REPLY SUBMITTED BY THE GOVERNMENT OF INDIA

INTRODUCTION

This Reply is submitted to the International Court of Justice by the Government of India (hereinafter sometimes referred to as "the Applicant") pursuant to an Order of the Acting President of the Court dated 20 March 1972 and within the time-limit fixed therein, following upon submission to the Court by the Government of Pakistan (hereinafter sometimes referred to as "the Respondent") of its Counter-Memorial on 29 February 1972.

2. The Applicant reaffirms every statement of fact and law and every submission and contention contained in its Memorial dated 22 December 1971, and denies every statement, allegation, submission and contention contained in the Respondent's Counter-Memorial, which is contrary to or inconsistent with what is set out in the Applicant's Memorial. In order to ensure brevity, it is thought unnecessary to set out here and deny specifically every such contrary or inconsistent statement, allegation, submission and contention contained in the Respondent's Counter-Memorial.

3. The Applicant submits that the Respondent's Counter-Memorial contains several errors and misconceptions in regard to the submissions made in the Applicant's Memorial. In addition, it may be observed that in its Counter-Memorial the Respondent has chosen to remain silent on many important points of fact and law raised in the Applicant's Memorial.

4. The Applicant now proceeds to deal *seriatim* with the fact and arguments set out in the Respondent's Counter-Memorial. The Applicant also desires to state that it reserves its position with regard to all facts and arguments which are adduced in the Respondent's Counter-Memorial and which are not expressly admitted in this Reply.

CHAPTER I

STATEMENT OF THE CASE

(Counter-Memorial, Paragraphs 5 and 6)

A. No Breach of Obligations by India

5. The true position in fact and in law is set out in Chapter IV of the Applicant's Memorial, under the heading "History and Background of the Dispute", and the contrary assertions contained in paragraphs 5 and 6 of the Respondent's Counter-Memorial are incorrect.

6. The fact that the Applicant allows aircraft of other States which are parties to the Convention on International Civil Aviation, 1944 ("the Convention"), and the International Air Services Transit Agreement, 1944 ("the Transit Agreement"), to overfly India, while not allowing Pakistan aircraft to overfly India, is in no way discriminatory or contrary to the principle of *pacta sunt servanda* in respect of the treaty obligations. The treaties in question were suspended only as between India and Pakistan, and not as between India and the other contracting States.

7. There has been no breach by India, as alleged, of any of its obligations towards Pakistan under the Convention or the Transit Agreement. As a result of the suspension, the alleged obligations did not exist.

B. Principal Question before the Court

8. The principal question before the Court is whether a dispute relating to the termination of suspension of a treaty can be regarded as a dispute relating to its "interpretation" or "application", and whether suspension of a treaty can be regarded as "action under" the treaty. This was the only question which was in issue before the Council ("the Council") of the International Civil Aviation Organization ("ICAO") when the Applicant and the Respondent argued their case before the Council on the Applicant's Preliminary Objections.

C. Pakistan's Negative Attitude

9. The Applicant denies that the Respondent made efforts to settle the dispute with the Applicant by peaceful negotiations and that such efforts proved fruitless. On the contrary, the Respondent did not show any willingness to settle the matter amicably, to pay compensation for the loss and damage caused to India, and to ensure safety of civil aviation.

10. The allegation that India dealt with the merits of the dispute in the Preliminary Objections and referred to events and circumstances which were extraneous to the present dispute, is denied. India confined itself to the competence and maintainability of Pakistan's Application and Complaint before the Council, and to replying briefly to the untrue allegations made by Pakistan.

CHAPTER II

THE EVENTS OF 1965 AND 1966

(Counter-Memorial, Paragraphs 7-10)

A. Convention and Transit Agreement Suspended since 1965

11. Since the outbreak of armed hostilities between India and Pakistan in 1965, Pakistan aircraft have neither the right to overfly India nor the right to land for non-traffic purposes in India, because the Convention and the Transit Agreement, as between India and Pakistan, have remained suspended, at least in relation to overflights and landings for non-traffic purposes. The Respondent's contention that Pakistan aircraft have such rights under the Convention and the Transit Agreement and that they had been enjoying those rights till 3 February 1971, is untenable. The Bilateral Air Services Agreement of 1948 between India and Pakistan was also suspended in 1965 and was never revived.

B. Special Agreement of 1966 and the Notification of 10 February 1966

12. As stated in the Applicant's Memorial, following the Tashkent Declaration of 10 January 1966, the Governments of India and Pakistan reached "the special Agreement of 1966" regarding overflights [1]. In implementation of this Agreement, a Notification [2] dated 10 February 1966 was issued by the Applicant to the effect that no aircraft registered in Pakistan, or belonging to or operated by the Government of Pakistan or persons who are nationals of Pakistan, shall be flown over any portion of India except with the permission of the Central Government and in accordance with the terms and conditions of such permission. This Notification, which was in operation till 4 February 1971, is wholly inconsistent with the Convention and the Transit Agreement and proves conclusively that these treaties which had been suspended in 1965, were not revived as between India and Pakistan [3]. This Notification was reproduced in the form of an Aeronautical Information Circular (A.I.C.) No. 8 of 1966 [4] read with A.I.C. No. 27 of 1965 [4] issued by India.

13. Aeronautical Information Circulars are issued pursuant to the International Standards prescribed by ICAO in Annex 15 to the Convention; and they are distributed to all concerned. The Standard in paragraph 6.1.1.1 of Annex 15 to the Convention requires that an Aeronautical Information Circular shall be originated whenever it is desirable to promulgate, amongst others, any major change in legislation, regulations, procedures or facilities or information or notification of an explanatory or advisory nature con-

[1] Para. 17 and 18 of Memorial.
[2] See Memorial, p. 120, *supra*.
[3] See para. 20 of Memorial, p. 32, *supra*.
[4] See Annex A to this Reply, p. 433, *infra*.

cerning legislative matters. An International Standard in paragraph 6.2.3 of Annex 15 to the Convention also provides that a check-list of Aeronautical Information Circulars currently in force shall be issued (as an Aeronautical Information Circular) at least once a year. Another International Standard contained in paragraph 7.1 of Annex 15 to the Convention provides that for preflight planning purposes, the flight operations personnel must have, amongst others, information contained in Aeronautical Information Circulars. The continued validity of the said A.I.C. No. 8 of 1966 was reiterated in the check-list of A.I.C.s [1] issued periodically and circulated to all concerned including ICAO.

14. Paragraph 10 of the Respondent's Counter-Memorial is wholly irrelevant since it deals with an incident which occurred in 1952, i.e., before the suspension of the Convention and the Transit Agreement as between India and Pakistan.

(Counter-Memorial, Paragraphs 11-15)

15. The Applicant denies the allegations contained in paragraph 11 of the Respondent's Counter-Memorial, except the last sentence of that paragraph, and does not deal with them specifically since they are irrelevant to this Appeal. As regards the events of August 1965 in Jammu and Kashmir, the record of the United Nations [2] clearly established that peace was disturbed by Pakistan on 5 August 1965, with massive crossings of the Cease Fire Line by Pakistan armed personnel.

16. The Respondent has sought, in paragraphs 12 and 13 of its Counter-Memorial, to give an untenable interpretation to the provisions of the Tashkent Declaration and the letters that were exchanged between the Prime Minister of India and the President of Pakistan on 3 February 1966 and 7 February 1966, respectively. The hopes entertained for restoration of normalcy between the two countries were not fulfilled; the Convention and the Transit Agreement were never revived but continued to remain under suspension as between the two countries [3].

17. The Respondent's assertion that "the conduct of India, subsequent to the armed conflict of 1965, shows that the Convention and the Transit Agreement continued to be in operation between the two countries", is incorrect. Equally untenable is the Respondent's assertion that "overflights across each other's territory were resumed on the basis of the Convention and the Transit Agreement". The incontrovertible basic facts are the following:

(a) Whereas previously Pakistan planes were permitted to overfly India without the Indian Government's permission, a total prohibition on Pakistan planes overflying India was imposed on 6 September 1965. This total prohibition was modified on 10 February 1966 to the limited extent that Pakistan planes were permitted to overfly India with the permission of the Indian Government and in accordance with the terms and conditions of such permission[4]. But the freedom to overfly India without the permission of the Indian Government, which is of the

[1] See Annex B to this Reply, p. 435, *infra*.
[2] UN Doc. S/6651.
[3] See paras. 16 to 24 of Memorial, pp. 30-33, *supra*.
[4] See Memorial, p. 120, *supra*.

essence of the Convention and the Transit Agreement and which was enjoyed by Pakistan prior to September 1965, was at no time restored.

(b) The right to land for non-traffic purposes without the Indian Government's permission, which is of the essence of the Convention and the Transit Agreement, and which was enjoyed by Pakistan prior to 1965, was never restored. After September 1965, Pakistan has had to seek India's special *ad hoc* permission in case any Pakistan aircraft wanted to land in India for non-traffic purposes, and this situation has continued up to date [1].

C. Instances Showing that Indian Government's Permission Was Sought for Landings

18. After the Tashkent Declaration in 1966, there was not a single case in which Indian aircraft overflew Pakistan, or made a non-traffic halt in Pakistan, without the permission of the Pakistan Government. Further, there was not a single case in which Pakistan aircraft overflew India, or made a non-traffic halt in India, without the permission of the Indian Government. In some cases, the permission asked for was refused or granted subject to special conditions. The following few instances should suffice:

(1) CASE 1. YEAR 1966

On 7 June 1966, the D.G.C.A., Pakistan, sent to the D.G.C.A., India, a signal requesting permission for landing at Delhi (Palam) International Airport for non-traffic purposes by Pakistan aircraft AP-AMC which was to fly from Karachi to Dacca. On 8 June 1966, the D.G.C.A., Pakistan, was informed that the request was under consideration.

Subsequently, the D.G.C.A., Pakistan, was informed that permission for landing at Delhi could not be granted.

(2) CASE 2. YEAR 1966

On 26 September 1966, the D.G.C.A., Pakistan, sent to the D.G.C.A., India, a signal requesting permission for landing at Delhi (Palam) International Airport for non-traffic purposes on 7 October 1966 by Pakistan aircraft which was to fly from Lahore to Dacca. On 30 September 1966, *the D.G.C.A., Pakistan, was informed of the request being* under consideration.

Subsequently, the D.G.C.A., Pakistan, was informed that permission for landing at Delhi could not be granted. Instead, the D.G.C.A., Pakistan, was asked to commence the flight from Karachi and avoid landing at Delhi.

(3) CASE 3. YEAR 1967

On 8 June 1967, the D.G.C.A., Pakistan, sent to the D.G.C.A., India, a signal requesting permission for landing at Delhi Airport for non-traffic purposes by Pakistan aircraft AP-AMC which was to fly from Lahore to Dacca. On 9 June 1967, the D.G.C.A., Pakistan, was informed of the request being under consideration.

Subsequently, the D.G.C.A., Pakistan, was informed that permission for landing at Delhi could not be granted. Instead, the D.G.C.A., Pakistan, was asked to commence the flight from Karachi and avoid landing at Delhi.

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[1] See, further, paras. 25 and 26 of this Reply, pp. 413-415, *infra*.

(4) CASE 4. YEAR 1968

On 14 February 1968, the D.G.C.A., Pakistan, sent to the D.G.C.A., India, a signal requesting permission for landing at aerodromes in India by Pakistan Helicopter en route Dacca-Karachi. On 17 February 1968, the D.G.C.A., Pakistan, was informed that the permission for landing could not be granted.

(5) CASE 5. YEAR 1969

On 4 March 1969, the D.G.C.A., Pakistan, sent to the D.G.C.A., India, a signal requesting permission for landing at Delhi for non-traffic purposes by Pakistan aircraft AP-AMC which was to fly from Karachi to Dacca. On 5 March 1969, the D.G.C.A., Pakistan, was informed of the request being under consideration.

Subsequently, the D.G.C.A., Pakistan, was granted permission to operate the flight in accordance with a specific Notice to Airmen, of 1966, which drew attention to A.I.Cs. in force.

(Karachi and Lahore are in West Pakistan; while Dacca is in Bangla Desh which was formerly East Pakistan. In the above cases, Pakistan desired to make a non-traffic stop at Delhi which is between West Pakistan and what was formerly East Pakistan.)

