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SETTLEMENT OF DISPUTES AT ICAO AND SUSTAINABLE DEVELOPMENT

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ABSTRACT

The International Civil Aviation Organization (ICAO) is a specialized agency of the United Nations responsible for regulating and coordinating international air travel. It plays a significant role in ensuring the safety, security, and efficiency of international civil aviation. When it comes to settling disputes at ICAO, it primarily deals with disputes related to aviation matters, including those involving its member states and international aviation agreements.

This article aims to present the dispute settlement mechanism established in Chapter XVIII of the Chicago Convention. To this end, the article will analyse how the Council could resolve a potential dispute in the field of sustainable development. For this exercise, a hypothetical case will be analysed, in which the European Union (EU) decides to unilaterally implement its emissions trading scheme in the field of aviation. This case will serve as a potential scenario to consider if the dispute settlement mechanism set out at Article 84 of the Chicago Convention could be efficient in order to resolve such a dispute. The said dispute settlement mechanism has been criticized many times in ICAO's history due inter alia to the incapacity of the Council to provide for a merit-based decision. In fact, the five disputes brought under the present article have always been resolved through diplomatic channels, involving the good offices of the President of the ICAO Council. Therefore, despite the peculiarity of the EU representation at ICAO, the article will demonstrate that a potential dispute with respect to sustainable development will most likely be resolved the same way that it has been done previously in ICAO's history.

A procedure for resolving conflicts between the member states of the International Civil Aviation Organisation (ICAO) is contained in the Chicago Convention, which established the organisation. According to the pertinent section of this Convention, the ICAO Council has the

authority to engage in sui generis judicial proceedings, which have not been frequently utilised in the organization's history (though there appears to be a growing interest in their usage). This article examines the background of this procedure's application, examines some of its contentious aspects, and highlights some recent developments in the field. These include the International Court of Justice's ruling in the appeal "BAHRAIN, EGYPT AND UNITED ARAB EMIRATES v. QATAR" and the ongoing review of the ICAO Rules for Settlement of Differences.

Keywords-: International Civil Aviation Organization, Chicago Convention, Settlement of Disputes, ICAO Rules of Procedure, Bahrain, Egypt and United Arab Emirates v. Qatar, ICJ verdict

INTRODUCTION

Negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, recourse to regional agencies or arrangements, or other peaceful ways of their own choosing are among the strategies employed for the peaceful resolution of international issues (Article 33, UN Charter). Since the beginning of human civilization, relationships between people and between different groups or social collectives have been shaped by the gradual creation of written and oral covenants, which have served as a foundation for governing and constructing our "society of coexistence." Historically, this notion has been explored under the label "Social Contract Theory," that is: the belief that persons' moral and/or political duties are dependent upon a contract or agreement among them in order to construct the society in which they live. People have good, if self-serving, motives to acclimatise to the artifice of morality in general as this state contains a figure endowed with the authority and capacity to administer sanctions for violations of such a contract.

Groups of people living together then obtained three things they lacked in the pre-covenant period (the so-called "State of Nature"): laws, judges to decide cases involving laws, and the executive power required to implement these laws. These items were formed when they consented to form a political society and government.

Therefore, each individual transfers to the government they have established via the agreement the authority to defend themselves and punish those who violate the Law of Nature.

Consequently, a major tenet of the "social contract state" is that compliance with the conditions (or "terms") of any such covenant should be the rule rather than the exception; otherwise, cohabitation would be chaotic, if not impossible.

For this reason, it is essential to have a sovereign who has the authority to both impose and punish rules. The same rules apply, *mutatis mutandi*, to the cohabitation of sovereign States. The modern concept of "world order" originated with the signing of the "Peace of Westphalia"² and the adoption of its political theory. Because this theory was founded on the creation of an autonomous system of states that would refrain from interfering in the internal affairs of others and would mutually control each other's aspirations through practical methods, it did not include the imposition of a single moral vision. Rather, it demonstrated a pragmatic adjustment of the European governments' requirements to the actualities of an overall balance of power at that point.

