REJOINDER SUBMITTED BY THE GOVERNMENT OF PAKISTAN

INTRODUCTION

This Rejoinder is submitted to the International Court of Justice by the Government of Pakistan (hereinafter referred to as "the Respondent") pursuant to an Order of the Acting President of the Court in answer to the Reply submitted on 17 April 1972 by the Government of India (hereinafter referred to as "the Applicant").

2. The Respondent reaffirms the statements of fact and submissions of law made in the Counter-Memorial dated 29 February 1972 and denies all statements, allegations, assertions, submissions and contentions contained in the Applicant's Reply, which are repugnant to or inconsistent with the contents of the said Counter-Memorial.

3. The Respondent submits that the Applicant has misconceived the statements and submissions made by the Respondent and has attempted to side-track the various issues of fact and law raised in the Counter-Memorial.

4. The Respondent now proceeds to give Rejoinder to the various statements of fact and submissions of law embodied in the Applicant's Reply. The Respondent reserves its position with regard to all facts, arguments, points, submissions and contentions which are set out in the Applicant's Memorial and Reply and which are not expressly admitted by the Respondent in the Counter-Memorial and the Rejoinder.

CHAPTER I

STATEMENT OF THE CASE

(Reply of India, Paragraphs 5-10)

A. India Is in Breach of Its Obligations under the Convention and the Transit Agreement

5. The Respondent reasserts the Statement of fact and law as set out in paragraphs 5 and 6 of Part I of the Counter-Memorial.

6. The Respondent submits that the Indian action, taken on 4 February 1971, unilaterally suspending all Pakistani flights over Indian territory was *mala fide* and contrary to India's international obligations under the Convention and the Transit Agreement. The purported termination or suspension of the Convention and Transit Agreement was against the recognized principles of law and had no legal effect. The Indian action in suspending overflights over its territory was contrary to the principle of *pacta sunt servanda* and was discriminatory in character.

7. The Applicant erroneously assumes that the Convention and Transit Agreement were not in force after 1965 conflict between the two countries and subsequently were never revived. On the basis of the assumption, the Applicant has asserted that suspension of Pakistani flights over India was not in breach of the Convention and the Transit Agreement. The Respondent submits that the Convention and the Transit Agreement were in operation on 4 February 1971 between the two countries and the Indian action constitutes a violation of its international obligations thereunder.

B. Principal Question before the Court

8. In the Respondent's view the principal question before the Court is whether the decision of the Council in rejecting the Preliminary Objection of the Government of India is correct in law. In the alternative, it is submitted that in the events that have happened and in the circumstances disclosed in the Application of Pakistan submitted to the Council of ICAO, the principal question before the Court is whether the Council has no jurisdiction to entertain the said Application presented by Pakistan.

C. India's Negative Attitude to Settle the Dispute Amicably Even in Disregard to Recommendations of the Council

9. The Respondent denies the allegations made in paragraph 9 of the Applicant's Reply. Before approaching the Council of ICAO, Pakistan made repeated efforts to settle the dispute with the Government of India by peaceful negotiations but without any fruitful results [1]. Efforts to settle the matter peacefully were also made pursuant to *(a)* the Council Resolution, dated 8 April 1971 [2], *(b)* and recommendations of the Council made at its Vienna

[1] Indian Memorial (hereinafter referred to as I.M.), pp. 77-79, *supra*.

[2] See Draft Council Minutes LXXII/22 (closed) Part I—Decisions, 14 April 1971.

Session [1] and *(c)* paragraph 4 of the ICAO Secretary General's letter, dated 30 July 1971 [2], which reiterated the Council resolution of 8 April 1971. All along India's attitude has been negative.

10. It is reiterated that the Applicant in its Preliminary Objection dealt with the merits of the dispute and referred to the events and circumstances which are extraneous and irrelevant to the issues in question.

[1] See Draft Council Minutes LXXIII/12 (closed) Decisions, 14 May 1971.
[2] Counter-Memorial of Pakistan, February 1972—Annex II, p. 398, *supra*.

CHAPTER II

THE EVENTS OF 1965 AND 1966

(Reply of India, Paragraphs 11-24)

A. Convention and Transit Agreement Are in Force Between India and Pakistan

11. The Applicant erroneously asserts in paragraph 11 of the Reply that since the outbreak of armed hostilities between the two countries in 1965 the Convention and the Transit Agreement were not in force as between India and Pakistan. The Respondent submits that the armed conflict of 1965, as is apparent from subsequent events, did not affect the treaties in force between the two countries. Moreover, the Convention and Transit Agreement expressly provide for the exigency of war and only give freedom of action to a contracting State in relation to its rights as a belligerent or neutral. When, however, the conflict ends, and belligerent or neutral rights cease to exist, the provisions of the Convention and the Transit Agreement have to be implemented. The Respondent reiterates the statements contained in paragraphs 7, 8 and 9 of the Counter-Memorial.

B. There Is no Special Agreement of 1966 and Indian Notification of 10 February Is not Relevant

12. The Applicant has unjustifiably described the steps taken in 1966 to implement the Convention and the Transit Agreement as the "Special Agreement of 1966". As mentioned above, the brief conflict of 1965 did not affect treaty relations between the two countries. Indeed, the Indus Water Treaty of 1960 and the Rann of Kutch Arbitration Agreement continued to be implemented. In order to normalize relations between the two countries, the Prime Minister of India and the President of Pakistan signed the Tashkent Declaration [1] and in Article VI thereof agreed "to take measures to implement the existing agreements between India and Pakistan". In order to implement the existing agreements letters were exchanged between the Prime Minister of India and the President of Pakistan on 3 February 1966 and 7 February 1966 [2] respectively, in which they decided to immediately resume overflights across each other's territory "on the same basis as that prior to 1 August 1965".

13. The Notification dated 10 February 1966 [3] of the Government of India has no bearing whatsoever on the Applicant's international obligations towards Pakistan. The reference to the Aeronautical Information Circular (AIC) in paragraphs 12 and 13 is irrelevant and uncalled for. It would be appropriate to point out in the following paragraphs the actual significance of AIC which can be issued under Annex 15 [4] to the Convention.

[1] I.M., pp. 352-353, *supra*.

[2] *Ibid.*, p. 354, *supra*.

[3] *Ibid.*, p. 120, *supra*.

[4] *International Standards and Recommended Practices*, Aeronautical Information Services, Annex 15 to the Convention on International Civil Aviation, Chicago, 1944, thereinafter referred to as Annex 15.

(i) Annex 15 lays down the Standard and Recommended Practices in respect of Aeronautical Information Services to be provided by the Contracting States. Chapter 6 of the Annex requires that "AIC shall be originated whenever it is necessary to promulgate aeronautical information which does not qualify:

(a) Under the specifications in 4.1 for inclusion in Aeronautical Information Publication; or

(b) Under the specification under 5.1 for the origination of NOTAM (Notice to Airmen)" [1].

(ii) The Annex in Chapter 6 also lays down that "an AIC shall be originated whenever it is desirable to promulgate:

(a) a long term forecast of any major change in legislation, regulations, procedures or facilities;

(b) information of a purely explanatory or advisory nature liable to affect flight safety; and

(c) information or notification of an explanatory or advisory nature concerning technical, legislative or purely administrative matters.

Note: The publication of an AIC does not remove the obligation set forth in Chapters 4 and 5 [2]."

(iii) In paragraph 13 of the Reply, the Applicant has not given the correct and full quotation from Annex 15 regarding the issue of AIC and has omitted the words "a long term forecast of any major change in legislation", for which AIC can be promulgated. In Chapter 4, paragraph 4.1, the Annex lays down that Aeronautical Information Publication (AIP) shall contain current information relating to those subjects enumerated in Appendix 1 to the Annex. Paragraph 6.1 of Appendix I to the Annex reads as follows:

"6.1 Entry, Transit and Departure.
Regulations (including Customs, Immigration and Health, and requirements for advance notification and applications for permission) concerning entry, transit and departure of:

1. civil aircraft on international flights;
2. non-immigrant passengers and crew;
3. cargo;
4. provisions for facilitating entry and departure for search, rescue, salvage, investigation, repair or salvage in connection with lost or damaged aircraft [3]."

(iv) In view of the requirements under which an AIC can be issued under Annex 15, Chapter 6, including the note thereunder, it is clear that the "entry and transit regulations" can only be laid down in AIP and not in AIC. In accordance with the requirements of Paragraph 6.1 of Appendix I to Annex 15 referred to above, India has laid down in its AIP, the following regulations governing the flight of foreign aircraft into or in transit across Indian territory:

[1] *Ibid.*, p. 12.
[2] Annex 15, Chap. 6, p. 12.
[3] Annex 15, Appendix I, p. 18.

"2.3. ENTRY PROCEDURE.
The following regulations shall govern the flight of foreign aircraft into or in transit across Indian territory other than regular scheduled flights by International air services performed under any agreement concluded between the Government of India and a Foreign State or under any temporary authorization issued by the Government of India:

2.3.1. At least 72 hours' notice shall be given to Aerodrome Officer-in-Charge of the Airport of entry or the Director General of Civil Aviation, New Delhi, of any flight by such aircraft specifying the following particulars:

(a) The route to be flown;
(b) The date of proposed flight;
(c) The type of aircraft;
(d) The nationality and registration marks of the aircraft;
(e) The callsign of the aircraft;
(f) The description of the radio equipment carried;
(g) The name of the Commander of the aircraft;
(h) The name, address and nationality of operator of the aircraft;
(i) The number of crew and also of passengers if any, as well as general description of goods carried; and
(j) Such other information as may be required by the DGCA.

Note: Provided that prior permission of the Central Government shall be required in respect of flights over or into Indian territory by aircraft registered in States which are not parties to the Convention on International Civil Aviation, Chicago, 1944 [1]."

The AIP (India) lays down the regulations regarding the entry procedure governing the flight of foreign aircraft including Pakistan aircraft, into or in transit across Indian territory on other than regular scheduled flights which requires only 72 hours' notification and not prior permission as envisaged in Article 5 of the Convention. It is, therefore, clear that the Notification of 10 February 1966 cannot be invoked by the Government of India to wriggle out of its international obligations towards Pakistan. In any event the said Notification is a domestic legislation of India and has no bearing on the Applicant's international obligations.

(v) In her letter of 3 February 1966 to the President of Pakistan, the Prime Minister of India said:

"We had thought that this matter would be settled at a meeting between the Ministers of both countries within a few days along with other problems connected with the restoration of communications. As it appears that such a meeting might take some time, we would be agreeable to an immediate resumption of overflights across each other's territory on the same basis as that prior to 1 August 1965. Instructions are being issued to our civil and military authorities accordingly [2]."

