

## Case Note

## THE LEGAL CONCERNS OF THE SETTLEMENT DISPUTES BY THE COUNCIL ON THE INTERNATIONAL CIVIL AVIATION ORGANIZATION

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### ABSTRACT

**Background:** *The International Civil Aviation Organization (ICAO) is a “Club” of sovereign States. ICAO is a specialised United Nations agency (UN) with 193 Member States. If a dispute between these States and the diplomatic channels does not find a mutual solution, disagreement arises; however, the ICAO Council has an essential function in settling disputes. This settlement procedure is structured under the Chicago Convention (1944), the Rules for the Settlement of Differences (1957) and the Rules of Procedure for the Council (1969). However, Member States do not welcome these provisions, demonstrated by the scarcity of dispute settlement procedures before the ICAO Council in the last 80 years. This article introduces these legal disputes and looks for justifications based on the nature of the cases. The Council is a unique permanent body within ICAO. Although ICAO in the former century became rather a political (diplomatic) body upon its foundation, that is why the absence of successfully concluded dispute resolutions is a legal viewpoint that is more than interesting. This research paper reveals examples of the lack of effectiveness of the ICAO Council’s dispute settlement, focusing on the nature of the State’s interests and the outcomes of the procedure, furthermore, the role in these disputes in front of the International Court of Justice (ICJ) or arbitration.*

**Methods:** *This article focuses on understanding and analysing the historical context, international cooperation and diplomacy, and the regulatory landscape of dispute resolutions and settlements. The search was based on databases, academic journals, and official publications from aviation authorities and organisations such as ICAO. The research utilised qualitative and quantitative methods based on empirical observations and examinations (document analysis and case studies).*

**Results and conclusions:** *The ICAO Council has rule-making, judicial and administrative functions. It is a quasi-judicial body, and its President has the authority to settle disputes among the contracting States. However, if we look at the history, in the last 80 years, only 10 cases were handled by the ICAO Council. The main reason for the lack of ICAO Council dispute settlement decisions is the growing diplomatic (political) function of the ICAO Council. Aviation is a crucial commercial activity for every State, meaning the aviation industry is determined by political interests and decisions. Such political interests and subtle international relations often prevent States from submitting themselves to binding legal procedures.*

*Another reason for fewer disputes before the ICAO Council is the need for more provisions and rules to support transparent and legally binding decisions. The current rules are neither appropriate nor comprehensive enough and cannot be executed in the same manner as court decisions. In addition, the ICAO Council's decision can be appealed to non-ICAO bodies such as the International Court of Justice.*

*Therefore, it is highly recommended that the whole processual mechanism be revised or that a new, dedicated judicial body with clear legal status, jurisdiction, and competence for dispute resolutions be created.*

## 1 INTRODUCTION

The main goals of international law are preserving peace, finding peaceful solutions, and evading conflict between sovereign states as much as possible. Looking back over the last century, these goals are valid and desirable. It is not inadvertent that the significance of international law has grown, and its role as a separate branch of law is paramount in our modern world.

Of the primary fundamental principles of international law, peaceful solutions and the peaceful settlement of disputes may be the most important objective and definitive system of aspects. The International Civil Aviation Organization (hereinafter ICAO) plays a significant role in fostering and maintaining peace in international civil aviation through its various instruments. A clear statement can be found in the Preamble of the Convention on International Civil Aviation (the so-called Chicago Convention): “Whereas, it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends.”<sup>1</sup>

ICAO is a specialised agency of the United Nations (UN).<sup>2</sup> The Chicago Convention empowered ICAO to pronounce that “the Organization may, concerning air matters within its competence directly affecting world security – by a vote of the Assembly – enter into

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1 Convention on International Civil Aviation (Chicago Convention) ICAO Doc 7300/9 (signed 7 December 1944, amended 2006) <<https://www.icao.int/publications/pages/doc7300.aspx>> accessed 18 February 2024.

2 United Nations Charter (signed 26 June 1945) chs IX-X <<https://www.un.org/en/about-us/un-charter/full-text>> accessed 18 February 2024.

appropriate arrangements with any general organisation set up by the nations of the world to preserve peace.”<sup>3</sup> For these arrangements to take effect, decisions of approval from both the General Assemblies of the UN and ICAO are necessary. After its administrative signing in 1947, ICAO became a member of the UN ‘family,’ assuming many obligations. As part of this system, ICAO establishes the conditions of friendship and peaceful alliance among the peoples and nations of the world.

## 2 THE CHICAGO CONVENTION AND GENERAL PRINCIPLES OF LAW

The Charter of the United Nations (1945) encompasses the general principles of international law, including respect for state sovereignty and equality and rights inherent in sovereignty, the prohibition of the threat or use of force, the peaceful settlement of disputes, cooperation among States, fulfilment in good faith of obligations under international law, and the equal rights and self-determination of peoples and nations.<sup>4</sup> Similarly, the Chicago Convention (1944), the primary and most important source of public international aviation law,<sup>5</sup> enshrines these general principles of international law. These principles, enumerated first and foremost in Article 38 of the Statute of the International Court of Justice (ICJ), are recognised by “civilised” nations as foundational to international law.<sup>6</sup> The Chicago Convention’s text reflects these universal requirements, which are essential for peaceful and cooperative existence in the world: e.g., respect for State sovereignty (Article 1), equality of States (Article 48 *b*), the prohibition of discrimination (Articles 4, 9, 11, 15), and the principle of the peaceful settlement of international disputes (Article 84).<sup>7</sup>

As highlighted, peace and peaceful solutions constituting a general principle and objective of international law are top priorities. Implementing this objective requires serious diplomatic and human efforts. The history of the 20<sup>th</sup> century, or even contemporary wars, demonstrates what terrors humankind can occasion if international norms and fundamental principles are not observed.

Each politician, nation, and community must work to ensure peace prevails under all circumstances. ICAO has always had an important role despite lacking the authority to impose substantive sanctions. As a community of Member States, ICAO cannot pressurise the coercion of specific political steps. However, as an international intergovernmental

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3 Chicago Convention (n 1) art 64.

4 United Nations Charter (n 2) ch I, art 2.

5 Assad KOTAITE, *My Memoirs: 50 Years of International Diplomacy and Conciliation in Aviation* (ICAO 2013) 43; Paul S DEMPSEY, ‘The Future of International Air Law in the 21st Century’ (2015) 64 *ZLW German Journal of Air and Space Law* 215.