Each state was given the quality of sovereign control over its own area in exchange. Thus, this article examines the parameters of the Chicago Convention's dispute resolution provisions, the ICAO Council's jurisdiction for settling disputes, the current application procedures before the Council, and the cases that the Council has previously heard. In view of the circumstances previously outlined, this chapter takes a closer look at the sorts of legal proceedings that particular States could pursue against the EU. Furthermore, because of the EU's ambiguous status at the ICAO, there can be uncertainty about the parties involved in a future application.

HYPOTHESES

A procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute This paper will going forward prove the statement.

RESEARCH QUESTION

What are the most effective methods to resolve the disputes by using international law and How does ICAO settle disputes?

RESEARCH METHODOLOGY

Doctrinal method

OBJECTIVES

CHICAGO CONVENTION PROVISIONS FOR THE SETTLEMENT OF DISPUTES

Articles 84 to 88 of Chicago Convention Chapter XVIII contains the provisions for resolving disputes. According to Article 84, the Council will resolve any dispute between two or more contracting states over the interpretation or implementation of this Convention and its Annexes upon request from any State involved. This clause also states that no member of the Council may cast a vote when the Council is debating a dispute in which it has a stake. A judgement made by the ICAO Council may be appealed to the International Court of Justice (ICJ) by a disputing party. Article 85 describes the circumstances under which a State party to a dispute may file an appeal council resolution does not become a party to the ICJ Statute.

Since all 191 ICAO Member States are also signatories to the UN Charter and have so recognised the Statute of the ICJ de facto, it appears that this clause is no longer applicable. Furthermore, Article 86 states that any ruling made by the Council regarding whether a foreign airline is operating in accordance with the Chicago Convention's provisions will stand unless overturned on appeal and that, in the event that the Council's decisions are appealed, they will be halted until the appeal is resolved. The ICJ's or an arbitral tribunal's rulings are final and enforceable. The Chicago Convention outlines two different kinds of punishments to guarantee adherence to rulings under Chapter XVIII: one for individual airlines and the other for States.

The first is outlined in Article 87, which states that each contracting state agrees to refrain from permitting an airline operating within its airspace if the Council determines that the airline in question is not abiding by a final decision made in line with Article 86. Regarding the penalties for States, Article 88 states that the ICAO Assembly will suspend the ability of any contracting state found to be in violation of this chapter's provisions to vote in both the Assembly and the Council. Over the years, a number of people have criticised these punishments. For instance, Professor Milde has noted that in order to uphold Article 88's sentence, the majority of States of the Assembly have to be in favour of such measure and would be “undoubtedly motivated by many policy considerations”

THE RULES OF PROCEDURES FOR THE SETTLEMENT OF DIFFERENCES

The Rules of Procedure for the Settlement of Differences (the Rules), which were enacted by the Council, add to the provisions of the Chicago Convention regarding disputes. The process for a State to submit an application to the Council is outlined in these Rules. The Council performs judicial powers in accordance with these Rules. In addition to oral hearings, the Council bases its findings on the written documents—memories and counter-memories—that the parties have submitted. The emphasis placed on mediation and conciliation, either before to or during the procedures, is another significant feature of the Rules. For example, Article 14 of the Regulations stipulates that any contracting state presenting a dispute to the Council sent must include evidence that attempts to resolve the dispute through talks between the parties were must prove that attempts to resolve the dispute through talks between the parties were unsuccessful in order to qualify for settlement.

Additionally, the Council has the right to invite the disputing parties to direct discussions at any point throughout the proceedings in an effort to resolve the disagreement or focus the problems. Furthermore, to aid in the negotiating process, the Council may choose one person or a team of people to mediate disputes between the parties. Professor Milde claims that because this allows for the President's good offices and encourages mediation and conciliation by the Council, it manifestly deviates from judicial powers.