19. In short, the special Agreement of 1966 and the uniform practice of the two countries after that date were inconsistent with the Convention and the Transit Agreement, and leave no doubt that those two treaties which had been suspended in 1965, were never revived as between India and Pakistan.

D. Two Incidents Wrongly Alleged to Show that the Convention and the Transit Agreement Continued to Be in Operation

20. The interpretation placed by the Respondent on the two incidents mentioned in paragraph 14 of its Counter-Memorial is wholly erroneous. Even the basic facts of the two incidents have not been correctly stated by the Respondent.

21. The following facts and aspects may be noted in regard to the incident referred to by the Respondent in sub-paragraph *(a)* of paragraph 14 of its Counter-Memorial:

(i) Pakistan's allegation that "Invoking Annex 13 to the Convention, India nominated its representative on the enquiry and requested Pakistan to grant the necessary facilities to the Indian representative and advisers" is incorrect. The first intimation of the accident referred to was received from Pakistan which sent a signal to India stating, *inter alia*—

"Nature of the accident not known. Aircraft destroyed. Awaiting nomination of yr representative."

In reply, the D.G.C.A., India, sent a signal stating, *inter alia*—

"V. N. Kapur Controller of Aeronautical Inspection Calcutta nominated as our representative on the inquiry. Please advise the place and date on which his presence is required."

The two telegrams referred to above make it clear that it was Pakistan which invited India to nominate its representative and there was no question of India "invoking" Annex 13 to the Convention.

(ii) Further, Pakistan was obliged to invite India to participate in the

enquiry in accordance with its own national laws and practices and not under Annex 13 to the Convention. Rule 77A of the Aircraft Rules, 1937 [1], of Pakistan provides for an accredited representative of the country in which the aircraft is registered to take part in the investigation or inquiry as the case may be.

This Rule is reproduced below:

"77A General—(1) Where an Inspector's investigation or a public inquiry relates to an accident which has occurred in or over Pakistan to an aircraft registered in any country other than Pakistan, and an accredited representative of the country in which the aircraft is registered or of any country which has, on request, furnished information in connection with the accident, may take part in the investigation or in the inquiry as the case may be; he may be accompanied by such technical and other advisers as may be considered necessary by the authorities of the country by which he is appointed [2]."

It may be noted that the foregoing Rule envisages participation in inquiries and investigations by a representative of the country of registration, regardless of the question whether such country is a party to the Convention or not.

(iii) It is the general practice all over the world to permit representatives of the State of registration to participate in an accident inquiry. Rule 77 of the Indian Aircraft Rules, 1937, also provides for similar action.

(iv) From mere participation by one State in an inquiry conducted by another State, it does not follow that the States concerned are acting under a multilateral treaty. For example, in March 1958 an Indian aircraft met with an accident in Nepal and while the investigation was conducted by the Government of Nepal, an accredited representative of the Government of India was also associated with the investigation, although at that time Nepal was not a party to the Convention.

(v) Equally misleading and unwarranted is Pakistan's reference to provisions of ICAO Document 4444. It has been stated in the Respondent's Memorial that "during the course of the investigation, the Pakistan Inspector examined the Duty Air Traffic Controller of Calcutta Airport in order to ascertain whether the provisions of ICAO Document 4444 had been complied with by them". Naturally, India does follow the provisions of ICAO Document 4444 which sets out the Procedures for air navigation services. This document is complementary to the Standards and Recommended Practices contained in Annex 2 (Rules of the Air) and in Annex 11 (Air Traffic Services) to the Convention. These Standards, Practices and Procedures are adopted by India in respect of aircraft operations of all countries, regardless of the question whether they are parties to the Convention or not. Even a country which is not a party to the Convention can also follow these Standards, Practices and Procedures to facilitate safe and orderly flow of air traffic. Thus the Procedures outlined in Document 4444 have no relevance to the point at issue, viz. whether the Convention was suspended as between India and Pakistan.

22. The following facts and aspects may be noted in regard to the incident

[1] *Aircraft Manual—A Compilation of the Legislation and Rules Governing Civil Aviation in Pakistan*, 1966, pp. 11-187.

[2] *Ibid.*, p. 66.

referred to by the Respondent in sub-paragraph *(b)* of paragraph 14 of its Counter-Memorial:

(i) Establishment of jurisdiction within a Flight Information Region is a matter for the national administration to decide, taking into account aeronautical, administrative and other considerations, including the recommendations of ICAO. When the boundaries of the Flight Information Region extend to the air space of another State, it becomes a matter of bilateral arrangement between the two States. The fact that an informal meeting was held between India and Pakistan, under the Chairmanship of the President of the Council, does not in any way prove that the Convention and the Transit Agreement were in force between the two countries. After all, India and Pakistan both continue to be parties to the Convention and the Transit Agreement, even after the suspension of the treaties as between the two countries. The fact that the good offices of ICAO or the President of the Council may have been made available to India and Pakistan has no bearing on the question of suspension of the treaties as between the two countries.

(ii) Pakistan's allegation in the last sentence of sub-paragraph *(b)* of paragraph 14 of its Counter-Memorial that "a meeting was accordingly held in Bangkok in 1971" is incorrect. The meeting was held between the representatives of India and Pakistan in 1970.

23. Summing up, it is clear that the two incidents cited by the Respondent in sub-paragraphs *(a)* and *(b)* of paragraph 14 do not in any way show that the Convention and the Transit Agreement continued to be in operation between the two countries.

24. Both the incidents are wholly consistent with the treaties continuing under suspension from September 1965 up to date. In any view of the matter, the two incidents referred to by the Respondent did not involve any question of overflying or landing in each other's territory, and have thus no relevance to the question whether the Convention and the Transit Agreement were suspended, as between the two countries, at least in relation to overflights and landings.

CHAPTER III

THE "BASIS" ON WHICH OVERFLIGHTS WERE RESTORED IN FEBRUARY 1966

(Counter-Memorial, Paragraphs 13, 21, 32, 34 and 35)

A. Misconstruction by Pakistan of the Letters Dated 3 and 7 February 1966 Exchanged Between the Prime Minister of India and the President of Pakistan

25. Since the Respondent in its Counter-Memorial has repeatedly expressed its reliance on the Tashkent Declaration and the letters [1] dated 3 and 7 February 1966 exchanged between the Prime Minister of India and the President of Pakistan, particularly the willingness expressed by each country to resume overflights "on the same basis as that prior to 1st August 1965", it is necessary to summarize here the correct facts of the case and true legal position regarding the Council's jurisdiction:

(1) The Tashkent Declaration did not confer an isolated right as regards aviation. It embodied a package deal. It was open to either India or Pakistan to disregard some of the material provisions of the Declaration and claim the benefits of the other provisions. It is a historical fact that Pakistan refused to respect and observe the terms of the Tashkent Declaration, and therefore the status quo *ante* the armed conflict was never restored. Pakistan's refusal to abide by the Tashkent Declaration is proved by the basic facts set out in paragraphs 22 and 23 of the Applicant's Memorial. Further, Article VI of the Tashkent Declaration merely stated that the Prime Minister of India and the President of Pakistan "*have agreed to consider measures towards* the restoration of economic and trade relations, communications, ... and to take measures to implement the existing agreements between India and Pakistan [2]". The Tashkent Declaration itself did not embody any agreement or decision to revive the Convention and the Transit Agreement as between the two countries.

(2) The letters between the Prime Minister of India and the President of Pakistan in February 1966 referred to resumption of overflights "on the same basis as that prior to 1st August 1965". This "basis" related to the fixing of routes, procedures for obtaining permission, etc.[3], and the basis was not the Convention or the Transit Agreement or any other multilateral treaty.

(3) The suggestion of the Respondent in its Counter-Memorial that the "basis" on which overflights were resumed was the Convention and the Transit Agreement, is patently erroneous, as is shown by the following facts:

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[1] See Memorial, Annex P, p. 354, *supra*.
[2] *Ibid.*, Annex O, p. 353, *supra*.
[3] *Ibid.*, p. 31, *supra*.

(a) The essence of the Convention and the Transit Agreement is the *cumulative and inseverable* rights to overfly across each other's territory and to land in each other's territory for non-traffic purposes [1]. These rights constituted a *single, indivisible* arrangement or bargain. The aforesaid letters in February 1966 referred merely to overflights and did not at all deal with the right to land in each other's territory.

(b) While the aforesaid letters expressed the willingness of the Prime Minister of India and the President of Pakistan to resume overflights, the actual terms of the Agreement were later embodied in the signals [2] exchanged between the two countries and the Notification [3] dated 10 February 1966 issued by India. The signals and the Notification show that the resumption of overflights was on a provisional basis and on a basis of reciprocity and "with the permission of the Central Government and in accordance with the terms and conditions of such permission". Such a basis for having overflights is in flat contradiction to the basis provided for overflying under the Convention and the Transit Agreement under which the freedom of overflying has to be on an enduring basis and *without the permission* of the Government concerned.

(c) The Notification of 10 February 1966 was issued by India to implement and give legal shape to the special Agreement of 1966 and it was declaratory of the understanding of the two Governments with regard to the resumption of overflights. The Notification was embodied in the Aeronautical Information Circulars [4] issued by India, which were circulated to ICAO and given international distribution visualized in Annex 15 to the Convention. There was no protest or objection by Pakistan or any other party against the Notification or any Circulars embodying the Notification which negatived the freedom of overflying under the Convention and the Transit Agreement.

(d) Between 1966 and 1971 Pakistan aircraft invariably complied with the said Notification dated 10 February 1966, and overflew India only with the permission of the Indian Government. Further, on a number of occasions between 1966 and 1971 Pakistan asked for express permission to let its aircraft land in India [5]. Such request for permission would have been wholly unnecessary if the Convention and the Transit Agreement had been in operation between the two countries after 1966, as suggested by the Respondent. Further, permission to land for non-traffic purposes was in fact refused in several cases by India, as mentioned *ante*, in negation of the freedom assured by the Convention and the Transit Agreement. It is inconceivable that Pakistan would have asked for permission or accepted the refusal without protest, as it did, if the two treaties had been in operation between India and Pakistan.

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[1] See Memorial, Annexes H and I, pp. 300, and 327, *supra*.
[2] *Ibid.*, pp. 117-119, *supra*.
[3] *Ibid.*, p. 120, *supra*.
[4] See Annex A to this Reply, p. 433, *infra*.
[5] See para. 18 of this Reply, pp. 409-410, *supra*.

B. The Council Had no Jurisdiction, Whether the Convention and the Transit Agreement Were Suspended in 1965 or in 1971

26. Even assuming for the purpose of argument that the Convention and the Transit Agreement were revived as between India and Pakistan in February 1966, they must be held to have been suspended by India, vis-à-vis Pakistan, on 4 February 1971. Even if the unilateral suspension of the treaties by India vis-à-vis Pakistan was in February 1971, that would have no bearing on the real point arising in this Appeal, which is as regards the limits of the Council's jurisdiction. In other words, the Council would have no jurisdiction to deal with questions relating to suspension of the Convention or the Transit Agreement, whether the suspension was in 1965 or in 1971 [1].

[1] See Memorial, para. 30, p. 36, *supra*.

CHAPTER IV

THE HIJACKING INCIDENT OF 1971

(Counter-Memorial, Paragraphs 16-21)

27. The Applicant denies all statements, allegations, submissions and contentions contained in paragraphs 16 to 20 of the Respondent's Counter-Memorial, which are contrary to or inconsistent with what is stated in paragraphs 25 to 31 of the Applicant's Memorial.

28. The finding of the so-called "Commission of Enquiry" set up by Pakistan, that the Indian Government virtually procured the hijacking of its own aircraft is too absurd to need any serious refutation. First, the conclusion is untenable having regard to the facts concerning the hijacking incident set out by the Respondent itself in paragraph 19 of its Counter-Memorial and by the Applicant in paragraph 28 of its Memorial. Secondly, the Commission's finding that the arms carried by the hijackers were "discovered to be dummy weapons" [1] is wholly inconsistent with Pakistan's own admission both before [2] and after [3] the Commission's Report that the aircraft was *blown up* by the hijackers. Thirdly, it is wholly inconsistent with the reception given to the hijackers in Pakistan and the other facts set out in the next paragraph.