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[1] API, India, Second Edition, p. FAL 1-2.
Note: Pakistan has also AIP which is applicable to the aircraft of all Contracting States.

[2] I.M., p. 354, *supra*.

It will be noticed that the letter does not state that the resumption of overflights will be conditional on permission of the Government of India in each particular case. It is not now open to the Applicant to rely on municipal law in an attempt to avoid international obligations. The correct position in this respect has been set out in paragraphs 35 and 36 of the Counter-Memorial.

14. The position stated in paragraph 14 of the Reply is incorrect. The assertions in paragraph 10 of the Counter-Memorial are not irrelevant. In fact Applicant has tried to retract from its original stand taken in the Preliminary Objection before ICAO in paragraph 28 thereof. India had stated therein that the "air transit and overflying each other's territory was governed by a 'Special Régime' between India and Pakistan in 1948 and continues to be so governed uptil today". This is incorrect as India herself had invoked the provisions of the Convention and the Transit Agreement in 1952 [1] by approaching the ICAO Council against Pakistan.

15. The Respondent reaffirms the facts contained in paragraph 11 of the Counter-Memorial and asserts that the position taken by the Applicant in paragraph 15 of the Reply is incorrect and misleading.

16. The position taken in paragraph 16 of the Reply is incorrect. In paragraphs 12 and 13 of the Counter-Memorial, the Respondent has given a correct interpretation of the provisions of the Tashkent Declaration and of the contents of the letters that were exchanged between the Prime Minister of India and the President of Pakistan in February 1966. The interpretation is further fortified by the submissions in paragraphs 12 and 13 of the Rejoinder.

17. The Respondent submits that in paragraph 17 of the Reply, the alleged "incontrovertible basic facts" are misconceived and incorrect. Firstly, the letters exchanged between the Prime Minister of India and the President of Pakistan in February 1966 referred to the resumption of overflights on the same basis as that prior to 1 August 1965. Secondly, taking into consideration the obligation to implement the existing agreements in terms of Article VI of the Tashkent Declaration, the phrase "on the same basis" could only mean that the overflights were resumed on the basis of the Convention and the Transit Agreement. The Applicant has misconstrued paragraph 14 of the Counter-Memorial. The Respondent reaffirms contents thereof and reiterates the facts stated therein.

C. Indian Government's Permission Was not Sought for Landings

18. The statement made in paragraph 18 of the Reply by the Applicant is denied. It is stated that there are two types of aircraft operations: *(a)* scheduled and *(b)* non-scheduled. In respect of scheduled services no permission is required under the Transit Agreement for either non-traffic landings or for flying across the territories of the parties to the Agreement. There is not a single case where permission was sought by either Pakistan or India in respect of scheduled services for making non-traffic landings or flying across other's territory. In case of non-scheduled services, no prior permission is required for making non-traffic landings under Article 5 of the Convention. However, in respect of overflights of non-scheduled flights, the State overflown has a right to require landings in its territory. It is denied that prior permission was requested for non-scheduled flights to make non-traffic landings in India. As

[1] Counter-Memorial, Annex III, p. 399, *supra*.

regards instances enumerated in paragraph 18 by the Applicant, it is stated that the instances firstly, relate to non-scheduled flights and secondly, relate to obtaining Air Defence Clearances as required under the Air Defence Regulations [1] laid down in the Aeronautical Information Publication of India and apply to all aircraft irrespective of their nationality and do not apply to Pakistan aircraft only. The Air Defence Clearance does not constitute "prior permission" as alleged by the Applicant.

In any case the position as regards the five instances mentioned in paragraph 18 of the Reply, is as under:

> Cases (1), (2), (3) and (5) relate to the aircraft AP-AMC a Dakota (DC3) type aircraft meant for calibration of navigational aids which had to make non-traffic landings in India to uplift fuel. It is submitted that with regard to these instances the same procedure was followed by the two countries even prior to September 1965 conflict. The following instances of the cases prior to September 1965 should suffice:
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> (1) Case A: Year 1964.
> On 5 August 1964 DGCA, Pakistan, sent a signal to DGCA, India, requesting no objection for the technical landing of Pakistan aircraft AP-AMC at Delhi on a flight from Karachi to Dacca. On 6 August 1964 DGCA, India, gave no objection to the aircraft making technical landing at Delhi.
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> (2) Case B: Year 1965.
> On 16 August 1965 DGCA, Pakistan, sent a signal to DGCA, India, requesting no objection for the technical landing of Pakistan aircraft AP-AMC at Delhi on a flight from Dacca to Karachi. On 17 August 1965 DGCA, India, gave no objection to the aircraft *making technical landing at Delhi.*
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> Case (4) quoted by the Applicant relates to a helicopter. In this case also, the same procedure as prior to September 1965 was followed as is apparent from the following:
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> (3) Case C: Year 1963.
> On 5 October 1963 a signal was sent by DGCA, Pakistan, to DGCA, India, requesting no objection to the operation of a ferry flight by PIA Helicopter AP-AOA from Karachi to Dacca making technical landings in India. The DGCA, India, by a signal of 21 October 1963 regretted its inability to grant permission but subsequently agreed by a signal of 11 November 1963 to the helicopter making technical landing in India.

19. It is denied that there existed any special agreement of 1966 and that there was any uniform practice of the two countries which was inconsistent with the Convention and the Transit Agreement. The Respondent reasserts that the Convention and the Transit Agreement were in operation between the two countries.

[1] API, India, Second Edition, p. RAC. 6-3—Extracts in Annexure 1 to this Rejoinder.

Note: Curiously enough the said "instances" were not mentioned by the Applicant in the Proceedings before the Council. It is only in the Reply that the Applicant has referred to them.

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

20. The statement made in paragraph 20 of the Reply is misconceived and incorrect. It is submitted that the two incidents mentioned in paragraph 14 of the Counter-Memorial have been correctly cited by the Respondent.

21. The version given by the Applicant in paragraph 21 of the Reply is erroneous and misleading. The correct position is as under:

(i) Pakistan had a right to conduct the inquiry into the accident of the Indian aircraft by virtue of Article 26 of the Convention. Under this Article India had a right to appoint Observers and Advisers to be present at the Inquiry and also receive the inquiry report from Pakistan. Under Annex 13 to the Convention also, India had a right to appoint accredited representative, advisors and to approve the publication of the inquiry report by Pakistan [1]. The signals and letters sent to DGCA, Pakistan, by DGCA, India, in connection with the inquiry are annexed [2] which indicate that Pakistan and India carried out their obligations and exercised their rights in accordance with the Convention and Annex 13 thereto. It shows that the Convention continued to be in force between the two countries.

(ii) and (iii) Rule 77A of the Pakistan Aircraft Rules is in accordance with Article 26 of the Convention and Annex 13 thereto. Similar rules are in force in India.

(iv) The Respondent does not accept the averments made in paragraph 21 (iv). The Respondent is not aware of the accident in Nepal which took place in March 1958 and the investigation conducted in respect thereof. In the absence of full particulars and documents, the Respondent does not admit the statement by the Applicant. Suffice to say that so far as India is concerned, its participation in the inquiry conducted by Pakistan was in accordance with the Convention and Annex 13 thereto.

(v) The statement made by the Applicant in paragraph 21 (v) is incorrect and unjustified. Pakistan and India both are parties to the Convention and have accepted the Procedures for Air Navigation Services as set out in ICAO Document 4444. The Pakistan Inspector investigating the accident to the Indian aircraft had to make inquiries whether the relevant procedures laid down in the document had been complied with by the Indian Air Traffic Controller. A State which is not a party to the Convention may or may not follow the Procedures but only Contracting States could invoke the provisions of the said Document. Pakistan and India being parties to the Convention, Pakistan invoked the provisions of the said Document and India complied therewith.

22. The Respondent denies the contents of paragraph 22 of the Reply. In this connection it is stated that ICAO in its Air Navigation Plans had shown the whole of the disputed State of Jammu and Kashmir included in Delhi FIR. The question was taken up with ICAO by Pakistan so that the ICAO Charts in the Regional Air Navigation Plans, Document 8700, were amended

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[1] *International Standards and Recommended Practices*, Aircraft Accident Inquiry, Annex 13 to the International Civil Aviation, Chicago, 1944 (hereinafter referred to as Annex 13), para. 5.5 of Chap. 5 and paras. 6.1, 6.2 of Chap. 6.

[2] Annexure II to this Rejoinder.

to indicate the correct position which was in conformity with the recommendations contained in Annex 11 (para. 2.7.1) to the Convention which states "that the delineation of airspace wherein air traffic services are to be provided, should relate to the nature of the route-structure and the need for efficient service rather than to the international boundaries". This matter was taken up at the LIM MID RAN Meeting held in Geneva in 1965 which endorsed Pakistan's proposal and made a recommendation accordingly. But as further action on this recommendation was not taken, the matter was discussed between the Delegations of Pakistan and India during the Manila Regional Air Navigation Meeting 1968. Summary of this informal meeting is annexed [1]. Pursuant to the decision taken at this informal meeting, a meeting between the representatives of the two countries was held in Bangkok in 1970. Report of the meeting is annexed [2]. This clearly shows that both India and Pakistan acted in accordance with the Convention.

23. The statement made in paragraph 23 of the Reply is wholly erroneous. It is submitted that it is clear from paragraphs 20, 21 and 22 of this Rejoinder that the two incidents cited by the Respondent in sub-paragraphs *(a)* and *(b)* of paragraph 14 of the Counter-Memorial, have been correctly cited and show that the Convention and the Transit Agreement continued to be in operation between the two countries.

24. The Respondent maintains that both the incidents are wholly consistent with the treaties continuing in force. It is stated that the incidents referred to by the Respondent involved the question of overflying or landing in each other's territory, and had relevance to the Respondent's assertion that the Convention and the Transit Agreement continued to be in operation between the two countries.

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[1] Annexure III to this Rejoinder.
[2] Annexure IV to this Rejoinder.

CHAPTER III

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

A. Proper Construction of the Letters Exchanged Between the President of Pakistan and the Prime Minister of India

25. In paragraph 25 of the Reply, the Applicant has misconstrued the Tashkent Declaration, the letters dated 3 and 7 February 1966 exchanged between the Prime Minister of India and the President of Pakistan and the signals exchanged between the Civil Aviation authorities of the two countries. The reference therein to the alleged Notification of 10 February 1966 is irrelevant. The Respondent reaffirms the statements made in paragraphs 13, 21, 32, 34 and 35 of the Counter-Memorial. The correct position is as follows:

1. It is denied that the Respondent failed to perform its obligations under the Tashkent Declaration as it did all that it could thereunder. It is submitted that the Tashkent Declaration did embody an obligation on the parties to implement all existing agreements between the two countries. In any case, so far as resumption of overflights is concerned, the Applicant is estopped from relying on the alleged package-deal or on the alleged non-restoration of *status quo ante* the armed conflict. This has been admitted by the Applicant in its Note of 3 February 1971, wherein it was stated as under:

   "The Government of India wish to remind Government of Pakistan that after Indo-Pakistan conflict of August/September 1965 they would have been well within their right to disallow the resumption of overflight so long as relations between India and Pakistan had not been fully normalized. However, on a specific request made by the then President of Pakistan, the Government of India agreed, in February 1966 to forego their right to demand prior settlement of outstanding issues and consented to resume mutual overflights [1]."