According to Professor Buergenthal, this means that the Council's primary duty under Chicago Convention article 84 is "to assist in settling rather than in adjudicating disputes." The Rules' close alignment with the Court of International Justice's Rules is another intriguing feature of the latter. This resemblance might potentially lead to some issues because the ICJ is a court and functions only as a tribunal. As a result, the Council's established Rules could not apply to a political entity that doesn't follow the customs of a court of law. The Rules were originally enacted in 1957 and then revised in 1975; they haven't been changed since. In light of this, some have argued recently in favour of the Council reviewing these Rules, which could be a good chance to consider the political uniqueness of this body.

THE CONSIDERATION OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT BY THE ICAO COUNCIL

As per the Kyoto Protocol's Article 2.2, cooperation between 60 States and ICAO is required to

decrease greenhouse gas emissions (GHG). However, ICAO does not believe that the aforementioned clause gives the Organisation the authority to take particular action in that regard. As Professor Dempsey rightly notes, a strict interpretation of the Kyoto Protocol implies that only a subset of States have a duty to address the problem of greenhouse gas emissions from international aviation. To be clear, ICAO is not required by the Kyoto Protocol or the Chicago Convention to create a policy on greenhouse gas emissions, but it is also not prohibited from doing so. States are thought to be able to debate any such concerns in the ICAO forum.

ICAO is under no special duty to take up such an issue unless its Member States so request. Nevertheless, it appears that the ICAO Assembly's decision to take action to address the aviation and climate change issue was sparked by the signing of the Kyoto Protocol. In light of this, an examination of ICAO Assembly Resolutions from 1998 to the present shows the political determination of Member States to address the matter.

Moreover, neither civil aviation nor the ICAO are mentioned in the most current agreement, which was signed at the Conference of the Parties in Paris in December 2015 (COP21). Surprisingly, the initial section on aviation was eliminated entirely from the final accord. The final agreement's exclusion of aviation, however, is unlikely to have much of an effect on the ICAO procedure. In fact, the momentum generated in Paris will continue to exert pressure on States at the ICAO to address aviation emissions by putting in place a unique MBM system, among other things, according to the ATAG spokesman.

SCOPE AND LIMITATIONS

Dispute Resolution Mechanisms: The scope includes an in-depth examination of the mechanisms and procedures employed by ICAO for resolving disputes. This can encompass negotiation, consultation, arbitration, or even cases referred to the International Court of Justice (ICJ).

Sustainable Development Aspects: The research can explore how the settlement of disputes at ICAO impacts sustainable development, covering areas such as environmental impact mitigation, safety, security, infrastructure development, and international cooperation in aviation.

Legal and Policy Analysis: The paper may include legal and policy analyses of ICAO agreements and conventions, international treaties, and relevant policies that relate to dispute settlement and sustainable development.

Data Availability: Access to comprehensive and up-to-date data on disputes and their outcomes at ICAO may be limited due to confidentiality concerns. Some information may not be publicly accessible.

LIMITATIONS

Subjective Nature: The assessment of sustainable development and its impacts can be subjective. It may vary based on different perspectives and interpretations, making it challenging to provide concrete and universally accepted conclusions.

Complex Legal Framework: The legal aspects of ICAO agreements and conventions can be intricate. Understanding the legal nuances may require a background in international law, which may be a limitation for some researchers.

Resource Constraints: The research may be constrained by limited resources, both in terms of time and funding, which could affect the depth and breadth of the analysis and the ability to conduct extensive fieldwork.

Evolution of ICAO: ICAO's policies, mechanisms, and dispute resolution practices may evolve over time. The research might not capture the most recent developments in dispute resolution within the organization.

Political Sensitivities: Disputes at ICAO can sometimes be politically sensitive, and the organization's actions or decisions may be influenced by diplomatic considerations. These political complexities can affect the research's scope and analysis.

Limited Generalizability: The findings of the research may not be universally applicable, as the impact of dispute settlement on sustainable development can vary from one case to another and from one region to another.

OUTCOMES

1. Scarcity of cases submitted to ICAO

There have only been five examples of disputes between Member States brought to the Council for resolution since the ICAO's founding and more than 70 years. However, in two additional conflicts between Member States (including three distinct claims), the intervention of the ICAO Council has been requested recently.