29. The hijackers were lionised as heroes, as reported in the newspapers published in Pakistan. For instance, *Pakistan Times* of 1 February 1971, describing a meeting between Mr. Z. A. Bhutto (now, President of Pakistan) and the hijackers, reported that Mr. Bhutto waving to one of the hijackers said, "We are with you". *The Morning News* of Karachi of 1 February 1971 reported that Mr. Z. A. Bhutto visited the hijackers and "assured them that they had full support of the people of Pakistan and everything possible would be done to look after their interests". *The Morning News* of 2 February 1971 reported as follows:

> "Although Pakistan seems to regard hijacking an undesirable practice as a matter of principle, a Foreign Office spokesman today expressed the view that hijacking of Indian Airliner by two Kashmiri young men on Saturday was justifiable in the view of the prevailing political conditions in the Occupied Kashmir . . .
>
> The spokesman hoped that the Indian plane would be returned to India as soon as hijackers agree to surrender it but apparently no force would be used to secure its release from hijackers."

The Khyber Mail of 31 January 1971 carried a statement reported to have been made by Dr. Mubashir Hassan, a prominent leader of People's Party of Pakistan, which reads as follows:

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[1] See Memorial, p. 135, *supra*.

[2] *Ibid.*, p. 71, *supra*.

[3] *Ibid.*, p. 126, *supra*, and Pakistan's Counter-Memorial, last two lines of paragraph 19, p. 377, *supra*. Curiously enough, Pakistan's Counter-Memorial omits to mention the means by which the aircraft was destroyed with its baggage, cargo and mail.

"I, on behalf of Pakistan People's Party, Lahore, salute the two Kashmiri freedom-fighters who chose our city to land their enemy's plane and gave us the opportunity and honour of giving them active support."

Pakistan Times of 1 February 1971 carried a report that Mr. Maqbool Butt described as the President of Jammu and Kashmir Plebiscite Front, stated that "the National Liberation Front was the militant wing of the Plebiscite Front" and that the two hijackers "hijacked the plane under instructions of the Front" and that "the command took full responsibility for the operation". The *Dawn* reported on 2 February 1971 that another member of the National Liberation Front, Mr. Javed Saghar, "today joined the two hijackers to keep a watch over the plane". *Pakistan Times* of 12 February 1971 reported that the hijackers would address a public meeting at Lahore on "Saturday" and that they would visit Gujranwala on Monday, Sialkot on Tuesday, Bhimber on Wednesday, Jhelum on Thursday, Mirpur on Friday and Rawalpindi on Sunday as the itinerary for tours and rallies and that the dates for Gilgit and Peshawar would be decided later.

30. The Applicant further submits that the reference to "the airspace of the disputed State of Jammu and Kashmir" in paragraph 16 of the Respondent's Counter-Memorial is unwarranted and irrelevant to the issue before the Court.

31. Paragraph 19 of Pakistan's Counter-Memorial gives the Respondent's version of the "correct position" as regards the hijacking incident. The Captain of the hijacked aircraft is said to have been given clearance to "take-off at any time he wished", but the possession of the aircraft was never restored to him. Permission to operate a relief aircraft is said to have been "immediately granted" by Pakistan to India to pick up the stranded passengers, but Pakistan did not give visas to the crew of the relief aircraft to proceed to Pakistan. The permission to operate a relief aircraft was, in any case, rendered infructuous by further instructions from the Pakistan authorities that the relief plane should not take off until further specific instructions from the D.G.C.A., Pakistan.

32. Further, the Respondent has stated in paragraph 19 of its Counter-Memorial that "any attempt to disarm or arrest one (of the hijackers) would have surely blown up the aircraft as the two had threatened to do". This statement is intended to give an impression to the Court that the Respondent was otherwise willing to arrest the hijackers on the spot. However, any such intention on the part of the Respondent is completely disproved by the facts that an announcement was made by the Government of Pakistan that the hijackers had been given asylum in Pakistan, that the hijackers were provided with food and other amenities which enabled them to continue their so-called occupation of the aircraft for three-and-a-half days, and that the hijackers were not arrested even after they had blown up the aircraft but were allowed to address rallies and meetings in Pakistan day after day.

33. Pakistan assertion in paragraph 20 of its Counter-Memorial that it "took all possible measures in accordance with international law and practice" is contrary to the correct facts which are set out in paragraphs 28 and 29 of the Applicant's Memorial.

34. The Respondent has conceded, in paragraph 21 of its Counter-Memorial, that Indian aircraft have ceased overflying Pakistan from 4 February 1971. Earlier, in attachment "B" to the Application and the Complaint submitted by Pakistan to the Council, Pakistan had untruly alleged that

"even after India's unilateral and illegal action, Indian planes continue to fly over Pakistan"[1].

35. The averments in the next paragraph again numbered 21 in the Respondent's Counter-Memorial are incorrect. The true factual and legal position is set out in paragraphs 18 and 19 of the Applicant's Memorial. It is incomprehensible how the Respondent can possibly deny that overflights of Pakistan aircraft across India were subject to the permission of the Government of India, when the statutory Notification dated 10 February 1966 issued by India says so in express terms [2], and all overflights by Pakistan aircraft were in accordance with the terms of that Notification. If the Convention and the Transit Agreement had not been suspended, the Respondent would be right in contending that the combined effect of Articles 82 to 83 of the Convention is that there cannot be any special arrangement between contracting States which is inconsistent with the provisions of the Convention. It is precisely because the Convention and the Transit Agreement had been suspended as between India and Pakistan, that the special Agreement of 1966 (set out in paragraphs 18 and 19 of the Applicant's Memorial) could be validly entered into by the two countries.

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[1] See Memorial, p. 72, *supra*.
[2] *Ibid.*, p. 120, *supra*.

CHAPTER V

JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

(Counter-Memorial, Paragraphs 22-25)

36. As stated in its Application and Memorial, the Applicant founds the jurisdiction of the Court on Article 84 of the Convention, Article II of the Transit Agreement, and Articles 36 and 37 of the Statute of the International Court of Justice. The contention of the Respondent that Article 36 of the Statute of the Court and Section I of Article II of the Transit Agreement are not relevant to this Appeal, is without any basis in law.

37. While stating that Article 36 of the Statute of the Court is irrelevant to this case, the Respondent contends that "Article 36 (1) relates to the original jurisdiction of the Court and comprises 'all cases which the parties refer to it'. The Parties have not referred any case to the Court in its original jurisdiction under this provision". The Respondent has chosen to ignore the latter part of paragraph 1 of Article 36 of the Statute which brings within the jurisdiction of the Court

> "*all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force*". (Italics added.)

The Chicago Convention and the Transit Agreement are "treaties and conventions in force".

38. The Respondent's contention that the decision of the Council in respect of Pakistan's Complaint filed under Section I of Article II of the Transit Agreement is not subject to appeal is equally unfounded in law; the correct position is set out in paragraphs 83 to 91 of the Applicant's Memorial. It is the submission of the Applicant that the Transit Agreement has been suspended as between India and Pakistan since 1965, and that no action has been taken by India under the Transit Agreement. Even if the Transit Agreement has been revived between India and Pakistan after 1965, the latter's Complaint would still be outside the scope of Article II (1) of the Transit Agreement, since the action complained of would amount to suspension of the Transit Agreement in 1971 and would not be under that Agreement. It is further submitted that even assuming India had committed a breach of the Transit Agreement, such a breach cannot be the subject-matter of a Complaint under Article II (1) of the Transit Agreement. For these reasons, India requested the Council to hold that Pakistan's Complaint was incompetent and not maintainable and that the Council had no jurisdiction to deal with it. Pakistan, on the other hand, maintained that,

> "... the word 'action' does not mean only positive action; it would include an omission on the part of the contracting State to carry out its obligations under the Agreement. India's decision to suspend the overflights of Pakistan aircraft is both an action as well as an omission. Therefore, Pakistan's Complaint is not incompetent as alleged by India [1]."

[1] See para. 58 of Pakistan's Counter-Memorial.

39. It is obvious that there is a disagreement between the two Parties regarding the interpretation of Section I of Article II of the Transit Agreement. The Council accepted the Respondent's interpretation of the word "action" and held the Complaint to be maintainable. From such a decision an appeal lies to this Court under Section 2 of Article II of the Transit Agreement [1] read with Article 84 of the Chicago Convention [2]. It is clear that a question relating to the interpretation or application of Section I of Article II of the Transit Agreement has not been excluded from the purview of Section 2 of the said Article.

40. Attention may also be drawn in this connection to Notes on Article 86 of the Chicago Convention relating to appeals from decisions of the Council, presented by the Secretary-General of ICAO to the Council at its Seventy-fourth Session [3] wherein he stated as follows:

> "*The case may also raise a question of interpretation or application* of that provision itself, namely, Section 1 of that Article II. It follows that, as specified in that Section 2, the provisions of Chapter XVIII of the Chicago Convention shall be applicable even in a case brought solely under Section 1 of Article II of the Transit Agreement . . ."

41. The words "interpretation" and "application" in Article 84 of the Convention and Section 2 of Article II of the Transit Agreement, as also the words "action under" in Section 1 of Article II of the Transit Agreement, are jurisdictional words: the jurisdiction of the Council is restricted to cases covered by those words properly construed. The Council cannot enlarge its own jurisdiction by erroneously construing these words. Such erroneous assumption of jurisdiction can be corrected, under the scheme of the Convention and the Transit Agreement, by this Court on an appeal.

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[1] See Memorial, p. 328, *supra*.
[2] *Ibid.*, p. 322, *supra*.
[3] See Annex C to this Reply, p. 450, *infra*.

CHAPTER VI

PRINCIPLES OF LAW RELATING TO TERMINATION AND SUSPENSION

A. Obligation to Act in Good Faith

(Counter-Memorial, Paragraphs 26-28)

42. The obligation to observe all treaties in good faith is a fundamental rule. This principle of law referred to in paragraphs 26 and 27 of the Respondent's Counter-Memorial is unexceptionable. The Government of India believes that scrupulous observance of treaty obligations by parties is necessary for stability of treaty relations as well as for international order and co-operation. The Government of India has acted in good faith throughout. It was in absolute good faith that it suspended the Convention and the Transit Agreement vis-à-vis Pakistan. The suggestion in paragraph 28 of the Respondent's Counter-Memorial that India has an obligation to implement these treaties in good faith is misconceived, since there can be no obligation to implement a treaty after it has been suspended vis-à-vis another State.

B. Suspension of the Convention and the Transit Agreement

(Counter-Memorial, Paragraphs 29-33 and 36)

43. Paragraphs 29, 30 and 31 of the Respondent's Counter-Memorial contain the following syllogism : (i) there can be no suspension of an international treaty unless the treaty provides for such suspension; (ii) the Convention and the Transit Agreement do not provide for suspension; (iii) therefore, there can be no suspension of those treaties as between India and Pakistan. The first premise is patently erroneous and has led to the patently erroneous conclusion. Suspension can be, and was in this case, *dehors* the treaty, under a rule of general international law, as has been pointed out in paragraphs 33 to 51 of the Applicant's Memorial. Article 89 of the Convention and Section 1 of Article I of the Transit Agreement have no relevance to this Appeal: they do not supersede the right of suspension under general international law.

44. In any view of the matter, even the aforesaid contention raised by Pakistan is outside the jurisdiction of the Council. Questions relating to suspension,—e.g., whether the suspension of a treaty by a contracting State was competent or justified, on the facts of the case and having regard to the principles of general international law—are not within the Council's jurisdiction, since they do not involve disagreement relating to the "interpretation" or "application" of the treaty, nor do they relate to "action under" the treaty.

45. The pleas of acquiescence and estoppel, contained in paragraph 33 of the Counter-Memorial, are wholly misconceived and have no basis in fact.

46. The fact of the matter is that the Respondent, being a party to the special Agreement of 1966 the terms of which are contradictory of the

provisions of the Convention and the Transit Agreement, and having acted in conformity with the special Agreement since 1966, is estopped from denying its existence. As stated by Judge Alfaro in his separate opinion in the *Preah Vihear* case:

> "This principle, as I understand it, is that a State party to an international litigation is bound by its previous acts or attitude when they are in contradiction with its claims in the litigation. . . .
>
> Whatever term or terms be employed to designate this principle . . . its substance is always the same: inconsistency between claims or allegations put forward by a State, and its previous conduct in connection therewith, is not admissible *(allegans contraria non audiendus est)* [1]."

