

**RULES
FOR THE
SETTLEMENT OF DIFFERENCES**

**Approved by the Council on 9 April 1957
and amended on 10 November 1975**



Approved by the Council and published by its decision

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RULES

FOR THE

SETTLEMENT OF DIFFERENCES

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CHAPTER I

SCOPE OF RULES

Article 1

(1) The Rules of Parts I and III shall govern the settlement of the following disagreements between Contracting States which may be referred to the Council:

(a) Any disagreement between two or more Contracting States relating to the interpretation or application of the Convention on International Civil Aviation (hereinafter called "the Convention") and its Annexes (Articles 84 to 88 of the Convention);

(b) Any disagreement between two or more Contracting States relating to the interpretation or application of the International Air Services Transit Agreement and of the International Air Transport Agreement (hereinafter respectively called "Transit Agreement" and "Transport Agreement") (Article II, Section 2 of the Transit Agreement; Article IV, Section 3 of the Transport Agreement).

(2) The Rules of Parts II and III shall govern the consideration of any complaint regarding an action taken by a State party to the Transit Agreement and under that Agreement, which another State party to the same Agreement deems to cause injustice or hardship to it (Article II, Section 1), or regarding a similar action under the Transport Agreement (Article IV, Section 2).

Part I

CHAPTER II

DISAGREEMENTS

Article 2

Any Contracting State submitting a disagreement to the Council for settlement (hereinafter referred to as "the applicant") shall file an application to which shall be attached a memorial containing:

* *Amendment of Article 29 approved by the Council on 10 November 1975.*

(a) The name of the applicant and the name of any Contracting State with which the disagreement exists (the latter hereinafter referred to as "the respondent");

(b) The name of an agent authorized to act for the applicant in the proceedings, together with his address, at the seat of the Organization, to which all communications relating to the case, including notice of the date of any meeting, should be sent;

(c) A statement of relevant facts;

(d) Supporting data related to the facts;

(e) A statement of law;

(f) The relief desired by action of Council on the specific points submitted;

(g) A statement that negotiations to settle the disagreement had taken place between the parties but were not successful.

CHAPTER III

ACTION UPON RECEIPT OF APPLICATIONS

Article 3

Action by Secretary General

(1) Upon receipt of an application, the Secretary General shall:

(a) Verify that it complies in form with the requirements of Article 2, and, if necessary, require the applicant to supply any deficiencies appearing therein;

(b) Immediately thereafter notify all parties to the instrument the interpretation or application of which is in question, as well as all Members of the Council, that the application has been received;

(c) Forward copies of the application and of the supporting documentation to the respondent, with an invitation to file a counter-memorial within a time-limit fixed by the Council.

(2) Copies of all subsequent pleadings or other documents submitted by a party to the Council shall similarly be forwarded by the Secretary General to the other party or parties in the case.

Article 4

Counter-memorial

(1) The counter-memorial shall contain:

(a) The name of an agent authorized to act for the respondent in the proceedings, together with his address, at the seat of the Organization, to which all communications relating to the case, including notice of the date of any meeting, should be sent;

(b) Answer to points raised in the applicant's memorial under Article 2 (c) to (g);

(c) Any additional facts and supporting data;

(d) Statement of law.

(2) In the counter-memorial there may be presented a counter-claim directly connected with the subject matter of the application provided it comes within the jurisdiction of the Council. The Council shall, after hearing the parties, direct whether or not the question thus presented shall be joined to the original proceedings.

Article 5

Preliminary objection and action thereon

(1) If the respondent questions the jurisdiction of the Council to handle the matter presented by the applicant, he shall file a preliminary objection setting out the basis of the objection.

(2) Such preliminary objection shall be filed in a special pleading at the latest before the expiry of the time-limit set for delivery of the counter-memorial.

(3) Upon a preliminary objection being filed, the proceedings on the merits shall be suspended and, with respect to the time-limit fixed under Article 3 (1)(c), time shall cease to run from the moment the preliminary objection is filed until the objection is decided by the Council.

(4) If a preliminary objection has been filed, the Council, after hearing the parties, shall decide the question as a preliminary issue before any further steps are taken under these Rules.

Article 6

Action of Council on procedure

(1) Upon the filing of the counter-memorial by the respondent, the Council shall decide whether at this stage the parties should be invited to enter into direct negotiations as provided in Article 14.

