision-making power at critical phases, making the political context and the ultimate availability of enforcement essential.
- The ICC will undoubtedly contribute to the formal rule of law in international criminal law [through its definitions of crimes, general principles and so forth]; that it will also contribute to the minimal level of minimal level of enforcement also called for by the rule of law cannot be assumed from the Statute itself.

International Criminal Court (ICC) contd...

- The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression.
- The ICC began operations on 1 July 2002, upon the entry into force of the [Rome Statute](#), a [multilateral treaty](#) that serves as the court's foundational and governing document. States which become party to the Rome Statute become members of the ICC, serving on the Assembly of States Parties, which administers the court. As of November 2019, there are [123 ICC member states](#); 42 states have neither signed nor become parties to the Rome Statute.
- The ICC has four principal organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry. The President is the most senior judge chosen by his or her peers in the Judicial Division, which hears cases before the Court. The Office of the Prosecutor is headed by the Prosecutor who investigates crimes and initiates criminal proceedings before the Judicial Division. The Registry is headed by the Registrar and is charged with managing all the administrative functions of the ICC, including the headquarters, detention unit, and public defense office.

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.
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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.

ICJ and Aviation Disputes

- The International Court of Justice succeeded the Permanent Court of International after the Second World War
- The jurisdiction of the court can be divided into two main heads:-
 - Contentious Jurisdiction
 - Voluntary Jurisdiction
 - Optional Jurisdiction or compulsory Jurisdiction based on Optional Clause
 - Advisory Jurisdiction
- The jurisdiction of the court comprises of all cases referred to it. Optional jurisdiction provides that a State may confer compulsory jurisdiction on the court by making such declaration in respect of any other State which also accepts similar obligation Article 36(1), The Statute of the International Court of Justice.

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 provides for adjudication of disputes by the ICAO Council
- 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.

Disputes before ICAO Council

- 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

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- 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.
- 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,*

***TREATMENT IN HUNGARY OF AIRCRAFT AND CREW OF UNITED STATES OF AMERICA
(UNITED STATES OF AMERICA V. UNION OF SOVIET SOCIALIST REPUBLICS) – 1954***

- USA claimed that USSR, abetted by Hungary seized and engaged in unlawful actions against a United States Air Force C-47 type aircraft flying to Belgrade and its crew consisting of 4 US Nationals ; amounting to serious violations of international obligations, including the denial of justice to the crew members and failure to notify US Consular staff of the said arrest, detention and seizure..
- It was argued that USSR had no legal right or authority to turn and order landing of the US aircraft in Hungarian territory. Allegations arose of Hungary and USSR violating Article 2 of the Treaty of Peace (relating to Human Rights) and violation of Articles 1, 14, 18 19 of the Treaty of Friendship, Commerce and Consular Rights by Hungary. Hence, USA claimed reparation primarily by way of compensation by praying that the Court award damages against USSR to the tune of \$637,8904.11, with interest.
- USSR argued that the military plane was used for spying and was prepared for combat as it had military maps and was fully equipped. Moreover the USSR justified the presence of its own military aircrafts in Hungarian airspace on the ground that it was protecting communication lines with Austria as obligated under Article 22 of the Peace Treaty with Hungary and in this course forced the landing of the US aircraft, having due respect for Hungary's sovereignty and airspace.
- The Court delivered an order on July 12, 1954 whereby it removed the dispute from its list since it found that USSR had not accepted its jurisdiction over the subject matter in question.