6 Statute of the International Court of Justice (signed 26 June 1945) art 38 <<https://www.icj-cij.org/statute>> accessed 18 February 2024.

7 Chicago Convention (n 1).

organisation, it can take steps to make decisions on controversial international issues emerging between the Member States and enforce its decisions.

### 3 ICAO COUNCIL SETTLEMENT OF DISPUTES FUNCTION

The ICAO institutional system is similar to that of other specialised UN Agencies. As the Chicago Convention stipulates, ICAO is “made up of an Assembly, a Council, and other bodies as may be necessary”.<sup>8</sup> Therefore, the main representative organ of ICAO is the Assembly. The permanent body of the ICAO Council is accountable to the Assembly. Besides the ICAO Council, the Secretariat manages and arranges the administrative and official matters of the ICAO's organisation.

The Council shall exercise its dispute settlement functions indirectly under the Chicago Convention when the Council “reports to contracting States any infraction of the Convention, as well as any failure to carry out recommendations or determinations of the Council” (Article 54 j) or when it considers “any matter relating to the Convention which any contracting State refers to it” (Article 54 n).<sup>9</sup> Thus, the Chicago Convention is apparent regarding the duty of the ICAO Council. The reporting system can serve as a form of sanction. As civil aviation has become international, the fact that a contracting State does not adhere to the recommendations and determinations of the ICAO Council means that the ICAO Council shall resort to the quasi-sanctioning instrument inherent in publicity. This is the case following safety and security audits; when a Member State does not comply with the Standards and Recommended Practices (SARPs) adopted by the ICAO Council, it communicates the audit results to other Member States in table form. This does not qualify as a dispute settlement. However, it manages the dispute between ICAO and its Member States.

The Chicago Convention is dedicated to settling disputes in Chapter XVIII (under Articles 84-88). It will be noted that the Convention gives the ICAO Council the mandatory power to decide on disputes. The Convention does not make any difference between the interpretation of the Convention and the interpretation of the Annexes. The ICAO Council is a quasi-judicial body. Only an appeal from the Council's decision would be referred to the International Court of Justice, thus vested with obligatory jurisdiction.<sup>10</sup>

At the same time, the treaty-maker settles disputes separately under the Chapter “Disputes and Default” (not in part “Mandatory Functions of Council”).<sup>11</sup> Thus, an essential duty of the ICAO Council is to exercise its dispute settlement function directly when it decides on

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8 *ibid*, art 43.

9 *ibid*, art 54.

10 Note that the Chicago Convention (1944) was signed prior to the acceptance of the UN Charter (1945), therefore, it refers to the Permanent Court of International Justice in the text.

11 Chicago Convention (n 1) ch XVIII.

controversial matters relating to interpreting or applying the Convention and its Annexes among the contracting States. "If any disagreement between two or more contracting States relating to the interpretation or application of the Chicago Convention and its Annexes cannot be settled by negotiation, it shall, on the application of any State concerned in the disagreement, be decided by the Council."<sup>12</sup> The procedure is briefly summarised in the Chicago Convention (1944) and more detail under the Rules for the Settlement of Differences (1957) and the Rules of Procedure for the Council (1969).<sup>13</sup>

In brief, during Council Settlement disputes, "no member of the Council shall vote in the consideration by the Council of any dispute to which it is a Party."<sup>14</sup> The Council, consisting of elected Member States,<sup>15</sup> primarily serves political functions, which complicates the ability to make decisions purely on a professional basis in disputes among Member States. To mitigate this issue and ensure the objective consideration of cases, the Council often employs internationally recognised experts.

### 3.1. Legal Dispute with the Involvement of the ICAO Council

The ICAO Council is composed of contracting States. Currently, 36 seats are occupied by Member States (in the future, the number of representatives will be 40).<sup>16</sup> The ICAO Council is a quasi-judicial body, unlike the governing body of other specialised agencies.<sup>17</sup> In nature, the ICAO Council is mainly a political body that has to decide on a legal matter. This function is "based on policy and equity considerations rather than purely legal grounds..., truly legal disputes..., can be settled only by a true judicial body...".<sup>18</sup> Moreover, the 36 ICAO Council Member States, indirectly but factually, create a conflict of interests as the 36 States represent the other contracting States (altogether 193). This means that 18,65% of Member States make decisions on behalf of the others. The problem arises mainly if the contracting State is not a Member of the ICAO Council. This State (or States) lacks the power to validate its interest or must seek support from some ICAO Council

12 *ibid*, art 84.

13 Rules for the Settlement of Differences, ICAO Doc 7782/2 (approved 9 April 1957, amended 10 November 1975) <<https://standart.aero/en/icao/book/doc-7782-rules-for-the-settlement-of-differences-en-cons>> accessed 18 February 2024; Rules of Procedure of the Council, ICAO Doc 7559 (revised 28 November 1969, entered 27 April 1970) <<https://standart.aero/en/icao/book/doc-7559-rules-of-procedure-for-the-council-ed-4-en-8811>> accessed 18 February 2024.

14 Chicago Convention (n 1) art 53.

15 *ibid*, art 50.

16 Proposal to Amend Article 50 a) of the Convention on International Civil Aviation so as to Increase the Membership of the Council (ICAO Assembly 39th Sess, A39-WP/18 EX/6 31/05/2016) <[https://www.icao.int/Meetings/a39/Pages/wp\\_num.aspx](https://www.icao.int/Meetings/a39/Pages/wp_num.aspx)> accessed 18 February 2024.

17 Attila Sipos (rev), *Milde's International Air Law and ICAO* (4th edn, Eleven 2023) 205.

18 Stated by Prof. Michael Milde, the Former Legal Director of ICAO. Ruwantissa Abeyratne, 'Law Making and Decision-Making Powers of ICAO Council: A Critical Analysis' (1992) 41 ZLW German Journal of Air and Space Law 394.

Member States. This situation also admits the lack of judicial transparency and detachment in decision-making.

The ICAO Council was adopted under the Rules for the Settlement of Differences (1957), which contains an option to request an “expert opinion”. When a case is brought to the attention of the ICAO Council, it may at any time, during the procedure, “entrust any individual, body, bureau, commission or other organisation that it may select, with the task of carrying out an enquiry or giving an “expert opinion”<sup>19</sup> According to the rules, whether legal or not, an expert opinion can only be requested by the ICAO Council if a case has been submitted to it by the Parties to the dispute. Hence, the Parties in disagreement about a legal issue cannot do so.