(2) If it is decided not to invite direct negotiations at this stage, without prejudice to a later invitation as provided in Article 14, the Council shall decide which procedure under these Rules is applicable. Unless the Council decides to undertake the preliminary examination of the matter itself, it shall appoint a Committee (hereinafter referred to as "the Committee") of five individuals who shall be Representatives on the Council of Member States not concerned in the disagreement, and shall designate one of them as Chairman.

(3) The decisions under (2), in cases where negotiations are invited, may be postponed until the parties have either refused to enter into negotiations or reported that the negotiations have failed to solve the dispute.

CHAPTER IV

PROCEEDINGS

Article 7

Written proceedings

(1) The additional pleadings which may be filed by the parties shall consist of:

- Reply to be filed by the applicant,
- Rejoinder to be filed by the respondent.

(2) The pleadings shall be filed with the Secretary General within time-limits fixed.

(3) There shall be annexed to every pleading, copies or originals of all the relevant documents which the party filing the pleading may wish to have considered.

(4) After the filing of the last pleading, save in the case of the submission of written evidence pursuant to Article 9 or of observations in writing pursuant to Article 19 (5), no further documents may be submitted by any party except with the consent of the other party or by permission of the Council granted after hearing the parties.

Article 8

Investigations by Council

(1) The Council may at any time, but after hearing the parties, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion. In such cases it shall define the subject of enquiry or expert opinion and prescribe the procedure to be followed.

(2) A report incorporating the results of the investigation, together with the record of the enquiry and any expert opinion, shall be submitted to the Council in such form, if any, as the Council may have prescribed, and shall be communicated to the parties.

Article 9

Evidence

If the parties should desire to produce evidence in addition to any evidence produced with the pleadings, such evidence, including testimony of witnesses and experts, shall be submitted in writing, within a time-limit fixed by the Council, but on special application the Council may agree to receive oral testimony. The Council may also request the parties to call witnesses or experts to give testimony before it at an oral hearing.

Article 10

Declaration by witnesses and experts

(1) The testimony of a witness shall be verified by the following declaration:

“I solemnly declare upon my honour and conscience that my testimony contains the truth, the whole truth and nothing but the truth.”

(2) The statement of an expert shall be verified by the following declaration:

“I solemnly declare upon my honour and conscience that my statement is in accordance with my sincere belief.”

Article 11

Questions

At the oral hearing, any Member of the Council not a party to the dispute may put questions, through the President, to the agents of the parties or to any counsel or advocate appearing for them. Such questions, if any, may be answered immediately or at a later date to be fixed by the Council.

Article 12

Arguments

(1) Upon completion of the evidence, and after a reasonable period for preparation by the parties, they may present arguments to the Council within time-limits fixed by it.

(2) The final arguments shall be in writing, but oral arguments may be admitted at the discretion of the Council.

Article 13

Procedure before the Committee

(1) If under Article 6 of the present Rules a Committee has been appointed, it shall, on behalf of the Council, receive and examine all documents submitted in accordance with these Rules and, in its discretion, hear evidence or oral arguments, and generally deal with the case with a view to action being taken by the Council under Article 15. The procedures governing the examination of the case by the Committee shall be those prescribed for the Council when it examines the matter itself. While the Committee has charge of the proceedings, the functions of the President of the Council under these Rules shall be exercised by the Chairman of the Committee.

(2) Thereafter the Committee shall, without undue delay, present to the Council a report which shall be a part of the record of the proceedings. The report shall include a summary of the evidence and other matters on record and the findings of facts and the recommendations of the Committee.

(3) The Council shall cause a copy of the report of the Committee to be delivered to each party in the case and each of the parties may, within a time-limit fixed by the Council, submit to the Council its written observations on the said report or, if permitted by the Council, its oral observations.

(4) When considering the report of the Committee, the Council may make such further enquiries as it may think fit or obtain additional evidence.

Article 14

Negotiations during proceedings

(1) The Council may, at any time during the proceedings and prior to the meeting at which the decision is rendered as provided in Article 15 (4), invite the parties to the dispute to engage in direct negotiations, if the Council deems that the possibilities of settling the dispute or narrowing the issues through negotiations have not been exhausted.

(2) If the parties accept the invitation to negotiate, the Council may set a time-limit for the completion of such negotiations, during which other proceedings on the merits shall be suspended.

(3) Subject to the consent of the parties concerned, the Council may render any assistance likely to further the negotiations, including the designation of an individual or a group of individuals to act as conciliator during the negotiations.

(4) Any solution agreed through negotiations shall be recorded by Council. If no solution is found the parties shall so report to Council and the suspended proceedings shall be resumed.