47. The contention of the Respondent, based on Articles 82 and 83 of the Convention, that the special Agreement of 1966 was not permissible since it was inconsistent with the terms of the Convention, is misconceived. The Convention having been suspended, the question of inconsistency does not arise. The fact that the special Agreement of 1966 was inconsistent with the Convention and the Transit Agreement demonstrates that those two treaties were suspended as between India and Pakistan.

C. Right of Unilateral Suspension or Termination of a Treaty

(Counter-Memorial, Paragraphs 37-42)

48. The statements of law and the contentions set out in paragraphs 37-39 of the Counter-Memorial are misconceived and are denied. The Applicant will refer to and rely on the Vienna Convention on the Law of Treaties, 1969, for its proper effect.

49. The contention of Pakistan that a party cannot suspend or terminate a treaty unilaterally, as a consequence of its material breach by the other party, in the face of the latter's objection to such suspension or termination, is without any basis in law. That the consent of the defaulting State for the termination or suspension of a treaty is not required and that no "third-party settlement" is necessary before such termination or suspension, is evident from Article 60 of the Vienna Convention, the existing customary international law on the subject as held by the International Court of Justice in the *Namibia* case, and the practice of sovereign States on the subject [2]. The third-party settlement machinery envisaged in the Vienna Convention has not yet been established, since the Vienna Convention has not yet come into force. Accordingly, a dispute regarding the suspension of a treaty can be settled by the parties directly or through only such "third-party settlement" as may be specifically agreed to between them.

50. The Applicant further denies the contention of the Respondent that the right to terminate or suspend a treaty as a consequence of its material breach by the other party is subject to the doctrine of proportionate and/or disproportionate reprisal. In any event, this contention of the Respondent has no relevance to the real issue arising in this Appeal, which is whether the Council has jurisdiction to handle disputes regarding termination or suspension.

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[1] *Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 6 at pp. 39 and 40.

[2] See Memorial, Chapter V, pp. 38-44, *supra*.

51. The Respondent refers to Article 95 [1] of the Convention and Article III [2] of the Transit Agreement which deal with denunciation of the said instruments and maintains that "India cannot thus unilaterally denounce, terminate or suspend the Convention and the Transit Agreement save in conformity with the provisions of the aforementioned agreements". This proposition is totally untenable in law. The correct position is that denunciation of a treaty on the one hand, and termination or suspension of it on the other hand, are distinct and separate legal concepts. India has not denounced the Convention and the Transit Agreement in the present case; and consequently the reference to Article 95 of the Convention and Article III of the Transit Agreement is irrelevant. Further, the aforesaid Articles of these treaties provide for denunciation by one State as regards all the other States which are parties to these treaties; whereas the present case is one of suspension of the treaties by India vis-à-vis Pakistan alone, and not any of the other contracting States.

52. Assuming that the Convention and the Transit Agreement were in force in February 1971 as between India and Pakistan, the Applicant denies the Respondent's contention that its conduct in relation to the hijacking incident has no relevance to the obligations imposed upon contracting States by the Convention and the Transit Agreement. It is not necessary or relevant in this Appeal to go into the legal justification for the Applicant's action on 4 February 1971, withdrawing permission to Pakistan aircraft to overfly India. However, the conduct of the Respondent amounted to the very negation of all the aims and objectives, the scheme and provisions, of the Convention and the Transit Agreement. The Respondent showed no regard for the most elementary notions of safety in civil aviation, and made it impossible for the Applicant to enjoy its rights under the Convention, and its privileges under the Transit Agreement, over Pakistan territory. The correct legal position is set out in paragraphs 30, 31 and 32 of the Applicant's Memorial.

53. The Applicant submits that the Advisory Opinion of the Permanent Court of International Justice on the *Interpretation of the Treaty of Lausanne* [3] has no bearing, direct or indirect, on the issue arising in this Appeal—whether the Council whose jurisdiction is limited to disputes regarding interpretation or application of the Convention and the Transit Agreement, can handle disputes regarding termination or suspension of the treaty. Nor are the observations of the International Law Commission quoted in paragraph 41 of the Respondent's Counter-Memorial of any relevance to the issue before the Court.

54. The Applicant reiterates that the concepts of termination and suspension of a treaty are distinct and different from the concepts of interpretation and application; and that the jurisdiction of the Council, under Article 84 of the Convention and Article II, Section 2, of the Transit Agreement does not extend to the question of suspension or termination of the said treaties.

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[1] See Memorial, p. 325, *supra*.
[2] *Ibid.*, p. 328, *supra*.
[3] *P.C.I.J., Series B, No. 12.*

D. Misconceived Plea of Acquiescence

(Counter-Memorial, Paragraphs 43 and 44)

55. The contention set out in paragraph 43 of the Respondent's Counter-Memorial, namely, that India has acquiesced in the operation of the Convention and the Transit Agreement and is therefore disentitled under Article 45 of the Vienna Convention to suspend the treaties, is misconceived. First, Article 45 of the Vienna Convention has no application, since India has not acquiesced in the operation of the treaties as between the two countries. None of the circumstances which are essential to attract the application of Article 45 of the Vienna Convention exist in the present case. Secondly, in any event the question whether the suspension of the treaties by India was rightful or wrongful, justified or unjustified, under general principles of international law or under Article 45 of the Vienna Convention, is a question relating to the suspension of the treaties and is outside the jurisdiction of the Council.

56. The interpretation placed by the Respondent on the letter dated 4 February 1971 addressed by India to ICAO Council is wholly unwarranted. The letter bears no evidence of India having proceeded on the basis that the Convention and the Transit Agreement were in operation as between India and Pakistan. It was a letter from the Government of India to the President of the Council informing the Council about Pakistan's conduct in the hijacking incident. India approached the Council as the keeper of the conscience of the world so far as safety in international aviation is concerned. The Respondent relies upon the fact that the Applicant in the said letter expressly refers to the Chicago Convention and to the conduct of the Respondent as being contrary to the principles contained therein. But it is impossible to infer from this that the Applicant regarded the Convention as being in force between India and Pakistan. It is most significant to note that in the same letter the Applicant also referred to the Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963 ("the Tokyo Convention") and the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 ("The Hague Convention"), to neither of which was India or Pakistan ever a party. This clearly shows that India's letter was addressed to the Council in the context of its general functions and powers concerning safety in international civil aviation, and the reference to the Convention as well as to the Tokyo and The Hague Conventions was merely to indicate the norms of responsible behaviour against which Pakistan's conduct fell to be judged [1].

57. The Applicant denies the Respondent's contention that even by lodging an Appeal under Article 84 of the Convention, Article II of the Transit Agreement and Article 37 of the Statute of the Court, India has acquiesced in the continued operation of the treaties. The present Appeal arises from the decision of the Council; and a challenge by means of an appeal to the jurisdiction of the Council to hear Pakistan's Application and Complaint cannot be construed as acquiescence on the part of India in the continued operation of the said treaties as between India and Pakistan.

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[1] See Memorial, pp. 58 and 59, *supra*.

E. The Advisory Opinion of the International Court of Justice in the Reference regarding Namibia

(Counter-Memorial, Paragraphs 45-48)

58. There is no basis for the argument of the Respondent that, according to the *Namibia* case, only a supervisory power is competent to terminate a treaty for material breach of obligations thereunder, and since the Applicant does not possess any such powers over Pakistan, it cannot unilaterally terminate the Convention and the Transit Agreement vis-à-vis Pakistan. The Court has not laid down any such qualification in regard to the right to terminate or suspend a treaty on account of material breach. The Court categorically asserted the general principle of law that the silence of a treaty as to the right of termination cannot be interpreted as implying the exclusion of a right which has its source outside of the treaty [1]. The Advisory Opinion of the Court in the *Namibia* case has, therefore, a direct and significant bearing on the point of law which the Court is called upon to decide in the present case.

59. The Respondent refers to an observation of Judge Sir Gerald Fitzmaurice which appears in a footnote in his dissenting opinion in the *Namibia* case. First, the Applicant submits that the majority opinion of the Court lays down the correct law and should be followed. Secondly, the observations of Judge Sir Gerald Fitzmaurice, which are quoted in paragraph 47 of the Respondent's Counter-Memorial, do not express any dissent on the point that the concepts of termination and suspension of a treaty are distinct and different from the concepts of interpretation and application of the treaty. Thirdly, even assuming the said observations of Judge Sir Gerald Fitzmaurice are to be read as disentitling a State to terminate or suspend a treaty, that would only go to the validity of the termination or suspension, and would have no bearing on the question whether the Council has the jurisdiction to pronounce on the validity of or justification for the termination or suspension.

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[1] *I.C.J. Reports 1971*, p. 16 at p. 47.

CHAPTER VII

INHERENT LIMITATIONS ON THE COUNCIL'S JURISDICTION

A. Composition, Powers and Functions of the Council

60. The Applicant submits that the vital point missed in the Respondent's Counter-Memorial is that the Council has inherent limitations on its jurisdiction, arising not only from the very words of the Convention and the Transit Agreement conferring the jurisdiction but inherent in the very composition and character, duties and functions, of the Council. It is inconceivable that the contracting States intended the Council, which is not expected to consist of trained lawyers, jurists or judges, to decide questions of international law, to go into the legal rights and wrongs of political confrontations between States, to decide whether the conduct of a State was such as to justify termination or suspension of a treaty by the State which is specially affected by a material breach by another State, and to pronounce upon the validity of a sovereign State's exercise of its right under international law to terminate or suspend a treaty. Only a Court of International Law, duly equipped and qualified to weigh the evidence in its legal aspect and to lay down principles of international law, can deal with such disputes. The Council is clearly not such a body. It performs extremely useful functions in its own area which is far removed from that of a Court of International Law.

61. In short, the inherent limitations on the Council's jurisdiction are reflected in its composition, its limited powers and functions; and the limits of its jurisdiction are expressly circumscribed by the clear provision in the Convention and the Transit Agreement that only disputes relating to "interpretation" or "application" would be decided by the Council, or disputes relating to "action under" the Transit Agreement.

62. The very points of international law raised by the Respondent in its Counter-Memorial,—challenging the right of India to suspend the Convention and the Transit Agreement,—themselves afford striking examples of the type of questions of far-reaching significance which arise when a sovereign State chooses to exercise its right under international law to terminate or suspend a treaty. *The Council is not at all equipped to deal with the relative merits of* the rival submissions in international law made by the Applicant and the Respondent.

B. Interpretation of Article 84 of the Convention and Article II, Section 2, of the Transit Agreement

(Counter-Memorial, Paragraphs 49-55)

63. The correct principles of interpretation of a treaty conferring jurisdiction on an international body have been set out in paragraphs 100 to 103 of the Applicant's Memorial. The Respondent has not cited any authority to refute the principles enunciated in those paragraphs. It is erroneous to attempt to determine the Council's jurisdiction by reference to principles of interpretation applicable for determining the jurisdiction of the Permanent Court of International Justice or the International Court of Justice. In any

event, even by reference to those principles of interpretation, the Council does not have the jurisdiction claimed by the Respondent.

64. The Applicant submits that the construction of Article 84 of the Convention, and Article II, Section 2, of the Transit Agreement, should be neither narrow nor liberal but should be such a fair and proper interpretation as to satisfy the principle of "strict proof of consent" laid down by Sir Gerald Fitzmaurice, i.e., the rule of exclusion of jurisdiction outside the scope of the consent given by the contracting States [1]. On a fair and reasonable construction, the words "interpretation" and "application" cannot cover "suspension" or "termination".

65. Reference may also be made to the principle of interpretation laid down by the Permanent Court of International Justice in the case concerning *Polish Postal Service in Danzig* that, "It is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd [2]". This principle has been confirmed by the International Court of Justice also [3].

66. In short, no principle of interpretation, no case, no authority, no textbook, cited by the Respondent, supports its proposition that a body whose jurisdiction is limited to handling disputes relating to "interpretation" and "application" of a treaty is entitled to adjudicate upon disputes relating to termination or suspension of the treaty. The citations and quotations in paragraphs 49 to 54 of the Counter-Memorial are not relevant to the real issue arising in this Appeal.

67. In paragraph 50 of the Counter-Memorial, the Respondent has claimed that a "wide and liberal" interpretation should be put upon the Convention and the Transit Agreement. The Applicant is constrained to say that nothing short of misinterpretation would be necessary to clothe the Tribunal with jurisdiction to decide disputes as to suspension or termination.