Over its nearly 80-year history, the ICAO Council has ruled on the following cases between the Member States under the provisions of the Chicago Convention:<sup>20</sup>

- 1) India v. Pakistan (1952);<sup>21</sup>
- 2) Lebanon v. Syria (1956);<sup>22</sup>
- 3) the United Arab Republic v. Jordan (1958);<sup>23</sup>
- 4) the United Kingdom v. Spain (1967);<sup>24</sup>
- 5) Pakistan v. India (1971);<sup>25</sup>
- 6) Cuba v. United States (1998);<sup>26</sup>
- 7) the United States v. European Union (2000);<sup>27</sup>

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19 Rules for the Settlement of Differences (n 13) art 8.

20 Chicago Convention (n 1) art 84; Ruwantissa Abeyratne, *Convention on International Civil Aviation: A Commentary* (Springer 2014) 663-8; Paul S Dempsey, *Public International Air Law* (2nd edn, William S Hein & Co, Inc for the Centre for Research of Air and Space Law, McGill University 2017) 851-70; Sipos (n 17) 204-17.

21 Report of the Council to the Assembly on the Activities of the Organisation in 1952 (ICAO Assembly 7th Sess, Doc 7367 A7-P/1 31/03/53) 74-6 <<https://www.icao.int/Meetings/AMC/Pages/Archived-Assembly.aspx?Assembly=a07>> accessed 18 February 2024.

22 Annual Report of the Council to the Assembly for 1956 (ICAO Assembly 11th Sess, Doc 7788 A11-P/1) 49 <<https://www.icao.int/Meetings/AMC/ArchivedAssembly/en/A11/index.html>> accessed 18 February 2024; ICAO Doc 2222, 14/5/56 and ICAO Doc 7739-C/894.

23 Annual Report of the Council to the Assembly for 1958 (ICAO Assembly 12th Sess, Doc 7960 A12-P/1) 60 <<https://www.icao.int/Meetings/AMC/Pages/Archived-Assembly.aspx?Assembly=a12>> accessed 18 February 2024.

24 Annual Report of the Council to the Assembly for 1967 (ICAO Assembly 16th Sess, Doc 8724 A16-P/3 April 1968) 116 <<https://www.icao.int/Meetings/AMC/Pages/Archived-Assembly.aspx?Assembly=a16>> accessed 18 February 2024; ICAO Doc 4582, 1/5/67.

25 *Appeal Relating to the Jurisdiction of the ICAO Council (India v Pakistan)* (ICJ), 18 August 1972 <<https://icj-cij.org/case/54>> accessed 18 February 2024.

26 Decision of the ICAO Council, C-DEC 154/16; C-DEC 147/9; C-DEC150/17; C-DEC 152/14; C-DEC 153/14.

27 C-DEC 170/16; C-DEC 152/14 and C-DEC 153/14.

- 8) Brazil v. United States (2016);<sup>28</sup>
- 9) Qatar v. Bahrain, Egypt, United Arab Emirates and Saudi Arabia (2017);<sup>29</sup>
- 10) Australia and the Netherlands v. Russian Federation (2022).<sup>30</sup>

Altogether, there are merely ten significant cases in which the ICAO Council has been involved, indicating a relatively low number of disputes addressed.<sup>31</sup> The question of our research focuses on why this is the case. One reason could be that most disputes are resolved via diplomatic channels or alternative dispute settlement mechanisms that do not require intervention from the ICAO Council. Another possibility is that Member States may not favour the ICAO Council dispute resolution procedure or even the outcomes of these decisions.

To shed light on this question, we will briefly introduce the nature of some relevant cases. In advance, it must be mentioned that in the history of the ICAO, only a few controversial cases have reached a final decision by the ICAO Council. Below is a brief history of some selected cases chosen by the authors:

- a) The first dispute settled was between India and Pakistan. In *India v. Pakistan* (1952), the disputing parties could not agree. Therefore, they requested the assistance of the ICAO Council. India complained about being unable to use a large part of the national airspace of the neighbouring country because Pakistan demarcated prohibited airspaces irrationally and unnecessarily. Whereas, in the airspaces closed before international air traffic, the scheduled flights of the Iranian airlines could demonstrably overfly, and this discriminative conduct violated Articles 5, 6 and 9 of the Chicago Convention (1944) as well as the rules of the IASTA – International Air Services Transit Agreement (1944).<sup>32</sup> The ICAO Council settled the relations within a few months, and in its decision, it obligated

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28 ICAO, 'Annual Report of the Council 2019: Settlement of Differences' <<https://www.icao.int/annual-report-2019/Pages/supporting-strategies-legal-and-external-relations-settlement-of-differences.aspx>> accessed 18 February 2024.

29 *ibid.*

30 'Netherlands, Australia launch new case against Russia over MH17: The Dutch and Australian Governments take Russia before the UN's International Civil Aviation Organization' (*Al Jazeera*, 14 March 2022) <<https://www.aljazeera.com/news/2022/3/14/netherlands-australia-launch-new-case-against-russia-over-mh17>> accessed 18 February 2024; 'Australian Government: ICAO Council decision on jurisdiction in MH17 legal proceedings' (*Attorney-General's portfolio*, 18 March 2023) <<https://ministers.ag.gov.au/media-centre/icao-council-decision-jurisdiction-mh17-legal-proceedings-18-03-2023>> accessed 18 February 2024.

31 The majority of the State-to-State disputes handled by ad hoc arbitral tribunals, and the International Court of Justice (ICJ). The highest number of cases are related: (1) security; (2) traffic rights; (3) economic rights; and (4) environmental issues. Zhang Luping, *The Resolution of Inter-State Disputes in Civil Aviation* (OUP 2022) 85.

32 International Air Services Transit Agreement (signed 7 December 1944) [1951] UN Treaty Series 252/390. Agreement has been ratified by 135 States.

both parties to secure unimpeded transit in their national airspaces for each other.<sup>33</sup> Finally, in January 1953, the ICAO Council officially noted that the disagreement had been settled.<sup>34</sup>

- b) The fifth dispute emerged again between Pakistan and India, known as *Pakistan v. India* (1971), following the 1965 war and subsequent suspension of transit rights of Pakistan's civil aeroplanes over Indian territories.