AERIAL INCIDENT OF 10 MARCH 1953 (UNITED STATES OF AMERICA V. CZECHOSLOVAKIA) – 1955

- The Government of the USA instituted proceedings against the Government of Czechoslovakia due to certain wrongful acts committed by a MIG-type aircrafts from the latter nation in US-occupied Germany on March 10, 1953.
- The dispute involved the interpretation of the Chicago Convention, specifically, the (a) provisions relating to flight of intruding military aircrafts, (b) duties of ground controllers and pilots of the intruding military aircrafts regarding interception and identification by patrolling domestic aircraft in the country of intrusion, (c) obligations to signal between patrolling and intruding aircraft, (d) the nature of rights of USA in occupied Germany for controlling air traffic in general and of this military aircraft in this particular occurrence.
- USA claimed that Czechoslovakia's MIG-type aircrafts entered US-occupied German territory and attacked and destroyed a US F-84 type aircraft, without provocation while causing physical injury to the pilot of the other F-84 type aircraft.
- It was claimed that the attack was upon instruction and coordination of the Czechoslovakia government and having entered German airspace, the MIG-type aircrafts failed to subject themselves to identification by the policing aircrafts belonging to the US. For the above, Government of USA claimed \$271,384.16 as damages for reparation from Czechoslovakia.
- The Court delivered an order on March 14, 1956 whereby it removed the dispute from its list since it found that Czechoslovakia had not accepted its jurisdiction over the subject matter in question.

***AERIAL INCIDENT OF 7 OCTOBER 1952 (UNITED STATES OF AMERICA V.
UNION OF SOVIET SOCIALIST REPUBLICS) – 1955***

- The Government of the United States of America instituted proceedings against the Government of the Union of Soviet Socialist Republics due to certain intentionally wrongful acts committed by a military aircraft of the latter nationality against a US Air Force B-29 aircraft and its crew in Hokkaido, Japan on October 7, 1952. USA intimated its claim to USSR vide several diplomatic notes beginning from September 25, 1954 up until December 30, 1954 (the latter being the most recent).
- USA claimed that the Soviet military aircraft hovered over and kept pace with the US B-29 aircraft and shot it down near Yuri Island, leading to destruction of the aircraft and loss of crew, on instructions from Soviet ground authorities. It claimed that USSR violated Article 6 of the Treaty of Peace between the Allied Power signed in San Francisco on September 8, 1951; which provided for stationing and retention of armed forces belonging to any of the armed forces in Japan
- The Court delivered an order on March 14, 1956 whereby it removed the dispute from its list since it found that USSR had not accepted its jurisdiction over the subject matter in question.

AERIAL INCIDENT OF 27 JULY 1955 (ISRAEL V. BULGARIA) – 1957

- The Government of Israel instituted proceedings against the Government of People's Republic of Bulgaria on October 9, 1957 for shooting down of a civil Constellation aircraft No. 4X-AKC , which crashed in Bulgarian territory on July 27, 1955.
- The aircraft bore Israel colours and belonged to El Al Israel Airlines Ltd. Bulgaria accepted responsibility and it was found that the aircraft had been shot down by Bulgarian Security Forces resulting in the death of all 51 passengers on board and seven crew members of various nationalities.
- Israel claimed reparation for violation of existing int. civil aviation norms by shooting down of the civilian aircraft and for the loss of the aircraft and persons on board.
- It argued that it had accepted the compulsory jurisdiction of the Court in its declaration dated October 3, 1956 and that Bulgaria had accepted the compulsory jurisdiction of the Permanent Court of International Justice on July 29, 1921.
- The dispute was concluded at the stage of preliminary objections as the majority of the Court in its judgment on preliminary objections dated May 26, 1959 found that Bulgaria's acceptance of the compulsory jurisdiction of the Permanent Court of International Justice could not be deemed to be acceptance of the compulsory jurisdiction of the International Court of Justice.

AERIAL INCIDENT OF 27 JULY 1955 (UNITED KINGDOM V. BULGARIA) – 1957

- The Government of the United Kingdom initiated proceedings against the Government of Bulgaria on November 19, 1957 after the former nation claimed compensation on behalf of its citizens which were involved in the shooting down of the Israeli Constellation aircraft by Bulgarian forces on July 27, 1955. UK had claimed compensation under three heads (a) pecuniary loss sustained by the relatives, being citizens of the UK and Colonies, of the persons killed; (b) loss of baggage and personal effects of citizens of the United Kingdom and Colonies aboard the aircraft; (c) loss of cargo owned by citizens of the United Kingdom and Colonies.
- Subsequently, by a letter dated July 8, 1959 issued by the Agent for UK to the Registrar, the UK government requested that it be allowed to discontinue proceedings against Bulgaria, to which the latter had no objections to. In furtherance of the same, the Court ordered that the case be removed from the list on August 3, 1959.