68. In paragraph 51 of the Counter-Memorial, the Respondent has cited cases on the meaning of the word "dispute" or "disagreement". Those cases are of no relevance to the present Appeal where the existence of a dispute or disagreement is not denied, the only question being whether the dispute or disagreement relates to interpretation or application of the Convention or the Transit Agreement.

69. The observations of the International Court of Justice in the *South West Africa* cases, 1962 [4], relied upon by the Respondent are not apposite to this Appeal. In that case, the Court was considering the scope of the expression "any dispute whatever . . . between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate . . .". The Court expressed the opinion that "any dispute" to fall within the scope of Article 7 of the Mandate should relate to "the provisions" of the Mandate. In the present case the suspension of the Convention and the Transit Agreement was *dehors* the treaty and represented the exercise of a right under a well-settled rule of international law.

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[1] See Memorial, para. 101, pp. 57 and 58, *supra*.

[2] *P.C.I.J., Series B, No. 11*, p. 39.

[3] *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, p. 4 at p. 8.

[4] *I.C.J. Reports 1962*, p. 343.

70. The case of *Heyman* v. *Darwins* [1] has already been dealt with in paragraph 83 of the Applicant's Memorial [2]. This decision really supports India's case inasmuch as it shows how broad the jurisdiction clause should be in order to cover disputes regarding matters other than application or interpretation. In *Heyman's* case, the Court was considering the scope of a very widely drawn arbitration clause which read as follows:

> "If any dispute shall arise between the parties hereto in respect of this agreement or any of the provisions herein contained . . ."

Viscount Simon, L.C., said in the above case,

> "the governing consideration in every case must be the precise terms of the language, in which the arbitration clause is framed [3]".

71. The observations of Lord Wright in the case of *Heyman* v. *Darwins* do not support the Respondent. Lord Wright's words [4], preceding those quoted in paragraph 52 of the Counter-Memorial, are:

> "I should prefer to put it that the existence of his (arbitrator's) jurisdiction in this as in other cases is to be determined by the words of the submission."

It may thus be seen that Lord Wright's observations support the view that the jurisdiction of a forum depends upon "the words of the submission" to it.

72. The observations of Mr. B. P. Sinha, referred to by the Respondent, have been quoted out of context. These observations, apart from the fact that they do not support the view that a question of termination or suspension of a treaty is a question relating to its interpretation or application, occur in Chapter I of his book wherein he deals with the "Statement of the Problem". The author's opinion on the question of unilateral termination of a treaty for material breach has been cited by the Applicant in paragraphs 42 and 46 of its Memorial.

73. The Respondent has relied on the cases,—the *Factory at Chorzów* [5], *Certain German Interests in Polish Upper Silesia* [6] and the *Corfu Channel* case [7]. The Applicant submits that these cases have no bearing at all on the question of the limits of jurisdiction which fall to be considered in the present case. Therefore, it is not necessary to discuss the facts of the said cases and the principles laid down therein which have no direct or indirect relevance to this Appeal.

74. The Respondent has argued that the principle of "effective interpretation applies also to jurisdictional clauses". The Applicant submits that this principle is of no avail to the Respondent in the present case. Hersch Lauterpacht warns that a judge should not "consciously and deliberately usurp the function of legislation", and adds that the principle of effectiveness "cannot be a substitute for intention; it certainly cannot claim to replace it [8]". In other words the doctrine of effective interpretation cannot create a

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[1] [*1942*] All England Reports 337.
[2] See Memorial, pp. 52 and 53, *supra*.
[3] [*1942*] All England Reports 337 at p. 344.
[4] *Ibid.*, pp. 353 and 354.
[5] *P.C.I.J., Series A, No. 9.*
[6] *P.C.I.J., Series A, No. 7.*
[7] *I.C.J. Reports 1949*, p. 4.
[8] H. Lauterpacht, "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties", *British Year Book of International Law*, Vol. XXVI, 1949, p. 48 at pp. 83 and 84.

new title of jurisdiction, where it does not exist by virtue of the specific jurisdiction clause in the treaty.

C. Complaint Under Section 1 of Article II of the Transit Agreement

(Counter-Memorial, Paragraphs 56-58)

75. That Pakistan's Complaint to the Council was incompetent has been demonstrated by the Applicant in paragraphs 86-91 of its Memorial. The Respondent relies on the word "deems" in Section 1 of Article II of the Transit Agreement and contends that it connotes the "subjective satisfaction of the aggrieved State". The correct position is that the word "deems" in Section 1 of Article II of the Transit Agreement relates to the "injustice or hardship" aspect; it does not relate to the word "action". That "action" has been taken *under* the Transit Agreement has to be objectively established.

76. Termination or suspension of the Transit Agreement, or even a breach of the Transit Agreement, cannot be the subject-matter of a Complaint under Section 1 of Article II. Dr. Eugene Pepin, the then Director of the Legal Bureau of ICAO, in reply to a question from the Chairman of the Working Group nominated by the Council for preparing the Rules for the Settlement of Differences, gave the following answer at the Working Group meeting on 14 July 1952:

> ". . . in the Air Transport and Air Transit Agreements there is a case of complaints which involve not something wrongly done in respect to the provision of the Convention but something done in accordance or in pursuance to the provisions of the Agreements but which causes hardship or injustice to another party. Therefore I think there is a fundamental difference between a disagreement, which is something contrary to the Convention, and a complaint which is something exactly pursuant to the Convention but which causes injustice [1]."

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[1] Minutes of the Working Group Meeting on Rules for Settlement of Differences, 14 July 1952 (afternoon).

CHAPTER VIII

MANNER AND METHOD EMPLOYED BY THE COUNCIL IN REACHING THE DECISION

(Counter-Memorial, Paragraph 59)

77. The Applicant reiterates that the manner and method employed by the Council in reaching its decision rendered the decision improper, unfair and prejudicial to India and bad in law, for the reasons set out in paragraphs 93 to 99 of the Memorial. The points made out by the Applicant in those paragraphs have not been met in paragraph 59 of the Respondent's Counter-Memorial.

78. The Applicant submits that, under Article 52 of the Convention, the Council would have to observe the requirement of approval by a majority of the total number of its members for any decision taken, even where, in accordance with Article 66 *(b)* of the Convention, some of the Council Members did not have the right to vote because they had not accepted the Transit Agreement. This position of the Applicant [1] has been clarified in a Memorandum of 10 August 1971 submitted by the Secretary-General of ICAO to the Representatives on the Council [2]. The President of the Council also repeatedly maintained [3] that a statutory majority of 14 votes is necessary for any decision of the Council, since there are 27 members of the Council as it is constituted at present. The Applicant reiterates that the decision of the Council in regard to Pakistan's Complaint was supported by 13 members only [4], whereas the minimum number required to constitute a majority of the members of the Council is 14; and hence the decision was invalid in law.

79. The decision of the Council was further vitiated by the fact that the propositions put to vote [5] in respect of Pakistan's Application and Complaint were neither introduced nor seconded by any member of the Council as required in Rules 41 and 46 of the "Rules of Procedure for the Council [6]".

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[1] See Memorial, para. 93 (2), p. 55, *supra*.

[2] See Annex D to this Reply, p. 451, *infra*.

[3] See Annex E to this Reply, p. 453, *infra*, and Memorial, pp. 264 and 276, *supra*.

[4] See Memorial, paragraph 6, p. 268, *supra*. The statements in the Respondent's Counter-Memorial, p. 393, *supra*, regarding the number of votes in favour of Pakistan are inaccurate.

[5] See Memorial, pp. 267-268, 278-279, 282-283, 286-287, *supra*. The President of the Council who put the propositions to vote is not a member of the Council, and no one seconded the propositions.

[6] See Annex F to this Reply, p. 455, *infra*.

CHAPTER IX

SUBMISSION

80. Upon the basis of the statements of fact and law in the Applicant's Memorial, supplemented by those set forth herein or which may subsequently be made before this honourable Court, the Applicant respectfully reiterates its prayer that the Court adjudge and declare in accordance with, and on the basis of, the Statement of Claim set forth in Chapter VIII of the Memorial, which Statement of Claim is hereby reaffirmed and incorporated by reference herein.

(Signed) Lt. General YADAVINDRA SINGH,
Ambassador of India at The Hague,
Agent of the Government of India.

The Hague, 17 April 1972.

BOOKS AND ARTICLES

A. BOOKS

1. *Aircraft Manual—A Compilation of the Legislation and Rules Governing Civil Aviation in Pakistan, 1966.*
2. B. P. Sinha, *Unilateral Denunciation of Treaty Because of Prior Violations of Obligations by Other Party, 1966.*

B. ARTICLES

H. Lauterpacht, "Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties", *British Year Book of International Law*, Vol. XXVI, 1949, p. 48.

TABLE OF CASES CITED

A. INTERNATIONAL COURT OF JUSTICE

1. *Corfu Channel, Merits, Judgment, I.C.J. Reports 1949*, p. 4.
2. *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, p. 4.
3. *Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962*, p. 6.
4. *South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 319.
5. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16.

B. PERMANENT COURT OF INTERNATIONAL JUSTICE

1. *Polish Postal Service in Danzig, Advisory Opinion, 1225, P.C.I.J., Series B, No. 11.*
2. *Interpretation of Article 3, Paragraph 2, of the Treaty of Lausanne, Advisory Opinion, 1925, P.C.I.J., Series B, No. 12.*
3. *Certain German Interests in Polish Upper Silesia, Merits, Judgment No. 7, 1926, P.C.I.J., Series A, No. 7.*
4. *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1227, P.C.I.J., Series A, No. 9.*

C. OTHER

Heyman and Another v. *Darwins Ltd.* [1942] All England Reports 337.

ANNEXES TO THE REPLY SUBMITTED BY THE GOVERNMENT OF INDIA

Annex A

GOVERNMENT OF INDIA AERONAUTICAL INFORMATION CIRCULARS, NOS. 27/1965 AND 8/1966

Phone: 70401/69
Telegraphic Address:—
Aeronautical: VIDDYA
Commercial: AIRCIVIL
NEW DELHI

GOVERNMENT OF INDIA
AERONAUTICAL INFORMATION CIRCULAR

No. 27/1965

Attention of all concerned is invited to Notification No. G.S.R. 1299 dated the 6th September, 1965/15 Bhadra, 1887 issued by the Government of India, Ministry of Civil Aviation, reproduced below:—

New Delhi,

8 September, 1965
17 Bhadra 1887 (Saka)

R. N. KATHJU
Director General of Civil Aviation

No. 27/1965 (1/1/65-GR)

GOVERNMENT OF INDIA
MINISTRY OF CIVIL AVIATION

Dated, New Delhi-2, the 6th September, 1965
15 Bhadra, 1887

NOTIFICATION

G.S.R. 1299.—WHEREAS the Central Government is of opinion that in the interests of the public safety and tranquillity the issue of an order under clause (b) of sub-section (1) of section 6 of the Aircraft Act, 1934 (22 of 1934), is expedient:

Now, THEREFORE, in exercise of the powers conferred by clause (b) of sub-section (1) of the said section 6, the Central Government hereby directs that no aircraft registered in Pakistan or belonging to or operated by the Government of Pakistan or persons who are nationals of Pakistan shall be flown over any portion of India.

V. SHANKAR, Secy.

Phone: 70401/69
Telegraphic Address:—
Aeronautical: VIDDYA
Commercial: AIRCIVIL
NEW DELHI

GOVERNMENT OF INDIA
AERONAUTICAL INFORMATION CIRCULAR

No. 8/1966

Attention of all concerned is invited to Notification No. G.S.R. 239 dated 10th February, 1966/21 Magha, 1887 issued by the Government of India, Ministry of Transport and Aviation (Department of Aviation), reproduced below:—

This is to be read with A.I.C. No. 27/1965.

New Delhi,
21 February 1966
2 Phalguna 1887 (Saka)

B. M. GUPTA
Director General of Civil Aviation

No. 8/1966 (1/1/65-GR)

GOVERNMENT OF INDIA
MINISTRY OF TRANSPORT AND AVIATION

(Department of Aviation)

New Delhi, the 10th February, 1966
21 Magha, 1887.

NOTIFICATION

G.S.R. 239.—Whereas the Central Government is of opinion that in the interests of the public safety and tranquillity it is necessary so to do:

Now, THEREFORE, in exercise of the powers conferred by clause (b) of sub-section (1) of section 6 of the Aircraft Act, 1934 (22 of 1934) the Central Government hereby makes the following amendment to the notification of the Government of India in the late Ministry of Civil Aviation No. GSR 1299 dated the 6th September, 1965, namely:—

In the said notification, after the words "any portion of India", the following words shall be inserted, namely:—

"except with the permission of the Central Government and in accordance with the terms and conditions of such permission."