The parties later agreed that transit flights (transit rights) may continue, although the terms of this agreement differed. The dispute was exacerbated by the hijacking of an Indian Airlines Fokker F-27 by two Kashmiri militants on 30 January 1971, which was flown to Pakistan. In response, India suspended all transit flights. Pakistan then turned to the ICAO Council with a petition and a complaint with reference to Article 84 of the Convention and the IASTA Agreement.<sup>35</sup> India initially questioned the Council's jurisdiction, leading to deliberations where the Council convened and affirmed its authority to address the complaint. Dissatisfied with this decision, India appealed to the International Court of Justice as the plaintiff.

In the lawsuit *India v. Pakistan* (1971-1972),<sup>36</sup> the International Court of Justice rejected India's petition and proclaimed the jurisdiction of the ICAO Council. Later, the parties suspended the procedure before the Council and settled the dispute themselves.

In its judgement, the International Court of Justice emphasised that the court always has to verify its jurisdiction, and if necessary, it has to be examined "ex officio". However, the preliminary decision on jurisdiction and the subsequent decision on the meritorious matters of the case may not be differentiated. Namely, the decision on jurisdiction, even if it does not determine the case's outcome, may affect it on its merits. Neither party is obligated to explain the case's merits to the court that does not have jurisdiction or whose jurisdiction is ambiguous. However, in some cases, jurisdiction issues may affect meritorious matters and require examining specific meritorious parts.

- c) The sixth dispute occurred between Cuba and the United States of America in the case of *Cuba v. United States* (1998). On 24 February 1996, Cuba attacked three unarmed civil aeroplanes in international airspace at a distance of 20 nautical miles from the Cuban coastline. The main objective of the pilots of these small aeroplanes was to search and rescue emigrants fleeing on the high seas, an action viewed unfavourably by the Cuban government. It was not inadvertent that the two Cessna 337 civil aeroplanes were shot by the MIG-29 fighter planes of the Cuban Air Force. This happened even though the pilots of the aeroplanes had been in contact with

33 Bin Cheng, *The Law of International Air Transport* (Stevens & Sons Ltd; Oceana Publ 1962) 102.

34 ICAO Doc 7367 A7-P1 (n 21) 74-6; ICAO Doc 7388 C/860.

35 Chicago Convention (n 1) art 84; International Air Services Transit Agreement (n 32) art 2 (s 1-2).

36 *India v Pakistan* (n 25).



the Cuban air navigation control, their onboard transponders had been working, and by observing the aviation rules, they had been flying in international airspace. This incident caused the death of four innocent civilians. The third aeroplane managed to evade the attack due to cloud cover, and its pilots later informed the public about the tragic event, prompting the families to take legal action.<sup>37</sup>

At the request of the UN Security Council, the ICAO investigated the incident of 26 February 1996 and concluded that the US aircraft had been destroyed over the high seas and not in the Cuban airspace.<sup>38</sup> However, that was unrelated to the substance of the Cuban claim before the Council. The political overtones of the situation discouraged the Council from dealing directly with the dispute; it called upon the parties, which agreed to discontinue the proceedings.<sup>39</sup> It is gratifying to note that, despite this isolated incident, Cuba had acceded to all aviation security conventions by the turn of the century and ratified Article 3bis of the Chicago Convention.<sup>40</sup> The ICAO Council confirmed the mediation efforts of its President.<sup>41</sup>

- d) The ninth case involved Qatar and four other States (Bahrain, Egypt, United Arab Emirates and Saudi Arabia) in *Qatar v. Bahrain, Egypt, United Arab Emirates and Saudi Arabia* (2017). The governments of Bahrain, Egypt, Saudi Arabia, and the United Arab Emirates accused Qatar of supporting terrorist groups and financing their activities.<sup>42</sup> The Government of Qatar renounced the charges and failed to meet the demands itemised in 13 points by the countries to be fulfilled within ten days. In response, the countries participating in the dispute discontinued their relationship with Qatar on 5 June 2017. The countries imposed a blockade, giving Qatari citizens residing in their territories 14 days to leave.<sup>43</sup> Furthermore, they cancelled all traffic (by sea, land and air) with Qatar. The closure of its airspace caused considerable damage to Qatar and led to the cancellation of numerous flights. With neighbouring states' airspace closed, Qatari aircraft were obliged to detour through Iran and Turkey, resulting in increased flying times. The growth of the duration of flights affected mainly the aeroplanes travelling to Africa and South

37 *Armando Alejandro Jr and Others v Cuba*, Case no 11.589, Report no 86/99 (IACHR, 29 September 1999) <<https://www.cidh.oas.org/annualrep/99eng/Merits/Cuba11.589.htm>> accessed 18 February 2024.

38 United Nations Security Council resolution 1067 'Shooting down of two civil aircraft on 24 February 1996' (adopted 26 July 1996) <<http://unscr.com/en/resolutions/1067>> accessed 18 February 2024.

39 C-Min/161-6, C-Min 163-17, C-Min 164-11 and C-Min 166-12.

40 'Status of individual States: Cuba' <<https://www.icao.int/secretariat/legal/Status%20of%20individual%20States/Forms/AllItems.aspx>> accessed 18 February 2024.

41 ICAO Press Release P10 05/98.

42 Andrew McGregor, 'Qatar's Role in the Libyan Conflict: Who's on the Lists of Terrorists and Why' (2017) 15(14) *Terrorism Monitor* 8 <<https://jamestown.org/program/qatars-role-libyan-conflict-whos-lists-terrorists/>> accessed 18 February 2024.

43 'Qatar Crisis: What You Need to Know' (*BBC*, 19 July 2017) <<https://www.bbc.com/news/world-middle-east-40173757>> accessed 18 February 2024.