2. The letters exchanged between the Prime Minister of India and the President of Pakistan in February 1966 provided for the resumption of overflights "on the same basis as that prior to 1st August 1965". Taking into consideration the obligation of the parties to implement existing Agreements laid down in Article VI of the Tashkent Declaration, the "basis" on which the overflights were resumed could only mean the Convention and the Transit Agreement which on India's own admission were in existence prior to 1 August 1965. The Applicant's contention that this "basis" related to fixing of routes, procedures for obtaining permission, etc., is erroneous as no such basis existed prior to 1 August 1965 and no such condition was laid down in the letters exchanged.

3. That the "basis" on which overflights were resumed was the Convention and the Transit Agreement, is apparent among others, from the following facts:

   (a) Under the Convention, aircraft engaged in non-scheduled interna-

[1] Counter-Memorial, Annex IV.

tional air services have the right to make technical landing without obtaining prior permission and to transit non-stop subject to the State overflown to require landing. Again under the Transit Agreement the right to make technical landing and to overfly without landing is available to the scheduled international air services. The resumption of overflights under the letters exchanged pertained to both scheduled and non-scheduled flights and the letter read with Article VI of the Tashkent Declaration, constituted an agreement for the restoration of overflights and technical landings as envisaged in the Transit Agreement and the Convention.

(b) The signals [1] exchanged between DGCA, Pakistan, and DGCA, India, were merely administrative steps pursuant to the letters exchanged between the Prime Minister of India and the President of Pakistan. The letter of 3 February 1966 from the Prime Minister of India states: "instructions are being issued to Civil and Military authorities accordingly." The letter of the President of Pakistan of 7 February 1966 states: "I am also issuing immediate instructions to our Civil and Military authorities to permit resumption of air flights of India and Pakistan planes across each other's territory on the same basis as that prior to 1 August 1965." The first signal which was sent to DGCA, India, by DGCA, Pakistan, on 15 January 1966 reads as follows: "Request confirm, no objection to the resumption of normal operations by PIA to and across India." In reply DGCA, India, stated: "Reference your signal of 15 January 1966, our Government has agreed to restoration of overflights of scheduled services between India and Pakistan. We would suggest meeting soonest possible to determine details including earliest date of the resumption and routes over which overflights can be resumed. We would be grateful for immediate reply regarding date and venue." The signal of 7 February 1966 to DGCA, India, reads: "we agree to the resumption of overflights in accordance with the procedure existing before 1 August 1965." PIA's inter-wing schedule for overflights was filed with DGCA, India, in this signal. To this signal, DGCA, India, replied on 8 February 1966, that "we agree to the resumption of overflights of scheduled services that PIAC proposes to resume". In this signal, schedule of Indian Airlines was filed with DGCA, Pakistan.

It is clear from this signal that Indian authorities only acknowledged the details of the overflights of Pakistan International Airlines Corporation. No prior permission was requested for such flights.

On 9 February 1966, DGCA, Pakistan, signalled to DGCA, India, that whereas all former routes over Pakistan territory which existed before 1 August 1965 were made available for the operation of Indian Airlines Corporation and Air India International, India did not open all the routes for PIA operations. Therefore, Pakistan authorities informed DGCA, India that "till the opening of the routes by India all the routes over Pakistan will be available to Indian Airlines on provisional basis". To this India replied on 9 February 1966, that "opening of other PDRs (predetermined routes) are under active consideration".

In the circumstances it is clear that these signals were merely administrative steps towards implementation of the existing agree-

[1] Annexure V to this Rejoinder.

ments. By no stretch of interpretation can these signals be construed to constitute an "agreement" between the two countries replacing the Convention and the Transit Agreement. India's Notification dated 10 February 1966 which provided that "Pakistan flights over India could take place only with the permission of the Central Government and in accordance with the terms and conditions of such permission" could not absolve India from its obligations under the Convention and the Transit Agreement.

(c) It is denied that between 1966 to 1971, Pakistan aircraft on scheduled and non-scheduled flights invariably complied with the Notification of the Government of India of 10 February 1966 either for overflying Indian territory or for technical landings. The position has already been explained in paragraph 18 of the Rejoinder.

B. The Convention and the Transit Agreement Were in Operation when India Unilaterally and Illegally Suspended the Overflightsof Pakistani Aircraft in February 1971. The Council Has Jurisdiction to Deal with the Matter

26. The Convention and the Transit Agreement were in operation between India and Pakistan at the time of illegal suspension of Pakistan overflights in February 1971. The Indian aircraft landed at Lahore in the circumstances disclosed in paragraph 19 of the Counter-Memorial. Notwithstanding the best efforts of the Government of Pakistan, the hijackers destroyed the aircraft on 2 February 1971. On 3 February 1971 the Applicant in its Note claimed damages in respect of destruction of the aircraft, etc. On the following day in their Note of 4 February 1971, the Applicant demanded compensation for the loss of the aircraft, etc., and the damages caused by the destruction of the hijacked aircraft in Lahore. It was further stated that "until the matter is satisfactorily resolved, the Government of India suspends with immediate effect the overflights of all Pakistani aircraft, civil or military over the territory of India. This decision is made not to inconvenience people of India and Pakistan but is taken with the hope that the Government of Pakistan will settle this matter amicably and peacefully without delay" [1]. The Applicant has since sought to link the suspension with the alleged breach by Pakistan of the Convention and the Transit Agreement, which is an after-thought. The suspension was arbitrary and illegal and the Council has jurisdiction to deal with the matters presented by Pakistan.

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[1] I.M., p. 78, *supra.*

CHAPTER IV

THE HIJACKING INCIDENT OF 1971

(India's Reply, Paragraphs 27-35)

27. *The Respondent reaffirms the statements and submissions contained* in paragraphs 16 to 21 of the Counter-Memorial.

28. The conclusions of the Commission of Inquiry set up by the Government of Pakistan were reached after thorough investigation and examination of all witnesses and data connected with the incident of hijacking. The facts set out in paragraph 19 of the Counter-Memorial are correct.

The Commission of Inquiry found that the aircraft was destroyed by the hijackers by setting it on fire. The fact that the arms carried by the hijackers were dummy weapons, was discovered subsequently.

The hijackers announced, after the landing of the plane, that they were Kashmiri freedom fighters. India has consistently indulged in a policy of repression against the people of Jammu and Kashmir who have steadfastly demanded right of self-determination. In these circumstances, it is not surprising that the citizens of Lahore, who have whole-heartedly supported the struggle of the oppressed people of Kashmir against Indian occupation, gave an enthusiastic reception to the hijackers. It is denied that this reception was either with the concurrence or the connivance of the authorities.

29. The hijackers were certainly not lionized as heroes by the Government of Pakistan. The public and the press, of course, could not be prevented from expressing their individual opinion. The Press reports referred to by the Applicant are unreliable and denied. It was only after the hijacking incident that the Government of Pakistan suspected the motives of the hijackers. Their suspicions were further confirmed by the subsequent events, among *them being Sheikh Abdullah's letter published in the Indian Press of New* Delhi on 15 February 1971 which stated, *inter alia*:

> "The revelations made since the incident, by the responsible quarters, have raised grave doubts in my mind and perhaps in the minds of many others, as to the veracity of the stories put out in regard to the agencies responsible for this act. Nevertheless, it has become abundantly clear that the chief hijacker was an employee of the (Indian) Border Security Force. He had crossed over to Pakistan, reportedly got training in hijacking there; after recrossing to this side of the ceasefire line, he was re-employed by Security Force and stationed on duty at the airport, ostensibly to keep watch on possible hijacking as reported by the Press. The hijackers had told his employers the possibility of skyjacking, which information was communicated to the Kashmir Government by the agency under whose employ the hijacker was. The Kashmir Police wanted to interrogate the person, but according to the Chief Minister Mr. Sadiq, the agency refused to identify him or surrender him to Kashmir Police for interrogation. Finally, the man with one of his accomplices, boards the plane with the full knowledge of the Border Security Force and carried out his mission, forcing the plane to land at Lahore. His first act there was to contact the person who is reported to

> be the leader of the Kashmir Liberation Front, named Mohd. Maqbool Butt. Now this Maqbool Butt was involved in some murder case in Kashmir and was tried and sentenced to death. How he managed to escape the jail has uptil now remained a mystery. Regarding his enlisting the official assistance in the dramatic escape from the jail it is being said that he was deliberately allowed to escape and cross over to Pakistan in order to use his services there for furtherance of the plans."

As reported in the *Hindustan Times*, Delhi of 3 February 1971 [1], the then Chief Minister of Indian occupied Kashmir Government had made allegation that hijacker Mohammad Hashim Qureshi had received protection from a Central Agency and had stated that the Kashmir Police had wanted to interrogate Qureshi but the Central Agency (of India) had refused them permission.

> The position was summed up by Mr. Z. A. Bhutto (now President of Pakistan) before the Security Council in his speech on 13 December 1971 wherein he said: "India had instigated a hijacking incident in Lahore in January 1971 as a pretext to ban air transport between East and West Pakistan."

30. The reference to the airspace of the disputed state of Jammu and Kashmir in paragraph 16 is not irrelevant.

31-33. The possession of the aircraft could not be restored to the Captain because the hijackers never gave up physical control of the aircraft. Attempts by the Pakistan authorities to persuade them to release the plane were not successful. Any attempt to disarm or arrest them or to use force against them would have been disastrous. Mention must also be made of the serious law and order situation created by the huge crowd collected at the airport. Notwithstanding this serious situation, the authorities tried on 2 February 1971 to isolate the hijackers so that conditions could be created which could permit taking possession of the aircraft. As soon as the hijackers realized this, they proceeded to destroy the aircraft. The position regarding the Indian relief plane has already been explained in paragraph 19 *(g)* of the Counter-Memorial. The hijackers and their accomplices are being tried before a Special Court headed by a Senior Judge of the Supreme Court of Pakistan.

34. If the Indian planes ceased to overfly Pakistan from 4 February 1971, it was due to India's own accord. Pakistan did not take any action to disallow the overflights of Indian aircraft, even after India's unilateral and illegal suspension of overflights of Pakistani aircraft.

35. The contention of the Applicant in paragraph 35 is misconceived and the Respondent reaffirms the statement made in paragraph 21 (A) at page 377, *supra*, of the Counter-Memorial.