Considering this, it is possible to draw the statistical conclusion that the number of conflicts submitted for adjudication grew dramatically in less than a year. It is premature to infer, therefore, that this represents a reaffirmation of the worldwide aviation community's faith and confidence in the reliability and efficacy of the ICAO dispute resolution system among States. Undoubtedly, it seems a little premature to issue a death certificate for the Chapter XVIII that some writers have recommended.

2. Rules for the Settlement of Differences

The Council may suspend or modify the Rules, subject to the parties' consent, if it believes that doing so will result in a more efficient or timely resolution of the issue, despite the Rules for the Settlement of Differences appearing to be rather strict. The WG-RRSD is currently revising the Rules to address a number of concerns connected to their modernization. It also seeks to develop new and creative procedures that will enable the prompt, transparent, and speedy resolution of disputes.

While the scope of the revision goes beyond that, taking into account the rules and procedures governing the settlement of disputes in other international judicial and dispute settlement bodies, the alignment with the new Rules of Procedure of the ICJ is a very significant example of the initiatives. The worldwide aviation community is sufficiently reassured by all of these factors along with the expertise of the group's expert members to maintain faith in the WG-RRSD's ability to successfully modernise the ICAO Rules and get over their current challenges.

3. The peculiar nature of the Council

The "political nature of the Council" is the primary reason for the criticism directed at the ICAO process for resolving disputes between States, as this article explains. This author believes that,

contrary to what other writers have indicated, such a claim cannot be seen as inevitably leading to the conclusion that this role should be given to an elected body of judges or arbitrators who might operate with "due judicial detachment."

First of all, it is quite improbable that States would be willing to voluntarily submit their disagreements to a final judgement. According to an author, unless States make every effort to resolve the issue through direct negotiations, "however imperfect the current machinery may be, it is available to States and its existence can act as a deterrent that it could be used with all the undesirable publicity and further inflame the adversarial attitudes." More significantly, such criticism ignores the reality that the Council is actually a political, diplomatic, and rule-setting organisation that has been given the authority to settle disputes by the Chicago Convention.

4. Lack of results

It is a truth that the Council has not yet issued a formal ruling on the merits of any of the cases that have been submitted to it for consideration. To the best of this author's knowledge, this does not in any way indicate that the Council did not fulfil its duty to settle conflicts. That might be claimed in the event that the aforementioned result is attained against the wishes or interests of the Council. It's actually the opposite, though. ICAO has extensive arbitral authority under several bilateral air transport agreements and complete adjudicatory authority under the Chicago Convention, but it has shown little interest in using either of these powers, preferring to use its good offices to bring the parties to a settlement of the conflict. The parties were able to settle the dispute in all five of the cases that were brought between 1952 and 2000 thanks to ICAO's assistance with conciliation and mediation, as well as the procedures' delay.

The 1957 Rules imply that discussions and agreements are preferable to decisions and penalties. The ICAO itself prefers mediation, conciliation, and the careful use of good offices as the most efficient and effective methods of resolving conflicts. The Council made an effort to use its best offices in every matter that it considered in order to facilitate the parties' ability to come to an amicable agreement. From this vantage point, it is clear that the ICAO has accomplished a great deal, either by actively participating in the process of mediating a peaceful resolution between the involved States or by actively deactivating all ongoing issues.

CONCLUSIONS

It seems that the Chicago Convention's Article 84 dispute resolution system might still be used in the event of a dispute involving environmental preservation and sustainable development, despite all the barriers. As seen, it would appear that a dispute involving a significant number of States would differ somewhat from instances that were more regional or bilateral in character in the past. However, conciliation and mediation will take precedence in a highly political disagreement like the EU-ETS, therefore this conflict resolution process is still applicable and suitable. There are significant procedural obstacles. The ICAO Council members' readiness to basing their judgement on sustainable development principles is also unclear. Although the Chicago Convention does not mandate this outcome, it also does not exclude the use of more stringent environmental protection rules.