America, necessitating more fuel and, in many cases, substituting narrow-body aeroplanes with wide-body ones capable of long-haul flights. Qatar instituted proceedings at the ICAO Council regarding the Chicago Convention and the IASTA Agreement. At the same time, after the blockade, Qatar sued the United Arab Emirates before the International Court of Justice (ICJ) for violating human rights.<sup>44</sup> The four countries executing the blockade lodged a preliminary complaint vis-a-vis the proceedings to be conducted before the ICAO Council, which was dismissed by the overwhelming majority of the ICAO Council. Against the decision of the Council, the boycotting countries took recourse to the ICJ and pleaded for the establishment of the nullity of the decision. On 14 July 2020, the ICJ unanimously dismissed the plaintiffs' action and established that the ICAO Council could bring the final ruling as a body with jurisdiction.<sup>45</sup>

In that case, the ICAO Council's jurisdiction was also established. However, the Parties took pains to reach an agreement in both cases, irrespective of the ICAO Council's decision. Finally, a mutual Agreement was reached between the Parties. This Agreement was signed in Saudi Arabia on 5 January 2021 during the Gulf Cooperation Council Summit.<sup>46</sup>

Taking into account the cases mentioned above, it can be summarised that in these disputes, the ICAO Council did not delve into the merits of the cases; instead, its approach remained more administrative and political. It has been criticised for its perceived lack of judicial activism, judicial capacity, and judicial transparency.<sup>47</sup> It means the ICAO Council cannot carry out its function under the Chicago Convention. As a result, there is often a significant gap between the expectations of states involved in disputes and the approach taken by the ICAO Council. This has led to many cases where states have resolved issues among each other or appealed to the International Court of Justice.

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44 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v United Arab Emirates)* (ICJ), 4 February 2021 <<https://www.icj-cij.org/case/172>> accessed 18 February 2024.

45 *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v Qatar)* (ICJ), 14 July 2020 <<https://www.icj-cij.org/case/173>> accessed 18 February 2024; Bhat B Sandeepa and Krishna Tushar, 'Jurisdiction under Article 84 of the Chicago Convention 1944 in the Context of Middle East Conflict' (2022) 2(1) *Lex ad Coelum* <<https://caslnujs.in/2022/01/30/jurisdiction-under-article-84-of-the-chicago-convention-1944-in-the-context-of-middle-east-conflict-2/>> accessed 18 February 2024.

46 'Transcript: Closing statement of 41st GCC summit' (*Al Jazeera*, 7 January 2021) <[www.aljazeera.com/news/2021/1/7/closing-statement-of-41st-gulf-cooperation-council](http://www.aljazeera.com/news/2021/1/7/closing-statement-of-41st-gulf-cooperation-council)> accessed 18 February 2024; Attila Sipos, *International Aviation Law: Regulations in Three Dimensions* (Springer Nature 2024) 181.

47 Lumping (n 31) 105.

## 3.2. Appeal Procedures

The Chicago Convention includes provisions for an appeal procedure:

“Any contracting State may appeal from the decision of the Council to an ad hoc arbitral tribunal or the Permanent Court of International Justice.”<sup>48</sup>

“Any such appeal shall be notified to the Council within sixty days of receiving notification of the Council's decision.”<sup>49</sup>

“The decisions of the Permanent Court of International Justice and an arbitral tribunal shall be final and binding.”<sup>50</sup>

Moreover, there are sanctions if a State does not abide by the decision of the arbitral tribunal or the International Court of Justice. In such cases, international airlines of the disobedient State may be denied operation through the airspaces of other contracting States.<sup>51</sup> However, no use has been made of this enforcement mechanism due to its sensitivity and implications. Additionally, contracting States of the Chicago Convention have taken further steps. Suppose there are contracting States which, despite a final and binding decision of the arbitration tribunal or the International Court of Justice, still allow the airlines of the disobedient State to operate through their airspaces; the voting power of those States in the ICAO Assembly may be suspended.<sup>52</sup> Moreover, in any other matter, the decisions of the Council, if appealed, are suspended until the appeal is adjudged.<sup>53</sup>

The Chicago Convention authorises the Assembly and the Member States of ICAO to apply sanctions vis-à-vis a Member State and its airline which does not adhere to the decision made in a debated matter.

- In an intervention vis-à-vis the Member State, “*the Assembly shall suspend the voting power in the Assembly and the Council (provided that the contracting State is a Member of the Council) of any contracting State that is found in default under the provisions*” of the Chapter XVIII.<sup>54</sup>
- Vis-à-vis the airline of the condemned Member State, “*each contracting State shall undertake not to allow the operation of an airline of a contracting State through the airspace above its territory if the Council has decided that the airline concerned is not conforming*” to the provisions of the Convention.<sup>55</sup>

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48 Chicago Convention (n 1) art 84. The International Court of Justice (ICJ) in The Hague is the Supreme Judicial Organ of the UN, the only permanent international judicial forum of universal character. The duty of the International Court of Justice is the adjudication of cases submitted thereto within the purview of international law. See: United Nations Charter (n 2) ch XIV, art 92.

49 Chicago Convention (n 1) art 84.

50 *ibid*, art 86.

51 *ibid*, art 87.

52 *ibid*, art 88.

53 *ibid*, art 86.

54 *ibid*, art 88.

55 *ibid*, art 87.

While the application of the former rule has occurred several times, the application of the latter rule has not ensued since it would probably have great political resonance and would divide the parties; therefore, the attached protected interest would be injured to a greater extent. These two sanctioning powers (targeted the operation of the airline and the voting powers in the ICAO Assembly of the States) show that the decision of the ICAO Council in dispute settlement is not legally binding and executed or creates some precedents for the future. The ICAO Council decision can be forced out by economic and administrative sanctions rather than legal consequences (based on international public law). These sanctions are not in favour of the contracting States.

At the 15th Assembly of ICAO (1965), the Member States took a stand on the issues of racial discrimination and apartheid vis-a-vis South Africa (Resolution A15-7). At the 16th Assembly of ICAO (1968), the Member States pronounced that apartheid and other racial discrimination are the primary sources of conflict among nations and peoples. Furthermore, these political views and racial discrimination are contrary to the general principles formulated in the Preamble of the Chicago Convention.<sup>56</sup> The Member States confirmed the former decision at the 18th Assembly of ICAO held in Vienna (1971). As a sanction, they envisaged that South Africa would not receive an invitation to ICAO Assemblies if it continued to maintain its embraced politics condemned by the nations.<sup>57</sup>

The International Court of Justice (ICJ) has had to deal with three types of cases, specifically:

1. incidents involving military aircraft;
2. incidents involving civil aircraft and
3. the appeal procedure under Article 84 of the Chicago Convention.