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[1] I.M., pp. 136-137, *supra*.

CHAPTER V

JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

(India's Reply, Paragraphs 36-41)

36. The Respondent reasserts that the Appeal of the Government of India against the decision of the Council in respect of the Application of Pakistan could be founded, if at all, on the following provision:

(a) Article 37 of the Statute.
(b) Article 84 of the Convention.
(c) Article II, section 2, of the Transit Agreement.

37. The Respondent had contended in paragraph 24 (A) of the Counter-Memorial that the Court's jurisdiction could not be based on Article 36 (1) of the Statute since that Article relates to the original jurisdiction of the Court and comprises "all cases which the parties refer to it"; and that in the instant case, no reference has been made by the parties. The Applicant, while conceding this point, has now referred to the latter part of paragraph 1 of Article 36 as the basis of the Court's jurisdiction which reads as follows:

> "The jurisdiction of the Court comprises ... all matters specially provided for in the Charter of the United Nations or in treaties and Conventions in force."

The Applicant further states that "the Chicago Convention and the Transit Agreement are treaties and Conventions in force". Since the Applicant now contends that this jurisdiction is based on the Chicago Convention and Transit Agreement which are "treaties and Conventions in force", the Applicant's statement is a clear admission of the fact that the Convention and the Transit Agreement were in force between the parties at the time the cause of action arose and continued to be so. However, it is submitted that the reference to Article 84 of the Chicago Convention is to the Permanent Court of International Justice and not to the International Court of Justice, whereas in Article 36 (1) the term "Court" refers to the International Court of Justice. Consequently jurisdiction can be based, if at all, on Article 84 of the Convention and Article II, section 2, of the Transit Agreement, as read with Article 37 of the Statute. Article 37 of the Statute, which provides for a succession of jurisdiction from the Permanent Court to the present Court, is the provision which is applicable in the instant case, since it provides:

> "Whenever a treaty or convention in force provides for reference of a matter to ... the Permanent Court of International Justice, the matter shall, as between the parties to the present statute, be referred to the International Court of Justice."

It may be mentioned that the submissions of the Respondent in respect of Article 36 (2) of the Statute of the Court set out in paragraph 24 (B) of the Counter-Memorial, have not been contested by the Applicant.

38. The Respondent submits that the contentions of the Applicant in paragraph 38 of the Reply are fallacious and reaffirms the assertions made in paragraph 25 of the Counter-Memorial.

39. In paragraph 39 of the Reply, the Applicant has stated as under:

> "The Council accepted the Respondent's interpretation of the word 'action' and held the complaint to be maintainable. From such a decision an appeal lies to this court under section 2 of Article II of the Transit Agreement read with Article 84 of the Chicago Convention. It is clear that a question relating to the interpretation or application of section 1 of Article II of the Transit Agreement has not been excluded from the purview of Section 2 of the said Article."

Without prejudice to the contentions of the Respondent and without accepting the interpretation of the Applicant, the Respondent submits that it is now Applicant's case that the disagreement relates to the interpretation of the word "action" in Article II, section 1, of the Transit Agreement, and a question relating to the interpretation or application has not been excluded from the purview of section 2 of the said Article. This is also an important admission by the Applicant which supports the Respondent's contention that the Council has jurisdiction to decide this disagreement, and has rightly exercised jurisdiction in respect of Pakistan's Complaint and Application.

40. The reference in paragraph 40 to the ICAO Document C. WP/5433, dated 8 September 1971 is unjustified. The Chief Counsel of Pakistan Mr. Sharifuddin Pirzada, at the Meeting of the Council held on 18 October 1971 had contested the contents of the document and contended as under:

> "Pakistan maintains that the Appeal by India in respect of our Complaint filed under section 1 of Article II of Transit Agreement is incompetent, misconceived and untenable. We submit that the conclusion contained in C-WP-5433 and the observations by the Director of Legal Bureau today are open to serious questions. We reserve the right to raise these issues and objections as to competency thereof before the International Court of Justice at an appropriate time."

It may be added that in the discussion at the said Meeting, it was indicated by the Members of the Council that C-WP-5433 was too general to serve as a basis for Council decision. Thereafter the Council had to consider the matter at a subsequent Meeting which has not been held so far. It is asserted that while dealing with a "Complaint" as opposed to an "Application", the ICAO Council and its Committees act very much like fact finding and conciliation bodies. In fact, while dealing with complaints, the Council has limited powers and can only make appropriate findings and recommendations to Contracting States concerned. The decision of the Council on any matter relating to a Complaint is not subject to appeal.

41. That the contention of the Applicant contained in paragraph 41 of the Reply and the construction sought to be given to the words "interpretation", "application" and "action" as jurisdictional words, is not correct.

CHAPTER VI

PRINCIPLES OF LAW RELATING TO TERMINATION AND SUSPENSION

(India's Reply, Paragraph 42)

A. Obligation to Act in Good Faith

42. The obligation to observe Treaties in good faith which has been contended by the Respondent is now conceded by the Applicant. In paragraph 42 of the Reply the Applicant has stated that: "it was in absolute good faith that it suspended the Convention and the Transit Agreement *vis-à-vis* Pakistan." The Applicant has thus admitted that, but for its suspension of the Convention and the Transit Agreement (which the Respondent claims to be illegal and ineffective), there would have been an obligation to implement the provisions of the said Treaties in good faith. This implies that the Convention and Transit Agreement were in force between the two countries at least till 4 February 1971. The Respondent reasserts that the Applicant has not acted in good faith since, firstly, the grounds put forward for the suspension of the overflights did not relate to the provisions of these Treaties at all and secondly, justification for the suspension of overflights on the ground of breach of the Convention and the Transit Agreement was given much later and belatedly the suspension of the said Treaties was claimed. The relevant Notes of the Applicant have already been referred to in paragraph 26 of the Rejoinder.

(India's Reply, Paragraphs 43 to 47)

B. Suspension of the Convention and the Transit Agreement

43. The Respondent submits that in paragraph 43 of the Reply, the Applicant has totally misconceived the points raised in paragraphs 29 to 31 of the Respondent's Counter-Memorial. In these paragraphs of the Counter-Memorial, the Respondent had put forward contentions explaining why the Convention and the Transit Agreement were not suspended during the armed conflict of September 1965, and were in operation between the parties at the time of the suspension of Pakistani flights over India. Among others it was pointed out that when a Treaty specifically provides for the exigency of war or national emergency, then those express provisions had to be followed.

44. The Applicant erroneously contends in paragraph 44 of the Reply that "the aforesaid contention raised by Pakistan is outside the jurisdiction of the Council". In any case, in the events that have happened and in the circumstances, the questions before the Council arose out of disagreements between the two countries relating to the application or interpretation of the Convention and the Transit Agreement and were not in any way outside the jurisdiction of the Council.

45-47. With reference to paragraphs 45, 46 and 47 of the Applicant's Reply, it is submitted that there is no special Agreement of 1966 inconsistent with or contradictory to the provisions of the Convention and the Transit

Agreement. The so-called "Special Agreement of 1966", was merely a measure to implement the Convention and the Transit Agreement and not an Agreement intended to replace them. The contention of the respondent, based on Articles 82 and 83 of the Convention, that there could be no special agreement inconsistent with the terms of the Convention, has been validly made. The Applicant has contended that "the Convention having been suspended the question of inconsistency does not arise". It is also important to note that in the latter part of paragraph 35 of the Reply the Applicant has stated as follows:

> "If the Convention and the Transit Agreement had not been suspended, the Respondent would be right in contending that the joint effect of Articles 82 to 83 of the Convention is that there could not be any special arrangement between the contracting States, which is inconsistent with the provisions of the Convention. It is precisely because the Convention and the Transit Agreement had been suspended as between India and Pakistan, that the 'special Agreement of 1966' (set out in paragraphs 18 and 19 of the Applicant's Memorial) could be validly entered into by the two countries."

Since the conduct of the parties clearly shows that Treaties were not suspended or terminated as a result of the brief conflict of September 1965 and having regard to the Tashkent Declaration and also to paragraph 42 of India's Reply and on India's own admissions, no agreement contrary to the Convention and Transit Agreement could be entered into by the two countries and in fact none was entered.

(India's Reply, Paragraphs 48 to 54)

C. Right of Unilateral Suspension or Termination of a Treaty

48. The statement of law and the contentions set out in paragraphs 37 to 42 of the Respondent's Counter-Memorial are valid and are reaffirmed. It is noted that the Applicant relies on the Vienna Convention on the Law of Treaties 1969 and accepts the provisions thereof as representing the law in force on the subject.

49-54. The Applicant has avoided a direct rebuttal of the points raised in paragraphs 38 to 42 of the Counter-Memorial and has also misconceived the issues set out therein.

(a) The Respondent had contended that where termination or suspension of a Treaty is sought on the ground of material breach, any provision which is embodied in the Treaty itself has to be applied. Article 60 of the Vienna Convention which deals with the termination or suspension of a Treaty provides in paragraph 4 that such a right is without prejudice to any provision in a Treaty applicable in the event of breach. Article 95 of the Convention, and Article III of the Transit Agreement expressly lay down the procedure for denunciation of the Convention and the Transit Agreement and the method by which a party may withdraw therefrom. On the other hand when there is an assertion relating to a breach of the Convention or the Transit Agreement and denial thereof by the other party, a procedure has been laid down under Article II, section 2, of the Transit Agreement, and Article 84 of the Convention to resolve the issue and to remedy the situation.

(*b*) The Respondent submits that when it is claimed to suspend a Treaty on the ground of material breach, that breach, apart from being material, must relate to a specific provision of the Treaty in question. The allegations of the Applicant in relation to the hijacking incident, apart from being false, do not relate to the breach of any specific provision of the *Convention or the Transit Agreement, let alone any "material breach"* thereof. The contention of the Applicant that the conduct of the Respondent in respect of the aircraft "amounted to the very negation of all the aims and objects, the scheme and provisions, of the Transit Agreement" is vague and does not refer to any specific provision thereof.

(*c*) The allegations regarding Pakistan's responsibility regarding the destruction of Indian aircraft at Lahore Airport are false. It has also been incorrectly stated that the Respondent showed no regard for the "most elementary notions of safety in civil aviation and made it impossible for the Applicant to enjoy its rights under the Convention, and its privileges under the Transit Agreement over Pakistan's territory". The fact is that India has never been hindeıed in her rights and privileges under the Convention and Transit Agreement by Pakistan, and not a single incident has occurred in which Indian overflights across Pakistan have been obstructed.

(*d*) The Respondent had submitted that when one party claims suspension of a Treaty on the grounds of material breach and the other party objects thereto, the former is obliged to settle the issue by consent of the parties or by resorting to third party settlement, specially where the Treaty provides a procedure for their party settlement. The general principle of law *nemo judex in re sua* is also consistent with and supports this contention.