(F. No. 21-A/4-66)

V. SHANKAR,
Secretary.

Annex B

GOVERNMENT OF INDIA AERONAUTICAL INFORMATION CIRCULARS: CURRENT AS ON 1 MARCH 1970 AND 1 JANUARY 1971

A. I. C.

GOVERNMENT OF INDIA
Aeronautical Information Service
Director General of Civil Aviation
R. K. Puram, New Delhi-22.

Phone: 70401/252
Telegraphic Address:
Aeronautical: VIDDYA
Commercial: AIRCIVIL
NEW DELHI

No. 3/1970
2nd March, 1970
11 Phalguna, 1891 (Saka)

(10-3/70—AIS)

THE FOLLOWING CIRCULAR IS HEREBY PROMULGATED FOR INFORMATION, GUIDANCE AND NECESSARY ACTION.

G. C. ARYA
Director General of Civil Aviation

AERONAUTICAL INFORMATION CIRCULARS: CURRENT AS ON 1ST MARCH 1970

NUMBER	DATE	TITLE
YEAR 1960	18-6-1960	EXCESSIVE LOADING OF WING STRUCTURE OF AIRCRAFT WHILE FLYING IN TURBULENT WEATHER.
15		
YEAR 1961		
3	25-2-1961	SAFDARJUNG AIRPORT—NEW DELHI.
22	18-9-1961	CHAKULIA AERODROME.
36	18-12-1961	GAYA AERODROME.
1962 (OLD SERIES)		
17	28-6-1962	NOTIFICATION OF FLIGHT, FLIGHT PLAN, AIR TRAFFIC CLEARANCE AND ARRIVAL REPORT.

NUMBER	DATE	TITLE
18	10-7-1962	CORRIGENDA TO AERONAUTICAL INFORMATION CIRCULAR NO. 3 OF 1961.
1962 (NEW SERIES)		
14	5-12-1962	NOTIFICATION — PROHIBITION OF FLIGHTS — PEOPLE'S REPUBLIC OF CHINA (G.S.R. 1637).
YEAR 1963		
3	13-4-1963	FORCED LANDINGS.
8	31-7-1963	MEDICAL EXAMINATION FOR THE ISSUE AND RENEWAL OF FLIGHT CREW LICENCES.
YEAR 1963		
15	14-9-1963	VISHAKHAPATNAM AERODROME.
17	26-11-1963	BHOPAL AERODROME.
1964		
1	1-1-1964	BHUBANESHWAR AERODROME.
4	2-1-1964	BHUJ AERODROME.
5	1-1-1964	KANDLA AERODROME.
6	20-1-1964	LUCKNOW AERODROME.
7	2-1-1964	VARANASI AERODROME.
10	14-2-1964	CUSTOMS EXAMINATION OF GOODS EXPORTED BY AIR.
14	8-2-1964	PATNA AERODROME.
16	4-2-1964	BEGUMPET AERODROME.
18	19-5-1964	TRIVANDRUM AERODROME.
22	4-8-1964	GAUHATI AERODROME.
23	19-8-1964	AURANGABAD AERODROME.
24	19-8-1964	UDAIPUR AERODROME.
25	19-8-1964	MADURAI AERODROME.
30	20-10-1964	MANGALORE AERODROME.

NUMBER	DATE	TITLE
1965		
2	11-1-1965	MUZAFFARPUR AERODROME.
4	22-1-1965	COMPLIANCE OF THE LAWS OF OTHER STATES BY AIR-CRAFT REGISTERED IN INDIA.
5	11-1-1965	VIJAYAWADA AERODROME.
6	8-2-1965	PARKING OF AIRCRAFT.
7	6-2-1965	PROVISION OF ARTIFICIAL HORIZON ON TRAINING AIRCRAFT.
16	26-2-1965	AGARTALA AERODROME.
19	16-2-1965	COIMBATORE AERODROME.
20	14-4-1965	CORRIGENDA TO AERONAUTICAL INFORMATION CIRCULARS ON AERODROMES.
22	18-5-1965	TECHNICAL EXAMINATION FOR FLIGHT CREW (PILOT'S & NAVIGATOR'S LICENCES/RATINGS).
27	8-9-1965	NOTIFICATION — PROHIBITION OF FLIGHTS—PAKISTAN (G.S.R. 1299).
36	19-10-1965	PROCEDURE AND PRECAUTIONS REGARDING FUELLING AND DE-FUELLING OF AIRCRAFT, FIRE AND GENERAL SAFETY.
1966		
4	20-1-1966	BHAUNAGAR AERODROME.
6	25-1-1966	AMENDMENT TO AERONAUTICAL INFORMATION CIRCULAR NO. 22 OF 1965.
8	21-2-1966	NOTIFICATION — PROHIBITION OF FLIGHTS—PAKISTAN (G.S.R. 239).
9	22-2-1966	GROUND WEATHER EQUIPMENT AVAILABLE AT AERODROMES AND WEATHER RADAR SERVICES PROVIDED FOR AIRCRAFT.
14	6-6-1966	NOTIFICATION OF ACCIDENTS.
17	25-6-1966	REQUISITIONS FOR SPECIAL WEATHER FORECASTS FOR NON-SCHEDULED FLIGHTS.

NUMBER	DATE	TITLE
1966		
19	13-7-1966	SAFETY PRECAUTIONS WHILE USING NAVAL AERODROME—COCHIN.
20	28-6-1966	BIRD STRIKES ON AIRCRAFT— PRECAUTIONS TO BE TAKEN BY PILOTS —SUBMISSION OF INFORMATION IN STANDARD FORM.
23	28-9-1966	POSITION REPORTS.
29	27-10-1966	CORRIGENDA TO AERONAUTICAL INFORMATION CIRCULAR NO. 15 OF 1963 ON VISHAKHAPATNAM AERODROME.
31	27-10-1966	CORRIGENDA TO AERONAUTICAL INFORMATION CIRCULAR NO. 25 OF 1964 ON MADURAI AERODROME.
32	27-10-1966	CORRIGENDUM TO AERONAUTICAL INFORMATION CIRCULAR NO. 4 OF 1966 ON BHAUNAGAR AERODROME.
1967		
2	20-1-1967	BELGAUM AERODROME.
4	13-3-1967	TREND TYPE LANDING FORECASTS.
5	10-4-1967	CORRIGENDUM TO AERONAUTICAL INFORMATION CIRCULAR NO. 9 OF 1966.
6	4-4-1967	HIGH RADIO MASTS IN INDIA.
14	15-12-1967	NOTIFICATION (G.S.R. 1851).
15	20-12-1967	ACCEPTANCE OF DATE AND PLACE OF BIRTH PARTICULARS.
1968		
1	9-1-1968	AIRMISS REPORTING PROCEDURE.
2	20-2-1968	USE OF IAF AND NAVAL AERODROMES BY CIVIL AIRCRAFT.
3	20-2-1968	NOTIFICATION (G.S.R. 1926).
4	20-2-1968	RESTRICTIONS OF FLYING INTO OR OVER CERTAIN AREAS OF NORTH-EAST INDIA.
9	20-3-1968	AVOIDANCE OF FIRE HAZARD— FUELLING NEAR JET AIRCRAFT.

NUMBER	DATE	TITLE
1968		
11	20-5-1968	AERODROMES AVAILABLE FOR CIVIL USE.
15	4-9-1968	INDIAN AIRCRAFT MANUAL.
19	12-8-1968	AMENDMENT TO PARAGRAPH I (*d*) OF SECTION K OF SCHEDULE II TO THE AIRCRAFT RULES, 1937 (G.S.R. 1392).
21	18-6-1968	PROCEDURE IN CONNECTION WITH FLIGHTS TO, WITHIN OR OVER INDIA BY FOREIGN AVIATORS.
24	23-11-1968	CEILOMETER INSTRUMENT AT INTERNATIONAL AIRPORTS—BOMBAY, CALCUTTA AND MADRAS.
25	25-11-1968	ALTIMETER SETTING FOR LANDING PURPOSES.
27	30-11-1968	MINIMUM FUEL AND OIL TO BE CARRIED BY AEROPLANES BEFORE COMMENCEMENT OF FLIGHTS.
28	24-12-1968	NOTIFICATION—AMENDMENT TO AIRCRAFT RULES, 1937 (G.S.R. 2147).
1969		
1	6-1-1969	AVIATION WEATHER CODES.
4	31-3-1969	NOTIFICATION — ADDITION OF RULE 78-B, TO THE AIRCRAFT RULES, 1937 (G.S.R. 544).
5	28-4-1969	NOTIFICATION — AMENDMENT TO CLAUSE (*b*) OF PARAGRAPH 3 OF SECTION D OF SCHEDULE II TO THE AIRCRAFT RULES 1937 (G.S.R. 182).
7	14-5-1969	NOTIFICATION — AMENDMENT TO CLAUSE (*a*) OF PARAGRAPH 4 OF SECTION M OF SCHEDULE II TO THE AIRCRAFT RULES, 1937 (G.S.R. 1045).
8	24-6-1969	STORM DETECTION RADAR—BEGUMPET AIRPORT.
9	8-7-1969	AERONAUTICAL INFORMATION PUBLICATION (SECOND EDITION) AND ITS AMENDMENTS NO. 1 TO 7—SALE OF.
11	4-7-1969	CONDITIONS GOVERNING THE USE OF GOVERNMENT OWNED AERODROMES IN INDIA.

NUMBER	DATE	TITLE
1969		
12	21-7-1969	NOTIFICATION (G.S.R. 1370).
13	22-7-1969	PRECISION APPROACH RADAR (PAR) EQUIPMENT AT BOMBAY AIRPORT.
14	31-7-1969	METEOROLOGICAL PROCEDURES FOR PILOTS.
15	14-8-1969	PARTIAL AMENDMENT TO A.I.C. NO. 11 OF 1968.
16	15-12-1969	REGULATION AND CONTROL OF AERONAUTICAL INFORMATION.
18	31-12-1969	NOTIFICATION—CUSTOMS (G.S.R. 1910).
19	31-12-1969	METEOROLOGICAL PRACTICES AND PROCEDURES IN AIR NAVIGATION SERVICES.
1970		
1	11-2-1970	AIRCRAFT RADIO EQUIPMENT.
2	11-2-1970	AIRCRAFT RADIO MAINTENANCE ENGINEER'S LICENCE.

CIRCULARS NOT INCLUDED IN THIS LIST HAVE EITHER BEEN CANCELLED, SUPERSEDED BY FURTHER CIRCULARS, INCORPORATED IN A.I.P. INDIA OR ARE CONSIDERED TO HAVE BEEN SUFFICIENTLY PROMULGATED.

A. I. C.

GOVERNMENT OF INDIA
Aeronautical Information Service
Director General of Civil Aviation
R. K. Puram, New Delhi-22.

Phone: 79501/252
Telegraphic Address:
Aeronautical: VIDDYA
Commercial: AIRCIVIL
NEW DELHI

No. 1/1971
15 January, 1971
25 Pausa, 1892 (Saka)

(10-1/71-AIS)

THE FOLLOWING CIRCULAR IS HEREBY PROMULGATED FOR INFORMATION, GUIDANCE AND NECESSARY ACTION.

G. C. ARYA
Director General of Civil Aviation

AERONAUTICAL INFORMATION CIRCULARS: CURRENT AS ON 1ST JANUARY 1971

NUMBER	DATE	*TITLE*
YEAR 1961		
22	18-9-1961	CHAKULIA AERODROME.
36	18-12-1961	GAYA AERODROME.
YEAR 1962 (OLD SERIES)		
17	28-6-1962	NOTIFICATION OF FLIGHT, FLIGHT PLAN, AIR TRAFFIC CLEARANCE AND ARRIVAL REPORT.
(NEW SERIES)		
14	5-12-1962	NOTIFICATION — PROHIBITION OF *FLIGHTS — PEOPLE'S REPUBLIC OF* CHINA (G.S.R. 1637).
YEAR 1963		
3	13-4-1963	FORCED LANDINGS.
8	31-7-1963	MEDICAL EXAMINATION FOR THE ISSUE AND RENEWAL OF FLIGHT CREW LICENCES.