In the first type, there are some cases concerning border incidents between the United States and the Soviet Union between 1951 and 1957. For example, the United States aircraft were intercepted or destroyed by Soviet aircraft while flying through or near the airspaces of Hungary and Czechoslovakia. Another incident took place in 1954 above the Sea of Japan. The United States, the Soviet Union and other concerned States appeared before the ICJ, but the Soviet Union refused to recognise the competence of the Court. That is why no decisions were made in these cases.<sup>58</sup> A similar case happened in 1999 when Pakistan brought a case against India before the ICJ after the destruction of a

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56 Ruwantissa Abeyratne, *Legal Priorities in Air Transport* (Springer 2019) 23-36.

57 The documentation and outcomes relating to past ICAO Assemblies can be found in: 'Sessions of the ICAO Assembly' (ICAO International Civil Aviation Organization, 2024) <<https://www.icao.int/publications/Pages/assembly-archive.aspx>> accessed 18 February 2024.

58 Gilbert Guillaume, 'Les affaires touchant au droit aérien devant la Cour internationale de justice' in Mariette Benkö und Walter Kröll (eds), *Luft- und Weltraumrecht im 21 Jahrhundert* (Carl Heymanns Verlag KG 2001) 75.

Pakistan military aircraft by Indian forces. On 21 June 2000, the ICJ decided it had no jurisdiction to hear the case.<sup>59</sup>

In the second type, for example, in the case of EL AL Israel Airlines (LY) on the route from Tel-Aviv (TLV) to London (LHR) was shot without any advance warning by a MIG-15 fighter plane of the Bulgarian Air Force above the territory of Bulgaria.<sup>60</sup> The case was filed at the ICJ, but no respectable judgment was passed since the mandatory jurisdiction of the court in the case was not established.<sup>61</sup> A further case was related to the downing of an Airbus A-300, operated by Iran Air, by missiles shot from the United States Navy ship Vincennes navigating in the Gulf area. Iran, among other facts, claimed the recognition by the International Court of Justice of an infraction by the United States and the provisions of the Montreal Convention (1971).<sup>62</sup> Furthermore, the compensation for damages suffered by Iranian passengers and crew, that is, the survivors. The ICJ found that the ICAO Council had to decide on this case under Article 84 of the Chicago Convention before it could handle it. The United States Government compensated the victims based on "ex gratia".<sup>63</sup>

In the third type, appeal procedures were launched only twice at the ICJ level in the last 80 years. These cases include *India v. Pakistan* (1972) [see, 3.1.a], *Bahrain, Egypt, United Arab Emirates and Saudi Arabia v. Qatar* (2020) [see, 3.1.d]. It must be noted here that the case of *Australia and the Netherlands v. Russian Federation* (2022) was not based on an appeal mechanism as the Netherlands and Australia applied directly to ICJ about the competence of the ICAO Council in the case under Article 84 of the Chicago Convention to prevent the decision of the ICAO Council not to deal with the case due to lack of competence.

### 3.3. Arbitration Procedure

It is also possible to reach an agreement via alternative dispute resolutions. Therefore, if any contracting State Party to a dispute in which the decision of the ICAO Council is under appeal has not accepted the Statute of the International Court of Justice and the contracting States Parties to the dispute cannot agree on the choice of the arbitral tribunal, each of the

59 *Aerial Incident of 10 August 1999 (Pakistan v India)* (ICJ, 21 June 2000) <<https://www.icj-cij.org/case/119>> accessed 18 February 2024.

60 ICAO Circular 50 - AN/45 [1957] 7 Aircraft Accident Digest 146.

61 *Aerial Incident of 27 July 1955 (Israel v Bulgaria)* (ICJ, 26 May 1959) <<https://www.icj-cij.org/case/35>> accessed 18 February 2024; ICAO Council Working Paper C-WP/5764 'Report concerning the Libyan Arab Boeing 727-224: 5A-DAH (Sinai - 21 February 1973)' 1 May 1973.

62 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (concluded 23 September 1971) [1975] UN Treaty Series 14118/178.

63 *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v United States of America)* (ICJ, 22 February 1996) <<https://www.icj-cij.org/case/79>> accessed 18 February 2024.

contracting States Parties to the dispute shall name a single arbitrator who shall name an umpire.<sup>64</sup> “If either contracting State Party to the dispute fails to name an arbitrator within three months from the date of the appeal, an arbitrator shall be named on behalf of that State by the President of the Council from a list of qualified and available persons maintained by the Council. If, within thirty days, the arbitrators cannot agree on an umpire, the President of the Council shall designate an umpire from the list previously referred to. The arbitrators and the umpire shall then jointly constitute an arbitral tribunal. Any arbitral tribunal established under this or the preceding Article shall settle its procedure and give its decisions by majority vote, provided that the Council may determine procedural questions in the event of any delay which in the opinion of the Council is excessive.”<sup>65</sup>

There are currently three specialised arbitration tribunals existing in the field of civil aviation: the International Court of Aviation and Space Arbitration (ICASA, Paris, 1994); the International Aviation Court of Arbitration (Shanghai, 2014)<sup>66</sup> and the Hague Court of Arbitration for Aviation (HCAA, the Hague, 2024).<sup>67</sup> The number of arbitration tribunals’ cases is growing as the Parties find the advantages of these alternative dispute resolutions; for example, in State-to-State cases, they also have more benefits, such as expert-determined (professional) decisions and a legally binding nature of the judgement.

### 3.4. Overview of the Forums

The chart compares the three above-introduced forums of the dispute resolution mechanism system in aviation. It examines the primary assessment and summarises the differences. The chart provides enough information to understand why the ICAO Council needs more changes and improvements to provide effective decision-making for its Member States. The dispute resolution mechanism must be reformed in the first step on the regulatory and organisational levels.

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64 The umpire is a third party appointed by the arbitrators to settle disagreements between the arbitrators themselves.

65 Chicago Convention (n 1) art 85.

66 The China Shanghai Pilot Free Trade Zone Arbitration Rules (effective 1 January 2015) <[https://ng-lassen.oss-cn-hangzhou.aliyuncs.com/upload\\_files/file/2020/20200813142126\\_1384.pdf](https://ng-lassen.oss-cn-hangzhou.aliyuncs.com/upload_files/file/2020/20200813142126_1384.pdf)> accessed 18 February 2024.

67 ‘The Hague Court of Arbitration for Aviation Conference’ (NAI - Netherlands Arbitration Institute, 29 January 2024) <<https://nai.nl/the-hague-court-of-arbitration-for-aviation-conference>> accessed 18 February 2024.