(*e*) Even Article 60 of the Vienna Convention provides that a "material breach" of a Treaty entitles another party to "invoke the breach" as a ground for terminating the Treaty or suspending its operation in whole or in part. The International Law Commission in its Commentary on this Article has pointed out that the formula, "invoke as a ground" is intended to underline that the right arising under the Article is not a right arbitrarily to pronounce the Treaty terminated. If the other party contests the breach, or its character as a "material" breach, there will be a difference between the parties with regard to which the normal obligations incumbent upon the parties under the United Nations Charter and under general international law to seek a solution of a question through pacific means will apply. (*Report of the International Law Commission on the second part of its 17th Session and on its 18th Session*, 1966, p. 83.) In the instant case the Convention and the Transit Agreement have specifically provided a procedure for the settlement of such a difference, and hence a party alleging "material breach" would have to invoke it as a ground while resorting to the procedure for settlement under the Convention and the Transit Agreement.

(*f*) The Respondent had contended that in view of the fact that Pakistan denied that any breach of the Agreement had taken place, India could not unilaterally suspend the Agreement since a remedy under Article II, section 2, of the Transit Agreement, and Article 84 of the Convention, was available. In any event, any question relating to the suspension of the treaties is a question relating to their application or non-application and interpretation and is within the jurisdiction of the Council under the aforementioned provisions.

(India's Reply, Paragraphs 55 to 57)

D. Plea of Acquiescence

55. The Respondent asserts that the principle embodied in Article 45 of the Vienna Convention on the law of Treaties, is applicable in the instant case in relation to the conduct of India. As indicated in paragraph 43 of the Respondent's Counter-Memorial, the Applicant sent a letter to the ICAO Council on 4 February 1971 bringing to its notice the hijacking incident and making certain assertions against the Respondent. When the Applicant referred the matter to the Council, it assumed that the Council had jurisdiction but when the Respondent approached the Council it was surprising that the Applicant objected to its jurisdiction. The submissions made by the Applicant in the latter part of paragraph 55 of the Reply, are also erroneous since a bare assertion that the Convention stands suspended does not affect the jurisdiction of the Council.

56-57. The submissions of the Applicant in paragraphs 56 and 57 of the Reply are also incorrect. By claiming that the International Court of Justice has jurisdiction, the Applicant has admitted that the Convention and the Transit Agreement are in force between India and Pakistan.

(India's Reply, Paragraphs 58-59)

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

58. The Respondent reasserts that in the Reference before the honourable Court regarding Namibia the question was whether the Mandate of South Africa over Namibia was terminated by the United Nations General Assembly with the concurrence of the Security Council for material breach of obligations under the Mandate. The Court expressed its opinion on the issue of revocation of the Mandate on the basis that the General Assembly and Security Council possessed supervisory powers, and in that capacity could terminate the Mandate for breach of obligations by South Africa. It is submitted with respect that the Advisory Opinion of the Court in the said Reference has no bearing on the points of law involved in the present proceedings.

59. The Applicant has failed to notice the context in which the observations of Sir Gerald Fitzmaurice were quoted in paragraph 47 of the Counter-Memorial. The Respondent does not accept the analysis thereof and the interpretation put thereon by the Applicant in paragraph 59.

CHAPTER VII

NO INHERENT LIMITATIONS ON THE COUNCIL'S JURISDICTION

(India's Reply, Paragraphs 60 to 62)

A. Composition, Powers and Functions of the Council

60-61. The Respondent submits that the points raised by the Applicant in paragraphs 60, 61 and 62 of the Reply are erroneous and misconceived. ICAO is a Specialized Agency of the United Nations and there is no inherent limitation on the jurisdiction of its Council by virtue of its composition, character, duties and functions. The Council is set up by the Multilateral Treaty, which according to established practive ought to receive a broad and liberal interpretation. The Convention has conferred on the Council adjudicatory, judicial and quasi-judicial functions and the Contracting States have accepted the same. Further, the fact that an appeal has been provided to the International Court of Justice against the decisions of the Council, is clearly indicative of the competency of the Council to go into the various matters and issues under the Convention and the Transit Agreement.

62. Where one Party denies the jurisdiction of the Council, as the Applicant has done in the instant case, it is for the Council itself to determine whether it has jurisdiction. While deciding this issue the Council is competent to examine the assertions made on the basis of which its jurisdiction is disputed. This would, in the present case, include an enquiry into the question whether or not the Convention and the Transit Agreement continued in force, or were validly suspended and/or terminated. The bare assertion of the Applicant that the Treaties in question stood suspended, cannot divest the Council of its right to determine its own jurisdiction. In the interpretation of the Greco-Turkish Agreement of 1 December 1926 the Permanent Court of International Justice held as follows:

> "For, according to its very terms, Article IV of the Final Protocol expressly contemplates questions which may arise within the Mixed Commission; there can, therefore, be no doubt that only questions arising in the course of the deliberations of the Commission are contemplated. But, that being so, it is clear—having regard amongst other things to the principle that, as a general rule, any body possessing jurisdictional powers has the right in the first place itself to determine the extent of its jurisdiction—that questions affecting the extent of the jurisdiction of the Mixed Commission must be settled by the Commission itself without action by any other body being necessary [1]."

[1] *P.C.I.J., Series B, No. 16*, p. 20.

(India's Reply, Paragraphs 63 to 74)

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

63. The contention and the comments of the Applicant in paragraphs 63 to 74 are misconceived and incorrect. According to the Respondent the position is stated in the following paragraphs.

64. The Applicant has submitted that the construction of Article 84 of the Convention and Article II, Section 2, of the Transit Agreement should be neither narrow nor liberal but should be such an interpretation as to satisfy the principle of "strict proof of consent". The Applicant has also asserted that on a fair and reasonable construction, the words "interpretation" and "application" cannot cover "suspension" or "termination". The Respondent submits that the assertions of the Applicant are erroneous.

65. The Respondent submits that the Convention, being a Multilateral Treaty setting up an International Organization, must, therefore, receive a wide and liberal interpretation. The Respondent relies on the principle of effective interpretation, which also applies to jurisdictional clauses. In this context the Respondent reasserts the averments in paragraph 54 of the Counter-Memorial and submits that the cases cited therein support the application of this principle.

66. In paragraph 73 of the Reply, the Applicant has stated that the case of the *Factory at Chorzów* [1], along with the other three cases cited in paragraph 54 of the Counter-Memorial, have no bearing at all on the question of the limit of jurisdiction which falls to be considered in the present case, and therefore, it is not necessary to discuss the facts of the said cases and the principles laid down therein. This is incorrect. Firstly, all these cases support the principle of effective interpretation of the jurisdictional clause and secondly, the case concerning the *Factory at Chorzów* clearly illustrates that when allegations regarding the breach of a Treaty are denied by the other party, a disagreement relating to the "interpretation" or "application" of a Treaty does exist.

67. In the case concerning the *Factory at Chorzów*, the provision conferring jurisdiction on the Permanent Court of International Justice was Article 23, paragraph I, of the Geneva Convention of 15 May 1922, which stated: "should differences of opinion respecting the construction and application of Articles 6 to 22 arise between the German and Polish Governments, these shall be submitted to the Permanent Court of International Justice." The Court in Judgment No. 7, exercised jurisdiction on the basis of this clause for alleged breaches of the Convention by Poland. In Judgment No. 9, in an effective interpretation of the above jurisdictional clause, the Court further held that by implication the Court also had jurisdiction to determine compensation for breach of the Treaty.

68. In paragraph 68 of the Reply, the Applicant has stated that the existence of a "dispute" or "disagreement" is not denied, the only question is whether the dispute or disagreement relates to "interpretation" or "application" of the Convention or the Transit Agreement. The Respondent asserts that the "disagreement" or "dispute" is about the application, non-application or interpretation of the Convention and the Transit Agreement.

69. The submissions of the Applicant regarding the observations of the

[1] *P.C.I.J., Series A, No. 9.*

International Court of Justice in the *South West Africa* cases in 1962 are incorrect and unjustified. It is further denied that the suspension of the Convention and the Transit Agreement was *de hors* the Treaty and represented the exercise of a right under a well-settled rule of international law.

70-72. The Respondent further submits that the language of Article 84 of the Convention, specially the expressions, "interpretation" and "application" are wide enough to cover a dispute as to application or non-application, suspension or termination thereof. The observations of the International Court of Justice in the *South West Africa* case, 1962 [1], the case of *Heyman* v. *Darwins* [2] and the comments of Mr. B. P. Sinha [3] quoted by the Respondent, are relevant and support the above propositions.

73. With reference to paragraph 73 of the Reply it is submitted that the Applicant has failed to appreciate the principles enunciated in the three cases mentioned therein.

74. The Respondent reaffirms that the principle of effective interpretation applies to the present case wherein no question of usurping the function of legislation arises.

(India's Reply, Paragraphs 75-76)

C. Complaint under Section 1, Article II, of the Transit Agreement

75. The contention in paragraph 75 of the Reply is wholly misconceived and has no basis in law and in fact. The Respondent reasserts the facts and law set out in paragraphs 56, 57 and 58 of the Counter-Memorial.

76. The Respondent does not accept the correctness of the opinion of the former Director of Legal Bureau of ICAO and reaffirms the position set out in paragraph 57 of the Counter-Memorial.

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[1] *I.C.J. Reports 1962*, p. 185.

[2] A.C. 356, 1942, p. 385.

[3] Sinha, B. P., *Unilateral Denunciation of Treaty Because of Prior Violations of Obligations by Other Party*, 1966, p. 2.

CHAPTER VIII

MANNER AND METHOD EMPLOYED BY THE COUNCIL IN REACHING THE DECISION

(Reply of India—Paragraphs 77-79)

77. The statement made in this paragraph by the Applicant is misconceived and incorrect. The Respondent reasserts that the manner and method employed by the Council in reaching the decisions are proper, fair and valid. The Respondent does not accept the various statements and contentions made in paragraphs 93 to 99 of the Memorial. To the extent it was necessary, they have been sufficiently met by the statements in paragraph 59 of the Counter-Memorial.