Article 15

Decision

(1) After hearing arguments, or after consideration of the report of the Committee, as the case may be, the Council shall render its decision.

(2) The decision of the Council shall be in writing and shall contain:

- (i) the date on which it is delivered;
- (ii) a list of the Members of the Council participating;
- (iii) the names of the parties and of their agents;
- (iv) a summary of the proceedings;
- (v) the conclusions of the Council together with its reasons for reaching them;
- (vi) its decision, if any, in regard to costs;
- (vii) a statement of the voting in Council showing whether the conclusions were unanimous or by a majority vote, and if by a majority, giving the number of Members of the Council who voted in favour of the conclusions and the number of those who voted against or abstained.

(3) Any Member of the Council who voted against the majority opinion may have its views recorded in the form of a dissenting opinion which shall be attached to the decision of Council.

(4) The decision of the Council shall be rendered at a meeting of the Council called for that purpose which shall be held as soon as practicable after the close of the proceedings.

(5) No Member of the Council shall vote in the consideration by the Council of any dispute to which it is a party.

Article 16

Default of appearance or in defending

(1) If one of the parties does not appear before the Council or the Committee, if any, set up under Article 6, or fails to defend its case, the other party may call upon the Council to decide in favour of its claim.

(2) The Council must, before doing so, satisfy itself not only that it has jurisdiction in the matter but also that the claim is well founded in fact and law.

Article 17

Discontinuance

(1) If in the course of the proceedings the applicant informs the Council in writing that it is not going on with the proceedings, and if, at the date on which this communication is received by the Secretary General, the respondent has not yet taken any step in the proceedings, the Council, or its President if the

Council is not in session, will officially record the discontinuance of the proceedings, and the Secretary General shall inform the respondent accordingly.

(2) If, at the time when the notice of discontinuance is received, the respondent has already taken some step in the proceedings, the Council, or its President if the Council is not sitting, shall fix a time-limit within which the respondent must state whether it objects to the discontinuance of the proceedings. If no objection is so made, acquiescence will be presumed and the Council, or its President if the Council is not sitting, will officially record the discontinuance of the proceedings. If objection is made, the proceedings shall continue.

Article 18

Notification and appeal

(1) The decision of the Council shall be notified forthwith to all parties concerned and shall be published. A copy of the decision shall also be communicated to all States previously notified under Article 3 (1) (b).

(2) Decisions rendered on cases submitted under Article 1 (1) (a) and (b) are subject to appeal pursuant to Article 84 of the Convention. Any such appeal shall be notified to the Council through the Secretary General within sixty days of receipt of notification of the decision of the Council.

Article 19

Intervention

(1) Any State which is a party to the particular instrument, the interpretation or application of which has been made the subject of a dispute under these Rules, and which is directly affected by the dispute, has the right to intervene in the proceedings, but if it uses this right it shall undertake that the decision of the Council will be equally binding upon it.

(2) Any State which desires to intervene in a disagreement shall forthwith file a declaration to that effect with the Secretary General.

(3) Such declaration shall be communicated to the parties to the instrument concerned. If within a month of the despatch of this communication, any objection has been notified to the Secretary General with respect to the admissibility of an intervention under paragraph (1) of this Article, the decision shall rest with the Council.

(4) If no objection has been notified within the above-mentioned period or if the Council decides in favour of the admissibility of an intervention, as the case may be, the Secretary General shall take the necessary steps to make the documents of the case available to the intervening party who may file a memorial within a time-limit to be fixed by the Council, in no event later than the date fixed for the filing of the last pleading referred to in Article 7 (4).

(5) Any such memorial shall be communicated to the other parties to the disagreement who shall send to the Secretary General their observations in writing within a time-limit to be fixed by the Council. The memorial and observations may be discussed by the parties in the course of the subsequent proceedings in which the intervening party shall take part.

Article 20

Dismissal of proceedings

(1) (a) If at any time before a decision is reached the parties conclude an agreement for the settlement of the dispute, or agree to discontinue the proceedings, they shall so inform the Council in writing. The Council shall then officially record the conclusion of the settlement or the discontinuance of the proceedings.

(b) In the event that the original parties to a dispute conclude such an agreement, the Council shall terminate the proceedings notwithstanding the fact that additional parties have intervened. This provision does not affect the right of an intervening party to file an application on its own behalf respecting the subject matter of the original dispute.

(2) In case the termination of the proceedings is pursuant to a settlement between the parties, the terms of the settlement shall be transmitted to the President of the Council and he shall communicate such terms to all States previously notified under Article 3 (1) (b).