NUMBER	DATE	TITLE
YEAR 1963		
15	14-9-1963	VISHAKHAPATNAM AERODROME.
17	26-11-1963	BHOPAL AERODROME.
YEAR 1964		
1	1-1-1964	BHUBANESHWAR AERODROME.
4	2-1-1964	BHUJ AERODROME.
5	1-1-1964	KANDLA AERODROME.
7	2-1-1964	VARANASI AERODROME.
14	8-2-1964	PATNA AERODROME.
16	4-2-1964	BEGUMPET AERODROME.
18	19-5-1964	TRIVANDRUM AERODROME.
22	4-8-1964	GAUHATI AERODROME.
23	19-8-1964	AURANGABAD AERODROME.
24	19-8-1964	UDAIPUR AERODROME.
25	19-8-1964	MADURAI AERODROME.
30	20-10-1964	MANGALORE AERODROME.
YEAR 1965		
2	11-1-1965	MUZAFFARPUR AERODROME.
5	11-1-1965	VIJAYAWADA AERODROME.
6	8-2-1965	PARKING OF AIRCRAFT.
7	6-2-1965	PROVISION OF ARTIFICIAL HORIZON ON TRAINING AIRCRAFT.
16	26-2-1965	AGARTALA AERODROME.
19	16-2-1965	COIMBATORE AERODROME.
20	14-4-1965	CORRIGENDA TO AERONAUTICAL *INFORMATION CIRCULARS ON* AERODROMES.
22	18-5-1965	TECHNICAL EXAMINATION FOR FLIGHT CREW (PILOT'S AND NAVIGATOR'S LICENCES/RATINGS).
27	8-9-1965	NOTIFICATION — PROHIBITION OF FLIGHTS — PAKISTAN (G.S.R. 1299).

NUMBER	DATE	TITLE
YEAR 1965		
36	19-10-1965	PROCEDURE AND PRECAUTIONS REGARDING FUELLING AND DE-FUELLING OF AIRCRAFT, FIRE AND GENERAL SAFETY.
YEAR 1966		
4	20-1-1966	BHAUNAGAR AERODROME.
6	25-1-1966	AMENDMENT TO AERONAUTICAL INFORMATION CIRCULAR NO. 22 OF 1965.
8	21-2-1966	NOTIFICATION — PROHIBITION OF FLIGHTS — PAKISTAN (G.S.R. 239).
17	25-6-1966	REQUISITIONS FOR SPECIAL WEATHER FORECASTS FOR NON-SCHEDULED FLIGHTS.
19	13-7-1966	SAFETY PRECAUTIONS WHILE USING NAVAL AERODROME — COCHIN.
20	28-6-1966	BIRD STRIKES ON AIRCRAFT — PRE-CAUTIONS TO BE TAKEN BY PILOTS —SUBMISSION OF INFORMATION IN STANDARD FORM.
23	28-9-1966	POSITION REPORTS.
29	27-10-1966	CORRIGENDA TO AERONAUTICAL INFORMATION CIRCULAR NO. 15 OF 1963 ON VISHAKHAPATNAM AERODROME.
31	27-10-1966	CORRIGENDA TO AERONAUTICAL INFORMATION CIRCULAR NO. 25 OF 1964 ON MADURAI AERODROME.
32	27-10-1966	CORRIGENDUM TO AERONAUTICAL INFORMATION CIRCULAR NO. 4 OF 1966 ON BHAUNAGAR AERODROME.
YEAR 1967		
2	20-1-1967	BELGAUM AERODROME.
6	4-4-1967	HIGH RADIO MASTS IN INDIA.
14	15-12-1967	NOTIFICATION (G.S.R. 1851).
15	20-12-1967	ACCEPTANCE OF DATE AND PLACE OF BIRTH PARTICULARS.
YEAR 1968		
3	20-2-1968	NOTIFICATION (G.S.R. 1926).
9	20-3-1968	AVOIDANCE OF FIRE HAZARD — FUELLING NEAR JET AIRCRAFT.

NUMBER	DATE	TITLE
YEAR 1968		
11	20-5-1968	AERODROMES AVAILABLE FOR CIVIL USE.
15	4-9-1968	INDIAN AIRCRAFT MANUAL.
19	12-8-1968	NOTIFICATION — AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 1392).
21	18-6-1968	PROCEDURE IN CONNECTION WITH FLIGHTS TO, WITHIN OR OVER INDIA BY FOREIGN AVIATORS.
25	25-11-1968	ALTIMETER SETTING FOR LANDING PURPOSES.
28	24-12-1968	NOTIFICATION — AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 2147).
YEAR 1969		
1	6-1-1969	AVIATION WEATHER CODES.
4	31-3-1969	NOTIFICATION — AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 544).
5	28-4-1969	NOTIFICATION — AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 182).
7	14-5-1969	NOTIFICATION — AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 1045).
9	8-7-1969	AERONAUTICAL INFORMATION PUBLICATION (SECOND EDITION) AND ITS AMENDMENTS NO. 1 to 7—SALE OF.
11	4-7-1969	CONDITIONS GOVERNING THE USE OF GOVERNMENT OWNED AERODROMES IN INDIA.
12	21-7-1969	NOTIFICATION (G.S.R. 1370).
13	22-7-1969	PRECISION APPROACH RADAR (PAR) EQUIPMENT AT BOMBAY AIRPORT.
15	14-8-1969	PARTIAL AMENDMENT TO A.I.C. NO. 11 OF 1968.
18	31-12-1969	NOTIFICATION — CUSTOMS (G.S.R. 1910).

NUMBER	DATE	TITLE
YEAR 1969		
19	31-12-1969	METEOROLOGICAL PRACTICES AND PROCEDURES IN AIR NAVIGATION SERVICES.
YEAR 1970		
1	11-2-1970	AIRCRAFT RADIO EQUIPMENT.
2	11-2-1970	AIRCRAFT RADIO MAINTENANCE ENGINEER'S LICENCE.
4	27-3-1970	NOTIFICATION — AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 463).
5	17-4-1970	AERONAUTICAL INFORMATION PUBLICATION (SECOND EDITION) AND ITS AMENDMENTS NO. 8 TO 11—SALE OF.
6	20-4-1970	NOTIFICATION — AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 595).
7	15-5-1970	NOTIFICATION—AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 494).
8	10-8-1970	NOTIFICATION—AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 1196).
9	26-5-1970	RESTRICTIONS OF FLYING INTO OR OVER CERTAIN AREAS OF NORTH-EAST INDIA.
10	20-6-1970	NOTIFICATION—AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 874).
11	16-7-1970	VISUAL APPROACH SLOPE INDICATOR SYSTEM (VASIS) AT BOMBAY, CALCUTTA AND DELHI AIRPORTS.
12	22-7-1970	MINIMUM FUEL AND OIL TO BE CARRIED BY PUBLIC TRANSPORT AIRCRAFT BEFORE COMMENCEMENT OF FLIGHTS.
13	25-7-1970	EXCESSIVE LOADING OF AIRCRAFT STRUCTURE WHILE FLYING IN TURBULENT WEATHER AND TURBULENCE IN THE WAKE OF AIRCRAFT.
14	27-7-1970	NOTIFICATION—AMENDMENT TO THE AIRCRAFT RULES, 1937 (G.S.R. 1009).
15	17-8-1970	SAFDARJUNG AERODROME.
16	20-10-1970	NOTIFICATION—AMENDMENT TO THE AIRCRACFT RULES, 1937 (G.S.R. 1198).

NUMBER	DATE	TITLE
YEAR 1970		
17	20-11-1970	REGULATION AND CONTROL OF AERONAUTICAL INFORMATION.
18	21-11-1970	PREDETERMINED DISTRIBUTION SYSTEM FOR NOTAM CLASS I.
19	23-12-1970	GROUND WEATHER RADAR EQUIPMENT AVAILABLE AT AERODROMES AND WEATHER RADAR SERVICES PROVIDED FOR AIRCRAFT.

CIRCULARS NOT INCLUDED IN THIS LIST HAVE EITHER BEEN CANCELLED, SUPERSEDED BY FURTHER CIRCULARS, INCORPORATED IN A.I.P. INDIA OR ARE CONSIDERED TO HAVE BEEN SUFFICIENTLY PROMULGATED.

Annex C

NOTES ON ARTICLE 86 OF THE CHICAGO CONVENTION RELATING TO APPEALS FROM DECISIONS OF THE COUNCIL—A WORKING PAPER PRESENTED BY THE SECRETARY GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION[1]

INTERNATIONAL CIVIL AVIATION ORGANIZATION

COUNCIL—SEVENTY-FOURTH SESSION

Subject No. 27: Convention on International Civil Aviation

(Chicago Convention)

NOTES ON ARTICLE 86 OF THE CHICAGO CONVENTION RELATING TO APPEALS FROM DECISIONS OF THE COUNCIL

(Presented by the Secretary General)

References:
1. President's Memorandum LE 6/1, LE 6/2 of 16 August 1971
2. Doc 7782
3. Doc 7300/4
4. *Proceedings of the International Civil Aviation Conference* (Chicago, Illinois, 1 November-7 December 1944), Vols. I and II
5. Doc 7500

Introduction

1. In his Memorandum LE 6/1, LE 6/2 of 16 August 1971, the President of the Council referred (in the first paragraph on p. 2) to the question of suspension of the Council decision against which an appeal is made. Subsequently, some Representatives on the Council requested the President and the Secretary General for a Council working paper on the interpretation of Article 86 of the Chicago Convention.

1.1 This paper has been prepared in response to those requests.

Drafting history of Article 86

2. The original proposal which was presented to the International Civil Aviation Conference (Chicago, 1 November-7 December 1944) and which eventually, after several modifications, became the present Article 86 of the

[1] Reproduced from ICAO DOC. C-WP/5433, dated 9-9-1971.

Chicago Convention will be found in Article XV, Section 3, of the proposal jointly submitted by the Delegations of the United States of America, the United Kingdom and Canada (Chicago Document 358); the text of the draft was:

"SECTION 3

A decision of the Board shall remain in effect until reversed on appeal or by agreement between the parties. The decision of the Permanent Court or of an arbitral tribunal shall be final and binding."

(*See: Proceedings of the International Civil Aviation Conference*, Chicago, Illinois, 1 November-7 December 1944, Vol. I, p. 427.)

2.1 This proposal was considered at the second meeting of the Joint Subcommittee of Committees I, III and IV and was referred to the Drafting Committee for further study, in consultation with the Committee of Legal Advisers. (*Ibid.*, p. 472.)

2.2 The Drafting Committee of the Joint Subcommittee of Committees I, III and IV redrafted the text to read:

"SECTION 3

Unless the Council decides otherwise, its determination shall remain in effect until reversed on appeal. The decisions of the Permanent Court or of an arbitral tribunal shall be final and binding."

(Document 402, *ibid.*, p. 415.)

2.3 The redrafted text mentioned in paragraph 2.2 above was considered at the fourth meeting of the Joint Subcommittee of Committees I, III and IV. At that meeting the Representative of Uruguay proposed that Article XV, Section 3, be amended so as to suspend the execution of the judgment of the Council if one party desires to appeal. The Representative of Cuba urged that the proposal of Uruguay be adopted and argued that a sovereign State should not be denied the rights which an ordinary citizen gets before an ordinary court. The Representative of Afghanistan and Liberia supported the views of Uruguay and Cuba.

The Representative of Canada argued that a typical dispute would involve complaint by country A of a violation by an airline of country B which, even though a majority of the Council declared in the wrong, would go unpunished for an indefinite period under the formula proposed by Uruguay and Cuba.

After discussion, it was finally agreed to refer Sections 3 and 4 to the Drafting Committee, with the substance of Section 3 unchanged.
(Document 420, *ibid.*, pp. 480-481.)

2.4 The Drafting Committee thereafter redrafted Section 3 of Article XV as follows:

"SECTION 3

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 or of an arbitral tribunal shall be final and binding."

(Document 422, *ibid.*, pp. 401-402.)

2.5 Article XV as redrafted was then approved at the fifth meeting of the

Joint Subcommittee of Committees I, III and IV and thereafter remained unchanged and its Section 3 eventually became Article 86 of the Convention as signed at Chicago on 7 December 1944.