78. The Respondent submits that Article 52 of the Convention is subject to Article 66 *(b)* of the Convention. Whether or not a statutory majority of 14 votes is required for any decision by the Council in any matter undei the Transit Agreement is itself under consideration of the Council. In this connection, the ICAO Secretariat prepared and circulated a paper (No. C-WP/ 5465-21-10-71) on this question and it is yet to be discussed by the Council. Therefore, the Memorandum of 10 August 1971 submitted by the Secretary General of ICAO to members of the Council is only a Secietariat paper which does not represent the decision of the Council. Likewise, the observations of the President which have been relied upon by the Applicant are not conclusive. It may be added that some Members of the Council at the meeting held on 29 July 1971 took the view that Article 52 was subject to Article 66 of the Convention. This is evident from the views of the Congolese representative at the Council (Mr. Ollassa) who said:

> "Mr. President, I do not understand. Is the majority of the Council always the same, even when there are States that are not parties to an agreement? . . . I really do not understand. There are 19 States that are parties to an agreement; the statutory majority should therefore be based on 19. We cannot base the majority on States which are not parties to an agreement and by virtue of Article 66 of the Convention cannot participate in a vote. That is incredible [1]."

The Nigerian and Australian Members supported the above views [2].

The Applicant's statement regarding the number of votes is incorrect as is apparent from the following statement of the President of the Council:

> "I said nothing about the statutory majority, although I said at the beginning of these proceedings, as early as February or March, that according to the legal opinion 14 votes were necessary in any vote taken on this subject. In this case it does not matter because there was only one vote in favour of the contention. So the contention has not been approved by the Council and we continue to have jurisdiction. That is all I am going to say and I suggest that we do not need to discuss at this

[1] I.M., para. 140, p. 287, *supra.*

[2] *Ibid.*, para. 144, p. 287 and para. 173, p. 290, *supra.*

moment what the statutory majority is. The result is the same. Any other explanations of vote [1]."

79. The statement made in paragraph 79 by the Applicant is misconceived and incorrect. It is submitted that the propositions put to vote by the President are not governed by Rules 41 and 46 of the Rules of Procedure for the Council [2]. In formulating and putting the propositions the President was exercising his authority under Rule 35 of the Rules of Procedure for the Council, which reads:

> "*Rule 35 (a)* The President shall convene meetings of the Council, he shall preside at and declare the opening and closing of each meeting, direct the discussion, accord the right to speak, put questions and announce the decisions.
>
> *(b)* He shall ensure the observance of these Rules, and shall rule on points of order and on any matter related to the interpretation or application of these Rules."

The President had, therefore, the right to put questions to the Council. The President said:

> ". . . The question I am putting to the Council is that the Council has no jurisdiction to consider the disagreement. That is all I want the Council to vote on: that the Council has no jurisdiction. I want to find out how many agree that the Council has no jurisdiction . . . unless the Council decides now that it has no jurisdiction, we carry on as we were before the preliminary objection of India [3]."

Under Rule 37 of the Rules, the rulings of the President can be appealed against and overruled by a majority of the votes cast. The said Rule reads:

> "*Rule 37* Rulings given by the President during a meeting of the Council on the application of these Rules of Procedure may be appealed against by any Member of the Council and the appeal shall be put to vote immediately. The ruling of the President shall stand unless overruled by a majority of the votes cast."

The ruling of the President was not appealed against by any Member, including the Applicant, during the entire proceedings and, therefore, cannot be assailed now. In any case, the Applicant has acquiesced in the manner employed by the President in putting the questions. The only objection raised by the Applicant was regarding the text of the propositions and not that the President could not formulate the propositions nor that the propositions ought to have been introduced and seconded. In any event, the Council and the Court, whose jurisdictions are international, are not bound to attach to matter of form and procedure the same degree of importance which they might possess in municipal law.

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[1] I.M., para. 141, p. 287, *supra*.
[2] Rules of Procedure for the Council, April 1970, ICAO Doc. 7559/4.
[3] I.M., para. 77, p. 281, *supra*.

CHAPTER IX

SUBMISSION

80. Upon the basis of the statements of fact and law in the Respondent's Counter-Memorial, supplemented by those set out in the Rejoinder and which may be subsequently made and argued before this Honourable Court, the Respondent most respectfully reiterates its prayers that the Court adjudge and declare in accordance with, and on the basis of the prayers set out in Part V of the Counter-Memorial which are hereby reaffirmed and incorporated by reference herein.

(Signed) Samuel Thomas JOSHUA,
Chargé d'Affaires,
Embassy of Pakistan at the Hague,
Deputy Agent of the
Government of Pakistan.

The Hague,
16 May, 1972.

TABLE OF CASES CITED

A. INTERNATIONAL COURT OF JUSTICE

1. *South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962.*
2. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971.*

B. PERMANENT COURT OF INTERNATIONAL JUSTICE

1. *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9.*

C. OTHER

Heyman and another v. *Darwins, Ltd.* [1942] *All England Reports.*

BOOKS

B. P. Sinha, *Unilateral Denunciation of Treaty Because of Prior Violations of Obligations by Other Party*, 1966.

ANNEXES TO THE REJOINDER SUBMITTED BY THE GOVERNMENT OF PAKISTAN

Annex I

AIR DEFENCE CLEARANCE REGULATIONS OF INDIA—EXTRACT FROM THE AERONAUTICAL INFORMATION PUBLICATION, INDIA (SECOND EDITION)

Page: RAC 6-3

REQUIREMENT FOR AIR DEFENCE CLEARANCE

No flight of aircraft civil/military, Indian or foreign, originating within the ADIZs, defined under paragraph 1 above and those penetrating into these ADIZs are permitted without Air Defence Clearance. The procedures for issue of Air Defence Clearance is outlined in the succeeding paragraphs. Aircraft flying without an Air Defence Clearance or failing to comply with any restriction or deviating from flight plan will be liable to identification and interception procedures promulgated in RAC 6/1.

3. PROCEDURE FOR ISSUE OF AIR DEFENCE CLEARANCE (ADC).

3.1. General:

Except the local flights conducted within the immediate vicinity of an aerodrome aircraft when operating to, through or within the ADIZs shall obtain Air Defence Clearance before take off, through the ATC concerned.

3.2. ADC shall be valid for the entire route irrespective of intermediate halts for flights originating in one ADIZs/FIR and transiting through other ADIZ/FIR.

3.3. ADC shall be obtained before departure and in the event of departure being delayed for more than 30 minutes at the aerodrome of departure or at intermediate halts, a fresh ADC shall be obtained. In the case of communication difficulty or delay in receipt of ADC, or non-existence of communication at the place of departure, the aircraft equipped with radio may be allowed to take off with instructions to obtain ADC immediately after airborne from the FICs concerned.

3.4. Flying Club aircraft intending to operate beyond the immediate vicinity of an aerodrome where no ATC unit is functioning may obtain ADC from the nearest IAF ATC Unit. The IAF ATC Unit will advise the FIC concerned regarding the movement of the Flying Club aircraft.

3.5. Scheduled aircraft or Flying Club aircraft returning to the aerodrome of departure on the same day may be issued with Airforce defence clearance for return flight also, if so desired, provided that a fresh defence clearance will have to be obtained in the event of the delay for more than 30 minutes in excess of the estimated departure time for the return flight.

Annex II

FM 221022 VIDDYA

TO DD OPKCYAFI

YA 323 (.) REF YR SIG 7-11/69-IB OF TWENTY SECOND APRIL STOP V N KAPOOR CONTROLLER OF AERONAUTICAL INSPECTION CALCUTTA NOMINATED AS OUR REPRESENTATIVE ON THE INQUIRY STOP PLEASE ADVISE THE PLACE AND DATE ON WHICH HIS PRESENCE IS REQUIRED (.)

FM 240810 VIDDYA

TO DD OPKCYADG

355 (.) REFERENCE OPKCYADG SIG 7-11/69/IB TOO 231225 AND YR SIG TOO 240252 STOP INDIAN AIRLINES OPERATIONS AND ENGINEERING PERSONNEL CAPT J. JOSEPH OPERATIONS MANAGER CMA CAPT ML GANDHI AIR SAFETY OFFICER AND MR NS RAJAN ASSISTANT CHIEF INSPECTOR WILL ACT AS ADVISERS TO ACCREDITED REPRESENTATIVE STOP REQUEST GRANT OF NECESSARY FACILITIES INCLUDING GRANT OF ENTRY PERMIT (.)

No. 1/12/69-AS

GOVERNMENT OF INDIA

CIVIL AVIATION DEPARTMENT

Office of the Director General of Civil Aviation

Dated New Delhi-22, 1 June 1970.

The Director General of Civil Aviation,
Government of Pakistan,
19, Napier Barracks, Karachi

(Attention: Wg. Cdr. W. D. Ahmed, Deputy Director
Flight Inspection)

Subject: Accident to Indian Airlines A/c F-27 VT-DOJ IC-260 on 21-4-69 at Daulatpur near Khulna.

Dear Sir,

In reply to your letter No. 7-11/69-IB, dated 21 May 1970, this is to inform you that the Department has no objection to your providing copy of the

summary of accident to ICAO and other agencies as referred to in your letter.

Yours faithfully,

(Signed) G. R. KATHPALIA,

Director of Air Safety,

for *Director General of Civil Aviation.*

GOVERNMENT OF INDIA

Office of the Director General of Civil Aviation

East Block II and III, R. K. Puram

No. 1/12/69-AS

Dated New Delhi-22, 26 September 1970.

To
The Director General of Civil Aviation,
Government of Pakistan,
19, Napier Barracks,
Karachi-4.

(Attention: Wg/Cdr. W. D. Ahmed)

Subject: Accident to I.A.C. Aircraft F-27 VT-DOJ IC-260 on 21-4-1969 at Daulatpur near Khulna.

Dear Sir,

May I refer to your letter No. 7-11/69-IB, dated 24 July 1970.

So far the investigation report on the above-mentioned accident has not been received. You are requested to have the transmission of the report expedited to this office.

Yours faithfully,

(Signed) G. R. KATHPALIA,

Director of Air Safety,

for *Director General of Civil Aviation.*

V. N. KAPUR,

CONTROLLER OF AERONAUTICAL INSPECTION,

CALCUTTA AIRPORT,

DUM DUM, CALCUTTA 52

D.O. REF. No. AS-/C/ADOJ/PT.II

Dated Dum Dum, 18 November 1969.

Dear Wg/Cdr Ahmed,

Please refer to your D.O. letter No. 7-11/69/IB, dated 28/29 October 1969.

Regarding Radar Scope observations relating to 1400Z and 1430Z weather,

it is not possible to provide the same as no observations were made then due to temporary unserviceability of the weather radar.

Concerning grant total of the flight experience of both the Captains, namely, Robin Ghosh and M. M. Singh, the figures are as follows:

Capt. Robin Ghosh	..	7684: 25 Hrs.
Capt. M. M. Singh	..	7146: 00 Hrs.

You are quite right, the error is typographical.

I have already contacted the Approach Controller for obtaining his statement with regard to the query raised by you concerning requirements of para. 6-3, para. 4-4 of ICAO Documents 4444/RAC/501/9 (9th edition). As soon as his statement and clarification on the same, if any, are obtained I will be forwarding the same to you.