Part II

CHAPTER V

COMPLAINTS

Article 21

Form of request

Any Contracting State submitting a complaint to the Council regarding a situation defined in Article 1 (2) of these Rules shall file a request to which shall be attached a memorial containing the same particulars as in the case of an application submitted under Article 2.

Article 22

Action upon receipt of requests

Articles 3 (1) (a) and (c), 4 and 5 of Chapter III of Part I (*Action upon receipt of Applications*) shall apply correspondingly to a request submitted under the preceding Article.

Article 23

Appointment of Committee

(1) Upon the filing of the counter-memorial the Council shall meet and formally decide whether the matter falls under the category of complaints under the provisions listed in Article 1 (2).

(2) The Council shall, if the answer under (1) is in the affirmative, appoint a Committee composed as the Committee described in Article 6 (2) of these Rules.

Article 24

Proceedings before Committee

(1) The Committee shall thereupon inquire into the matter on behalf of the Council and shall call the States concerned into consultation.

(2) The Committee shall arrange the procedures for the consultation as far as possible in agreement with the parties, and on an informal basis in accordance with the circumstances of each case. It may request additional information and summon representatives of the parties to meet with the Committee at the seat of the Organization or in any other place.

Article 25

Report of Committee

(1) The Committee shall report to Council on the outcome of the consultation held as expeditiously as possible.

(2) If the consultation has failed to resolve the difficulty the report may include proposed findings and recommendations to the States concerned.

Article 26

Council Action

(1) After receiving the report of the Committee the Council shall consider it.

(2) If a settlement has been reached through consultation the terms of the settlement shall be recorded and communicated to all States notified of the proceedings.

(3) If consultation has failed to resolve the difficulty the Council may make appropriate findings and recommendations to the States concerned. Article 15 shall apply, *mutatis mutandis*, in this case.

Part III

CHAPTER VI

GENERAL PROVISIONS

Article 27

Agents

(1) A State which becomes a party to the proceedings on disagreements or complaints under these Rules shall name an agent authorized to represent it and to act for it in the proceedings, provided that a Representative on the Council of any Member State shall not be nominated as an agent.

(2) The agent may have the assistance of counsel or advocates. The name of any assisting counsel or advocate shall be communicated to the Council in advance of any meeting where he will be present.

(3) The agents shall be invited to attend any meeting convened to discuss the case.

Article 28

Procedural measures

(1) The Council shall determine the time-limits to be applied, and other procedural questions related to the proceedings. Any time-limit fixed pursuant to these Rules shall be so fixed as to avoid any possible delays and to ensure fair treatment of the party or parties concerned.

(2) The Council may at any time extend any time-limit that has been fixed under these Rules, either at the request of any of the parties or at its own discretion. It may also in special circumstances and after hearing objections from any party, decide that any step taken after the expiration of a time-limit shall be considered as valid.

(3) In respect of fixing or extending a time-limit under these Rules, the President of the Council shall act on behalf of the Council when it is not in session.

Article 29

Languages

(1) A party may make its submissions, written or oral, in any of the four working languages of the Organization and, at the request of any of the other parties, these shall be translated into each of the other languages under arrangements to be made by the Secretary General. The Council may at the request of any party authorize another language to be used by that party, in which case the necessary arrangements for translation shall be made by the party concerned.

(2) The text of the decision of the Council in case of a disagreement, or its findings and recommendations in case of a complaint, shall be rendered in the four working languages, and each of such texts shall be of equal authenticity unless all the parties agree that any of the texts shall be considered as the authentic one.

Article 30

Records and publicity

(1) The Secretary General shall keep a full record of the proceedings.

(2) A verbatim transcript shall be made of any oral testimony and any oral arguments and incorporated into the record of the proceedings.

(3) The record of the proceedings shall, unless otherwise ordered by the Council, be open to the public. The Council may open to the public any part of the record previously ordered to be withheld from the public.

Article 31

Costs

(1) Unless otherwise decided by the Council, each party shall bear its own costs.

(2) All other costs may be assessed to the parties in proportions fixed by the Council.

Article 32

Suspension of the Rules

Subject to agreement of the parties, any of these Rules may be varied or their application suspended when, in the opinion of the Council, such action would lead to a more expeditious or effective disposition of the case.

Article 33

Amendments to the Rules

The present Rules may, at any time, be amended by the Council. No amendment shall apply to a pending case except with the agreement of the parties.

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