AERIAL INCIDENT OF 27 JULY 1955 (UNITED STATES OF AMERICA V. BULGARIA) – 1957

- The Government of the United States of America instituted proceedings against the Government of Bulgaria on October 24, 1957 for the killing of its nationals aboard the Israeli Constellation civilian aircraft, which was shot down by Bulgarian forces on July 27, 1955. They claimed a total of \$257,875.00 as monetary compensation, alleging violation of international obligations arising under international civil aviation law (primarily the same grounds taken by Israel in its case against Bulgaria).
- Bulgaria took a preliminary objection with regards to the jurisdiction of the ICJ. USA filed its counter argument in its reply to Bulgaria's preliminary objections claiming that the latter had accepted the compulsory jurisdiction of the World Court.
- However, in its order dated May 30, 1960, the Court ordered removal of the case from its list after receiving a letter dated May 16, 1960 requesting discontinuation of proceedings from USA and acceptance of the same by Bulgaria.

*AERIAL INCIDENT OF 4 SEPTEMBER 1954 (UNITED STATES OF AMERICA V.
UNION OF SOVIET SOCIALIST REPUBLICS) – 1958*

- On July 25, 1958 the Government of the United States of America initiated proceedings against the Government of the Union of Soviet Socialist Republics regarding certain allegedly illegal activities carried out by a Soviet military aircraft on September 4, 1954 in the international air space over the Sea of Japan against at USA Navy P2-V-type aircraft (also known as Neptune type aircraft) and its crew.
- USA claimed monetary compensation amounting to \$1,355,650.52 with interest. The USSR claimed that the US aircraft had violated its territorial integrity by entering its airspace. USA objected to the existence of any such territorial claim by the USSR.
- On December 9, 1958, the ICJ ordered the case to be removed from the list since it found that USSR had not accepted its jurisdiction.

*AERIAL INCIDENT OF 7 NOVEMBER 1954 (UNITED STATES OF AMERICA
V. UNION OF SOVIET SOCIALIST REPUBLICS) – 1959*

- The Government of the United States of American instituted proceedings against USSR on June 8, 1959 after Soviet military aircrafts attacked and destroyed a US Air Force B-29 airplane engaged in legitimate and peaceful flight in the area of the Japanese Island of Hokkaido, causing the death of on crew member and injury to the remaining crew (all being American nationals).
- USA claimed \$756,604.09 as compensation for the same. However, the court ordered the removal of the case from its list on October 7, 1959 since USSR had not accepted its jurisdiction.

*AERIAL INCIDENT OF 3 JULY 1988 (ISLAMIC REPUBLIC OF IRAN V.
UNITED STATES OF AMERICA) – 1989*

- The Government of the Islamic Republic of Iran initiated proceedings against the Government of the United States of America. This was an appeal by Iran from the decision of the Council of the International Civil Aviation Organisation delivered on March 17, 1989 regarding whether USA had violated the Chicago Convention and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention) by shooting down a commercial Iranian airliner
- Iran claimed that the Court had jurisdiction by virtue of Article 84 of the Chicago Convention which deals with settlement of disputes. Similarly, Article 14 of the Montreal Convention provided the World Court with jurisdiction to entertain the present matter. Previously, the ICAO Council was approached by Iran for (a) condemnation of shooting down of the airliner, (b) recognition of USA's liability arising from breach of international obligations, (c) recognition of USA's responsibility to pay compensation to Iran, and (d) demand for immediate termination of restrictions, threats, and use of force against civilian aircraft in the region. The ICAO Council dismissed the matter and simply stated that it "deeply deplored the tragic incident".