Yours sincerely,

(Signed) V. N. KAPUR.

W/Cdr. W. D. Ahmed,
Dy. Director Flight Inspection,
Department of Civil Aviation,
19, Napier Barracks, Karachi,
West Pakistan.

Annex III

SUMMARY OF INFORMAL DISCUSSIONS HELD ON 21 NOVEMBER 1968 CONCERNING THE BOUNDARY BETWEEN DELHI AND LAHORE FIRS

1. Present at the discussions were from India Mr. S. Datta, from Pakistan Mr. S. A. Khan and Mr. S. I. Lakhani, and from ICAO Mr. W. Binaghi, Mr. P. C. Armour (ICAOREP, Bangkok), Mr. J. G. Karlsson (ICAOREP, Cairo) and Mr. K. Leipelt (T/O RAC/SAR, Bangkok).

2. The background for the informal discussion was the Rec. 3/3 of the LIM MID RAN Meeting in Geneva 1965 concerning the proposal to realign the boundary between Delhi and Lahore FIRs.

3. It was agreed during the discussions that the matter should not be raised during the present meeting. The representatives of India and Pakistan agreed that they should stress to their respective administrations that the urgency of the matter required that it be resolved without delay. For this purpose they should recommend that a meeting between the civil aviation administrations of the two countries with the participation of ICAO, be held as early as possible.

4. It was suggested that, in the interim period the ATS Charts in Doc. 8700[1] may reflect the distribution of responsibilities between the two States. The representatives of Pakistan and India agreed that this matter should also be left to the meeting between the two administrations for their consideration.

5. Mr. Binaghi indicated that necessary corrections for the next edition of Doc. 8700 are to be submitted to ICAO before the end of February 1969.

Manila, 25 November 1969.

(Signed) S. DATTA,
Delegate of India to the
MID/SEA RAN Meeting.

(Signed) S. A. KHAN,
Delegate of Pakistan to the
MID/SEA RAN Meeting.

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[1] ICAO DOC. 8700, Regional Air Navigation Plan for Middle East and South East Asian Regions.

Annex IV

INTERNATIONAL CIVIL AVIATION ORGANIZATION

REPORT OF INFORMAL MEETING BETWEEN INDIA AND PAKISTAN

Bangkok, 4-6 June 1970

1. *Participants:*

GOVERNMENT OF INDIA

Dr. Saroj Datta	Director of Aeronautical Communications.
Mr. R. N. Mazumdar	Assistant Director, Air Routes and Aerodromes.

GOVERNMENT OF PAKISTAN

Mr. M. Y. Wazirzada	Director of Aerodromes.
Mr. M. M. Sharif	Director, Map Publications, Survey of Pakistan.

ICAO

Mr. P. C. Armour	ICAO Representative, Far East and Pacific Office.
Mr. G. Peche	Technical Officer, RAC/SAR.
Mr. N. N. Chen	Technical Officer, COM.

2. *Place and Duration:*
The meeting was held at the ICAO Regional Office, Sala Santitham, Bangkok. The opening session was held at 14.30 hours on 4 June. The meeting closed at 12.30 hours on 6 June.
3. *Agenda:*
The purpose of the meeting was to discuss the matter of the common boundary between the Delhi and Lahore Flight Information Regions.
4. *Discussion:*

4.1 A discussion paper (DP/1) summarising the previous history of the matter was presented by the Regional Office. A copy of the discussion paper is attached to this report.

4.2 At the opening session the Delegate of Pakistan tabled the following proposal with respect to the proposed boundary of the Lahore FIR, for consideration by the meeting:

> Beginning at 3000N 6620E to 3000N 7330E then north-wards along the geographical boundaries of West Pakistan to 3274N 7419E then along the UN Cease Fire Line in Kashmir area to 3453N 7701E to 3531N 7750E then along international boundary

between China-Sinkiang and the contiguous areas the Defence of which is under the actual control of Pakistan to 3702N 7434E then along the geographical boundaries of West Pakistan to 3000N 6620E.

Note: This agreement is without prejudice to the final disposition of the territory of Jammu and Kashmir in accordance with the UN Security Council Resolutions.

4.3 The Delegate of Pakistan pointed out that the above proposal recognizes the practical and operational situation as it exists at present. The area proposed to be formally incorporated in the Lahore FIR is under the complete control of Pakistan, which exercises responsibility for the provision and operation of all air navigation facilities and services within the area. These responsibilities include air traffic services, communications, and search and rescue.

4.4 He further explained that if Pakistan's above proposal was not acceptable to India in its present form it could be stated simply, without reference to any boundaries, by saying that the area under the control of India and Pakistan respectively should form the respective FIRs until such time that the status of Jammu and Kashmir is finally decided.

4.5 The Delegate of India stated that he was not in a position to enter into discussion relating to the question of political and military boundaries, or political and military control of the area.

4.6 The Delegate of Pakistan stated that airspace over this area, which is under the actual control of Pakistan, had to be defined one way or another, either by defining lateral limits, with references to latitudes and longitudes, cease-fire line, international boundaries, etc., or by saying that the airspace over the areas undei the actual control of Pakistan and India, will be controlled by Lahore and Delhi FICs respectively. There is no other way of defining the FIR.

4.7 The Delegate of India referred to ICAO Annex 11 in which it is recommended that FIR boundaries need not necessarily be coincident with national boundaries. The Delegate of Pakistan stated that the civil aviation authorities of Pakistan have full respect for the ICAO Annexes, and pointed out that paragraph 2.7.1 of Annex 11 referred to by the Delegate of India reads as follows:

"2.7.1. RECOMMENDATION. The delineation of airspace, wherein air traffic services are to be provided, should be related to the nature of the route structure and the need foı efficient service rather than to national boundaries."

4.8 The Pakistan proposal is related to the route structure, some of these routes being as follows:

Rawalpindi—Skardu
Rawalpindi—Gilgit
Lahore—Rawalpindi—Skardu
Lahore—Rawalpindi—Gilgit.

The proposal is, therefore, directly related to the nature of the route structure, and also to the need for efficient services which can only be provided by Lahore FIC. It is clearly in the interest of flight safety that the part of the airspace over Jammu and Kashmir which is under the administrative control of Pakistan, should be included in the Lahore FIR.

4.9 The Delegate of India was of the opinion that the matter should be considered purely from the practical view of meeting requirements for civil aviation, with particular regard to the question of responsibility for air traffic services, and the safety of air transport. He recognized that under the conditions now prevailing Lahore FIC had been exercising this responsibility in part of the airspace now under consideration. He therefore suggested that responsibility for air traffic services in that part of the airspace could be formally delegated to the Lahore FIC without any change in the FIR boundaries.

4.10 Put into the form of a firm proposal, this was stated by the Delegate of India as follows:

> That for ATS purposes an area bounded by a straight line joining point 3650N 7415E to 3508N 7707E and this point another straight line joining point 3440N 7345E, should become the defined area over which Lahore FIC could exercise its responsibility from ground level to say, 25,000 feet. Delhi FIC should exercise ATS responsibility in the airspace above 25,000 feet in this area.

These arrangements would be subject to review at any time, and any changes considered necessary at a later date could then be discussed.

The Delegate of India also suggested that in the event of acceptance of the above proposal, Pakistan should withdraw its Notam No. 5 issued on 25/3/1960.

4.11 In the discussion which followed, the question was raised by the Delegate of Pakistan as to why the Indian proposal included an upper limit of 25,000 feet over the area and suggested a reduction in the area comprising the Lahore FIR, while under the existing situation Lahore FIC now exercises responsibility over the whole airspace with no upper limit.

4.12 The Delegate of India explained that imposing an upper limit would facilitate the movement of overflying highlevel jet aircraft, and such aircraft would not be required to report in and out of too many FIRs. In his opinion the Indian proposal met the Pakistani requirements as set out in the report of the LIM MID RAN Meeting (quoted in para. 4 of the Attachment). The proposed upper limit of 25,000 feet can certainly be examined and if necessary be extended above that level.

4.13 The Delegate of Pakistan stated that if the arguments put forward by the Indian Delegate in support of his proposal were accepted there was no reason why the proposal of the Indian Delegate should not be applied to the whole of the Kashmir territory, because the disputed territory is not only the area defined in Pakistan's proposal, but includes the whole of Kashmir.

4.14 The Delegate of Pakistan re-emphasized his view that the only proper solution to the problem is to recognize the actual situation whereby Lahore FIC exercises full jurisdiction over traffic in the area defined by the Pakistan proposal. This situation should be formally recognized by acceptance of the Pakistan proposal.

4.15 The Delegate of India re-stated his point that there need be no reference to disputed boundaries or amendment of FIR boundaries. He emphasized again that he was not in a position to enter into discussions regarding these points. He stated that acceptance of the proposal he had made would be a first step towards a long-term solution of the problem.

4.16 He also drew attention to an air traffic control problem requiring

solution in the eastern part of the continent—the Calcutta/Dacca area—where Calcutta had for some time been exercising air traffic control responsibility within a defined area of the Dacca FIR under authority delegated by Dacca. He made the proposal that a further delegation of authority should be given by Dacca to Calcutta, without any change to the FIR boundaries, in an area located north of a line joining the co-ordinates 89.01E 25.05N and 90.00E 25.13N between Flight Levels 50 and 200.

4.17 The delegate of Pakistan pointed out that questions relating to delegations of authority in other Indian and Pakistan FIRs were not open for discussion, according to the agreement on the agenda reached prior to this meeting. However, he was prepared to take note of India's proposal relating to the Dacca/Calcutta FIRs, and it would be studied by his Administration.

4.18 He then referred to charts published by ICAO, particularly those included in the MID/SEA Air Navigation Plan and Publication (Doc. 8700) and expressed his strong view that they should be amended to make it clear that air navigation facilities and services in the area to the west and north of the cease-fire line in the Kashmir territory, under the actual control of Pakistan, were provided by Pakistan and not by India as it now appears on the charts.

4.19 He was of a firm opinion that ICAO charts should reflect the correct position as given in the United Nations maps. He requested this to be done by insertion on the charts of a note reading as follows:

> The area [1] shown as part of the Delhi FIR is in dispute between India and Pakistan, and charts and maps published by the United Nations show this area as a disputed area. In the area now under the actual control of Pakistan, air navigation services are provided by Lahore FIC.

4.20 The ICAO Representative pointed out that the question of markings on ICAO charts included in ANP documents, and the form of wording used on these charts, was a matter for the Secretary-General to decide but he was sure that the Secretary-General would give careful consideration to Pakistan's request.

4.21 The Delegate of India requested that any proposed changes to the ICAO charts in respect of the area under dispute should be referred to the Governments of India and Pakistan before being incorporated in the charts.