	ICAO Council	International Court of Justice	Arbitration
<b>CASES</b>	Typically, <b>public air law</b> disputes (aviation security), but sometimes commercial (traffic rights, economic rights, environmental issues).	In <b>all legal disputes</b> submitted to it by States. + Give <b>advisory opinions</b> to UN organs and specialized agencies.	Generally, <b>private law</b> disputes.
<b>SELECTION</b>	Parties <b>cannot choose</b> ; there is a permanent body with 36 Representatives on the Council of ICAO. (Elected for 3 years). Representatives are <b>not experts</b> (some may have aviation backgrounds). Forum is seated in <b>Montreal/Canada</b> , at the headquarters of ICAO.	Parties <b>cannot choose</b> ; there is a permanent body with 15 Judges. (members) on the Court. (Elected for 9 years). Judges are <b>professionals</b> .  Forum is seated in <b>The Hague/The Netherlands</b> , seated in the Peace Palace.	Parties <b>freely select Arbitrators</b> .  Arbitrators are <b>competent</b> .  Forum is <b>Neutral</b> (place/seat). It can be any Forum of their choice (“no home advantage”).
<b>LEGAL PROCEDURE</b>	<u>Legal source</u> ➤ Chicago Convention ➤ Rules for the Settlement of Differences ➤ Council’s Rules of Procedure  Representatives must follow <b>strict</b> but <b>insufficient</b> rules.  <b>Transparent</b>  The ICAO Council decision is <b>not final</b> and <b>can be appealed</b> to	<u>Legal source</u> ➤ Statue of the Court ➤ Rules of the Court ➤ Practice ➤ Precedent  Rules and procedures are strict and systematic. <b>Transparent</b>  The judgement is final and legally binding.	<b>Specific arbitration rules</b> (international treaties and institutional rules).  Arbitrators <b>can tailor</b> their procedural rules. <b>Flexible</b> process.  <b>Confidential</b> (the entire process, docs., proceedings, award). [But it can enter to the public, if it has commenced or there is a legal

	<b>ICAO Council</b>	<b>International Court of Justice</b>	<b>Arbitration</b>
	<ul style="list-style-type: none"> <li>➤ International Court of Justice; or</li> <li>➤ Arbitration.</li> </ul> <p>The appeal shall be notified to the Council within <b>2 months</b> of receiving notification of the Council's decision.</p> <p>The decision's <b>enforceability is limited</b>, and this mechanism is sensitive, making enforcement difficult.</p>	<p>The judgement is enforceable.</p> <p>No jurisdiction for non-governmental organisations, individuals, corporations or any other private entity).</p> <p>States must accept the Jurisdiction of the ICJ.</p>	<p>obligation to disclose].</p> <p>The award is final and legally binding (No appeal, only under limited circumstances; it must be challenged within <b>3 months</b>).</p> <p>The award is enforceable.          (The award does not have automatic powers).          If not followed, the winning party can seek enforcement before the National Court.</p>
<b>COST</b>	Each Party shall bear its own cost.	Parties shall bear their own cost.	The cost is moderate. The winner is fully compensated by the losing side.
<b>SPECIAL POWERS</b>	Representatives have limited powers (exercise voting powers).	Judges exercise wide powers.	Arbitrators exercise wide powers.
<b>REPRESENT-ATION</b>	Representatives have <b>various backgrounds</b> . (career diplomats, state or civil aviation professionals, politicians, lawyers, etc.).	<b>Professional</b> Judges (selected on high standards and UN principles/policies like geographic distribution).	Can be <b>anyone</b> (lawyer, expert, technical or academic person, etc.).



## 4 CONCLUSION AND RECOMMENDATION

### 4.1. Conclusion

It is well-known from aviation history that applying dispute settlement based on Chapter XVIII of the Chicago Convention (1944) during the past 80 years has not been encouraging and promising. The numbers speak for themselves, proving this fact: since 1944, only ten cases have been filed to the ICAO Council, and in most cases, the ICAO Council did not decide on the case's merits. Although the legal status of the dispute settlement mechanism of the ICAO Council is obvious, many factors do not substantiate this mandatory function properly. The reasons might be the following:

- The first reason is that the ICAO Council has a diplomatic function. This function has become increasingly important in the previous decades, but this was not the case initially (in the 60s-80s) when the ICAO Council focused more on civil aviation's technical, professional and operational aspects, for example, when drafting and formulating the new Annexes for the aviation industry. Aviation is a crucially important commercial activity for every State, meaning the aviation industry is determined by political interests and decisions (even the liberalised open market and the Single Sky initiative are subject to political decisions with commercial implications). Such political interests and subtle international relations often prevent States from submitting themselves to binding legal procedures.
- It is also visible that the provisions of the Chicago Convention are not detailed, which is expected for an international treaty. Still, the Rules for the Settlement of Differences (1957) and the Council's Rules of Procedure (1969) were also not methodically drafted by the Council Members. The Chicago Convention does not define the exact procedure to be followed by the Council, nor do the Council's Rules of Procedure adequately encompass the possible challenges and the necessary measures. The Council realised the lack of proper procedural guidance from the beginning of the first case [*see* 3.1], but no action has been taken to rectify this. Besides, the current rules are not relevant enough, are not comprehensive, and cannot be executed as the court's decisions. Moreover, the ICAO Council's decision can be appealed to a non-ICAO body, such as the International Court of Justice.<sup>68</sup>
- The reason can be that currently, there are 36 Council Members, meaning these States represent all contracting States. It is peculiar that the 36 Member States account for merely 18.65% of the 193 Member States. Upon a two-thirds majority decision, this proportion of 24 votes accounts only for a ratio of 12.43%. These numbers show the weight of the ICAO Council's decision in the settlement dispute. Those contracting States with no membership in the ICAO Council need

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68 Gabriel S Sanchez, 'The Impotence of the Chicago Convention's Dispute Settlement Provisions' (2010) 10(1) *Issues in Aviation Law & Policy* 35.

to find support from those States (more often on a regional level) who are ICAO Council members, and this fact states more about the political/diplomatic nature of the Council. It also determines the decision-making mechanism, which does not favour these States.

## 4.2. Recommendations

It is highly recommended that the whole processual mechanism be revised. The ICAO Council can only achieve its goals without explicit procedural provisions, which should be revised according to needs based on experiences. The solution can be reached in two ways: by establishing a new procedure with legal requirements for dispute settlement or by revising the existing rules mentioned above. The second option is not practicable in light of the lack of revision or modernisation of the Chicago Convention.<sup>69</sup> Therefore, a modernised procedure under the Rules for the Settlement of Differences (1957)<sup>70</sup> or a new regulation is necessary to solve this issue.

