



OVERVIEW OF THE DISPUTE SETTLEMENT MECHANISMS IN ICAO

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Overview of Presentation

1. Judicial functions of the Council under Chapter XVIII (Articles 84 to 88) of the Chicago Convention
2. Quasi-judicial functions of the Council of ICAO under Articles 54 (n), (j) and (k) of the Chicago Convention



Settlement of Differences under Chapter XVIII

- Under **Article 84** of the Chicago Convention and the **Transit Agreement** the Council of ICAO has been entrusted with a judicial function
- Any disagreement between two or more contracting States relating to the interpretation or application of the Chicago Convention, its Annexes or the Transit Agreement that cannot be settled by negotiation 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
- A decision of the Council is appealable to the International Court of Justice



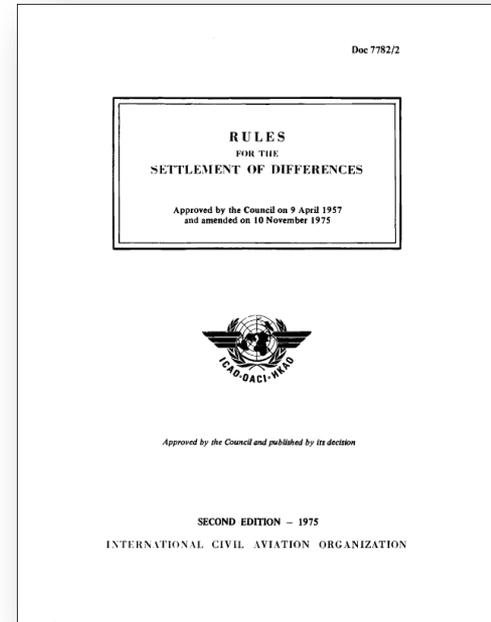
Settlement of Differences under Chapter XVIII

- **Article 85:** Arbitration Procedure
- **Article 86:** Appeal from a decision of the Council
- **Article 87:** Penalty for non-conformity of airline (suspension of the operation of an airline)
- **Article 88:** Penalty for non-conformity by State (suspension of voting power)



The Rules for the Settlement of Differences

- Adopted in 1957
- Define the procedure to be followed by the Council for the consideration of disputes
- The Council takes its decisions on the basis of submission of written documents by the parties as well as on the basis of oral hearings
- The Rules give a priority to negotiation during the proceedings



Settlement of Differences under Chapter XVIII

- Within ICAO's history, nine disputes were filed with the Organization and three of them are still under consideration by the Council of ICAO





Cases presented before the Council of ICAO

India and Pakistan (1952)

- Relates to the establishment by Pakistan of a prohibited zone along its western border.
- Articles 5 (right of non-scheduled flight) and 9 (prohibited areas) of the Chicago Convention and the Transit Agreement

United Kingdom and Spain (1967)

- Relates to the establishment of a prohibited area by Spain near Gibraltar airport
- Article 9 (prohibited areas) of the Chicago Convention

Pakistan and India (1971) – Case (1) and Case (2)

- Relates to overflight rights by Pakistani aircraft over Indian territory. Article 5 (right of non-scheduled flight) of the Chicago Convention as well as the Transit Agreement
- The Decision of the Council on the preliminary objection was appealed to the International Court of Justice

Cuba and US (1996)

- Relates to the right of Cuban-registered aircraft to overfly United States territory during their flights to and from Canada. Article 5 (right of non-scheduled flight) of the Chicago Convention as well as the Transit Agreement

US and 15 EU States (2000)

- Relates to EU Regulation 925/99 on the EU's non-addition, or "hushkit" rule. United States alleged that the EU Regulation violated Articles 11 (applicability of air regulations), 15 (airport and similar charges), 38 (departures from international standards and procedures) and 82 (abrogation of inconsistent arrangements) of the Chicago Convention as well as Annex 16, in that it limited the registration and operation within the EU of aircraft that were modified in order to comply with ICAO noise standards



Cases presented before the Council of ICAO

Brazil and United States (2016)

- Relates to the “the interpretation and application of the Convention and its Annexes following the collision, on September 29th 2006, of the air carrier Boeing 737-8EH operating a regular flight GLO 1907, and air jet Legacy EMB-135BJ operating a flight by ExcelAire Services Inc.”

Qatar and Egypt, Bahrain, Saudi Arabia and UAE (2017) Application (A) and Application (B)

- Relates to the interpretation and application of the Chicago Convention and the Transit Agreement following an alleged closing of the airspace by the Respondents to Qatar-registered aircraft

Quasi-judicial functions of the Council

- **Article 54 (n):** “Consider any matter relating to the Convention which any contracting State refers to it”
- The *Rules of Procedure for the Council* apply
- Several cases: *Cuba v. United States*; *Congo v. Rwanda and Uganda*; *PLO v. Israel*





Quasi-judicial functions of the Council

- **Article 54 (j):** “Report to contracting States any infraction of this Convention, as well as any failure to carry out recommendations or determinations of the Council”
- **Article 54 (k):** “Report to the Assembly any infraction of this Convention where a contracting State has failed to take appropriate action within a reasonable time after notice of the infraction”



Conclusion

1. Negotiation is the principal means of dispute resolution within ICAO framework.
2. Judicial functions of the Council may serve to facilitate the settlement of disputes through negotiation.
3. Quasi-judicial functions may play more role in the future to promote the safety, security and sustainability of international civil aviation.



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