4.22 The Delegate of Pakistan expressed his view if a note, such as that indicated above, is referred to States, it is likely to meet with objections from India, and the purpose of the note which is solely in the interest of flight safety, will not be achieved.

4.23 The Delegate of Pakistan tabled a request that the Indian civil aviation authorities should amend their Aeronautical Information Publication and relevant NOTAMs so as to reflect the correct position.

4.24 The Delegate of India observed that unilateral action by any State concerned with the matter under discussion will further retard progress towards a solution of the problem, rather than facilitate such progress.

4.25 The Delegate of Pakistan pointed out that if all other attempts fail, there

[1] This area would be indicated on the chart.

will be no other alternative except to take unilateral action in the interest of flight safety in this area.

4.26 *Conclusion:*

It was regretted by the participants that this meeting had been inconclusive, and it was felt that further discussions on the matter should be held, in due course, to attempt to resolve the problems at issue. In the meantime it was expected that the points documented in this report, and the proposals put forward, will receive careful consideration by the two Governments.

Annex V

DD 150915Z

FROM : OPKCYA

TO : VIDDYA

3-65|AT. 1(.) REQUEST CONFIRM NO OBJECTION TO THE RESUMPTION OF NORMAL OPERATIONS BY PIAC TO AND ACROSS INDIA (.)

FROM : VIDDYA (171135)

TO : OPKCYA

YA 274 (.) REF YR SIG 3-65|AT-1

TOO 150915 ACKD (.) WRITING TO YOU (.)

T : OPKCYA

FROM : 040940 VIDDYA

TO : DD OPKCYA

YA 054 (.) OUR GOVERNMENT HAS AGREED TO RESTORATION OF OVERFLIGHTS OF SCHEDULED SERVICES BETWEEN INDIA AND PAKISTAN(.) WE WOULD SUGGEST MEETING SOONEST POSSIBLE TO DETERMINE DETAILS INCLUDING EARLIEST DATE OF RESUMPTION AND ROUTES OVER WHICH OVERFLYING COULD BE RESUMED (.) WE WOULD BE GRATEFUL FOR IMMEDIATE REPLY REGARDING DATE AND VENUE (.)

DD 070945Z

FROM : OPKCYA (DGCA PAKISTAN)

TO : VIDDYA (DGCA INDIA)

3-66|AT.1 (.) WE HAVE RECEIVED INSTRUCTION FROM OUR GOVERNMENT THAT THE GOVERNMENT OF INDIA HAS AGREED ON RECIPROCAL BASIS TO THE RESUMPTION OF OVERFLIGHTS OVER EACH OTHERS TERRITORY BY OUR RESPECTIVE AIRLINES IN ACCORDANCE

WITH PROCEDURES EXISTING BEFORE 1ST AUG. 1965 (.) ACCORDINGLY WE PROPOSE TO RESUME OVERFLIGHTS OF INDIAN TERRITORY AS PER FOLLOWING SCHEDULE (.) SUBPARA (A) (.) PIA INTENDING SCHEDULE OVERFLYING INDIA (.) KARACHI|DACCA| KARACHI SERVICES PK 720 DEP KARACHI MON FRI 0630 ARR DACCA 1050 PAK 722 DEP KARACHI DAILY EXCEPT MON FRI 0930 ARR DACCA 1350 PAK 722A DEP KARACHI MON FRI 1700 ARR DACCA 2120 PK702 DEP KARACHI WED 0630 ARR DACCA 1050 PK 708 DEP KARACHI SAT 0630 ARR DACCA 1050 PK 721 DEP DACCA MON FRI 1910 ARR KARACHI 2135 PK 723 DEP DACCA DAILY 2230 ARR KARACHI 0055 PK 705 DEP DACCA THU 0200 ARR KARACHI 0425 PK 711 DEP DACCA SUN 0200 ARR KARACHI 0425 (.) DACCA-LAHORE|DACCA SERVICES PAK725 DEP DACCA MON FRI 1200 ARR LAHORE 1330 PK 733 DEP DACCA DAILY EXCEPT MON FRI 1500 ARR LAHORE 1630 PK 726 DEP LAHORE MON FRI 1430 ARR DACCA 1800 PK 734 DEP LAHORE DAILY EXCEPT MON FRI 1730 ARR DACCA 2100 (.) AIRCRAFT BOEING 720B (.) SUBPARA (B) (.) PIA DACCA| KATHMANDU|DACCA SCHEDULE OVERFLYING INDIA (.) PK 531 DEP DACCA MON WED 0615 ARR KATHMANDU 0955 PK532 DEP KATHMANDU MON WED 1100 ARR DACCA 1505 (.) AIRCRAFT DC-3(.) ALL TIMINGS LOCAL (.) SUBPARA C (.) BOTH EFFECTIVE 0001 LT 10TH FEBRUARY 66 (.) PARA 2(.) SUGGEST SCHEDULED FLIGHTS BETWEEN PAKISTAN AND INDIA BY OUR AIRLINES COMMENCES FIRST MARCH (.) OUR SCHEDULE WILL BE FILED SHORTLY (.) FOR THIS PURPOSE PIA AND IAC MAY GET IN TOUCH FOR REOPENING THEIR OFFICES IN INDIA AND PAKISTAN RESPECTIVELY (.) WILL APPRECIATE YOUR ASSISTANCE IN THE MATTER (.) PARA 3 (.) PLEASE ACKNOWLEDGE AND INTIMATE OVERFLIGHT SCHEDULES OF YOUR AIRLINES (.) PARA 4 (.) THIS DISPOSE OF YOUR SIGNAL NO. YA 054 DATED 040940 (.)

DD OPKCYA

081505 VIDDYA

YA 101 (.) REF YOUR SIGNAL TOO 070945 (.) WE AGREE TO RESUMPTION OF OVERFLIGHTS BY SCHEDULED SERVICES EFFECTIVE 0001 LT 10TH FEB 1966 (.) WE NOTE THE DETAILS OF OVERFLIGHTS OF SCHEDULED SERVICES THAT PIAC PROPOSE TO RESUME (.)

FM : 091127Z OPKCYA

TO : DD VIDDYA

DCA|ATS-27|65 (.) PARA ONE (.) IN ACCORDANCE WITH AGREEMENT BETWEEN OUR GOVERNMENTS

ALL ROUTES AND PROCEDURES WHICH EXISTED PRIOR TO FIRST AUGUST WERE TO BE RESTORED (.) IT IS NOTED FROM YOUR SIGNAL YA101 TOO 081505Z THAT PDRs 3, 4 & 6 FOR KARACHI-DACCA FLIGHTS HAVE NOT BEEN MENTIONED (.) SECONDLY YOUR SIGNAL INDICATES THAT ON KATHMANDU-DACCA ROUTE OUR AIRCRAFT WILL BE REQUIRED TO FLY VIA CALCUTTA (.) PREVIOUSLY THE ROUTE WAS DHANBAD-DACCA DIRECT (.) SUGGEST NECESSARY AMENDMENTS ARE EFFECTED TO CONFORM WITH AGREEMENT (.) PARA TWO (.) YOUR SCHEDULES HAVE BEEN NOTED (.) ALL FORMER ROUTES OVER PAKISTAN TERRITORY AS EXISTED PRIOR TO 1.8.1965 WILL BE AVAILABLE TO IAC AND AII ON A PROVISIONAL BASIS (.) THIS WILL BE SUBJECT TO REVIEW IN CASE YOU ARE UNABLE TO RESTORE ALL FORMER ROUTES AND PROCEDURES (.) PARA THREE (.) TO AVOID CONFUSION AND ENSURE FLIGHT SAFETY IT IS NECESSARY THAT THE BOUNDARIES, CONTROL OF AIR-SPACE AND TRANSFER OF CONTROL POINTS FOR KARACHI-BOMBAY FIRs IN THE WEST AND DACCA-CALCUTTA FIRs IN THE EAST SHOULD REMAIN IN FORCE AS EXISTED ON 1ST AUGUST ( )

FM VIDDYA 091403

TO DD OPKCYA

YA 117 (.) REF YR SIGNAL 091127 (.) WE HAVE OPENED UP PDR CONCERNING YR OVER-FLIGHTS (.) OTHER PDR ARE UNDER ACTIVE CONSIDERATION (.) IT IS CONFIRMED THAT ROUTE DHANBAD-DACCA IS DIRECT AND NOT VIA CALCUTTA (.) FLIGHTS MENTIONED IN OUR SIG TOO 081505 WILL COMMENCE OPERATING FROM 10TH FEB AS SUGGESTED IN YR SIG TOO 091127 ON PROVISIONAL BASIS (.)

DD 120935Z

FROM : OPKCYA

TO : VIDDYA

3|66|AT-1 (.) PIA DACCA|CALCUTTA|DACCA AND CHITTAGONG|CALCUTTA|CHITTAGONG SCHEDULE EFFECTIVE 1ST MARCH 1966 ARE AS FOLLOWS (.)
PK : 435 DEP DACCA DAILY 1700 ARR CALCUTTA 1725
PK-425 DEP DACCA DAILY 0745 ARR CALCUTTA 0810
PK-436 DEP CALCUTTA DAILY 1755 ARR DACCA 1920
PK-426 DEP CALCUTTA DAILY 0840 ARR DACCA 1005 (.)
PK-429 DEP CHITTAGONG MON WED FRI SUN 1420 ARR

CALCUTTA 1505 PK-428 DEP CALCUTTA MON WED FRI SUN 1535 ARR CHITTAGONG 1715 (.) ALL TIMES LOCAL (.) AIRCRAFT F-27(.)

FM 191321 VIDDYA

TO DD OPKCYA

YA 260 (.) REFERENCE YOUR SIGNALS 3,66|AT-I TOO 120935 ATD 120937 (.) AS WE HAVE INFORMED YOU IN OUR SIGNAL YA 101 TOO 081505 RESUMPTION OF FLTS RAISES QUESTION NOT MERELY OF INTER-AIRLINE IMPOSITION SUCH AS RESTORATION OF PROPERTY STAFFING ETC (.) THESE MATTERS WILL HAVE TO BE RESOLVED AT INTER-GOVERNMENTAL LEVEL (.) WE REGRET UNTIL THEN (.) IT WILL NOT (REPEAT) NOT BE POSSIBLE TO RESUME SERVICES (.) IN ORDER TO FACILITATE DECISION WE REPEAT OUR PROPOSAL THAT DGCAS OF INDIA AND PAKISTAN SHOULD MEET TO RESOLVE VARIOUS PROBLEMS ARISING OUT OF RESUMPTION AT APPROPRIATE STAGE TWO AIRLINES COULD ALSO MEET AS SUGGESTED BY YOU EARLIER (.) REGARDING ROUTES NOTAMS HAVE BEEN ISSUED AND YOU MUST HAVE RECEIVED THEM STOP =