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- Iran contended that the Council's decision was erroneous on three major premises.
- First, the destruction of the Iranian commercial airliner was a violation of Articles 1, 2, 3 and 44(a) and (h) of the Chicago Convention.
- Secondly, USA's interferences in the Persian Gulf violated Annex 15 of the Chicago Convention and Recommendation 2.6/1 of the Third Middle East Regional Air Navigation Meeting of ICAO.
- Thirdly, by failing to pay compensation for the aircraft, USA violated Articles 1,3, and 10(1) of the Montreal Convention.
- On February 22, 1996 the International Court of Justice ordered the discontinuation of proceedings and removal of the case from the list.
- This decision was a result of accepting a letter dated August 8, 1994 whereby the Agents of both parties informed the Court that they had entered into negotiations that "may lead to a full and final settlement of the case" and subsequently jointly request discontinuation vide letter dated February 22, 1996; filed with the Registry of the Court.

***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***

- The Government of the Libyan Arab Jamahriya instituted proceedings against the Government of the United States of America 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, (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

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- (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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- 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 the Islamic Republic of Pakistan initiated proceedings against the Government of the Republic 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.

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- India took a preliminary objection to Pakistan's claim on the ground that the ICJ did 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.

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- 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.

AERIAL HERBICIDE SPRAYING (ECUADOR V. COLOMBIA) - 2008

- The Government of Ecuador instituted proceedings against the Government of Columbia on March 31, 2008 relating to Columbia's aerial spraying of toxic herbicides at locations near, at and across its border with Ecuador.
- Since the year 2000, Columbia has sprayed this herbicide (the chemical formula of which it refused to disclose to Ecuador), targeting illicit coca and poppy plantations in the frontier area. In respect of the same, the airplanes and helicopters used had in several occurrences crossed over the border into the Ecuador side.
- The result has been serious damage to people, crops, animals and the environment of Ecuador

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- It claims that the ICJ has jurisdiction to hear the matter by virtue of the American Treaty on Pacific Settlement of Disputes, signed at Bogota on April 30, 1948; to which both parties to the dispute are parties to.
- Ecuador has prayed for an order from the Court ordering Columbia to
 - (a) respect Ecuador's sovereignty and territorial integrity,
 - (b) to take all necessary steps required to prevent use of any toxic herbicides in a manner in which they become deposited on the Ecuador side of the border between the two nations,
 - (c) prohibit use of such herbicide on or near any part of the border with Ecuador, and (d) indemnify Ecuador for any loss or damage caused by its internationally wrongful acts.

WTO and Dispute Settlements

- The World Trade Organization (WTO) is an international organization designed to supervise and liberalize international trade.
- The WTO came into being on 1 January 1995, and is a successor to the General Agreement on Tariffs and Trade (GATT), which was created in 1947, and continued to operate for almost five decades as a de facto international organization.
- WTO deals with the rules of trade between nations at a near-global level. It is responsible for negotiating and implementing new agreements, and is in charge of policing member countries adherence to all WTO agreements, signed by the majority of the world's trading nations and ratified by their parliaments.
- **Functions of WTO** : Administering WTO trade agreements; Forum for trade negotiations; Handling trade disputes; Monitoring national trade policies; Technical assistance and training for developing countries and Cooperation with other international organizations

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 United States 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
 - Libya v. United States (1992)
 - Iran v. United States (1996)
 - Pakistan v. India (2000)

Conclusion

- International aviation law has come up for consideration by the ICAO, ICJ in occurrences relating to hijackings, air space restrictions, and military operations/accidents.
- It can be observed that issues relating to aviation have been entwined with fundamental principles of the U.N. Charter, such as the territorial integrity, respect for sovereignty, and prohibition of use of force, international co-operation, and friendly relations.
- The *Aerial Herbicide* case demonstrates a good example of how territorial integrity, sovereignty, and air space regulations are combined in a complex dispute between nations.

Conclusion Cont..

- Unfortunately, the contribution of the ICJ has been limited due to the non-binding nature of its jurisdiction.
- Most cases relating to international aviation law have been completed before the dispute was decided on merits due to preliminary objections raised by one of the state-parties on the grounds of jurisdiction of the World Court.
- However, we can rest assured that the Court at least recognized and considered principles relating to air law. This leaves future potential for the Court to actually apply and decide according to law if and when a dispute actually reaches the merits stage in proceedings before it.
- Hence the ICJ still holds great power in its hands to interpret and change international aviation law where required.

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THANK YOU