Conclusions to be drawn from the drafting history of Article 86

3. The drafting history of Article 86 of the Chicago Convention explains why the first sentence of that Article specifically relates to a decision of the Council "on whether an international airline is operating in conformity with the provision of this Convention" and why a decision of the Council on such a question "shall remain in effect unless reversed on appeal"; no doubt this wording was accepted to meet the concern of the Canadian Delegation mentioned in paragraph 2.3 above.

3.1 The drafting history of Article 86 also explains why "on any other matter", namely, other than the question whether an international airline is operating in conformity with the Convention, decisions of the Council shall, if appealed from, be suspended until the appeal is decided; this wording, obviously, was adopted in response to the arguments of the Delegations of Uruguay, Cuba, Afghanistan and Liberia mentioned in paragraph 2.3 above.

Interpretation of the second sentence of Article 86

4. *(a)* "On any other matter": Occurring, as it does, in Chapter XVIII of the Convention, the expression quoted denotes only such matters as relate to a decision of the Council rendered under Article 84. The words "other matter" have the effect of excluding the matter specified in the preceding sentence which relates only to the case of an international airline operating in contravention of the Convention. The drafting history of Article 86 shows the reason for the distinction made between cases covered by the first sentence of the Article and "any other matter" found in the second sentence.

(b) "decisions of the Council": There are no qualifying words which would exclude any particular class of decision [1]. The legislative history of Article 86 reveals no such distinction.

(c) "Shall, if appealed from, be suspended until the appeal is decided": The words "if appealed from" denote a fact, namely whether or not an appeal has been filed. The words "shall . . . be suspended" are imperative, so that the Council's decision is *ipso facto* suspended during the pendency of the appeal. The decision appealed from would confer no right on any of the parties to the dispute and would not be given effect, during the pendency of the appeal, namely "until the appeal is decided".

[1] For example, the decision may be one affirming or negating the jurisdiction of the Council in a particular matter: *see* the words "shall decide the question" in Article 5 (4) of the Rules for the Settlement of Differences, Doc. 7782. Article 15 of those Rules refers to a decision of the Council subsequent to arguments or consideration of a report of a committee. Again, the Council may take a decision without hearing arguments: for example, under Article 16. There may be also a decision of the Council under Article 19 (4) in favour of or against the admission of an intervention. Article 23 also provides that the Council shall "formally decide" the category of a given complaint. Again, a decision may be taken by the Council under Article 28 (2), i.e., "after hearing objections". This list of acts which would constitute a decision of the Council is not exhaustive.

Distinction between cases of "disagreements" and those of "complaints"

5. The foregoing observations apply to cases governed by Chapter XVIII of the Chicago Convention, namely, cases of disagreement between parties to that Convention or parties to the International Air Services Transit Agreement as to the interpretation or application of the provisions of either of those instruments concerned. Section 2 of Article II of the Transit Agreement specifically mentions Chapter XVIII of the Chicago Convention.

5.1 Section 1 of Article II of the Transit Agreement makes no reference to Chapter XVIII of the Chicago Convention. The question might therefore arise as to whether in the case of a "complaint" brought under that Section 1 the second sentence of Article 86, which forms a part of Chapter XVIII of the Chicago Convention, would apply. This point is considered below.

5.2 Assume that in the case concerned there is no other element present except a complaint of injustice or hardship under Section 1 of Article II of the Transit Agreement, in other words—

(a) the scheduled international air services of the complainant State are *not* denied the privileges of flight across the territory of the respondent State without landing and of landing therein for non-traffic purposes;

(b) however, the territorial State either—

(1) insists, under Section 2 of Article I of the Agreement, on compliance with what it alleges to be certain provisions of the Chicago Convention, or

(2) requires the complainant's airlines, under Section 3 of said Article I "to offer reasonable commercial service", the reasonableness of which is questioned by the complainant State, or

(3) has designated, under Section 4 of Article I, such a route to be followed as is said to cause injustice or hardship to the airline, or

(4) under Section 5 of Article I, has withheld or revoked a certificate or permit.

5.3 Each of the foregoing acts of the territorial State would constitute, under Section 1 of Article II of the Transit Agreement, an "action . . . under this Agreement". However, it cannot be denied that a complaint in respect of any of the foregoing matters is essentially a complaint of misapplication of the Agreement and consequently is a case of "disagreement . . . relating to the interpretation or application" of the Agreement and would, in any event, fall under Section 2 of Article II of the Transit Agreement. The case may also raise a question of interpretation or application of that provision itself, namely, Section 1 of that Article II. It follows that, as specified in that Section 2, the provisions of Chapter XVIII of the Chicago Convention shall be applicable even in a case brought solely under Section 1 of Article II of the Transit Agreement, e.g., a case described in paragraph 5.2 above. This means that the second sentence of Article 86 which is in that Chapter will govern the case if an appeal is made against a decision of the Council.

Annex D

MEMORANDUM OF 10 AUGUST 1971 SUBMITTED BY THE SECRETARY GENERAL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION TO REPRESENTATIVES ON THE COUNCIL ON THE SUBJECT OF VOTING IN THE COUNCIL ON DISAGREEMENTS AND COMPLAINTS BROUGHT UNDER THE RULES FOR THE SETTLEMENT OF DIFFERENCES

INTERNATIONAL CIVIL AVIATION ORGANIZATION
INTERNATIONAL AVIATION BUILDING
1080 UNIVERSITY STREET
MONTREAL 101, P.Q. CANADA

SG 609/71
LE 4/1.11 Conf.
LE 4/1.12 Conf.

10 August 1971.

To: Representatives on the Council
From: Secretary General

Subject: Voting in the Council on disagreements and complaints brought under the Rules for the Settlement of Differences.

1. During the Sixth Meeting of the Seventy-fourth Session of the Council, held on 29 July 1971, it was requested that a memorandum be circulated in which it would be explained why, even if certain Council Members did not have the right to vote in a matter brought before the Council under the Rules for the Settlement of Differences, it was still necessary to require that decisions of the Council on such matters be taken by a majority of its Members. As will be seen from the following paragraphs, a brief history of the question of voting in the case of the Rules for the Settlement of Differences provides the necessary explanation.

2. The question of voting in circumstances where parties to a difference did not have the right to vote arose during the preparation of provisional Rules for the Settlement of Differences in 1953. At that time, it was noted that, because of the provisions of Article 52 of the Convention, the majority required for a decision under the Rules would have to be a majority of all Council Members. The question also arose during the preparation of the present Rules for the Settlement of Differences in 1955 by a Group of Experts nominated by the Chairman of the Legal Committee in consultation with the President of the Council. In its report, that Group pointed out, in the terms set forth below, the difficulty that could arise in regard to voting if certain Council Members did not have the right to vote, thus:

> "According to Article 52 of the Convention:
> 'Decisions by the Council shall require approval by a majority of its members'. In the opinion of the Group, this provision requires 11 votes for a decision [1]. However, since, according to Articles 53 and 84, no

[1] Obviously, the reference of the Group of Experts to a requirement of 11 votes for a decision was made in relation to a Council which, at the time contained 21 Members and had the Council then contained 27 Members, the Group would no doubt have included the figure of "14" instead of "11".

member of the Council may vote in the consideration by the Council of a dispute to which it is a party, it may well happen that the Council finds itself unable to give a decision. A possibility of a tie vote has also to be taken into account in this connection."
(See C-WP/2271, 15/10/56, p. 6.)

This view of the Group of Experts was not disputed by the Council when the latter adopted the Rules for the Settlement of Differences in 1957.

3. Similarly, in cases involving the International Air Services Transit Agreement, the majority required by Article 52 of the Convention would continue to apply even where, in accordance with Article 66 *(b)* of the Convention, Council Members who did not have the right to vote because they had not accepted the Transit Agreement *(sic.)*.

4. In view of the foregoing, the Council is merely being consistent with its attitude in the past when, in relation to the cases involving Pakistan and India, it follows the statement made by the President on 7 April 1971 to the effect that at "this meeting and in any other proceedings on these cases, the Council would be acting under Article 84 or 66 of the Convention, which implied observance of the statutory majority requirement in Article 52 for any decision taken". (C-Min. LXXII/20 (Closed), para. 6.)

(Signed) Assad KOTAITE,
Secretary General.

Annex E

EXTRACTS FROM VERBATIM TRANSCRIPT OF THE TWENTIETH MEETING AND TWELFTH MEETING OF THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION AT ITS SEVENTY-SECOND AND SEVENTY-THIRD SESSIONS, RESPECTIVELY

COUNCIL—SEVENTY-SECOND SESSION

Verbatim Transcript of the Twentieth Meeting (Closed)

(Wednesday, 7 April 1971)

CASE NO. 1 (PAKISTAN VERSUS INDIA)—SUSPENSION BY INDIA OF FLIGHTS OF PAKISTANI AIRCRAFT OVER THE TERRITORY OF INDIA: APPLICATION SUBMITTED BY THE GOVERNMENT OF PAKISTAN UNDER ARTICLE 2 OF THE RULES FOR THE SETTLEMENT OF DIFFERENCES

President: In the discussion of this afternoon, as well as in every future discussion and proceeding, we are acting under Article 84 or Article 66 of the Convention and in both cases the implication is that Article 52 of the Convention has to be observed. Article 52 says that Council decisions are by a majority of its members, which in our day-to-day language means that any decisions will have to be taken by a statutory majority. I am saying this after having sought and obtained proper legal advice and I should say that as Chairman of this meeting I agree that this is the proper way to do it. You will realise that this case we are starting on now is a serious case that eventually might go beyond the ambits of ICAO. It might go to another tribunal, the International Court of Justice, so we must make sure that it will never be possible to say that the Council decided unconstitutionally.

Regarding voting, for Case No. 1, which is a "difference", Article 53 provides that no Council member can vote in the consideration by the Council of a dispute to which it is a party. Therefore India will not be able to vote on any of the points that may come up this afternoon or on future occasions. All the other Council members can vote.

For Case No. 2 the situation is different. In accordance with Article 66 *(b)* of the Chicago Convention, only those Council members who are parties to the Transit Agreement have the right to vote. You have seen in the paper that deals with Case No. 2 that eight Council members will not be able to vote. However, I should point out immediately that in both cases the statutory majority means 14 votes, regardless of how many members can vote.

COUNCIL—SEVENTY-THIRD SESSION

Verbatim Transcript of the Twelfth Meeting (Closed)
(Saturday, 12 June 1971)

PAKISTAN VERSUS INDIA—SUSPENSION BY INDIA OF FLIGHTS OF PAKISTANI AIRCRAFT OVER INDIAN TERRITORY

4. Dr. Scherer: Mr. President, before we enter into the item proper, I want to ask a purely procedural question. Must the decisions taken by the Council as to the date or the objection be taken in conformity with Article 52 of the Convention—in other words, by a majority of the Members of the Council—or is just a simple majority sufficient? I do not find any exact definition in Article 15 of the Rules for the Settlement of Differences entitled "Decision". There are several references in it to "majority vote", but I don't know what "majority" means here.

5. The President: When we started this case in Montreal two months ago, I think I said that the legal opinion was that as it was a case that might eventually go to an authority outside ICAO—for instance, the International Court of Justice—it was necessary throughout the proceedings to take decisions by the majority required under the Convention. Dr. FitzGerald confirms that that was what I said. . . .

Annex F

TEXT OF RULES 41 AND 46 OF THE RULES OF PROCEDURE FOR THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

Rule 41

Any Member of the Council may introduce a motion or amendment thereto, subject to the following rules:

1. With the exception of motions and amendments relative to nominations, no motion or amendment shall be discussed unless it has been seconded.
2. No motion or amendment may be withdrawn by its author if an amendment to it is under discussion or has been adopted.
3. If a motion has been moved, no other motion than one for an amendment to the original motion shall be considered until the original motion has been disposed of. The President shall determine whether such additional motion is so related to the motion already before the Council as to constitute a proper amendment thereto, or whether it is to be regarded as an alternative motion, consideration of which shall be postponed as stipulated above.
4. If an amendment to a motion has been moved, no other amendment than an amendment to the original one shall be moved until the original amendment has been disposed of. The President shall determine whether such additional amendment is so related to the original one as to constitute an amendment thereto, or whether it is to be regarded as an alternative amendment, consideration of which shall be postponed as stipulated above.

Rule 46

With the exception of motions and amendments relative to nominations, no motion or amendment shall be voted on, unless it has been seconded.