ICAO must provide a wider platform for regional organisations such as ECAC, AFCAC, ACAC, and LACAC in dispute resolutions.<sup>71</sup> Since ICAO Council Members, in reality, cooperate on a regional level (for example, there are 8 European Union States and 8 African States representing the ICAO Council), decisions could be more favourable if more contracting States are involved. Regional organisations and Member States (all of which are ICAO Member States) can have greater influence and roles in the decision-making process. Regional groups possess more united power and effective mechanisms than individual states in a debate.

For the mandatory dispute settlement task, ICAO needs a new, dedicated judicial body with clear legal status, jurisdiction, and competence, subject to the control of the Assembly and the ICAO Secretariat. Decisions cannot be based on unbalanced circumstances; for example, the State involved in the dispute should not have membership in the ICAO Council. While the Council Member involved in the case has no voting right and must be neutral during the Council procedure, definitely, in the political arena, it has more influence than those States which are not represented in the

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69 Michael Milde, 'Chicago Convention at Sixty: Stagnation or Renaissance?' (2004) 29 *Annals of Air and Space Law* 443; Sipos (n 17) 210-22.

70 Although, ICAO Council established a Working Group to modernize the ICAO settlement rules, there is no final comprehensive text had been made. At the 38th Session of the Legal Committee (22-25 March 2022), a significant amount of time was dedicated to discussing the progress report of the Working Group for the review of the ICAO Rules for the Settlement of Differences, chaired by Terry Olson (France). See: 'ICAO Legal Committee Meeting' (2022) 3 *ECAC News Point* 7 <<https://www.ecac-ceac.org/news/636-icao-legal-committee-meeting>> accessed 18 February 2024.

71 The European Civil Aviation Conference (ECAC), the African Civil Aviation Commission (AFCAC), the Arab Civil Aviation Commission (ACAC), Latin American Civil Aviation Commission (LACAC).

Council (*see*, in the 9<sup>th</sup> case, Qatar was not a Member in the ICAO Council during the “blockade” period while Saudi Arabia, Egypt and the United Arab Emirates were [3.1.d]).

Therefore, the duty of dispute settlement should be entrusted to a legal rather than a political organ. Only an authorised legal organ can enhance the credibility and authority of its decisions. It is unquestionably desirable that a contracting State, if involved in a dispute, can find remedy in the ICAO, as this is the only and most crucial intergovernmental organisation with all the necessary instruments to reach a mutual agreement under all circumstances.

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## АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Практична нотатка

### ПРАВОВІ ПРОБЛЕМИ ВРЕГУЛЮВАННЯ СПОРІВ РАДОЮ МІЖНАРОДНОЇ ОРГАНІЗАЦІЇ ЦИВІЛЬНОЇ АВІАЦІЇ

**Халід Альшамсі та Аттіла Сінос\***

#### АНОТАЦІЯ

**Вступ.** Міжнародна організація цивільної авіації (ІКАО) є «Клубом» суверенних держав. ІКАО є спеціалізованою установою Організації Об'єднаних Націй (ООН), до якої входять 193 держави-члени. Якщо ці держави та дипломатичні канали не можуть знайти спільного вирішення спору, виникає розбіжність; однак Рада ІКАО виконує важливу функцію у розв'язанні цих спорів. Ця процедура врегулювання визначена Чиказькою конвенцією (1944), Правилами врегулювання розбіжностей (1957) і Правилами процедури Ради (1969). Проте держави-члени не схвалюють ці положення, про що свідчить нечисленна кількість процедур вирішення спорів у Раді ІКАО за останні 80 років. У цій статті було розглянуто ці правові спори та запропоновано обґрунтування, з огляду на характер справ. Рада є унікальним постійним органом ІКАО. Незважаючи на те, що ІКАО з моменту заснування у минулому столітті стала радше політичним (дипломатичним) органом, відсутність успішно завершених розв'язань спорів є, з юридичного погляду, більш ніж цікавою. Ця дослідницька стаття подає приклади недостатньої ефективності врегулювання спорів Радою ІКАО, зосередивши увагу на характері інтересів держави та результатах провадження, а також на ролі в цих спорах Міжнародного суду (ІС) або арбітражу.

**Методи.** У роботі наголошено на розумінні та аналізі історичного контексту, міжнародної співпраці та дипломатії, а також на нормативно-правових засадах вирішення спорів і їхнього врегулювання. Пошук ґрунтувався на базах даних, наукових журналах і офіційних публікаціях авіаційних органів і організацій, таких як ІКАО. У дослідженні використовувалися якісні та кількісні методи, засновані на емпіричних спостереженнях і дослідженнях (аналіз документів і тематичні дослідження).

**Результати та висновки.** Рада ІКАО виконує нормотворчі, судові та адміністративні функції. Це квазісудовий орган, і його президент має повноваження вирішувати спори між договірними державами. Однак, якщо ми поглянемо на історію, то за останні 80 років Рада ІКАО розглядала лише 10 випадків. Основною причиною відсутності рішень Ради ІКАО щодо вирішення спорів є зростання дипломатичної (політичної) функції Ради ІКАО. Авіація є важливою комерційною діяльністю для кожної держави, тобто авіаційна галузь визначається політичними інтересами та рішеннями. Такі політичні інтереси та делікатні міжнародні відносини часто заважають державам підкоритися обов'язковим правовим процедурам.

Іншою причиною меншої кількості спорів у Раді ІКАО є потреба в більшій кількості положень і правил для підтримки прозорих і юридично обов'язкових рішень. Чинні правила не є ані відповідними, ані достатньо вичерпними, і їх не можна виконувати так само, як судові рішення. Крім того, рішення Ради ІКАО можна оскаржити в органах, що не входять до складу ІКАО, наприклад, у Міжнародному суді.

Тому наполегливо рекомендуємо переглянути весь процесуальний механізм або створити новий спеціалізований судовий орган із чітким правовим статусом, юрисдикцією та компетенцією для вирішення спорів.

**Ключові слова:** врегулювання спорів, Рада ІКАО, міжнародне публічне повітряне право, Міжнародний суд, арбітраж.